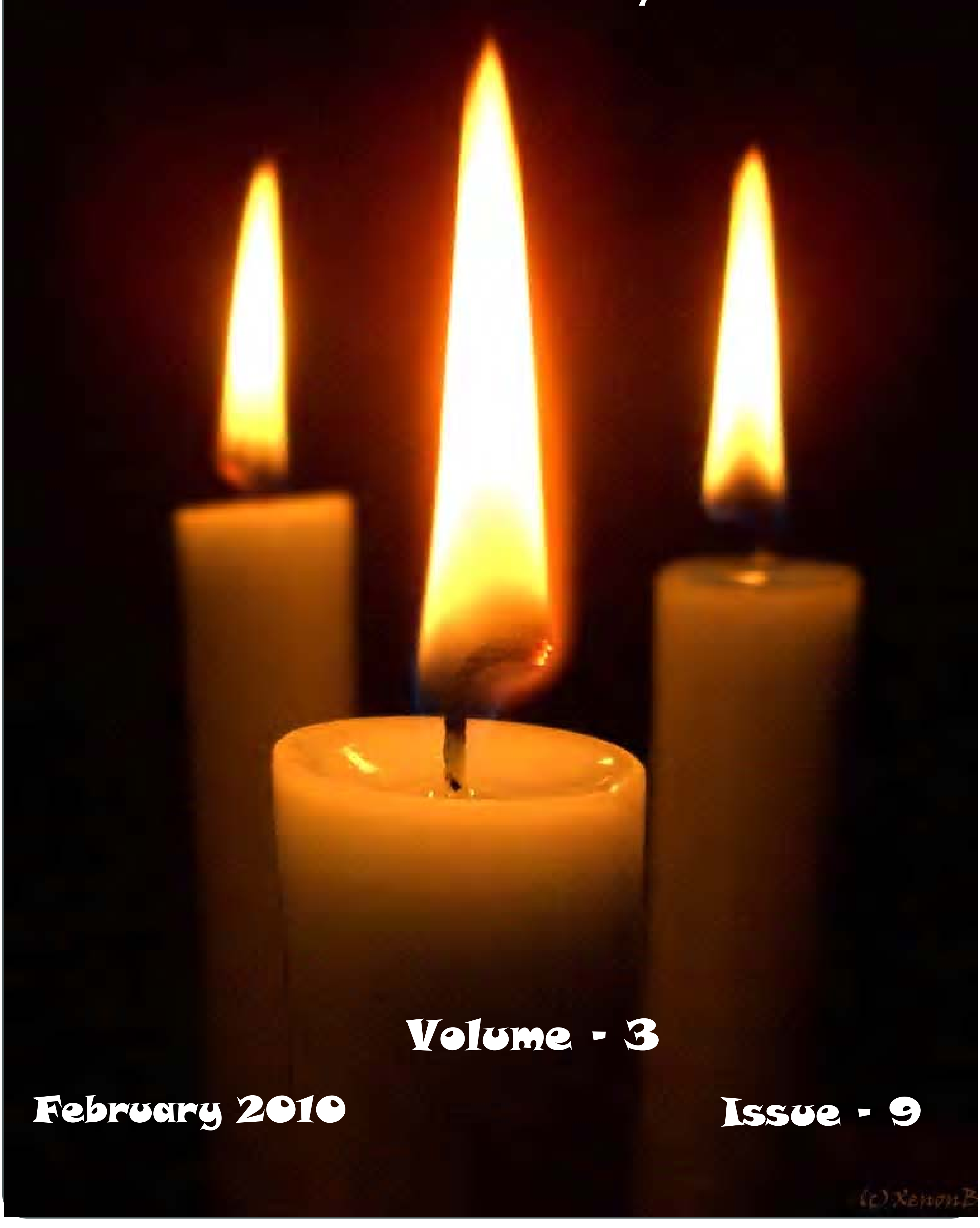
THE ARTICLED

U'r Altitude is determined by Ur Attitude



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The Editorial . . .

An inhuman act of terrorists took place at the German Bakery, a popular eatery in Pune's posh Koregaon Park area, have taken 11 lives injured many others.

After Mumbai its Pune now! With Saturday blast Terrorists have illustrated that they are constantly delivering their immoral duty of killing humanity and innocent souls. We the Indians are persistently fostering amicable relationship with our neighbours and even they are persistent reciprocating our approach with terrorism.

"Fostering of terrorism from across the border (by Pakistan) was not helping bilateral relations," - Minister of state for defence M M Pallam Raju.

The Maharashtra ATS (Anti – Terrorist Squad) and the National Investigation Agency (NIA) are studying the video which shows two suspects, one is talking on the phone and the other is holding a backpack. Investigators suspect the involvement of Indian Mujahideen.

The DNS family conveys our heartfelt condolences to the families and friends who have lost their loved and dear ones.

Marketability - Excise

- **Sashank**

Several judicial precedents have upheld that for goods to be "excisable" they must also be marketable. The insertion of an explanation to Section 2(d) "excisable goods" of the Central Excise Act, 1944 sought to give clarity to the aspect of marketability

Confusion has always prevailed in the area of excise whether a certain goods emerging from the process of manufacture is to be subjected to excise duty or not. Section 2(d) of the Central Excise Act defines Excisable goods to mean goods specified in the First Schedule & Second Schedule of Central Excise Tariff Act, 1985 as being subject to a duty of excise and includes salt. Explanation to Section 2(d) has been inserted on 10.05.2008 to provide that "goods" include any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable.

Section 3 of the Central Excise Act seeks to provide for the levy and collection of excise duty on all excisable goods which are produced or manufactured. Hence for there to be a levy under Section 3 the following conditions should be fulfilled:

1. There must be manufacture
2. The manufacture must be that of Goods
3. The Goods should be specified in the First & Second Schedule of the Central Excise Tariff Act, 1985.

Sale of goods act 1930 has defined goods as any **movable property**, including stocks, shares and growing crops, grass and others forming part of the land but excludes actionable claims". Several judicial decisions have held that for the purpose of levy under excise the goods emerging from the manufacturing process should be movable and marketable.

The pertinent question arises as to when, would one consider the goods to be *Marketable*. As generally understood *Marketability* is capacity of the goods to raise its demand for being bought and sold in the market. So the ability of commodity to get sold in the market was considered as test to find out the whether goods are marketable, which was known as *Marketability Test* also called 'Vendibility Test'. This was been followed by Courts in many of its judgments.

Recent amendment which inserted an explanation in clause (d) of section 2 only admits the concept of salability but not of presence in the market. As per the departmental understanding this new explanation seeks to over rides the decision pronounced by the honorable Apex Court in the case of UOI vs. Indian Aluminum Ltd 1995 (77) ELT 268 where it was been stated that, Everything that is sold is not necessarily a marketable commodity as known in commerce and which, it may be worthwhile to trade in, as even rubbish can be sold.

But In the case of Indian Cable Co. Ltd vs.CCE 74 ELT 22 (1994), it was stated that actual sale of commodity is not necessary to apply the Marketability Test. It only means 'capable of being sold' is enough to consider as marketability.

As it is commonly known the marketability of a product arises only from manufacture of product, but one should not conclude that only final product emerged is the excisable goods. All the intermediate products or ancillary products can also amount considered as Excisable Goods. However as per Notification no. 67/95 Dt. 16.03.1995, intermediate goods are not liable to excise duty, if finished goods are not exempted from excise duty.

In the landmark judgment given in the case of Bhor Industries Ltd vs. CCE 40 ELT 280 (SC) 1989, It was been held that, the mere mention of an item in tariff is not enough for the goods to be considered as marketable and the same is not dutiable, if the goods are not able to be sold in the market.

In the above case, the dealer was engaged in the manufacturing of leather cloth which gave raised to an intermediate product of Crude PVC films, which have been utilized for captive consumption for further manufacture of final product. As the intermediate product arose had no value in the market, so it was concluded in that case that intermediate was not dutiable.

Similar Judgments arise in the case of Gujarat Narmada Valley Fertilizers Co. Ltd (2005) 184 ELT 128 SC, where it was been stated that identity of commodity as distinct product is necessary unless which the imposition of excise cannot be done by mere mention of item in the schedule.

Thus, the essential test has to be conducted for determining whether the product is capable of being bought and sold in the market. This decision had several facets which substantially contributed to the development of the law on dutiability of intermediate goods.

In case of Shalimar Wires Industries Ltd vs. CCE 2008 (230) ELT 639 (Tri) it was stated that burden of/proving marketability of intermediate product is on revenue department. Moreover proving of marketability of final product is also on revenue department.

Similarly, a five judge bench in CCE vs. Man Structural Ltd (2001) 44 RLT 113 expressed their views that as far as marketability issue will be concluded on the basis of consensus within the department. The onus of proving that goods are marketable is on department. If they are not able to prove the same would be considered as non marketable, hence not dutiable.

With the latest amendment vide circular no. 904/24/09-CX dated 28th October 2009 it's clarified that amendment in clause (d) of section 2 of Central Excise Act, 1944 is intended to cover every goods that are capable of being sold for consideration will be deemed as marketable and hence will be excisable. From the above we can presume that products known as waste, residue or refuse arise during the process of manufacture and capable of being sold would be excisable goods and chargeable to excise duty.

Interesting Internet Fact

Are you addicted to your online connection? Are you one of those crazy folks that can't wait to read the email with your morning coffee? Doctors are calling it serious addiction combined with: Computer Addiction and Cyber-Relational Addiction. They even managed to stamp the cool names for it, like Internet Addictive Disorder (IAD) or the Internet Overuse Syndrome (IOS). Based on the latest research and simple human reasoning Internet addiction should not be labeled as addiction like gambling or drug addiction. There should be a strict line that distances other addictions from the internet addiction. Staying in touch with your friends or watching funny YouTube videos is not a destructive behavior which usually characterizes major addictions. If you gamble on the internet then you are not addicted to the internet, but online gambling. Internet is a wonderful tool, but like everything else in this Universe there is the sunny side and the dark side of the pyramid of life.

Write to The Editor

"Continuous learning process" is the vital essence of our Profession. To keep ourselves in pace with the emerging concepts, is what we have endeavored through our E-Newsletter, "The Articled". We also intend to build this into a common knowledge sharing platform for all and welcome any contributions to strengthen this common pool. Your views will help us fortify the forthcoming Issues. You can mail us at newsletter@dnsconsulting.net or write to: The Editor, #10, South Park Road, Nehru Nagar, Seshadripuram, Bangalore – 560020.

A nation is a society united by a delusion about its ancestry and by common hatred of its neighbours.

Building Wealth

- CA Sumana Rao

Investment is not only a security for future but a means to build wealth. Choosing the right option for investment is not easy as today. Investment option found to be right for you today might not be the same tomorrow. An individual should find out the best place for putting his money to beat the inflation. Investment in shares was fetching a good return till the stock market took a downturn last year. This was a good lesson to those who concentrated their money and hopes on one mode of investment. Ensuring return as well as taking intelligible risk is what an individual should do during weak economy.

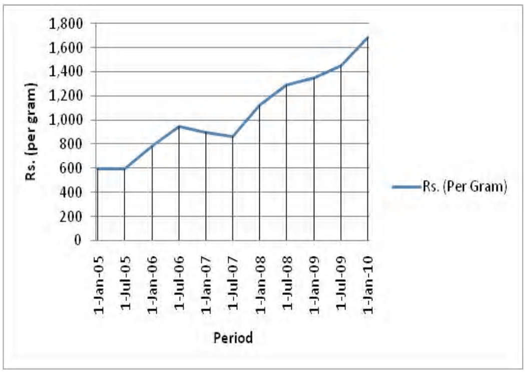
Factors to be considered for a good investment

1. **Ability to absorb the risk:** An individual who has a reasonable high income will have more ability to opt riskier investment and wait for a longer period to get desired benefit, as compared to an individual with lower income.
2. **Diversify but not over diversify**: Diversification is required so that your portfolio will have the right level of exposure to risk as well as fetch good returns. But it's not advisable to invest in too many schemes.
3. **Timing the returns:** Investing in small term, medium term and long term investment options will help one to a great extent, to meet his future commitments.

Hence one should ensure to have a proportionate mix of investments to meet future requirements in terms of ability to take various risks, timing the returns, age, future commitments, Average yield on returns etc. sd

Keeping the above factors in mind some of the investment options available during a weak economy area

1) **Gold as the investment:** At the time of global slowdown investors gold is a safe investment haven. Gold is a hedge against dollar and inflation. Gold has inverse relationship with US dollar indicating that gold can protect value against the dollar. Thus gold is no more to be treated as ornaments but one of the biggest investment vehicles. It is forecasted that this investment option will be promising a high level of demand in 2010 as well. The growth between 01st Jan 05 to 01st Jan 10 is surprisingly as high as 283%.



Reliance	NAV (Rs)	Growth % (Y-O-Y)
01.01.2008	1,066.12	-
01.01.2009	1,322.81	24.08
01.01.2010	1,604.78	21.32
UTI	NAV (Rs)	Growth % (Y-O-Y)
01.01.2008	1,073.35	-
01.01.2009	1,356.05	26.34
01.01.2010	1,648.81	21.59
Gold Benchmark	NAV (Rs)	Growth % (Y-O-Y)
01.01.2008	1,071.39	-
01.01.2009	1,352.90	26.28
01.01.2010	1,651.20	22.05
Quantum	NAV (Rs)	Growth % (Y-O-Y)
27.02.2008	615.11	-
01.01.2009	675.28	9.78
01.01.2010	821.14	21.60
Kotak	NAV (Rs)	Growth % (Y-O-Y)
01.01.2008	1,074.55	-
01.01.2009	1,348.52	25.50
01.01.2010	1,649.81	22.34

2) **Gold Exchange Traded Fund:** This is also known as paper gold. This option is introduced as recently as February 2007 after approval of SEBI. Gold ETFs are mutual fund schemes that invest in standard gold bullion. They are special types of exchange traded funds (ETFs) which tracks the prices of gold (i.e. whose value is based on price of gold) and are convenient and inexpensive alternative to owning physical gold. It is just like buying and selling stocks that can be traded on stock exchange. The advantage of Gold EFT over Gold is that it eliminates the risk of impurity, save on wastage charges and investment in smaller amounts are possible. The five EFT;s available in India as on today is Reliance Gold ETF, UTI Gold ETF, Gold Benchmark ETF, Quantum Gold ETF and Kotak Gold ETF.

Each nation feels superior to other nations. That breeds patriotism - and wars.

3) **Real Estate**: Investment in real estate has been one of the most successful investment phenomenon's in the last decade. For instance ,the per sq ft rate in Jayanagar, Bangalore is around Rs. 3,400/- (residential) in the period May 2007, has increased to around Rs. 6,000/- in the month of Feb 2009 which shows a steep growth of 76%. However the global meltdown had its repercussion on this industry. Though the prices have not fallen steeply, there is a hit in the growth of this industry. Despite this, the industry has recorded a growth of 16% in 2009 over 2008. Foreign direct investment into India has given more Investment in this area at this time might be fruitful tomorrow when the market is recovering.

4) **Equity Shares:** The stock market crash in 2009 had its ripples all around the world. But there is nothing to be skeptical about investment in shares if investment is made keeping a close eye on the movements in market. Indian markets are seeing some level of recovery. However investment in shares, if held for a medium to longer period will yield more return as compared to investment done only to make short term gains.

Stock of:	Period	1-Jan-05	1-Jan-08	1-Jan-10	Growth % (Jan 05 to Jan 10)
	BSE Index	**6,626.49**	**20,325.27**	**17,473.45**	
		BSE - Closing Price			
Infosys		1,044.50	1,749.70	2,605.25	149.43
Reliance		266.90	1,423.55	1,089.40	308.17
SBI		615.59	2,250.48	2,269.45	268.66
	NSE Index	**1,818.55**	**5,370.35**	**4,343.10**	
		NSE - Closing Price			
Infosys		1,045.85	1746.85	2,601.10	148.71
Reliance		266.85	1,424.13	1,090.55	308.68
SBI		615.16	2,248.83	2,269.00	268.85
source: moneycontrol .com, bseindia.com, nse-india.com					

5) **Mutual Funds:** An individual cannot get the benefit of diversified investment if he possesses a small amount. In order to get the benefit of diversification by investing his savings in a mutual fund. A mutual fund is a professionally managed type of collective investment scheme that pools money from many investors and invests it in stocks, bonds, short-term money market instruments, and/or other securities. Mutual funds are subject to a special set of regulatory, accounting, and tax rules. The income earned through these investments and the capital appreciation realized is shared by its unit holders in proportion to the number of units owned by them. The contribution for participation in mutual fund notified under section 10(23D) is allowable as a deduction under Chapter VI-A of the Income Tax Act, 1961. Mutual fund investment is offered by SBI, LIC, UTI, DSP Merrill Lynch, Kotak Mahindra, Reliance and other companies.

6) **Life Insurance:** Life is roller coaster. We cannot forsee what trouble is awaiting us or our family members. An insurance of life is a must to mitigate the unexpected loss in one's life. Life insurance is a contract that pledges payment of an amount to the person assured (or his nominee) on the happening of the event insured against. The contract is valid for payment of the insured amount during the date of maturity, or Specified dates at periodic intervals, or Unfortunate death, if it occurs earlier.

Amongst the top life insurance provider, LIC, UTI, ICICI, SBI are some of the top insurance providers. Each individual's insurance needs and requirements are different from others and a policy suiting one's requirement should be opted. There are multiple schemes in market which are planned for children education, marriage, and high worth individuals, women and annuity payments. Tax benefit on life insurance payment is also an advantageous feature.

7) **Public Provident Fund:** It is one of the lowest risk investment avenues, as it is backed by Government. PF is compulsory investment for all salaried people who work for a company having 20 or more employees. Apart from what company deducts an employee can also opt for Public Provident Fund (PPF). It is a great instrument for risk-averse investors. It is also a very good instrument for long term wealth creation. Thus, it is among the safest instruments you can invest in India. This guarantees safety of your principal and the interest earned on it.

If Mr. A invests in PPF from 01 April 2009 onwards a sum of Rs. 50,000/- for a period of 15 years.	
Amount he will receive after the end of 15 years from the end of the year when initial subscription was made is as under:	
$\left[\frac{P[(1+i)^n]-1}{i}\right]$	1+i
$\left[\frac{50000[(1+0.08)^{15}]-1}{0.08}\right]$	1.08
1,466,214	

A PPF account is opened for an initial period of 15 years. This also means that these funds cannot be touched for ad-hoc needs, which makes PPF all the more suitable for goals like retirement planning. The maturity date of the PPF account depends on the financial year, and not on the date of its opening. The current rate of interest on PPF is 8% per annum (compounded) and this interest is tax free. The maximum investment allowed in PPF is Rs. 60000/- – 70000/- per year. It is not necessary to deposit the amount in one go; multiple deposits can be made in a year. Since PPF is not a onetime lump-sum investment, you have to invest in it every year, year after year, at least for 15 years.

The individual will get deduction under Chapter VIA from Gross Income and the interest earned on contribution is also Tax Free.

8) **Fixed Deposits:** These deposits are a very common investment especially with Scheduled Banks, which is riskless but with low interest rate which varies based on lending rate, cash reserve requirement fixed by RBI. The interest rate on these deposits varies depending on the term of investment. Today a five year term deposit earns a interest varying from 7.25% to 9%. However these days the popularity of fixed deposit has seen a constant decrease and in order to give it a book the government has announced that fixed deposit locked in for five year term is allowable as deduction under Section 80C of Income Tax Act, 1961.

9) **National Savings Certificate:** National Savings Certificate (NSC) is a fixed interest, long term instrument for investment. NSCs are issued by the Department of Post, Government of India. Since they are backed by the Government of India, NSCs are a virtually risk free avenue of investment. They can be bought from authorized post offices. NSCs have a maturity of 6 years. They offer a rate of return of 8% p.a. compounded six monthly. This interest is calculated every six months, and is merged with the principal. That is, the interest is reinvested, and is paid along with the principal at the time of maturity. NSCs are transferable from one person to another. It is encashable prematurely, but with a penalty. Deduction under Section 80C of Income Tax Act, 1961 is also available on investment. As seen in the example an investment of Rs. 50,000/- with fetch an interest of Rs. 30,052/- at end of 6 years and thus a return of 60% on investment.

Amount that will be received after 6 years (interest compounded semi annually) is computed as under		
Formulae	$P(1+i)^{n*2}$	where P is Principal; I is the interest rate/number of conversion period in a year; n is the term
=	$50000(1+0.04)^{6*2}$	
=	**80,051.61**	

I have long believed that sacrifice is the pinnacle of patriotism.

A comparative study of the above discussed investments is depicted in the below chart:

SL. No	Investment Option	Major Class of Investors	Risk	Reward	Preferred % of investment
1	Physical Gold	HNI and MC	**Low - Medium:** Depends on the variation in US dollar rate. Demand-Supply trend	High if held for hoarding in current market condition	8 to 10%
2	Gold ETF	HNI, MC and Lower MC	**Low - Medium:** When supply exceeds demand and hoarder sell of stock, the price may dip	High if held for hoarding in current market condition	8 to 10%
3	Real Estate	HNI	**Medium:** Depends on Liquidity in Market	High	20-30%
4	Equity Shares	HNI and MC	**High:** Business risk, financial risk of the company, inflation risk and interest rate risk	High - Medium	15-20%
5	Mutual Fund	HNI, MC and Lower MC	**Medium-High:** Risk associated with underlying asset	Medium	20-30% (in weaker economy when prices of stock and commoditie s are low)
6	Life Insurance	HNI, MC and Lower MC	NIL	Low	10-15% annually
7	Public Provident fund	MC and Lower MC	NIL	Low	5-10% annually
8	Fixed Deposits	HNI , MC and Lower MC	NIL	Low	5%
9	NSC	HNI and MC	NIL	Low	5%

HNI: High net worth individuals; MC: Middle class; Lower MC: lower middle class

The famous saying of **WARREN BUFFET goes like "**Don 't **save** what is left after spending; spend what is left after **saving"** has a great lesson for all of us. In this high tech world our want multiply like in the speed of lightning. In order to fulfill these wants we save little and spend more. At times of difficulty we end up in borrowing and loss of peace. Therefore, for a peaceful living convert a piece of your earnings into an intelligible investment.

Doctrine of Res Judicata with regard to Income Tax

- Tanuja

We would have heard of the word 'assess' very commonly in our day to day life. It is nothing but judging a particular situation. Judgment involves a matter of careful analysis of the situation whether the same is right or not. With regard to Income Tax Act, it is assessing the return of income filed by the assessee. Now the point of dispute comes only when there is difference of opinion by the assessee & the Income Tax Department. It can be because of wrong understanding of the law or the actual application of the same. This is nothing but what is called as the 'Assessment Proceedings'. The word 'Doctrine' is nothing but the instruction or the principle practiced.

Res Judicata is the Latin term for " a matter judged" and may be referred to two things; in both civil law and common law legal systems, a case in which there has been a final judgment and is no longer subject to appeal. Once a final judgment has been handed down in a law suit, subsequent judges who are confronted with a suit that is identical to or substantially the same as the earlier one would apply **res judicata** to preserve the effect of the first judgment. The objective behind this is to avoid multiplicity of cases in the court of law so that the same parties are not vexed twice over on the same issue. Vexatious litigation is put to an end & the court's valuable time is saved. The essentials of the above doctrine are as follows:

- An earlier decision on the issue.
- A final judgment on the merits.
- The involvement of the same parties, or parties in privity with the original parties.

The application of the 'Doctrine of Res Judicata' with regard to assessment proceedings is all about the article. The above mentioned doctrine would not apply strictly to the proceedings under Income Tax Act. This is on one side of the coin. On the flip side, it is also equally true that unless there is a change of circumstances, the authorities will not depart from the previous decisions at their sweet will in the absence of material circumstances or reasons for such departure.

Now we would have a study on a case law which is in which Doctrine of Res Judicata is applicable. The same is dealt in Taraben ramanbhai Patel *V/s* ITO (1995) 215 ITR 323 (Gujarat)

Facts of the case:

- The *petitioners* are the *trustees* of the trust, who had income of the trust derived from the undivided share of 4.5% from a building. It also had *undivided 4.5% share* in the tenancy rights in the *plot on which a building is situated*.
- The *petitioners* & others *filed a suit* in respect of the property & a ***receiver was appointed*** by the High Court of Bombay.
- Now the receiver is in receipt of the income derived from property. The *receiver*, being a *representative assesee* u/s 160 & 161 of Income Tax Act, 1961 was requested by the trustees to file the returns of the same to the Income Tax department & communicate the department directly for the same.
- The fact that the receiver was appointed by the trustees had been accepted by the department.
- Initially there was an interest levied on the petitioners u/s 139(8) & 117A(v) of the Act. But the same was waived by CIT on the ground that representative assessee is responsible for the same.

Having given the above decision, a different officer took a different view & levied *Penalty* under section 271(1)(a) for non filing of return. The petitioners went on an appeal to ACIT & CIT. But the same was dismissed.

Issued Raised: Whether levy of penalty is justified in the light of Doctrine of Res Judicata

Relevant Provisions of Income Tax Act involved:

Sec 271(1)(a): Penalty imposed for non-filing of returns. However the same is omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Prior to its omission, clause (*a*) was amended by the Finance Act, 1963, w.e.f. 28-4-1963 and Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 10-9-1986.

Sec 160(1)(iii): For the purposes of this Act, representative assessee means in respect of income which the Court of Wards, the Administrator- General, the Official Trustee or any receiver or manager (including any person, whatever his designation, who in fact manages property on behalf of another) appointed by order of a court, receives or is entitled to receive, on behalf or for the benefit of any person, such Court of Wards, Administrator-General, Official Trustee, receiver or manager. *Explanation 2 of the section says that the representative assessee shall be deemed to be the assessee for the purpose of the Act.*

Sec 161: Every representative assessee, as regards the income in respect of which he is a representative assessee, shall be subject to the same duties, responsibilities and liabilities as if the income were income received by or accruing to or in favour of him beneficially, and shall be *liable to assessment in his own name* in respect of that income; but any such assessment shall be deemed to be made upon him in his representative capacity only, and the tax shall, subject to the other provisions contained in this Chapter, be levied upon and recovered from him in like manner and to the same extent as it would be leviable upon and recoverable from the person represented by him.

Sec 139(8): Where the return under sub-section (1) or sub-section (2) or sub-section (4) for an assessment year is furnished after the specified date, or is not furnished, then whether or not the AO has extended the date for furnishing the return under sub-section (1) or sub-section (2), the assessee shall be liable to pay *simple interest at fifteen per cent per annum*, reckoned from the day immediately following the specified date to the date of the furnishing of the return or, where no return has been furnished, the date of completion of the assessment under section 144, on the amount of the tax payable on the total income as determined on regular assessment, as reduced by the advance tax, if any, paid, and any tax deducted at source.

How the Essentials of Doctrine of Res Judicata is applicable in the above case:

An earlier decision on the issue: There was an earlier decision that the representative assessee i.e., *the receiver* takes care of the Income Tax matters till the case before HC of Bombay in respect of the property of the trust, is settled and not the petitioners i.e., the trustees.

A final judgment on the merits: That the representative assessee represents the Income Tax matters on behalf of the trustees.

The involvement of the same parties, or parties in privity with the original parties: The trustees & the receiver were involved & a petition was again filed by the trustees as they were issued notice for payment of penalty for non-filing of returns. Where as the representative assessee i.e., the receiver has to do the same. Therefore they are the same parties.

Decision:

Levy of penalty u/s 271(1)(a) was dismissed.

Reasons:

The petitioners had already intimated the authorities about the dispute pending before the HC at Bombay. Documentary evidence on record is being borne out regarding the same.

Patriotism is a kind of religion; it is the egg from which wars are hatched.

The department having accepted the orders given by the Appellate ACIT in favour of the petitioner on similar grounds has been final.

Earlier for the Assessment Years 1978-79, because the receiver did not send necessary details regarding the property income as a result of which other co-owners also could not file returns within the stipulated period. Interest was charged by the ITO u/s 139(8) and 117A (v) of the Act. But the same was waived by CIT u/s 264. The interest was waived because the co-owners had sufficient cause from filing of returns on time.

By not granting relief to the petitioners, it is an error of law apparent on the face of the record. The Honorable High Court was satisfied that there was a reasonable cause for non filing of the return by the petitioner & hence penalty need not be imposed.

Conclusion:

The above case law gives us a clear picture where the 'Doctrine of Res Judicata' has been applied in Income Tax assessment proceedings. In this case, the petitioner was already given a decision that the representative assessee i.e., the receiver would take care of filing of returns of the trust & the Income Tax Authorities had not raised any issue for the same. Subsequently an order was issued against the petitioner by a different officer on a contrary view and levied penalty u/s 271(1)(a) for non filing of returns. As the circumstances did not support for any deviation and there was no sufficient reason for deviating from the previous decisions the case was in favour of the petitioner. Thus the Doctrine of Res judicata is applicable for the above reasons in this particular case. The correctness of the assessee in arguing that a particular change is required or not required, which is contrary to the previous practice, depends on the valid reasons for such deviation.

Straight from ICAI

Important Announcement: Relaxation of 9 months study course period to converted to IPCC students. - (08-02-2010)

All students who have been registered for the erstwhile Intermediate under paragraph 2 or 2 A of schedule B to the Chartered Accountants Regulations 28 or who have been registered for the erstwhile Professional Education (Course-II) or who have been registered for the Professional Competence Course (PCC) are eligible for conversion to Integrated Professional Competence Course (IPCC) by paying the prescribed conversion fee along with the conversion application form obtained along with IPCC prospectus or down loaded from **http://www.icai.org/resource_file/14262ipcc_re_regform.pdf** - **IPCC Re-Registration Form** to be submitted to the concerned Regional Office for becoming eligible to appear in the May, 2010 and onwards examination before last date for submission of examination application form as notified from time to time.

Students so converted from erstwhile Intermediate/ Professional Education (Course – II)/ Professional Competence Course to Integrated Professional Competence Course (IPCC) and have completed minimum period of nine months from the date of registration in Intermediate/ Professional Education (Course – II) or completed nine months after joining the Professional Competence Course are permitted to appear in the Integrated Professional Competence Examination to be held in May, 2010 and onwards. However, they should successfully complete 35 hours Orientation Programme and also 100 hours Information Technology Training before the commencement of relevant Integrated Professional Competence Examination (IPCE).

Congratulations

DNS Family heartily congratulates CA. Amarjit Chopra on being elected as the President and CA. G. Ramaswamy on being elected as the Vice-President of the Institute of Chartered Accountants of India.

Patriotism is supporting your country all the time, and your government when it deserves it.

Signs of Profit

- Sneha Shah

Profit Level Indicator (PLI) which can also be called as Sign of Profit is the predictor of profit. Ratios are the commonly used indicators which ascertain different signs of profit. Ratio helps in analyzing the financial statements and judging the financial health of a business from various different perspective points of views. It also helps in making a comparative study of the company with its comparables and interpretation of results. The most appropriate set of ratios takes into account the type of industry and the area of risk.

Hence, the choice of a PLI depends on number of factors which includes the analysis of the functions, risk involved, the costs considered and the reliability of the financial data for the tested parties as well as the comparable companies. Therefore, this is only estimation with respect to the extent that the PLI would likely produce an appropriate measure of an Arm's Length Result.

In order to identify an appropriate PLI, an analysis of the PLI's is undertaken to determine the extent to which the PLI is likely to produce a reliable measure of the income that the tested party would have earned had it dealt with controlled taxpayers at Arm's Length.

In view of transfer pricing, which justifies the price charged in an international transaction by a tested party to its associated party and non-associate party using Arm's Length Price (ALP). The computation of ALP depends on the comparables used to compare the prices charged between both associated and non-associated parties. Thus in order to ascertain the comparables various PLIs are used.

The usage of PLI's is not strictly to be followed by a given specific industry. It basically depends on the various comparables used as it is just a prescribed method to ascertain the ALP. However, there are various other methods also which enable the computation of ALP.

Some of the PLI which help in comparing a tested party's transactions to those of comparable companies are:

Berry Ratio

It measures the proportion of gross profit which is available to cover the operating expenses. This measure is appropriate when the capital employed per rupee of operating expense is comparable between the tested party and the comparison companies. It becomes difficult to outline the profitability when the comparable companies do not follow the same path of operating cycle. A ratio above 100% is sustainable which means that a company is able to recover its operating profit. *Berry ratio = Gross profits/Operating Expenses or Operating Revenue/Operating Expenses*

Note: Gross Profits = Sales – Cost of Sales

Net Cost plus Mark-Up Ratio

This ratio measures the ability of the company to earn a margin above its operating profit. In case of comparable companies (especially service providers where there is no cost of goods sold) where there is limitation in getting the data, the operating expenses can be arrived by deducting EBIT (Earnings before Interest and tax) from the sum of operating revenue. This measure helps in finding the best picture in profit cycles.

Net Cost Plus Mark-Up Ratio = Operating Profit/Operating Expenses

Cost Coverage Ratio

It measures the company's ability to recover its operating expenses out of operating revenue. *Cost Coverage Ratio = Operating Cost/ Operating Revenue*

Gross Margin

Gross profit is net sales less cost of goods sold. The margins vary according to the industry involved. The cost of goods sold calculated above does not include financial, administrative and general expenses. It measures the clean profits earned by the company. But it is sensitive to differences in the cost of goods sold and operating expenses. The analyst involved should be able to classify the costs between costs of goods sold/sales and operating expenses and must ensure that it is similar with that of the companies compared.

Gross Margin = Gross Profits/Net Sales

Operating Profit Margin:

Operating Profit Margin is the ratio of operating profit to sales, is normally a good indicator of total return to the business activity. This measure accounts for operating expenses as well as cost of goods sold and thus is less likely, than the gross margin, to be distorted by differences in functions or accounting conventions. Thus, it is generally considered as an acceptable PLI.

Return on Value Added Expense:

This would be an appropriate measure for companies where the cost of inputs is not very significant and instead value adding expenses comprises the most significant component of total costs. The variation in cost components would primarily arise because of difference in functions and activities being undertaken by the enterprises. Thus this measure can be thought of as an approach to account for differences in nature and scale of functions/activities.

Return on Operating Assets/Capital Employed:

Operating assets/capital employed play a role in generating operating profits for both the tested party and the uncontrolled comparable. Hence the variation in profitability vis-a-vis operating assets/capital employed provides a combined measure of the efficiency of Net Fixed Assets and the return on key components of working capital. Reliability of this PLI is also dependent up on the extent to which the composition of assets/capital employed is similar and valuation of the same. Hence, these PLIs are suitable in cases where the business is either capital intensive in nature or has significant working capital requirements.

Return on Total Cost:

The return on total cost or full-cost mark-up (Operating Profit/Total Cost) is similar to an operating margin indicator except that the denominator is cost-based rather than revenue based. This ratio is also easy to calculate and because the denominator includes both operating expenses and cost of goods sold, it is less susceptible (than the use of gross margins) to accounting and functional differences. As service providers usually have functional differences because of the varied nature of services, the return on total cost is generally considered an acceptable PLI.

Cash Profit on Sales:

This PLI is similar to the Return on Sales except that it measures the cash returns on sales during the year. This measure also eliminates the impact on profitability of differences in the technology used, age of assets used in production, differences in capacity utilization and the different depreciation policies adopted by the companies.

Selection of Profit Level Indicator and its Uses:

Based on the above considerations an acceptable PLI is to be determined for establishing the ALP for the company's international transactions.

The following PLI can be used for any industry in the absence of specific guidelines for its selection:

- Gross margin or operating margin on operating cost or
- Gross margin or operating margin on operating revenue

The following PLIs can be used while computing ALP under different methods:

1. **Resale Price Method:** It is generally considered appropriate for Resellers/Traders/Distributors. The PLI which can be used is Gross margin on operating revenue.
2. **Cost *Plus* Method:** It can be generally used for Manufacturers and service industry. PLI used here is Cost *plus* Mark up and Net Cost *plus* Mark up.
3. **Transactional Net Margin Method:** This generally covers Service/Trading/manufacturers. The selection of PLI depends on the type of transaction. If transaction is receipt of income then PLI adopted is operating margin on operating cost. If transaction is payment of expenses then PLI adopted is operating margin on operating revenue.

The PLI as selected above should go in hand with the method prescribes in Rule 10B of the Income Tax Rules. Hence, before interpreting the results a full analysis along with other detailed information is necessary to know about the company and its surrounding factors.

Answers to Crossword - 31

ACROSS:

1. Indict
6. Delinquent
8. Breach
9. Acquiescence
11. Waiver
13. Zoning
14. Precarious
15. Novation

DOWN:

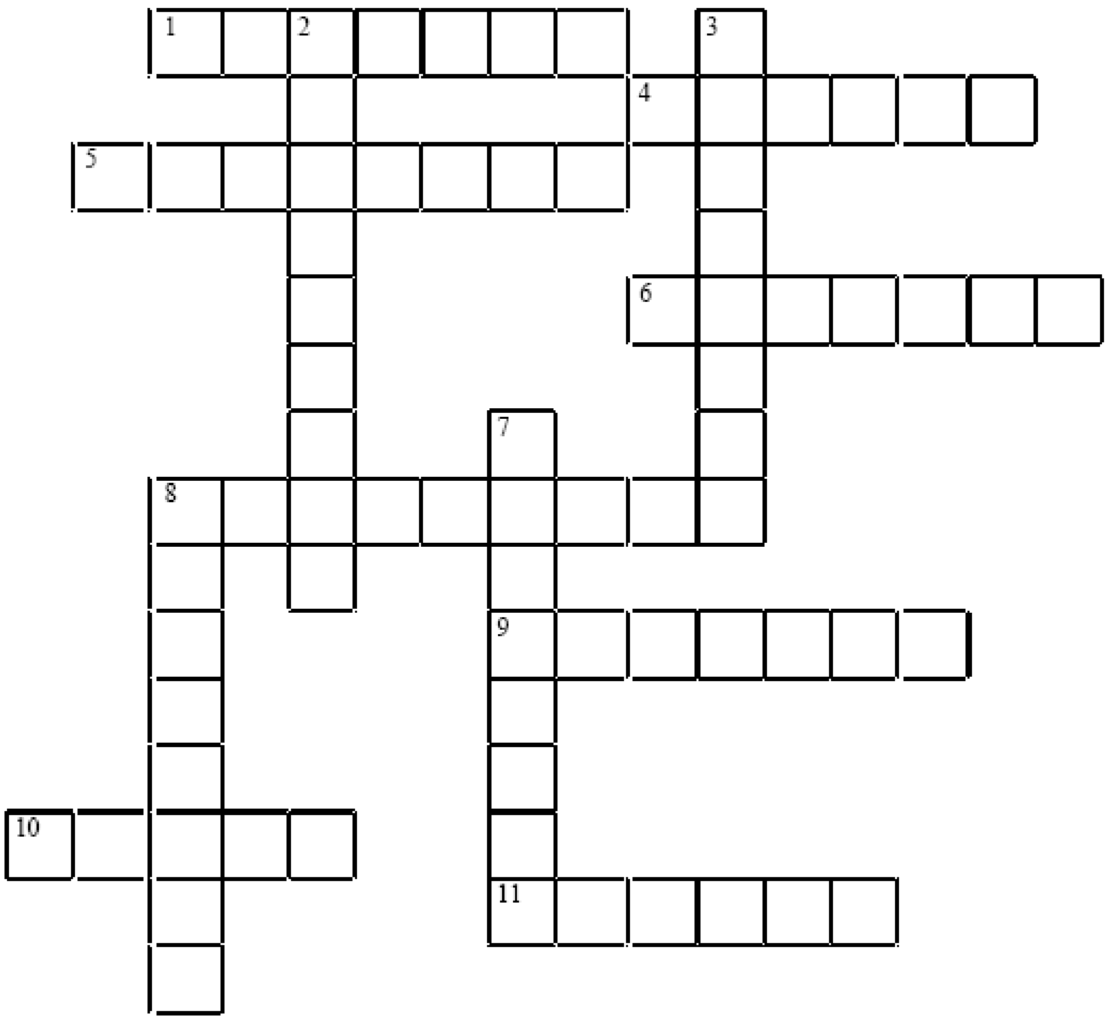
2. Codicil
3. Slander
4. Defalcation
5. Repossession
7. Assault
10. Encryption
12. Amnesty

Joke of the day

The accountant had just read the story of Cinderella to his four-year-old daughter for the first time. The little girl was fascinated by the story, especially the part where the pumpkin turns into a golden coach. Suddenly she piped up, "Daddy, when the pumpkin turned into a golden coach, would that be classed as income or a long-term capital gain?"

The love of one's country is a splendid thing. But why should love stop at the border?

Crossword - 32



ACROSS

1 The official and intentional destruction or erasure of records or information. (7)

4 Small offenses, where a person by fraud or deceit causes damage or tort to someone. (6)

5 A guarantee given on the performance of a product or the doing of a certain thing. (8)

6 Having a rough, dry taste. (7)

8 A practice of sharing the benefits of a lawsuit, by a person who is not a party to that lawsuit. (9)

9 Temporary Stay. (7)

10 Facie/Self Evident, Adequate at first sight. (5,5)

11 A writing deposited with someone until the performance of an act or the occurrence of an event specified in that writing. (6)

DOWN

2 A person who is not a lawyer or is not acting in that capacity but who provides a limited number of legal services. (9)

3 A person when he or she is placed on trial and is at the risk of conviction and punishment. (8)

7 Capable of being done, executed, or effected. (8)

8 An order issued by a court to a person to appear before it to answer the charges or to do a certain thing. (8)

The proper means of increasing the love we bear our native country is to reside some time in a foreign one.

Rationalization of Provisions relating to TDS

- Gopal P.L

The TDS provisions has been amended during the financial year 2009-10, few of them have been made applicable from the middle of the financial year and the others have been made applicable from the next financial year. The highlights of the same has been given hereunder for easy reference

1. TDS Rates has been reduced relating to payments in the nature of Rent U/s. 194I & Contract Payments U/s. 194C
2. Multiple classification of payees in case of contract payments have been removed and all the contracts have been considered as one and the same for the purpose of TDS
3. Surcharge & Education cess shall not applicable on any of the payments liable for TDS
4. Transport contractors shall not be liable for TDS provided they submit PAN and this provision is applicable only for the small truck owners who shall not own more two goods vehicle as defined under the provisions of Section 44AE
5. 40A (3) limit has been increased to Rs. 35,000 considering the difficulties faced by the transport contractors, as they need to travel outside their home cities, where they do not have bank accounts, and to en-route the expenses on diesel, food and journeys, which most of the time might cross beyond Rs. 20,000. To remove these operational problems the limit has been increased, however the limit for Other assessees remains Rs. 20,000 only
6. "Contract for Sale" has been excluded from the purview of TDS, provided the invoice contains the bifurcation with respect to the value of raw materials purchased from such customers to execute the main contract. If such bifurcation is not available TDS shall be made on the full value of the Invoice

   All the above said amendments are effective from 1st Day of October 2009

7. Any payments liable for TDS, the Payees shall be required to submit PAN mandatorily, if the same is not complied with, Tax shall be deducted at a higher rate of 20%
8. Lower deduction certificate U/s, 197 and declarations in Form 15G/15H shall not be issued/accepted if the payee does not own PAN

   Point No. 7 and 8 amendments are effective from 1st Day of April 2010

9. Introduction of Form 17, UTN, Form 24C applicability hold on till next press release of CBDT (Refer CBDT press release dated 30th day of June 2009)

Making PAN mandatory, does this have an impact on deductors?

- *Possibility of increase in cost*
- *Also these provisions are applicable in case of Non-Residents having transactions in India liable for TDS, will non-residents be interested in getting PAN to retain the business transactions or deductors might have to bear the burden of TDS liability by grossing up the payments needs to be done. All these are big issues if the PAN submission is really made mandatory from 1st Day of April 2010*

All the world's a stage,
And all the men and women merely players.
They have their exits and their entrances;
And one man in his time plays many parts...

- William Shakespeare

THE EDITORIAL

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Currency	Rate
Australian Dollar (AUD)	41.27
British Pound (GBP)	71.23
Chinese Yuan (CNY)	6.77
Euro (EUR)	62.49
Hong Kong Dollar (HKD)	5.96
Japanese Yen (JPY)	0.5
Pakistani Rupee (PKR)	0.55
Singapore Dollar (ZAR)	32.70
South African Rand (ZAR)	6.05
Swiss Franc (CHF)	42.64
UAE Dirham (AED)	12.61
US Dollar (USD)	46.32

Values as on 19th February, 2010.

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