Tax & Corporate law Bulletin

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FEBRUARY 2011

From the Editor's Desk...

Dear Reader,

Greetings for the season.

Don't think about what can happen in a month, don't think what can happen in a year. Just focus on the 24 hours in front of you and do what you can do to get closer to where you want to be.

Let's have a look on some of the updates regarding this month: Public Provident Fund (Amendment) Scheme, 2010, Indian economy set to grow by 8.6% in 2010-11, New Companies Bill ready, Provision of 0.25% for standard assets of NBFCs and read many more…

We eagerly await your feedback on the bulletin.

Yours truly,

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DIRECT TAX

➢ I-T dept may write off some arrears

The government is considering a mechanism to analyze profile and finally write off irrecoverable income tax arrears of tax defaulters as it looks to reduce administrative cost incurred on maintaining records of this bad debtand clean its books. Arrears for direct tax have touched Rs 2.5 lakh crore till last fiscal, of which Rs 1.43 lakh crore is not considered as recoverable by the income tax department. Still the department has to maintain record of the arrears and compute interest and penalty on such defaults.

➢ Depreciation allowable on goodwill

This article summarizes a recent important decision of the Delhi High Court (the DHC) in the case of CIT vs. Hindustan Coca Cola Beverages Pvt. Ltd., Income Tax Appeal No.1391/2010, (Order dated 14th January 2011).

TheDHC has held that the true basis for depreciation allowance is the actual character of the assets on which it is claimed. The nomenclature given to the entries in the books of accounts is not relevant for ascertaining the real nature of the transaction.

➢ I-T slaps notice on Cadbury, Kraft; seeks takeover details

The income-tax department has served a notice on Cadbury India and its overseas parent, Kraft Foods Inc,seeking details of its $19-billion global takeover of Cadbury last year. The notice follows a directive from the finance ministry after a public interest petition was filed in the Delhi High Court in 2010 claiming that Kraft had"completely and illegally avoided" tax liabilities related to the sale of shares and capital assets in India. The move is the latest in a series of efforts by the Indian revenue department to tax overseas deals, the most famous being the Vodafone deal. I-T officials confirmed the development. "An enquiry is on and we are in the process of collecting the details of the transaction," a senior official said. A Kraft Foods spokesperson sought to play down the significance of the notice.

➢ 115JAA MAT Credit

If an assessee is entitled to a tax credit as a consequence of th assessee making payment of tax under section 115JA (1) in the year one, then, the set off of such tax credit follows as a matter of course once the conditions mentioned in section 115JAA are fulfilled and the grant of such credit is not dependent upon determination by the Assessing Officer. MAT credit available under section 115JAA has tobe excluded while calculating 'assessed tax' under section 234B.

Further a form prescribed under the rules can never have any effect on the interpretation or operation of the parent statute.

CIT vs.Tulsyan NEC Ltd. [2011] 196 Taxman 181 (SC)

➢ Section 119 Of The Income -Tax Act, 1961 – Instructions To Subordinate Authorities- Instructions Regarding Income Limits For Assigning Cases To Deputy Commissioners Assistant Commissioners

The CBDT vide its Instruction No. 1/2011 [F. No. 187/12/2010-It (A-I)], dated January 31st, 2011 has decided to increase the monetary limits as under:-

Metro charges for the purpose of above instructions shall beAhmedabad, Bangalore, Chennai, Delhi, Kolkata, Hyderabad, Mumbaiand Pune. The above instructions are issued in supersession of the earlier instructions and shall be applicable with effect from April 1st 2011.

RECENT JUDGEMENTS

- **Honda Siel Power Products Ltd vs. DCIT (Delhi High Court) dated February 26th, 2011**

The assessee has "accepted and admitted" that it has not given details with regard to proportionate expenses relatable to tax free income and argued that it was not required to disclose the same as s. 14A was not in the statute book when the ROI was filed. However, the details ought to have been given at the stage of the assessment proceedings & the failure to do so is a "failure to disclose material facts". It is the duty of the assessee to bring to the notice of the AO particular items in the books of account or portions of documents which are relevant.

Material facts are those facts which if taken into accounts they would have an adverse affect on assessee by the higher assessment of income than the one actually made. The assessee is a multinational company and it is difficult to perceive and accept that its tax or the legal department was not aware and did not have knowledge about section 14A (Consolidated Photo 281 ITR 394 (Del) followed)

- **The Central India Electric Supply Co Ltd vs. ITO (Delhi High Court)datedFebruary 21st, 2011**

U/s 151, a notice u/s 148 cannot be issued after the expiry of 8 years (now 4 years) from the end of the assessment year "unless the Board is satisfied on the reasons recorded by the Income-tax Officer that it is a fit case for the issue of such notice". In the present case, approval had been accorded by affixing a mere rubber stamp. Rubber stamping of underlying material is hardly a process which can get the imprimatur of the Court as it suggests that the decision has been taken in a mechanical manner.

Even if the reasoning set out by the ITO was to be agreed upon, the least, which is expected, is that an appropriate endorsement is made in this behalf setting out brief reasons. Reasons are the link between the material placed on record and the conclusion reached by an authority in respect of an issue, since they help in discerning the manner in which conclusion is reached by the concerned authority. There is no proper application of mind by the Board (Chuggamal Rajpal 79 ITR 603 (SC) followed)

- **Clear Plus India Pvt Ltd vs. DCIT (ITAT Delhi) dated February 26, 2011**

U/s 92C read with Rule 10B, the most appropriate method has to be applied for determination of arm's length price. In principle, the CUP method (the traditional transaction method) is preferable to the other methods because all other things being equal, the CUP and traditional transactional methods lead to more reliable results vis-a-vis the results obtained by applying transaction profit method (UCB India 121 ITD 131 and Serdia Pharmaceuticals followed)

- **St. Lawrence Educational Society vs. CIT (Delhi High Court)**

To decide whether the institution exists solely for education and not to earn profitthe test of predominant object of the activity has to be seen to decide. The purpose does not lose its character merely because some profit arises from the activity. It is not possible to carry on educational activity in such a way that the expenditure exactly balances the income and there is no resultant profit, for, to achieve this, would not only be difficult of practical realization but would reflect unsound principles of management. In order to ascertain whether the institute is carried on with the object of making profit or not it is duty of the prescribed authority to ascertain whether the balance of income is applied wholly and exclusively to the objects for which the applicant is established (Aditanars Educational Institution 224 ITR 310 (SC) & American Hotel and Lodging Association 301 ITR 86 (SC) followed)

➢ **CIT vs. Mahindra Fin. lease Pvt Ltd (Delhi High Court)dated February 8, 2011**

In the context of regular assessment proceedings, it has been held in Lalji Haridas vs. ITO 43 ITR 387 (SC) that even when there is no specific provision in the Act for protective assessment, the AO has power to make such a protective assessment under certain circumstances. This principle of law will apply to block assessment proceedings u/s 158BC & 158BD as well and the AO has the power to make a block assessment order on a protective basis.

➢ **Reliance Infrastructure Ltd vs. ACIT (ITAT Mumbai) dated February 2, 2011**

U/s 80-IA (8), the transfer of goods from an eligible business to a non-eligible business is required to be taken at "market value". The tariff determined by MERC is based on the concepts of 'clear profits' and 'reasonable return' and does not reflect the "market value" of the electricity. While the 'clear profits' are determined by considering the streams of income, the 'reasonable return' is determined on the capital base. If the 'clear profits' are more than the 'reasonable return', the excess is considered while fixing tariffs for the subsequent year and the exercise of adjusting the gap between the reasonable return and clear profits is an on-going process. The tariff is either increased or reduced to adjust the gap between the two. Further, the tariff is fixed for both activities of generation and distribution of power and may not reflect the true rates with regard to only the activity of generation

➢ **ACIT vs. Essar Steel Ltd (ITAT Vizag) dated February 1st, 2011**

CBDT Circular No.12 dated 23.8.2001 which provides that "the AO shall not make any adjustment to the arm's length price determined by the taxpayer if such price is unto 5% less or unto 5% more than the price determined by the AO" was in the context of the proviso to section 92C (2) inserted by FA 2001 w.e.f. AY 2002-03. Though the proviso provided for only arithmetical mean of the prices to be taken and did not provide for any concession, the Circular was issued considering practical difficulties. The said Proviso was amended by FA 2002 w.e.f AY 2002-03. The effect is that the Proviso in the context of which Circular No. 12 was issued never came into operation and so the Circular No. 12 became otiose and cannot be relied upon

➢ **Hyderabad Chemicals Supplies Ltd vs. ACIT (ITAT Hyderabad) dated February 9, 2011**

That section 80-IA deduction has to be computed after deduction of the notional brought forward losses and depreciation of business even though they have been allowed set off against other income in earlier years is concluded by the ITAT Special Bench judgment in ACIT vs. Gold Mine Shares & Finance (P) Ltd113 ITD 209 (SB) (Ahd.) against the assessee. As regards the High Court judgements in Mewar Oil & General Mills 271 ITR 311 (Raj) (not followed by the Special Bench) & Velayudhaswamy Spinning Mills vs. ACIT 38 DTR 57 (Mad) (delivered after referring to the Special Bench), though a judgment of a non-jurisdictional High Court prevails over a judgment of the Special Bench, the former cannot be followed, even though it is the only High Court judgment on the point, if "rendered without having been informed about certain statutory provisions that are directly relevant"

INDIRECT TAX

Service Tax

Synopsis of notifications, circulars & letters

- **CBEC vide Circular No. 132/1/2011-ST dated 12th January, 2011**

Has clarified that fumigation of export cargo including agricultural/horticultural produce, whether loaded into containers or not, is not liable to service tax under the category of "cleaning activity" since the definition of "cleaning activity" u/s. 65(24b) covers cleaning of objects or premises of (i) commercial or industries buildings and premises thereof; or (ii) factory, plant or machinery, tank or reservoir of such commercial or industrial building & premises thereof.

- **CBEC vide Circular No. 133/2/2011-ST dated 18thJanuary, 2011**

Has clarified that customized group "Janata Personal Accident Policy (JPAP)" insurance schemes floated by various insurance companies as per the specifications of concerned State Governments, to extend risk cover to target populations and to fulfill the prescribed rural or social sector obligation, are eligible for exemption from service tax vide Notification No.3/1994-ST dated 30thJune, 1994 since the term "JPAP Policy" is not specifically defined for the purpose of the said notification.

CENTRAL EXCISE

- **Excise-Repercussions of duty paid on goods which are absolutely exempt**

- **Circular No. 940/01/2011–CX, dated January 14th, 2011**

a) As per the provisions of section 5A (1A) of The Central Excise Act, 1944, a manufacturer shall not pay excise duty on goods manufactured by him, if Central Government has granted an unconditional exemption on manufacture of such goods. Moreover, a departmental circular dated November 26, 2010, was also issued which clarified that the manufacturer cannot opt to pay duty on such goods and avail CENVAT credit of the duty paid on inputs.

b) Subsequently, circular dated January 14, 2011, issued recently clarifies that, if manufacturer opts to pay excise duty on such goods, the same cannot be passed on as 'Cenvat credit' to downstream units. Further, the amount of excise duty collected from the buyers by the manufacturer shall be deposited with Central Government and the Cenvat credit if utilized by downstream units shall be recovered along with interest as per Rule 14 of CENVAT Credit Rules, 2004.

c) Departmental InstructionCBEC has instructed all the Jurisdictional Commissioners to undertake follow-up action including invoking of penalty under Central Excise Laws on assesses who are not filing their excise returns on time.

- **E-Gujarat**

Earlier the scope of e-filing was enhanced through Public Circular. Taking in to consideration the resistance in compliance, in view of lack of statutory backing, Notification No. (GHN-47)VAR-2010(30)has been issued, amending Rule 19, to statutorily provide for e-filing of returns. Accordingly, E-filing of returns is now statutorily mandatory in following cases:-

a) If turnover exceeds 50 lacks in previous year or current year.

b) If registered under the CST Act.

c) If Zero rated sales are made.

d) If SEZ developer or co developer or unit in SEZ.

e) If dealer in Timber, Ceramic Tiles, Scrap of Iron &Steel, Tobacco& Tobacco Products or such other Major Minerals, as may be specified by the Commissioner.

CORPORATE LAW

➢ Format for submission of data to credit information companies

The RBI has issued Circular No. 41/03.05.33/2010-11,whereby in terms of section 17(1/2) of the CreditInformation Companies (Regulation) Act, 2005, a credit informationcompany may require its members to furnish credit information as it may deem necessary in accordance with the provisions of the Act and every such credit institution has to provide the required informationto that credit information company.

Further, in terms of Regulation10 (a) (ii) of the Credit Information Companies Regulations, 2006, every credit institution shall,

- keep the credit informationmaintained by it, updated regularly on a monthly basis or at such shorter intervals as may be mutually agreed upon between the credit institution and the credit information company, and,
- Take all suchsteps which may be necessary to ensure that the credit information furnished by it is update, accurate and complete.

This Circular clarifies that RRBs which have become members of credit Information Company / companies may provide them the current data in the existing format and that such RRBs may also provide historical data in order to enable the new credit information companies to validate their software and develop a robust database. The Circular also notes that in many cases, names of Directors of various firms/companies are similar.

It is, therefore, necessary to ensure that Directors are correctly identified and in no case, names appearing to be similar tothe names of Directors appearing in the list of defaulting borrowersare wrongfully denied credit facilities on such grounds. To avoid suchsituations, it has been decided that the Director IdentificationNumber (DIN) may be included as one of the fields in the data formatsubmitted by RRBs to credit information companies. Such provision of DIN will further ensure that the data relating to credit informationis accurate and complete.

➢ Issuance regulatoryFramework for coreinvestment companies (CICs) (NCDs)

The RBI has issued Circular No. 206 /03.10.001/2010-11 dated January 5th, 2011 amending the definitions of “Adjusted net worth” and “Core Investment Company”, “Market value of quoted investments”, “Outside liabilities” and “Systemically important core Investment Company”. The modified definition of “Adjusted net worth” is as under:-

- “Adjusted net worth” means the aggregate, as appearing in the last audited balance sheet as at the end of the financial year, of Owned Funds as defined in Non Banking Financial (Non Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions,2007;

  As increased by:–

  a) 50% of the unrealized appreciation in the book value of quoted investments as at the date of the last audited balance sheet as at the end of the financial year (such appreciation being calculated, as the excess of the aggregate market value of such investments over the book value of such investments); and

  b) The increase if any, in the equity share capital since the date of the last audited balance sheet.

  As reduced by:–

  a) The amount of diminution in the aggregate book value of quoted investments (such diminution being calculated as the excess of the book value of such investments over the aggregate market value of such investments) and

b) The reduction, if any, in the equity share capital since the date of the last audited balance sheet.

Explanation:

Investments shall include investment in shares, stock,bonds, debentures or securities issued by the Government or local authority or other marketable securities of a like nature.

The modified definition of "Core Investment Company" is as under:

"Core Investment Company" means non-banking financial company carrying on the business of acquisition of shares and securities and which satisfies the following conditions as on the date of the last audited balance sheet:-

- It holds not less than 90% of its net assets in the form of investment in equity shares, preference shares, bonds, debentures, debt or loans in group companies;
- Its investments in the equity shares (including instruments compulsorily convertible into equity shares within a period not exceeding 10 years from the date of issue) in group companies constitutes not less than 60% of its net assets Net assets, for the purpose of this proviso, would mean total assets excluding :-

  a) Cash and bank balances;
  b) Investment in money market instruments and moneymarket mutual funds
  c) advance payments of taxes; and
  d) Deferred tax payment.

- It does not trade in its investments in shares, bonds, debentures, debt or loans in group companies except through block sale for the purpose of dilution or disinvestment.It does not carry on any other financial activity referred to in Sections 45 I (c) and 45 I (f) of the Reserve Bank of India Act,1934 except:

  - Investment inbank deposits,money market instruments, including Money market mutual funds, government securities, andbonds or debentures issued by group companies;
  - granting of loans to group companies; and
  - Issuing guarantees on behalf of group companies.

➢ **Provision of 0.25% for standard assets of NBFCs**

The RBI has issued Notifications No. DNBS.222 CGM (US) 2011 and No.DNBS.223CGM (US) 2011 dated. 17thJanuary, 2011 under Non-Banking Financial(Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007, and Non-Banking Financial (Non- Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007 whereby all NBFCs are required to make necessary provisions for non-performing assets. In the interest of counter cyclicality and so as to ensure that NBFCs create a financial buffer to protect them from the effect of economic downturns, it has been decided to introduce provisioning for standard assets also whereby:-

- NBFCs should make a general provision at 0.25 per cent of the outstanding standard assets,
- The provision on standard assets should not be reckoned for arriving at net NPAs,
- The provisions towards Standard Assets need not be netted from gross advances but shown separately as 'Contingent Provisions against Standard Assets' in the balance sheet, and,
- NBFCs are allowed to include the 'general provisions on standard assets' in Tier II capital which together with other 'general provisions/ loss reserves' will be admitted as Tier II capital onlyupto amaximumof 1.25 per cent of the total risk-weighted assets.

INTERNATIONAL TAXATION

- **Cray Research India Ltd. [2010-TII-156-ITAT-DEL-INTL]**

- **Facts of the case**

Cray Research Inc, a tax resident of the USA, entered into agreement for supplying a computer system and its peripherals and was assigned a service contract for maintaining the computers in good operative condition.

The AO held that the amount received towards maintenance services was in the nature of FTS as defined in Explanation 2 to clause (vii) of sub-section (1) of section 9 of the Act.

Further, the project office in India is the PE in India and the payments for maintenance charges are directly attributable to thisPE and accordingly the payments have to be taxed under Article 7 of the tax treaty.As per clause 3 of Article 7 of the tax treaty, in determination of the profits of a PE, only such expenses and deductions shall be allowed which are in accordance with the provisions of and subject to theprovisions of the Act.

Accordingly, the AO taxed the amount received by the taxpayer ongross basis at 30 percent by applying the provisions of Section 44Dread with Section 115A of the Act.Section 44D of the Act states that no deduction is admissible in the case of FTS earned by the foreign company and is to be taxed at gross basis under Section 115A of the Act.

The taxpayer contended that the payments were not in the nature of fees for included services as per the tax treaty. It was further submitted that the payment will be covered under article 7 of thetax treaty as business profit and it shall be taxed accordingly.

- **Tribunal's ruling**

Reliance was placed on the Hon'ble Mumbai Tribunal's decision in the case of Boston Consulting (2005) 94 ITD 31 (Mum) wherein it was held that Section 44D of the Act is titled as "Special Provisions for computing income by way of royalties, etc. in case of foreign companies".

Receipts for which profits are computed under Article7 (3) of the tax treaty but which do not fit the description of royalty and FTS under the tax treaty, the limitation of deduction of expenses under Section 44D cannot be applied. During the proceedings before the CIT (A), the AO himself has categorically stated that the consideration received by the taxpayer for maintenance services are not in the nature of FTS as defined under Article 12 of the tax treaty.
Accordingly, the Tribunal held that the maintenance charges received by the taxpayer for maintaining the super computer are not in the nature of FTS as per the definition in the tax treaty. The Tribunal held that since the charges received by the taxpayer were not in the nature of FTS as per the tax treaty, Section 44D and read with Section 115A of the Act is not applicable.

- **Tata Sons Limited (ITA No. 4776 /Mum/04)**

- **Facts of the case:-**

The taxpayer is an investment company which holds major investments in equity shares of Tata Group of Companies. The taxpayer is also engaged in the business of export of software and provision of engineering consultancy. The taxpayer paid tax on income earned in foreign countries and claimed credit in India under section 90 or 91 of the Act.

The Taxpayer, relying on the Tribunal's decision in its own case for earlier years, also claimed deduction of foreign taxes paid as business expenditure under Section 37(1) of the Act while computing its profits in India. The appeal against this decision was rejected by the High Court. The foreign taxes paid by the Taxpayer are state income taxes paid in USA which are not eligible for the tax credit in India.

The AO held that though foreign taxes paid by the taxpayer are entitled to tax credit under section 90/91 of the Act, they are specifically restricted to be claimed as expenditure in terms Section 40(a) (ii) of the Act.

- **Tribunal's ruling:-**

The taxpayer has claimed a deduction under Section 37 of the Act as well as relief under Section 90/91 of the Act in respect of foreigntaxes, therefore the taxpayer has sought double relief which is not allowable as per the scheme of the Act.

The decision relied upon by the taxpayer categorically states that tax deducted is a local tax and not tax on profits. However, in the present case it is an undisputed position that the tax levied overseas, being income tax, is a tax on profits of the taxpayer.

The Tribunal relied on Supreme Court's decision in the case of KPVarghese vs. ITO [1981] 131 ITR 597 (SC) where it was held that while interpreting the statutes, one has to essentially bear in mind the context and underlying scheme of the legislation in which the words are set out. The underlying principle in Section 40(a) (ii) of the Act is that a tax which is levied on the income of the taxpayer is an appropriation of income and not a charge on income.

The Tribunal relied on the case of Lubrizol India Limited vs. CIT[1991] 187 ITR 25 (Bom) wherein the Bombay High Court took note of the wording of Section 40(a)(ii) of the Act and held that the expression 'tax' is not restricted to 'income tax' as defined under Section 2(43) of the Act. The High Court observed that the word'tax' is used in conjunction with the words 'any rate or tax' andtherefore the word 'any' tax herein refers to any kind of tax levied orleviable.

Accordingly, the Tribunal held that foreign taxes paid by thetaxpayer are covered by the section 40(a) (ii) of the Act andtherefore not deductible as expenditure while computing taxableincome under the Act.

However, the Tribunal observed that in respect of state incometaxespaid in US, though relief is not available under the tax treaty,the relief is available under section 91 read with Section 90 of the Act to the extent the aggregate taxes paid overseas do not exceedIndian tax liability on such income.

- **Whirlpool India Holdings Ltd. vs. DDIT[2011-TII-15-ITAT-DEL-INTL]Dated 14th January, 2011**

Facts

The taxpayer, a company incorporated in USA, is a wholly owned subsidiary of Whirlpool Corporation, USA (Whirlpool USA). The taxpayer's main object was to watch and safeguard the interest of the parent company in India and accordingly, it had opened a branch in India.

Whirlpool Corporation, USA, also has a subsidiary company in India, Whirlpool of India Ltd. (WIL) engaged in the business of manufacture and sale of consumer durable goods.The taxpayer had a branch in India. Whirlpool USA paid remuneration of the employees of WIL through the branch of the taxpayer. The employees were on the payroll of WIL and the remuneration which was paid through the tax payer was fully reimbursed by Whirlpool USA.

The AO, however, held that the taxpayer was acting as a consultant to Whirlpool USA and in this role it was a guiding force for managing affairs of WIL. It was held that the taxpayer carried out substantive operations in India through the branch office such as formulating policies and taking strategic decisions, identifying good suppliers, creating export opportunities, etc. and hence its income was taxable in India. The AO applied Transfer Pricing provisions to quantify income taxable in India.

Issues

Whether branch office set up in India which merely remunerated employees seconded by US Group Company constituted a Permanent Establishment in India.

Held

The Tribunal observed that the employees could be either of WIL (on the ground that they were under the supervision and control of the Board of Directors of WIL) or of Whirlpool USA (on the ground that salaries were paid by them), but it was difficult to come to a conclusion that the employees are those of the taxpayer.

Since it was not established that the seconded employees are those of the taxpayer, no services were furnished by the taxpayer either to WIL or to Whirlpool USA. The branch office, although a fixed place of business, has not carried out the business of the taxpayer wholly or partly and it would not constitute a PE in India. Accordingly, the taxpayer was not chargeable to tax in India in terms of Article 5 of the tax treaty.

In order to bring a foreign company to tax in India on its business profits, the tax department should establish that it has PE in India. The tax department in the case under consideration could not prove that the tax payer had a PE in India. Since the taxpayer is not chargeable to tax in India in terms of the provision contained in Article 5 of the tax treaty, it was not necessary to go into the question whether any transfer pricing adjustment could be made in determining such profit.

INDIAN ECONOMY AT A GLANCE

- **Government approves Rs 80 billion subsidy to oil firms**

The government approved Rs 80 billion in cash subsidy to state-owned fuel retailers to make up for half of the revenues they lost on selling diesel, domestic LPG and kerosene below cost in the third quarter. Finance Ministry has issued a letter approving Rs 80 billion in cash compensation for the October-December 2010 quarter. Indian Oil Corporation (IOC), the nation's largest fuel retailer, will get Rs 44 billion, Bharat Petroleum Corp (BPCL) Rs 18 billion and Hindustan Petroleum Corporation (HPCL) Rs 17 billion. The subsidy approved is less than Rs 100 billion compensation that the oil ministry was seeking.

- **Corporate Ministry wants private companies to spend 2% on CSR**

Corporate Affairs Ministry has favored making it mandatory for the private sector to spend 2%ofprofits on Corporate Social Responsibility (CSR). The industry, however, has opposed any specific allocation for the purpose, saying it (CSR) should be self monitored without any government supervision. The government is seeking industry opinion on making CSRmandatory for the private sector on the lines of Public Sector Undertakings (PSU) where companies are required to spend up to 5% of the net profit on CSR activity.

Moreover, PSUs whose net profit is less than Rs 1 billion has to contribute 3-5% of bottom-line for CSR, PSUs with profits between Rs 1 billion and Rs 5 billion earmarks 2-3%. In case of public sector companies earning profit of Rs 5 billion and above, CSR spending should be between 0.5% and 2% of the net profit

POLICY WATCH

- **India, Malaysia signs trade agreement**

India and Malaysia signed a Comprehensive Economic Cooperation Agreement (CECA), with a short term objective to boost bilateral trade to $15 billion by 2015 from the present $9 billion. The trade agreement would result in tariff reduction for goods ranging from bananas to basmati rice and easier movement of software engineers and doctors. The agreement, to take effect from July 1, was signed in Putrajaya city between commerce and industry minister and Malaysia's minister for international trade & industry.

The India-Malaysia CECA is a comprehensiveand ambitious agreement that envisages liberal trade in goods and services and a stable and competitive investment regime to promote foreign investment between the two countries. The goods package under the CECA takes the tariff liberalization beyond the India-Association of Southeast Asian Nation (ASEAN) Foreign Trade Agreement (FTA) commitments on items of mutual interest for both the countries.

- **Andhra Pradesh government nod for online trading of farm produce**

The Andhra Pradesh cabinet has decided to allow e-

trading spot exchange for agricultural commodities by amending the Marketing Act. The government proposes to give license to the National Spot Exchange to operate in the state as an online trading platform between farmers and traders. This will also provide a choice to farmers to either sell their produce at conventional agricultural markets or through e-trading exchange.The government expects online trading to give farmers an exposure to the nationwide market along with better access to information on prices across the country. Farmers can quote price for their produce on the online trading platform where traders, corporate firms and importers will compete to buy the commodity. This way, the role of intermediaries is expected to come down in deciding the price of agricultural commodities.

- **New Companies Bill ready**

The Ministry of Corporate Affairs (MCA) complete the draft of the new Companies Bill, which promises greater shareholder democracy and stricter corporate governance norms, is ready and will be submitted to the Cabinet soon. The Companies Bill 2009, which will replace a half-a-century old Act, is expected to be brought before Parliament for consideration and passage in the ongoing Budget session. The Bill, if passed, will protect the rights of minority shareholders; bring about responsible self-regulation with adequate disclosure and accountability, and lesser government control over internal corporate processes. The Bill proposes that no independent director can be on board of a company for more than six consecutive years, and cannot be on the board of more than seven companies.

INDUSTRY WATCH & CORPORATE HIGHLIGHT

- **Domestic car sales grow by 26% in January 2011**

The Domestic passenger car sales grow by 26.28% to 184,332 units in January 2011 from 145,971 units in January 2010. The motorcycle sales registered a growth of 14.94% during the month, increasing from 650,633 units in January 2010 to 747,818 units in the first month of 2011. The total two-wheeler sales in January 2011 are increased by 17.55% to 980,752 units from 834,343 units in January 2010. Sales of commercial vehicles also saw an upsurge by 12.58% to 60,753 units in January 2011 from 53,963 units in the same month last year. Total sales of vehicles across categories registered a growth of 18.69% to 13, 22,979 units in January as against 1,114,692 units in the year-ago period.

- **Online marketing industry size to touch Rs 20 billion by 2013**

As rules of the advertising game change rapidly, online or digital marketing market size in India is estimated to touch close to Rs 20 billion in the next two years from Rs 14 billion now. Apart from search engines like google.com and yahoo.com, the next top sites in India are social networking sites like Facebook, Orkut, Twitter and LinkedIn. Facebook users have increased nearly nine folds during last year, and now companies are sitting up and taking notice of the importance of advertising through such websites, especially when it is possible now to do hyper local marketing targeted at specific customer. Google India is bigger than any television channel in the country. It gets 100 million unique users every year in India, of which 70 million are on desktop, while the rest access it through mobile phones. As online marketing opens up newer avenues and prospects of acquiring new clients, even major banks like Housing Development Finance Corporation (HDFC) have jumped on to the bandwagon. HDFC Bank will launch 100 to 200 new online and digital campaigns every month

- **Indian economy set to grow by 8.6% in 2010-11**

The Indian economy is set to grow by 8.6% in 2010-11, as compared to 8% in 2009-2010; the farm sector growth is estimated to increase by 5.4% in the current fiscal, as against the expansion of 0.4% in the previous fiscal, on the back of robust monsoon rains. The manufacturing sector is estimated to grow 8.8% and overall services sector growth is seen at 9.6%.
Per capita income in real terms (at 2004-05 prices) is predicted to increase by 6.7% to $ 794.5 in 2010-11 compared to the previous fiscal's $ 744.4.

At current prices, per capita income is estimated at $ 1203.3 in this fiscal, registering an increase of 17.3% from the previous fiscal's $ 1025.97.

- **New telecoms add 14% new subscribers in January-November, 2010**

New operators, including Uninor, MTS, STEL, ETISALAT DB and Videocon, which were given unified access service (UAS) licenses in 2008, have together captured 14% of the incremental share in addition of new subscribers over the last one year. This is contrary to the perception that new players have not been able to make inroads into the Indian telecom market. Incremental share essentially means the net new addition of subscribers each month. These numbers go up to 24% if the subscriber base of Tata Teleservices' GSM service, launched after it got a license under dual technology in 2008. While Uninor garnered 7.3% of incremental share, Videocon got 3.3% and MTS 2.3%, according to Telecom Regulatory Authority of India (TRAI) figures for the January-November 2010 period.

- **FII investments touch $ 17.19 billion in January 2011**

Foreign Institutional Investors (FII) touch $ 17.19 billion as stocks and bonds worth over $ 17.19 billion were purchased by the foreign investors from the Indian capital market so far in January 2011. During the course of the 19 trading sessions conducted so far in January 2011, overseas investors have been gross sellers of equities worth $ 917.99 million so far in 2011, but were confident about the debt market, making a net investment of $ 2.33 billion. Moreover, FIIshave invested $ 1.44 billion on the purchase of Indian stocks and bonds in January, 2011, so far. Significantly in 2010, the net FII inflows stood atabout $ 39 billion in 2010.

- **Deal, is expected to cost around $900 million (Rs-4,100 crore)**

Aditya Birla Group in talks to buy Columbian Chemicals for Rs. 4,100 crore: - The $29-billion diversified conglomerate Aditya Birla Group is planning to buy US-based carbon black manufacturer Columbian Chemicals from One Equity Partners, the Business Standard newspaper today reported citing two sources.

Columbian, the world's third-largest carbon black manufacturer after Boston, Massachusetts-based Cabot and Germany's Evonik, had a global market share of 9 per cent of the 12.7-million tonne per annum (tpa) global carbon black capacity in 2009.

- **January exports up 32%**

INDIA'S exports in January rose an annual 32.4% to $20.6 billion, while imports for the month rose 13.1% in the year to $28.6 billion. India's trade deficit in January widened to $8 billion compared with $2.6 billion in December. Exports in April-January rose an annual 29.3% to $184.6 billion. Oil imports for January fell 7.8% to $7.9 billion. Asia's third-largest economy is on track to exceed a target of close to 15% export growth in the current fiscal year. But the government has lately raised concern about a ballooning trade deficit that could double in three years and cause an unsustainable current account deficit.

- **TCS ready to spend $500 million on acquisitions**

TATA Consultancy Services (TCS), the country's largest Information Technology (IT) services provider, is eyeing acquisitions to expand its geographic footprint and presence in niche verticals. It is ready to spend more than $500 million. TCS made its last large acquisition in 2008. It had acquired Citigroup's captive business process outsourcing unit, Citigroup Global Services, for $505 million. TCS would like to expand in geographies like Germany and look at verticals like healthcare. The size certainly does not matter.TCS also looks over Japan as an attractive target for acquisition.

- **To start delivery centre into ronto:-**

Wipro Technologies plans to set up an exclusive delivery centre to develop software solutions and cut down Canadian companies' energy consumption bills. The Toronto centre, scheduled to open in March, 2011 will be first of its kind developed by any IT firm in North America. Wipro Technologies, Canada, said, that the Ontario government giving enhanced attention to green energy, they could play an important role in developing software solutions.

This centre will look at renewable and green energy, green architectural planning as well as design andenergy engineering solutions. It will have nearly 100 employees which would eventually increase to 1,000. Wipro Canada, incidentally, has 2300 employees supporting 40 clients.

- **Nestle buys UK-based CM&D Pharma**

SWISS food giant, Nestle has acquired CM&D Pharma, a UK-based drug maker that specializes in the development of products tailored for patients with

Kidney disease, for an undisclosed amount. Nestle through its subsidiary Nestle Health Science has completed the acquisition of CM&D Pharma, the Swiss firm said in a statement without disclosing the financial details.

The acquisition of CM&D comes just a month after Nestle Health Science became operational. This acquisition is an excellent fit with Nestle Health Sciences strategic goal of being a pioneer in the promising area of science-based nutrition CM&D's commitment to use health science for improving the quality of people's lives, and this acquisition will help to reinforce the position in this opportunity.

- **Toyota Motors to invest in Rs 3 billion to enhance capacity of its Indian subsidiary**

TOYOTA Motors Corp (TMC) will invest Rs 3 billion to enhance capacity of its Indian subsidiary by 60,000 units in the next one year. Toyota Kirloskar Motors (TKM), the local subsidiary of the Japanese company, will take the cumulative capacity of its two plants in Bangalore to 210 thousand units to meet rising demand from the local market. These expansion plans comes after the parent TMC plans to have larger focus on emerging market including Asia and projects a larger chunk of sales from such markets. The world's largest car maker, by sales, Toyota is looking at 50% of its future sales coming from Brazil, Russia, China and India and other emerging markets. Toyota's India sales grew 31% to 74,362 units in the April-February months, which give it around 3.5% market share of the 2.2 million Indian passenger car sold in the same period.

- **France keen to invest in Indian infrastructure projects on PPP**

FRANCE express keenness to participate in India's infrastructure projects and want to share with India its experience and practices of building infrastructure on the Public Private Partnership (PPP) model. France is convinced that PPP is an important means of carrying out investment projects that conform to sustainable development. The French experience in the PPP field goes back a long way. Examples of PPP started to appear in France a long time ago with construction of canals as early as the 17th century and also the paving of Paris streets and other forms of urban improvement being carried out in the form of PPPs. PPP concessions in France today amount to over 20,000 contracts, covering 93% of district-heating networks, 75% of the 10,000-km motorway network and 16% of urban work accounts for PPP.

Statuary compliance calendar for the month of February 2011			
Due date	**Statuary compliance under Act**	**particulars**	**Governing Authority**
			
06/02/2011	Service Tax	Payment of monthly service tax for the month of January by all tax payers electronically	Central Board of Excise and Custom
	Central Excise	Payment of monthly central excise duty for the month of January on goods by assesses other than SSI units electronically	Central Board of Excise and Custom
07/02/2011	Income Tax	Deposit of Income Tax TCS and TDS deducted in January	Central Board of Direct Tax.
	NBFC-D	Monthly return of exposure to capital markets in form NBS-6 by NBFC having total assets of 100 crore and above	Reserve Bank of India.
	NBFC-ND-SI	Monthly return of source and application of funds, profit and loss account, asset classification	Reserve Bank of India.
10/02/2011	Central Excise	Monthly central excise return in form ER-1/ER-2 by other that SSI	Central Board of Excise and Custom
	Central Excise	Monthly return of receipts and consumption of Principal Inputs by specified manufacturers of excisable goods in form ER-6	Central Board of Excise and Custom
	NBFC-ND-SI	Monthly statement of short term dynamic liquidity in form NBS-ALM1	Reserve Bank of India.
15/02/2011	Provident Fund	(a) Payment of monthly dues of Provident Fund for the month of January (b) Monthly return in form 5 for employees joining Provident Fund during January along with declaration in form 2 furnished by the employees (c) Monthly return of Provident Fund in form 10 of employees leaving the service during January	The Central Board of Trustees , The Employees' Provident Fund Scheme, 1952
21/02/2011	ESIC	Payment of ESIC contribution for the month of January	The employees' state insurance Act-1948. Ministry of labour and employment.
25/02/2011	Provident Fund	Monthly contribution statement (abstract) in form 12A, along with copy of receipted challans regarding payment of contribution.	The Central Board of Trustees , The Employees' Provident Fund Scheme, 1952

Glossary

AAR	Authority of Advance Rulings
ADR	American Depository Receipt
ALP	Arm's Length Price
AO	Assessing Officer
AP	Association of Persons
APA	Advance Pricing Agreement
ATM	Automated Teller Machine
AY	Assessment Year
BCD	Basic Customs Duty
BI	Body of Individuals
BP	Balance of Payments
CA	Chartered accountant
CAD	Current Account Deficit
CBDT	Central Board of Direct Taxes
CBEC	Central Board of Excise & Customs
CENVAT	Central Value Added Tax
Customs Act	Customs Act, 1962
CIT	Commissioner of Income Tax
CPI	Consumer Price Index
CSR	Corporate Social Responsibility
CD	Countervailing Duty
DDT	Dividend Distribution Tax
DTA	Domestic Tariff Area
ECB	External Commercial Borrowings
ESI	Employee's state insurance
FDI	Foreign Direct Investment
FEMA	Foreign Exchange Management Act
FERA	Foreign Exchange Regulation Act
FII	Foreign Institutional Investors
FIPB	Foreign Investment Promotion Board
FPI	Foreign Portfolio Investment
FTS	Fees for Technical Services
FY	Financial Year
GDP	Gross Domestic Product
GDR	Global Depository Receipt
GI	Government of India
GST	Goods and Services Tax
HUF	Hindu Undivided Family
ICAI	Institute of chartered accountant
IFRS	International Financial Reporting Standard
IDR	Indian Depository Receipt
IIP	Index of Industrial Production
IRDA	Insurance Regulatory Development Authority
ITR	Income tax return
LCD	Liquid-crystal Display
MP	Madhya Pradesh
MP	Market price
MF	Mutual fund
MSME	Micro Small and Medium Enterprises
NBFC	Non Banking Finance Company
NHAI	National Highway Authority of India
NPS	National Pension Scheme
NRI	Nonresident in India
NABARD	National Bank for Agriculture and Rural Development
OEM	Original Equipment Manufacturer
OET Act	Odessa Entry Tax Act, 1999
PSU	Public Service Undertakings
P&L	Profit & loss
PF	Provident fund
POTR	Point of Taxation Rules
QE	Quantitative Easing
QFI	Qualified Foreign Investor
RBI	Reserve Bank of India
REF	Renewable Energy Fund
REIT	Real Estate Investment Trust
Rules	Income-tax Rules, 1962
SA	Standard on Auditing
SAD	Special Additional Duty
SC	Scheduled Caste
SC	Supreme Court
SEBI	Securities and Exchange Board of India
SEZ	Special Economic Zone
ST	Scheduled Tribes
ST	Service Tax
STP	Software Technology Park
STR	Service Tax Rules
STCG	Short Term Capital Gain
TIN	Transaction identification number
TNNM	Transactional Net Margin Method
Tribunal	Income tax Appellate Tribunal
TDS	Tax Deducted at Source
TPO	Transfer Pricing Officer
TED	Terminal Excise Duty
VAT	Value Added Tax
VCC	Venture Capital Companies
VCF	Venture Capital Fund
WPI	Wholesale Price Index
WT	Wealth tax
WB	World bank

BUSINESS ADVISORY

- Growth Planning
- Succession Planning.
- Strategic Decision Appraisal
- Risk, Uncertainty and Change Management Services
- Strategic Decision Implementation – National and Global Platform
- Wealth Management Services.

AUDIT & ASSURANCE

- Statutory Audit including Tax Audit &VAT Audit
- Internal Audit and Concurrent Audit
- Management Audit and Operational Audit
- Cost Audit/Reviews
- System and process control reviews.
- Secretarial Audit.

RBI, FEMA, SEBI Services

- Setting up Liaison Office, Branch Office and Project Office.
- RBI Consulting
- Private Equity Finding Advisory.
- Project Financing.
- Credit Rating.
- Business Asset Valuation.
- Due Diligence.

TAXATION SERVICES

- Direct Taxation Advisory
- Service Tax, Excise duty, VAT Registration Services
- Tax Planning Strategy– Optimum use of Corporate Tax Incentives.
- Implementing and Operating in the tax consolidation regime
- Preparation of return of Income Tax, Service Tax, Excise Duty and VAT.

OUTSOURCING ACCOUNTANTS

- Annual financial report preparation
- Preparation of general and special purpose statutory accounts
- Processing Payroll
- Cash management reporting
- Accounting system reviews
- Financial analysis
- General Accounting Support, as required by client.

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