INDIA TAX LAW: March, 2014

CBDT Instruction On TDS Obligation U/s 195 on Payment to Non-Residents

The CBDT has issued Instruction No. 02/2014 dated 26.02.2014 in which it has referred to the judgements of the Supreme Court in Transmission Corp of A. P. 299 ITR 587 and GE India Technology Pvt. Ltd 327 ITR 456 on the issue of deduction of tax at source u/s 195 while making payments to non-residents. The CBDT has directed AOs u/s 119 that in a case where the assessee fails to deduct TDS u/s 195, the AO cannot treat the whole sum remitted to the non-resident as being chargeable to tax but he has to determine the appropriate proportion of the sum chargeable to tax as mentioned in s. 195(1) for treating the assessee as being in default u/s 201.

TDS on Reimbursement of Expenses to Non-Residents.

Scheme and mechanism envisaged in the Act for deduction of TDS on payments to Non-Resident.

- Section 195 is principle section governing the provisions for deduction of TDS on payments to Non-Resident.
- Section 195 (1) provides for deduction of TDS at rates in force on payment of interest or any other sum chargeable under the Act to Non-resident.
- Section 195(2) enables Non-Resident to approach to AO to determine the appropriate income in entire sum paid to him, where Non-Resident considered that entire sum paid to him would not be income chargeable under Act.

The important points for consideration are as under:--

i. First to determine, whether amount paid to Non-Resident, represent income either in entirety or in part, which is chargeable under Act as per provisions of Act or DTAA.
ii. Second, where it is established that amount paid represent the income, it is essential to look at scheme provided in the Act for computation of Income of Non-Resident.
iii. In case of Non-Resident, Act provide for taxability of Income on Gross basis (without allowing deduction for expenses) in some cases and Net basis in the other cases.
iv. The object of section 195 is to ensure that tax due by non-resident on income remitted to him has been appropriately deducted by payer.
v. Thus for determining whether reimbursement of expenses to Non-Resident entails deduction of TDS, it is essential to look at whether Gross basis or net basis is prescribed for taxability of income to which reimbursement relates.

The provisions in Act providing for taxability of Non-Resident on Gross basis or net basis are summarized as under :-

1 Fees for Technical Service to Non-Resident :- Gross Basis: As per Provision of Section 115A, taxable @ 25% on Gross amount.
2. Royalty to Non-Resident :- Gross Basis: As per Provision of Section 115A, taxable @ 25% on Gross amount.
3. Fees for Technical Service/Royalty paid to PE of Non-Resident in India :- Net Basis: As per Provision of Section 44DA.
4. Interest to Non-Resident :- Gross Basis: As per Provision of Section 115A, taxable @ 25% on Gross amount, except interest referred to in section 10(47), 194LC & 194LD, where interest is taxable @ 5%.

5. Any Other Income :- Net Basis: Normal Provision of Act.

I-T moves SC against transfer of Nokia assets to Microsoft

The income-tax department on Wednesday moved the Supreme Court to get the transfer of Nokia India's Chennai plant's assets to software giant Microsoft stalled as it apprehends it would not be able to recover its tax dues of over R21,000 crore once the deal is "consummated." Earlier, Nokia had also moved the apex court seeking immediate and smooth transfer of assets of its Chennai plant as part of the impending $7.2-billion deal with Microsoft. The company had challenged the High Court's December 12 order that asked it to give an undertaking to settle any final tax liabilities that would be imposed by I-t in the tax dispute.

CBDT clarifies key rule related to TDS on overseas payments

The Central Board of Direct Taxes has clarified to field officers that the requirement of deducting tax at source when a person makes payments to non-residents or foreign companies should be enforced only on that part of the remitted amount that accounts for the recipient's income chargeable to tax in India. The Board also told the officers that the amount chargeable to tax in India could be determined by the income component in the total payment made, the nature of remittance and any other relevant information. The clarification comes after field officers sought clarity on the issue.

Recent Case Laws: Direct Tax

1. **Booking rights in apartment becomes long-term capital asset after 36 months from the date of buyer's agreement with Builders.**

   The 36 months period under section 2(42A) for deciding whether booking rights are short-term capital asset or long-term capital asset should be counted from date of buyer's agreement and not from the date of booking/date of allotment application/ confirmation letter where the allotment application/confirmation letter states clearly that no right to provisional or final allotment accrues until Buyer's agreement is signed and returned to the builder. The capital asset of booking rights accrues to buyer only on the date of signing buyer's agreement and not on date of allotment application/confirmation letter. *[2014] 43 taxmann.com 200 (Delhi) Gulshan Malik v.Commissioner of Income-tax.*

2. **No TDS under section 195 on payments to non-residents for services specifically characterized as 'work' under section 194C**

   The payments made by the applicant (an Indian company) to the non-resident company specifically falls under the definition of work under section 194C of the Act and they will not be taxable without Permanent Establishment in India. Consequently, the payment will not suffer withholding of tax under section 195 of the Act. [2014] 42 taxmann.com 395 (AAR - New Delhi) Endemol India (P.) Ltd., Mumbai, In re.

3. **Cash credits: Section 68**: Meaning of "any sum": No explanation regarding particular amount: Addition of sum in excess of such particular amount is not permissible u/s. 68: 359 ITR 513 (Del): D. C. Rastogi vs. CIT.

4. **Business expenditure: Capital or revenue**: Media cost paid for the import of a master copy of Oracle Software used for duplication and licensing is an expenditure of a revenue nature and as such is an allowable deduction: [2013] 39 taxmann.com 150 (Delhi):Oracle India (P.) Ltd. vs. CIT.

5. **Assessee in default: TDS: S/s. 192, 201(1) and 201(1A)** : Short deduction on account of bona fide belief: Assessee not in default: Not liable u/s. 201(1) and 201(1A): 263 CTR 241 (All): CIT vs. ITC Ltd.

6. **Business expenditure: TDS: Disallowance: Royalty:** Section 9(1) Expl. (2), 194J and 40(a)(ia): A. Y. 2009-10: Consideration for perpetual transfer for 99 yrs of copyrights in film is not "royalty": [2013] 40 taxmann. com 350 (Mad) Mrs. K. Bhagyalakshmi vs. Dy. CIT.

7. **Capital gain: Exemption u/s. 54F**: Construction of new house commenced before the sale of 'original asset': Denial of exemption u/s. 54F not proper: [2014]41taxmann.com 50 (Delhi) CIT vs. Bharti Mishra.

8. **Capital gain: Business profits vs. Capital gains: w/s. 45, r.w.s. 28(i):** Conversion of stock-in-trade (shares) into investment in 2002 and 2004: Sale of such shares in relevant year: Profit is capital gain and not business income: 359 ITR 320 (Bom): 218 Taxman 316 (Bom) Yatish Trading Co. (P.) Ltd. vs. CIT.

9. **Transfer pricing**: The Assessing officer cannot substitute the method of 'cost plus mark up' with the method of 'cost plus mark up on FOB' value of exports without establishing that assessee bear significant risks or AEs would enjoy geographical benefits: [2013] 40 taxmann.com 300 (Delhi): Li and Fung India (P.) Ltd. vs. CIT.

10. **Whether allotment letter or payment of first installment has entitled the assessee to claim a long term capital gain.** Held Yes**:** In the instant case, assessee claims LTCG on sale of flat by considering dated of issuance of allotment letter/ date of payment of first installment as date of acquisition and contended that identification of flat or physical delivery of possession is irrelevant as right to hold property stands crystalised upon allotment and payment of first installment. However, the AO considered it as STCG by contending that mere allotment and/or payment of the first installment without identification of the flat or delivery of possession does not confer any right in the flat which was allotted to assessee later on. Since, allotment letter could be cancelled at any time and it does not confer any right in any specific unit but merely confers a right to be allotted a unit. Therefore, definition of transfer contained in Section 2(47) of the Act has to be read against the assessee.

    Hon'ble High Court has held that mere fact that possession was delivered later, does not detract from the fact that the allottee was conferred a right to hold property on issuance of an allotment letter. The payment of balance installments, identification of a particular flat and delivery of possession are consequential acts, that relate back to and arise from the rights conferred by the allotment letter. Thus, appeal is allowed by placing reliance on Vinod Kumar Jain v. Commissioner of Income Tax Ludhiana and others (ITA No.140 of 2000): Mrs. Madhu Kaul Vs. CIT, ITA No. 89 of 1999, Date of Pronouncement: 17.01.2014, High Court of Punjab and Haryana.

11. **Withdrawal over a period of 3 years to redeposit it in bank a/c isn't valid argument; HC affirms sec. 69 additions**

    Where Assessing Officer issued on assessee a notice under section 142(1) on 30-8-2007 calling upon him to furnish return for assessment year 2005-06, in view of insertion of proviso in clause (i) of section 142(1) by Finance Act, 2006, with retrospective effect from 1-4-1990, said notice was issued well within period of limitation

    Where assessee had made cash deposit of Rs. 6.50 lakhs in his bank account on 8-9-2004 and submitted that cash deposit was out of amount withdrawn earlier from bank over a period from February, 2000 to September, 2003 and kept with him, lower authorities were justified in treating

said amount as unexplained investments under section 69Section 142, read with section 153, of the [In favour of revenue] [2014] 42 taxmann.com 69 (Hyderabad - Trib.) Mir Basheeruddin Ali Khan v. Income-tax Officer, Ward -6(3), Hyderabad*

12 **Excess sum paid to sister concern held allowable as both concerns were paying tax at same rate.**

Section 37(1) of the Income-tax Act, 1961 - Business expenditure - Allowability of Sister concern- Assessee firm purchased finished goods from a sister concern at higher price which was of superior quality - Sister concern charged much higher rates from other entities to which it supplied similar finished goods - Sister concern was also paying tax on profit at same rate as paid by assessee and, thus, there could have been no incentive for sister concern to supply goods at a higher rate than market rate because it would go to increase its profits - Whether Commissioner (Appeals) and Tribunal were right in allowing excess payment so paid to sister concern - Held, yes [In favour of assessee] [2014] 42 taxmann.com 124 (Punjab & Haryana) Commissioner of Income-tax-I, Ludhiana v. Mansarover Impex.

13. **Foreign Trustee can't do charity but a Foreign Director can do so** - Section 25 Companies can have foreign directors and can avail section 80G recognition. In the case of GIA India v. Director of Income-tax (Exemption) [2013] 38 taxmann.com 323 (Mumbai – Trib.), the issue was whether a Company registered under section 25 of the Companies Act, 1956 incorporated with the objects of charitable purposes having foreign nationals as directors was entitled to approval under section 80G(5) of the Income-tax Act, 1961. Distinguishing between the provisions of the Indian Trust Act, 1882 and the Companies Act, 1956, the Tribunal held that a Company could have foreign nationals and as no restriction was imposed by section 80G(5) in granting approval to such Company, the provisions of the Indian Trust Act were irrelevant in the matter.

14. **Sums paid for purchase of software was 'royalty' as assessee failed to prove his distributorship in software:** Unless evidence is produced to show that assessee was a distributor, payment towards purchase of software should be termed as royalty requiring deduction of tax at source. [2014] 42 taxmann.com 490 (Hyderabad - Trib.)

15. S. 56(2)(vii) does not apply to bonus & rights shares offered on a proportionate basis even if the offer price is less than the FMV of the shares.

S. 56(2)(vii)(c) (ii) provides that where an individual or a HUF receives any property for a consideration which is less than the FMV of the property, the difference shall be assessed as income of the recipient. S. 56(2)(vii) does not apply to the issue of bonus shares because there is a mere capitalization of profit by the issuing-company and there is neither any increase nor decrease in the wealth of the shareholder as his percentage holding remains constant. The same argument applies pari materia to the issue of additional shares to the extent it is proportional to the existing share-holding because to the extent the value of the property in the additional shares is derived from that of the existing shareholding, on the basis of which the same are allotted, no additional property can be said to have been received by the shareholder. The fall in the value of the existing holding has to be taken into account. As long as there is no disproportionate allotment, i.e., shares are allotted pro-rata to the shareholders, based on their existing holdings, there is no scope for any property being received by them on the said allotment of shares; there being only an apportionment of the value of their existing holding over a larger number of shares. There is, accordingly, no question of s. 56(2)(vii)(c) getting attracted in such a case. A higher than proportionate or a non-uniform allotment though would attract the rigor of the provision to the extent of the disproportionate allotment and by suitably factoring in the decline in the value of the existing holding. Sudhir Menon HUF vs. ACIT (ITAT Mumbai).

16. **Sec. 54 relief allowed as two houses were acquired instead of one big house to avoid disharmony among children**

Expression 'a residential house' used in section 54 doesn't refer to a single residential house; it permits use of plural - The assessee was not attempting to evade tax when instead of one big house, assessee chose to purchase two small residential houses (out of the sales consideration) for his two sons to avoid litigation or disharmony amongst brothers - Therefore, the assessee was entitled to exemption under sec. 54 in respect of acquisition of two residential houses - Held, yes: [2014] 43 taxmann.com 143 (Karnataka) Commissioner of Income-tax v. Khoobchand M. Makhija.

17. **Purchases by account-payee cheque held sufficient to allow claim even if recipient couldn't be produced.**

Where assessee, a builder, purchased cement from one party by account payee cheques at rates which were reasonable as compared to rates paid to other parties, assessee's claim for deduction in respect of said expenses was to be allowed under section 37(1). Where assessee in support of payment of labour charges, brought on record documentary evidence such as election card, driving licence, ration card etc. of recipients, transactions in question being genuine in nature, assessee's claim for deduction of labour charged was to be allowed [2014] 42 taxmann.com 80 (Gujarat) Commissioner of Income-tax –IV v. Sonar Construction (P.) Ltd.

18. S. 147: Court can examine existence but not adequacy of reasons. AO is only required to provide material on which he relies to reopen the assessment

The law only requires that the information or material on which the AO records his or her satisfaction is communicated to the asseseee, without mandating the disclosure of any specific document. While the 2G Spectrum Report has not been supplied in this case on grounds of confidentiality, the reasons recorded have been communicated and do provide – independent of the 2G Report – details of the new and tangible information that support the AO's opinion. These facts are capable of justifying the satisfaction recorded on their own terms, as discussed above. In this context, there is no legal proposition that mandates the disclosure of any additional document. This is not the say that the AO may in all cases refuse to disclose documents relied upon by him on account of confidentiality, but rather, that fact must be judged on the basis of whether other tangible and specific information is available so as to justify the conclusion irrespective of the contents of the document sought to be kept confidential. Acorus Unitech Wireless Pvt. Ltd vs. ACIT (Delhi High Court)

19. Retainer fee to doctor would attract sec. 192 TDS instead of sec. 194J if terms of contract prove him an employee

Cumulative effect of agreement with retainer-doctor is decisive as to whether TDS to be deducted under section 192 or under section 194J

Where retainer doctor debarred from taking any other assignment with any other company engaged in business similar to assessee-company(corporate hospital), required to follow rules, regulations and policies of assessee-company and required to report to the head of the department in which he is working and he was to be paid fixed consolidated monthly fee with no fee-sharing with hospital, the retainer-doctor is employee and not independent professional doctor and his fixed monthly retainer fee is salary which is liable to deduction of tax under section 192 and not professional fee liable for TDS under section 194J. The retainership agreement was also for a limited period. Mere fact that the retainer doctor has to raise monthly bills for getting payment of consolidated monthly retainership fee will not make him an independent professional doctor when in substance the cumulative effect of agreement indicates employer-employee relationship.

[2014] 42 taxmann.com 200 (Jaipur - Trib.) (TM) Escorts Heart Institute & Research Centre Ltd. v. Deputy Commissioner of Income-tax (TDS), Jaipur.

INDIRECT TAX

Taxability of Obligation Related Services.

As per section 66E(e), 'agreeing to an obligation to refrain from an act or to tolerate an act or a situation, or to do an act,' has been declared as a service. Refrain means to keep oneself away from one act or feeling from a particular thing that somebody does. In terms of this entry, the following activities, if carried out by a person for another for consideration, would be treated as provision of service:

a). Agreeing to an obligation to refrain from an act.

b). Agreeing to an obligation to tolerate an act or a situation.

c). Agreeing to an obligation to do an act.

This is a new entry which was not taxable in erstwhile provisions prior to Finance Act, 2012. Simply but, in case a company or any other person enters into a non- compete agreement with another person for a consideration, then it would be considered to be a declared service and attract Service Tax. This entry covers cases, where a transaction may involve rendering of a service or even non-rendering of a service but consideration is involved. It also covers an entry where a non-action or non-service event also becomes taxable because consideration is involved. Note that the activities mentioned in the above clause have very wide ambit and may be interpreted to include the transactions as far as the creativity in the mind allows. However, one thing to be kept in view while determining whether it is a declared service or not is that, the consideration should have a direct link with the activity.

Scope of obligations

After referring to the aforementioned definitions the said clause can be broken in to following three parts:

1) Obligation to refrain from an act: It means any act, which binds a person, for not doing a particular act in the given circumstance.

For example - Non Compete fees for not doing a particular business or not to practice a particular profession.

2) Obligation to tolerate an act or a situation: It means to accept the occurrences or existence of an act or a particular thing, which is imposed by a condition or circumstances, in a contract, agreement or any other document which is legally enforceable by law. The following are some of the examples:

a) Penalty on early termination of rental or lease agreement.
b) Pre-payment charges on early payment of loan installment.
c) Demurrage charges paid to the port authorities for not clearing the goods within a specified period of time.
d) Compensation on termination of business agreements.
e) Advance forfeited for cancellation of agreement to provide a service.

3) Obligation to do an act: It means to perform or to do something, necessarily, prescribed in an agreement, contract, or any other document, which is required under any law for the time being in force.

Examples

The following are the examples, where agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act may be considered as a declared service and made liable to Service Tax:

a). Non-compete fees for agreeing not to compete.
b). Compensation on termination of business agreements.
c). Advance forfeited for cancellation of agreement to provide a service.
d). Forfeiture of security deposit for damages done by service receiver in course of receiving of services.
e). Cancellation charges being charged by airlines, hotels etc.
f). Consideration for non-appearance in a court of law or withdrawal of suit.
g). Demurrage charges or detention charges at ports, airports, warehouses, railways etc.

"Refund to Service Providers covered under Partial Reverse Charge"

At the time of introduction of Partial Reverse Charge, Government has inserted Rule 5B of CENVAT Credit Rules 2004. This rule is inserted to provide benefit of refund claim of unutilized CENVAT Credit to Service Providers covered under partial reverse charge however notification (Notification No. 12/2014-CE(NT) dated 3rd March, 2014) to provide procedure, safeguards, conditions and limitations for refund claim is issued after lapse of around one and half year of introduction of Rule 5B.

Under this Notification benefit of refund claim is available in respect of following services covered under partial reverse charge (partial reverse charge services):-

1. Rent-a-Cab (where service provider has not opted benefit of abatement);
2. Manpower Supply Service;
3. Security Service; and
4. Works Contract Service

Refund Amount:

(CENVAT Credit taken on inputs and input services during the half year) X (Turnover of output service under partial reverse charge during the half year / Total Turnover of the goods and services during the half year) Less (Service Tax paid by the service provider for such partial reverse charge services during the half year.)

Maximum amount of Refund Claim:

Amount of service tax liability paid or payable by the recipient of service with respect to the partial reverse charge services provided during the period of half year for which refund is claimed.

Period of Refund Claim: Half Yearly

Due date of filing of Refund Claim: Within one year from the due date of filing of return for the half year. If more than one return is required to be filed for the half year, then the time limit of one year shall be calculated from the due date of filing of the return for the later period.

Notification also provides that the last date of filing of application in Form A, for the period starting from the 1st day of July, 2012 to the 30th day of September, 2012 shall be the 30th day of June, 2014.

The notification also clarifies that no refund shall be admissible for the CENVAT credit taken on input or input services received prior to the 1st day of July, 2012.

Case Laws: Indirect Tax

1. Study Materials provided by coaching institutes: Study Materials provided/billed/sold separately by coaching institutes to their students are exempt from service tax under Notification No. 12/2003-ST and Circular No. 59/8/2003-ST restricting such exemption only to sale of priced standard text books is void [2013] 37 taxmann.com 398 (New Delhi - CESTAT) Cerebral Learning Solutions (P.) Ltd. v. Commissioner of Central Excise, Indore.

2. Valuation of goods manufactured on job work basis

The taxpayer was engaged in the activity of building a body on the chassis received from the principal manufacturers and was also purchasing some inputs required for this process. The taxpayer availed Credit on the chassis and accessories received from the principal manufactures, and after manufacturing, the finished goods were cleared to the depot/regional sales office of the principal manufacturers on payment of duty under the provisions of Rule 6 of Valuation Rules (i.e. on the basis of processing/ job charges plus cost of goods procured plus cost of materials received from the principal manufacturers plus profit margin).

However, the Central Excise authorities contended that the valuation of goods is required to be done under the provisions of Rule 10A of the Valuation Rules (i.e. on the basis of sales price adopted at the depot of the principal manufacturer).

The taxpayer contended that Rule 10A will be attracted only when the goods are manufactured on behalf of the principal manufacturer. Since the transaction with the principal manufacturer is on a principal to principal basis and the goods are manufactured for the principal manufacturer and not on behalf of the principal manufacturer, the case is not covered under the provisions of Rule 10A. Further, when the job worker contributes his own raw material to the article supplied by the customers and manufactures goods, it does not amount to job work.

The Mumbai Tribunal held that it cannot be said that the expression 'on behalf of' used in Rule 10A would indicate that in order to be a job-worker, he has to be a representative of or on behalf of the principal manufacturer to the third party. Accordingly, the value of the goods is required to be determined under Rule 10A and not under Rule 6 of the Central Excise Valuation Rules. Hyva (India) Private Limited v. CCE [2013-TIOL-166-CESTAT-MUM]

MISCELLENIOUS

Non-Compete Clauses and The Indian Contract Act, 1972

A non-compete clause or a covenant not to compete is a term used in contracts under which the employee agrees to not pursue a similar profession, trade or business in competition against the employer. Apart from the regular employment agreements, such covenants are also at times included in the agreements relating to sale of goodwill of business or professional practice, employment exit and other exclusive dealings and service arrangements.

The Indian Contract Act, 1872, which provides a framework of rules and regulations, governing the formation and performance of a contract in India deals with the legality of such non-compete covenants. It stipulates that an agreement, which restrains anyone from carrying on a lawful profession, trade or business, is void to that extent. Under section 27 of the Indian Contract Act, 1872 agreements in restraint of trade are void.

Agreement in restraint of trade is defined as the one in which a party agrees with any other party to restrict his liberty in the present or the future to carry on a specified trade or profession with other persons not parties to the contract without the express permission of the latter party in such a

manner as he chooses. Providing for restraint on employment in the employment contracts of the employees in the form of confidentiality requirement or in the form of restraint on employment with competitors has become a part of the corporate culture.

Conclusion

It is well established by the various case laws decided in the courts of India that 'non compete' clauses that extend after the termination of employment are not enforceable in India. It is stated clearly in section 27 of the Indian Contract Act, 1872 that agreements in restraint of trade are void. In the garb of confidentiality, an employer cannot be allowed to perpetuate forced employment, as it is hit by Section 27.

Even though these clauses are valid in foreign countries, the laws and judicial interpretations of other countries will hardly have any effect on Indian courts if the statutory laws of this country are unambiguous. Post term restrictive covenants have been held invalid through various judicial pronouncements. An employer is not entitled to protect himself against competition on the part of an employee after the employment has ceased. However, a purchaser of a business is entitled to protect himself against competition per se on the part of the vendor and it has been upheld that a employer has no legitimate interest in preventing an employee after he/she leaves his service from entering the service of a competitor merely on the grounds that the employee has started working with a competitor, unless the same leads to misuse or an unauthorized disclosure of confidential information, which has been provided to the employee during his course of employment

Article 21 of the Constitution of India guarantees the live to livelihood and since it is a fundamental right it is held to be inviolable. This makes the enforcing of non compete clauses in India even more of a difficult task.

It's an obligation of company to file Form 32 on acceptance of resignation of a director

Resignation of a director being accepted and acted upon, company should file statutory Form No. 32 showing his cessation as director from board of company.

Prayer for compensation for non-removal of director's name after resignation, did not fall within ambit and scope of provisions contained in section 614 [2014] 42 taxmann.com 208 (CLB - Mumbai) Kamal Kumar Gupta v. Arc Marine (P.) Ltd.

RBI turned net seller of dollars in Jan

Reversing the trend of being a net buyer of dollars for three months in a row, the Reserve Bank of India (RBI) became a net seller of the US currency in January 2014.It sold dollars worth $1.92 billion in the month, buying $375 million and selling $2.3 billion. The central bank was a buyer on a net basis in October-December 2013, as banks received huge dollar flows into Foreign Currency Non-Resident (Banks) deposits, backed by RBI's offer to swap dollars. Under this window, banks could swap fresh FCNR (B) dollar funds (deposits with a maturity period of at least three years) at a fixed 3.5 per cent a year. The window was open till November 30, 2013. RBI also offered banks a swap on their foreign borrowings. The two windows mobilised a sum of $34 billion.

RBI Checking if RoC-Registered Firms are Involved in Non-Banking Business

RBI is running a check on a large number of companies registered with the Registrars of Companies to see if they have directly or indirectly indulged in the 'activities' of non- banking finance companies.

Last year, RBI had asked the large pool of companies to file their balance sheets and activity related documents.

Various non-banking financial intermediaries could be registered with the RoCs without being registered with the RBI.

An RBI official confirmed that last year the apex bank undertook an exercise to find out whether RoC-registered companies under the sub-class of financial and related services undertook NBFC activities, including deposit collection.

"At present, the documents gathered are being scrutinised," the official added on condition of anonymity. Early last year, the Union Ministry of Corporate Affairs had also identified and shared details of some 34,754 RoC-registered companies, which were "capable of functioning" as NBFCs, but not registered with the RBI.

After the Saradha furore, the MCA has been trying to plug the legal and regulatory loopholes to bring "illegal" money collecting entities under a regulatory framework or control mechanism. RBI is the regulator of the 12,157 non-banking finance companies, out of which, 257 are also licensed to take deposits.

Interestingly, around 5,800 (registered with RBI) NBFCs operate in West Bengal. However, only one (West Bengal Infrastructure Development and Finance Company, a State Government unit) retains the RBI licence for deposit collection.

Common Problems faced by SMEs

Lack of IT Support

IT personnel are in high demand and are often attracted to bigger companies and MNCs. It is very difficult for SMEs to attract good IT personnel. It is even more difficult to retain them. Moreover, good IT personnel are expensive and may not be affordable by most SMEs.

Lack of IT Literacy

Many of the employees in SMEs started from the ground up after working with the company for many years. Some of them are often holding supervisory and managerial positions. These employees may not be IT literate and often have high resistance to the changes in the working process that they are comfortable with after many years.

Lack of Formal Procedure and Discipline

Most SMEs do not have formal procedure or often these are not documented. Furthermore, there is tendency for these procedures to change frequently. This makes it difficult for third party and newcomer to understand the existing business practices and match them with the IT process.

Uneven IT Awareness and Management Skill

As company grows, new managers are often introduced into the company. There will also be old managers who are promoted from the rank and file. Some of these managers may not been trained in the leadership and management skill. These uneven skill among the managers often caused conflicts during the implementation.

Lack of Financial Resources

As a SME/SMI, financial resources are often limited. This often forces company to select a solution, which appear to be cheap initially. However, the hidden costs will start to emerge during implementation. This sometime causes the project to be abandoned or sometime sent the company into further financial crisis.

Lack of Human Resources

Implementations of some bigger scale IT project especially those that involve business process across different departments or require large amount of initial data entries require human resource during the implementation. Some SMEs are often in the stage of frequent fire fighting and shortage of manpower. This makes it very difficult for them to allocate time to carry out implementation. Furthermore, there is always a conflict between getting the daily routing work going and to do the "Extra" IT implementation.

Lack of Experience of Using Consultants

A good consultant often save time and effort, and help to prevent pitfalls during the IT projects. However, most SMEs are lacked of experience in working with consultants. The lack of knowledge in the field of IT makes them difficult in identifying good consultant for the projects. They often feel that the consultant costs is too high and they can handle it with their own staff. If the company has no staff that are experience and knowledgeable in the IT project, avoiding external help often costs more to the company eventually.

Need to encourage innovations in the SME sector: Another source of possible efficiency increases comes from the higher levels of innovation, both product and organisational, which are possible in the SME sector. We do not as yet have systems, which encourage and nurture such innovations.

Rs. 30,000 crore stimulus to economy expected from poll spending

The country's faltering economy is likely to get a significant stimulus from election spending by political parties, candidates and the government which estimates suggest could be as much as Rs 30,000 crore.

The figure is comparable to the $4 billion (around Rs 20,000 crore at the prevailing exchange rate) additional spending that the government announced in 2008 to shield the economy from the impact of the global financial crisis. It is, however, less than the $7 billion raised and spent by political parties in the 2012 US presidential polls.

The election spend is often more effective than official economic stimuli as the money is actually spent — virtually without any transmission loss — in a short time. Moreover, there is a "trickle-down effect" as it often reaches the poorest voter.

This poll there will be a sharp increase in expenditure from the 2009 elections, when total spending was estimated at Rs 10,000-Rs 15,000 crore. Experts pointed out a large chunk of the spending by political parties and candidates is in cash, which makes it difficult to estimate the actual amount spent.

"Spending will increase significantly in these elections. The estimate is about Rs 30,000 crore," said N Bhaskara Rao, chairman of the Centre for Media Studies, a New Delhi-based think tank, adding that the figure includes the expenditure by the Centre. "No other election can match the 2014 elections," CMS's Rao.

Several sectors of the economy, ranging from advertising, air charter services, security services, food and beverages, transport, liquor, fuel and automobiles are expected to see hefty activity, thanks to the sharp increase in spending.

"Election spending provides a very sizeable boost to the economy. Traditionally we have seen it adds 0.2-0.3% to growth," said Pronob Sen, chairman of the National Statistical Commission.

Indian economy: No longer fragile.

Source: Live Mint

The Indian economy is now looking far less fragile than it has been over the past two years. The gradual decline in inflation as well as the dramatic reduction in the current account deficit is a sure sign that excess demand pressures are finally easing.

A growth revival is not yet on the horizon. But the ability of the Indian economy to withstand a global shock is far higher than what it was during July 2013. It is no surprise that the rupee has been strengthening against the dollar in recent weeks despite the fact that the US is committed to keep trimming its extraordinary monetary stimulus.

Much of the credit for the growing stability should go to finance minister P. Chidambaram, who learnt the harsh lessons on offer in the weeks when the rupee seemed to be in free fall. Raghuram Rajan also flanked him since he took over as Reserve Bank of India governor. It is worth comparing the recent Indian success in reducing external imbalances with some of the other countries whose currencies were battered last year. India and Indonesia have worked hard to bring down their current account deficits; Turkey, Brazil and South Africa have done precious little.

Of course, the sceptics have a point when they say that the reduction in the current account deficit is an exaggeration because gold imports have been pushed underground by the import curbs imposed over the past year. And the decline in consumer price inflation is largely explained by the seasonal decline in vegetable prices; core inflation has not seen a similar decline. But the economy does seem more stable even after taking these criticisms on board.

However, the battle is far from over. India continues to be a high inflation economy. Retail inflation is around three percentage points higher than the average of nine comparable emerging market economies I have considered. The latest inflation reading is only 1.6 percentage points lower than its average since the new national consumer price inflation began to get calculated in January 2012. And the rate at which prices rose when India had a similar growth rate a decade ago was half the current rate, if one considers the consumer price index for industrial workers in fiscal year 2003.

Big blow to ill-gotten wealth invested in real estate; SC affirms seizure of asset acquired from illegitimate means

SAFEMA : Where subject acquires property by means which are not legally approved, sovereign would be perfectly justified to deprive such persons of enjoyment of such ill gotten wealth and such a deprevention under section 7 of SAFEMA would not be hit by prohibition contained under Article 20 of Constitution of India ***[2014] 41 taxmann.com 420 (SC) Biswanath Bhattacharya v. Union of India***