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THE ARTICLED...

U'r Altitude is determined by u'r Attitude

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Hera Pheri...

Fraud is a deliberate misrepresentation which causes another person to suffer damages, usually monetary losses. Fraud is a type of illegal act in which the perpetrator obtains something of value through willful representation. Fraud usually occurs within the context of legitimate business transactions and is carried out in such a manner that legitimate business unwittingly conceals it. There must be a deliberate misrepresentation of the product's condition and actual monetary damages must occur.

Case Study:

➤ **Frauds Through Spurious Documents:**

Applying the principle of 'Litmus Test' to reveal usage of spurious documents:

➤ **Facts of the Case:**

An internal auditor was asked to review the operations of multiplex theatre complex containing seven theatres having a total of 2500 seats, running 6 shows in a day. Entry tickets were charged at an average of Rs.50 per head. Even at 50% occupancy, collections aggregated to about Rs.3.75 lacs per day and since the break-even point was low, the multiplex was making a small operating profit. The auditor's objective was to evaluate the overall financial results and determine whether there was any control deficiency and identify any issues of concern.

➤ **Red flags which the auditor spotted which necessitated application of AAS 4 :**

On a preliminary review of the collections, the auditor saw that the ticket sales and collections were relatively steady at about 50% of the capacity. While this was not unusual, he observed something which gave him a warning sign or a 'red flag' immediately.

The multiplex theatre had collected demographic information and statistical data, for its research and development activities, of the people visiting the theatre. Since no one was admitted in the complex without a ticket, the quantitative data of various categories of visitors to the complex and the total tickets sold should have matched at least reasonably in broad terms.

However, he was astonished to note that the demographic figures indicated that there was about 46% patronage by children and 18% by adults in the last six months. The total statistics showed patronage close to 64% in the last six months, apparently contradicting the 50% sale of tickets. The 14% gap was significant. He studied the system of cash accounting as well as recording the demographic data to satisfy himself about the reliability of the data. The cash accounting was satisfactory and well documented through a daily collection sheet.

Unsold tickets were reconciled with unoccupied seats along with theatre reservation charts. As regards collection of demographic data, he learnt that, entries were made in visitors' registers. This was done by providing an incentive to every ticket holder by providing some gift (such as a chocolate, discount coupon etc.) upon furnishing details, such as his name, address etc. along with his ticket number, which was recorded in registers.

His finding revealed that this procedure was reason-able and the data was reliable. If at all there was an error, there was a risk of underestimation of the number of visitors and not over-estimation. (The error could be an understatement of the figure and not an over-statement, because not every ticket holder collected the gift). However, this risk compounded his concern of understatement of sale of tickets because the 14% gap would increase in the event of an understatement.

This was material enough to raise this issue with the management and invoke the provisions of AAS 4. The management agreed readily because they had also got some information that spurious tickets were being sold. On learning this, the auditor was left with no doubt as to the possibility of some kind of fraud.

➤ **Extended Procedures applied by the Auditor :**

The Auditor had secretly carried out a test of justification by correlating the ticket counterfoils (collected by the ushers in two shows) with the collections as per current and the advance booking as declared by the cashiers in the daily collection



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sheets and found what he was looking for. There were 10 extra tickets collected by the usher in one theatre and 12 extra in another. The auditor now found that extra tickets were indeed being issued. He again secretly verified the unused book of tickets (for those shows where extra tickets were collected) with the cashiers and found that their daily cash collections were arithmetically correct and the unused tickets matched vacant number of seats in the theatre reservation charts.

Thus, the extra tickets were still unexplained. He painstakingly compared the serial numbers of each ticket collected by the usher and found that there was then a duplicate set of numbers on the extra tickets ! This implied two things : (a) one set of the duplicate tickets was spurious and (b) it ought to have been an inside job because the numbers matched with the genuine serial numbers and the print, type and font and the colour was as good as the original.

The auditor discussed this with the management. The management was concerned and the logical question was who was doing this ? The auditor said that it had to be one of the cashiers since only they had access to the customers in a big way and knowledge of the current level of sale in any show. Spurious sale could take place only if any show was not going to full capacity. The management agreed and asked the auditor to suggest some way to determine which cashier could be doing this. The auditor suggested the 'litmus' test.

What exactly was the Litmus Test?

Litmus paper when dipped in an acidic solution turns red and blue if dipped in a basic solution. Essentially what happens is that the natural properties of the litmus paper are revealed when it is placed in such solutions. In much the same way, the natural traits of a human being are revealed when they are placed in a particular situation. In the current example the auditor explained that a dishonest cashier will react differently from an honest one in a predetermined situation. He suggested that each cashier be tested by placing him in a situation of fraud.

This could be achieved by providing a ticket book to each of the cashiers with certain serial

numbers missing. The intention was to see at the end of the day how the cashiers would explain the shortage on account of missing tickets. As the auditor had predicted, the natural traits were revealed. The honest cashiers, who were not used to dealing with shortages were perplexed, tense and dismayed at the time of cash hand-over, and uncertain about the course of action. They were not able to explain the missing serial numbers and admitted to a cash shortage.

However, the reaction of the cashier who was indulging in collecting revenue on the sly was different. He apparently covered up the shortage of cash by putting in his own money. That gave him away. When the management confronted him with the issue of missing numbers, he admitted that he had indeed placed his own money. Initially he stated that he was scared to show a shortage and therefore he had reluctantly placed his own money. The cashier was asked to explain how he had placed cash in the cash box to compensate for the missing serial numbers, since he had placed his wallet with the accounts department. (As a rule the cashiers were supposed to deposit their belongings with the accounts department when they were at the ticket window).

He was trapped. He now had to account for the excess money rather than the shortage. On further questioning, he revealed how the 'excess money' was being generated.

How was the fraud committed?

What happened was that some time in the past, this cashier had noticed a printing error in one of the ticket books whereby some serial numbers were printed twice. Thinking fast, he sold one set of the duplicate serial numbers but the other set was attached with the daily collection sheet as unsold tickets. He reduced the actual collection to the extent of value of duplicate set sold and pocketed the money.

This gave him an idea and in collusion with the printer, he got a separate set of ticket books printed for himself, for several shows which he knew that generally never went full-house . As and when he had a chance, he would sell tickets from his own printed lot initially, also taking most care to see that



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not too many were sold. He would make entries in pencil for sale of spurious tickets in the reservation charts, so as to facilitate erasing them later, and yet be able to control the allocation of seats.

Before he is handing over the cash, he would separate his own collection from the official collection and hand over the official collection with a proper daily collection sheet and unused tickets which would naturally tally. The cash received on account of sale of spurious tickets rested in his pocket.

Unfortunately, the auditor had thrown a spanner in his neat little procedure for making money by providing a ticket book with missing numbers. The cashier eventually admitted to having embezzled about Rs.10 Lac in the last three months.

Conclusion:

Audit procedures are governed by standard auditing practices and conventional audit principles which never will and never should change. Conventional tools and analytical techniques are indispensable, as was seen in the operating results analysis made by the auditor. This however does not mean that innovative methods and creative thinking should be suppressed, but audit findings can become meaningful and effective for the management if complemented by astute methods to reach a logical end.

AAS 4 provides some indication of that when it talks of 'extended procedures' to be applied in circumstances of fraud and error.

By - Bharath Bhushan & Dev Samar



Glimpse of Advance Ruling

What is the scheme of advance ruling? What are the tax implications of a non-resident entering into transactions with a resident? Are they liable to pay taxes in India? All these question which are frequently asked by a non resident Indian are answered in this article with the help of a case which deals with supply of hardware, software and related services.

With a view to avoid a dispute in respect of assessment of income tax liability in the case of a non-resident, a Scheme of Advance Ruling has been introduced by incorporating Chapter XIX-B in the Income Tax Act, 1961 by the Finance Act, 1993. The Scheme now enables the non-residents to obtain, in advance, a binding ruling from the Authority for Advance Ruling (AAR) on a matter of law or fact in relation to a transaction undertaken / proposed to be undertaken by them in determining their tax liabilities in India. Time-consuming and expensive appeals can, thus be avoided. Such issues may relate to transactions undertaken or proposed to be undertaken by the non-resident applicant.

The facilities available in such provision can be availed of by the Non-residents in the matters regarding Double Taxation of income also. Now let's

discuss one of the recent decisions given by AAR in the case of airport Authority of India v/s US Company wherein a US company provides software documentation, software, hardware, installation, testing, training, etc., to the AAI.

Now the question arises whether the **sale of hardware, right to use software and provision of services relating to software such as documentation, installation, testing, training, etc.** by a US Company to AAI will be taxed under the Income Tax Act in India?

In case of **sale of hardware** is concerned, AAR held that it is business income, which will be taxable only in the US, since it didn't have any permanent establishment in India and has not carried any operation.



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So it is clear from above that in the absence of permanent establishment, as per Article 7 of DTAA, the income **does not attract tax under the Act.**

However explanation to section 9(2) of the Income Tax Act, 1961 where the income is deemed to accrue or arise in India such income shall be included in the total income of the non-resident, whether or not the non-resident has a residence or place of business or business connection in India.

The second issue was on the **right to use software and documentation.** The company's contention was to supply software in the nature of sale of goods and profit on such sale should be treated as business income. This contention was based on decision held in Tata Consultancy Case wherein supply of software was considered as goods. However the authority took the view that since there was transfer of right, it should be treated as royalty income and hence taxed in India. Because the essence of the contract is outright sale of some

copyright software, but the software could be used only for the specified intended purpose.

Now let's take up the last issue relating to **installation, testing and training services. The services rendered relating to installation, testing and training services is in the nature of technical services in pursuance of the agreement entered by the companies.**

As per Section 9(1)(vii) Of the Income Act of India, 1961, fees for technical services means any consideration for the rendering of any managerial, technical or consultancy services, including provision of services of technical or other personnel. **This income is chargeable to tax @ 10 per cent.**

Thus it is concluded that the payment received in respect of sale of Hardware is not taxed in the hands of the US Company whereas payment received in respect of supply of Software is taxed as per the Income Tax Act, 1961 r/w DTAA.

By - Sneha Shah & Romal Jindal

"Right to Information Act" - A Right or just a Glorified Deceit.

Right to information is more or less a universal concept. The concept of Right to know, right to Information, and right to make a demand for certain documents with the public authorities has been dealt with, and has been appraised. The idea that governments withheld information from the public has become outdated. During the last decade, many countries have enacted legislations on freedom of information, giving their citizens access to governmental information, and thus, opening the way to a true democracy.

Since June 2005, when Right to Information Act, was passed, it has been hailed as the hallmark of democracy for the reasons that it purports to make, as regards government information, disclosure the norm and secrecy as the exception. Experts felt that the Act aims at making the government transparent and more accountable, the effective use of it would, in a long run, curb corruption. In India, the Official Secrets Act 1923 was enacted to protect the official secrets. Whereas,

the new information law intends to disclose information, replacing the 'culture of secrecy' in administration. It promotes public accountability which is a part of governance. In this law the intention was to expose public accountability by which the malpractice, mismanagement, abuse of discretion, bribery etc could be curbed.

The right to Know flows directly from the guarantee of free speech and expression in Article 19(1)a of the Constitution of India. Yet, it requires fair and efficient procedures to make the freedom of information work.

The first and most well known right to information movement in India was by the Mazdoor Kisan Shakti Sangathan (MKSS) in Rajasthan during the early 1990's. MKSS's struggle for the access to village accounts and transparency in administration was widely credited and sparked off the right to information movement in India.



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The Key Concepts:

- Transparency and accountability in the working of every public authority.
- The right of any citizen of India to request the access to information.
- The obligation of Public authorities to proactively make key information to all.
- A responsibility on all sections of life: Citizenry, NGOs, Media etc.

Different ways in which access to information is provided under RTI Act

The main object of the Act is to provide information. The Act provides the ways in which the information can be accessed. Sec 3 of the said Act states that, subject to the provisions of this Act, all citizens shall have the right to information. The Act enforces a duty upon the public authorities to disclose all information starting from the particulars of its organization, functions, and duties, to budget allocated to each of its agency. It shall also publish relevant facts while formulating important policies which affect public and give reasons for its administrative or quasi-judicial decisions to the persons affected. Thus, the Act imposes an obligation upon the public authorities to disclose information. Also, it is stated under Sec 4 (2) that every public authority shall take constant steps to provide information suo moto to the public. Thus the authorities have to give information voluntarily so that the public have minimum resort to use this Act.

The public authorities also have to disseminate information widely in any form which is easily accessible to the public. The word 'dissemination' has been defined in the Act. Disseminated means making known or communicating the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including, inspection of offices of any public authority. Thus the dissemination of information by public authorities has been made mandatory by the Act.

Finally, the Information can be obtained by request in writing or through electronic means in English or Hindi or in the official language of the area in which the applications is being made (sec 6). Here, the person has to make a nominal payment of

fees. And where the request cannot be made in writing, the central PIO or State PIO shall render all assistance to the person to reduce the oral request into writing.

Where the information has not been provided correctly or within time, access to information can be made available by means of appeal or complaint to the Information Commission. (Sec. 8 (a)1).

Is RTI Act a successful enactment?

The RTI Act has paved way for informed citizenry which would strengthen the democratic government of India. With the enactment of Information Act, we can use our right to speech and expressions and control the governmental activities effectively. Since the Act requires information regarding the pendency of application, the reasons as to why they are not disposed of at the earliest etc., there is now an improvement in the efficiency of the governmental departments.

There is always the risk of a designated official calling for the relevant information at the instance of a citizen which will act as a check on the inefficiency of officers. Thus, the government becomes accountable to the citizens. The idea of open government is becoming a reality with the implementation of RTI Act.

But is all this really the truth? Has the RTI actually been effective enough of making the Government accountable?

With administrators and legislators, who are always in an attempt to narrow the scope and applicability of the Act, in the past one year the Act has seen more controversies than success stories. From parliamentary debate relating to exclusion of file notings to army's refusal to grant information, it is evident that the 'right to information', as a statutory right, has served as a puppet in the hands of our rulers. There is, therefore, a need felt for a superior and more dynamic right.

Something like, including the Right to Information in Part III of the Constitution, to be granted as a fundamental right rather than a statutory right. This would have kept the constant attacks the right suffers at the hands of the politicians at bay.



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Ideal Status of Right to Information:

The ideal status the right to information deserves is that of a fundamental right under our Constitution. With the Constitutional guarantee to conform to, the Act could have been used as an instrument constituting the requisite authorities, apart from laying down the quintessential exceptions to granting information, such as national security and parliamentary privilege.

Right To Information Recognized As A Fundamental Right By The Judiciary :

At this juncture, it is imperative to note that the Supreme Court, in *State of U.P v. Raj Narain* - a 1974 case, recognized the 'right to know' as a right inherent in Fundamental Right to freedom of speech and expression guaranteed under article 19(1)(a) of the Constitution. Following this, a plethora of cases the right to information was recognized as a right implicit in the article 19(1)(a) and in article 21 (fundamental right to life and personal liberty).

In *Peoples Union for Civil Liberties v. Union of India*, the Supreme Court observed that in Right of information is a facet of the freedom of 'speech and expression' as contained in Article 19(1)(a) of the Constitution of India. Right of information, thus, indisputably is a fundamental right.

However, every time the Constitution is amended, the 'basic structure' test laid down in *Keshavanada Bharti Case* has to be satisfied. The test provides that a constitutional amendment should not be in derogation of the basic features of the Constitution like judicial review, democracy or Rule of Law.

While including the right to information is as a fundamental right, if at all there is any effect on any of the basic structure it would be in the nature of strengthening the democracy and making it progressive, as envisaged by the makers of our Constitution.

Need For the Fundamental Right Status:

The nature of problems the Act has faced till date ranges from administrative interpretation against the grant of requested information, to ordinary and easy amendment to reduce the scope of the Act. These problems would not have arisen had the right been a fundamental right.

Analysis of the problems faced by the RTI Act in a case-wise format:

1. Exclusion of 'File Notings' From the Purview of the RTI Act:

In December 2005, the Central Government, for the first time, floated the idea of excluding 'file notings' from the scope of the Act by bringing about an amendment to the Act.

File notings is an important public document containing details of the decision making process in any public matter - such as who said what and who rejected whose view and on what grounds before a decision was reached in government. It also includes the official correspondence between officers in pursuance of a government scheme or project.

The news created uproar, with activists opining that the accountability of the government would remain only in paper with such exclusion. The matter was then put to rest with the Prime Minister, Mr. Manmohan Singh's statement against the exclusion. However, today the matter is back in news. As on date, the Union Cabinet has approved the Amendment Bill to the Act, that when passed will exempt file notings as information that can be demanded as a matter of right.

2. Indian Army's Recent Refusal to Grant Information:

Again in December 2005, the Indian Army refused to provide information to an applicant on the ground that issues of national security were involved in the requested information. This was in spite of the Army not being one of the eighteen agencies that are exempted under the Act, by virtue of section.24. But when the PM intervened and insisted that Army cannot refuse until a government notification to that effect, the army retracted its stand.

Could It Have Been Avoided?

The above mentioned controversies has brought out into the open, the hard facts. The spineless politicians are going to amend the Act as and when they like it, suiting their needs of the day; the officers are going to be complacent and hesitant in giving the information.

Had right to information been a Constitutional provision, the fear of PILs would have kept a check on the notoriety of the parliamentarians and authorities.



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Conclusion :

Thus, it is evident the issues such as those illustrated above could have been avoided had right to information been a fundamental right under the Constitution. Ideally, the legislature should have brought about a constitutional amendment to include the right to information as a fundamental right and the Act should have merely constituted the Information Commissions and appointed the Public Information Officers. With the separate government agency to tackle the problems relating to the fundamental right to information, the evils of bureaucratic pressures and whimsical administrative

interpretations could have been kept at bay and democracy celebrated.

Inclusion of right to information as a fundamental right would have also been in conformity with the decisions of the apex court.

Therefore, though India has finally woken up to realize that right to information is a key component in the attainment of economic, social and political rights of an individual as well as the community at large, the step she has taken towards it could have been more effective had she guaranteed a fundamental right to information to its citizenry.

By - Rayan Sequeira & Umesh.

Importance of Cash Flow Statement as a Reporting Tool

Financial Reporting has undergone a sea of change over the years....!! Though the traditional reporting tools i.e. the Balance Sheet and Profit & Loss Account have stood the test of time, the changes in the global financial scenario have pressed upon the need for additional reporting tools.

No longer have the investors restricted themselves to the Income Statement & the Balance Sheet for taking investing decisions. Over the period of time they have felt a need for additional reporting tools for a better analysis of the position & the performance of a Company. Cash Flow Statement is one such additional reporting tool, and now it has become an integral part of reporting.

In the modern world of mergers and acquisitions, organizations world over get a birds eye view of the sound financial position of the vendor company (Target Company) by having the glimpse of its Cash Flow Statement.

It's only after analyzing it that the purchasing company move ahead with decision of acquiring the vendor company. Apart from this, there are a lot other tools of financial analysis like ratios, value added statements, social reporting, which have made their way in the Annual Reports of companies but cash flow statement remains indispensable.

Applicability of AS-3:

As of now the Cash Flow Statement (AS-3) is applicable to the Level I Enterprises ^[1] (explanation in the foot-note) only. It was made mandatory for these enterprises from 1st of April 2004. The Level II and Level III Enterprises are not required to prepare the Cash Flow Statement, but are encouraged to prepare this statement. With the growing importance and need of Cash Flow Statement, there are possibilities that it would be made applicable for the Level II and Level III Enterprises also.

Advantages of Cash Flow Statement:

The Cash Flow Statement as a reporting tool provides the readers with the following information:

1. The firm's **liquidity** and **solvency** and its ability to change cash flows in future circumstances.
2. Provides additional information for **evaluating** changes in assets, liabilities and equity.
3. Helps in **comparing** with different firms', the **operating performance** variance after eliminating the effects of different accounting methods.
4. Helps in indicating the **amount, timing and probability** of future cash flows.



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In financial accounting, a cash flow statement is a financial statement that shows only inflows of cash and cash equivalents during a time period (often monthly or quarterly). It excludes transactions that do not directly affect cash receipts and payments. These non-cash transactions include depreciation and write-offs on bad debts. These activities are usually reported in the financial statements. It is a cash basis report on three types of financial activities: operating activities, investing activities, and financing activities;

1. **Operating activities:** Operating activities include the production, sales and delivery of the company's product as well as collecting payment from its customers. This could include purchasing raw materials, building inventory, advertising and shipping the product.
2. **Investing activities:** Investing activities focus on the purchase of the long-term assets a company needs in order to make and sell its products, and the selling of any long-term assets.
3. **Financing activities:** Financing activities include the inflow of cash from investors such as banks and shareholders, as well as the outflow of cash to shareholders as dividends as the company generates income. Other activities which impact the long-term liabilities and equity of the company are also listed in the financing activities section of the cash flow statement.

Reporting on these activities enables in knowing the movement of the cash in the organization, the inflow and outflow. The credit transactions are overlooked as they would affect the working of the organization in the future period only, their liquidity is uncertain at the present time.

Comparison with Funds Flow Statement:

In comparison to the Funds flow statement, the cash flow statement shows the more important aspect of liquidity of the organization. It shows the sound cash position of the organization which also means sound fund position as inflow of cash necessarily involves inflow of funds. Also it is prepared on the cash basis of accounting, without any assumptions whereas the Funds Flow Statement is

prepared on the accrual basis of accounting showing only changes in the working capital.

Understanding the importance of Cash Flow Statement:

The importance of Cash Flow Statement is even more emphasized because public and private companies tend to use accrual basis of accounting, the income statements they release each quarter may not necessarily reflect changes in their cash positions. **For example**, if a company lands a major contract, this contract would be recognized as revenue (and therefore income), but the company may not yet actually receive the cash from the contract until a later date. While the company may be earning a profit in the eyes of accountants (and paying income taxes on it), the company may, during the quarter, actually end up with less cash than when it started the quarter. Even profitable companies can fail to adequately manage their cash flow, which is why the cash flow statement is important: it helps investors see if a company is having trouble with cash.

Conclusion:

Experienced analysts and investors consider the cash flow statement as the most important among all financial statements. The profit and loss account can be manipulated by adjusting non-cash entries like provisions. Some of the items under the profit and loss account are also based on estimates and assumptions by the management. There can be hardly any argument against hard cash generated by the business or the lack of it.

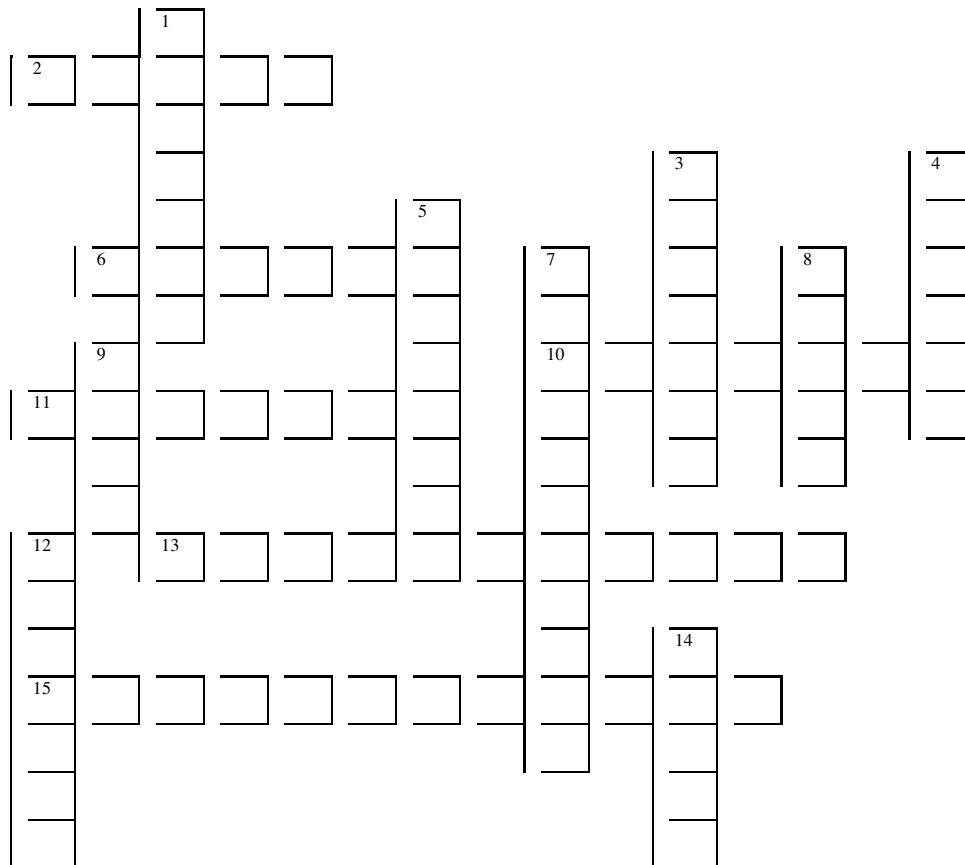
Cash generated from operations gives a far better picture about the strengths of the company than any other measure. The overall cash position of a company gives a better idea about its financial position. Cash flow statements are difficult to be manipulated though they are not immune to misrepresentations. Thus, increasing the need for using Cash Flow Statement as an integral part of reporting assisted with the financial statements.

On a conclusive note a Cash Flow Statement captures that information which even the other reporting tools fail to & provides a very good insight into the solvency of the company for facilitating sound financial decisions.



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CROSSWORD - 15



ACROSS

- 2 Law relating to number of chips in a computer processor.(5)
6 The country of copper.(6)
10 A financial term for setting off debit & credit balances.(7)
11 A tool of Hedging in a portfolio.(7)
13 The longest highway in the world.(11)
15 An MBA in a different profession.(12)

DOWN

- 1 Tax exemption for certain undertakings.(7)
3 Who wrote "The Darling Buds of May?".(7)
4 The mode of financing undertaken to cover delay in disbursement of large loans from financial institution.(6)
5 The Worlds oldest known city.(8)
7 A pricing strategy in which prices are kept low initially to capture the market.(11)
8 A set comprising of all elements of two given sets.(5)
9 The country known as the sugar bowl of the World.(4)
12 A high revenue generating product.(7)
14 The lower end in a price band.(5)



After the frantic July season, a trip to Hogenekkal provided the much needed relief from all the hustle-bustle. It was indeed a picturesque delight that was required for a complete rejuvenation of the troupe. The travel was marked with exciting games which made the trip even more memorable.



The exhilarating boat ride was the highlight of the trip. The whole scene seemed to be a carefully choreographed scenic beauty where all the elements of nature seemed to be at perfect harmony merging into one 'mist'ifying soul the "Hogenekkal Falls". It will indeed be a day to be cherished and remembered for the years to come.

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A Brief Analysis Of Karnataka Value Added Tax Act- 2008

-- CA Sanjay Dharwal M

Stepping into the Fourth year of VAT regime the Government seeks to have an effective tax collection and administration system and simplified collection methods. At the outset certain amendments under the Karnataka Value Added Tax Bill is discussed as follows:

1. **Dealer (Section 2 (12)):-** The agriculturist being a company and also selling **Areca nut** are also deemed to be dealer
2. **Section 11(a) (1) :-** Input tax shall not be deducted in calculating the net tax payable in respect of tax paid on purchases attributable to sale or manufacture or processing or packing or storage of exempted goods except when such goods are sold in the course of export out of the territory of India. Such amendment is from the Prospective effect from 01.08.2008 and the dealer can avail the input tax credit benefits till such date.
3. **Section 11(c) :-** Input tax shall not be deducted by any dealer executing a works contract who is claiming deduction on any amount paid or payable to any sub contractor as the consideration for execution of part or whole of such works contract for him. Such amendment is effective from 01.04.2006. There is a drafting error as it state that works contractor if they are deducting payments to sub contractor, then such works contractor cannot take input tax credit. Therefore it would have been input tax shall not be deducted towards the payments made to registered sub contractor.
4. **Section 15(4)** relating to restricting of input tax credit to composition dealers was refereeing to section 15 (1) which lead to lot of interpretation. There was unregistered tax which was to be availed or not was a litigated issue. Therefore there is an amendment and input tax credit is restricted under section 15. Even section 15(5) , has stated notwithstanding anything contained in section 15(1) and section 15(4), which also lead to lot of interpretations, therefore there is an amendment and section 15(4) has been removed with effect from 01.04.2006
5. **Section 18 A** defines TDS payments to certain dealers. The goods will be notified by the commissioner and for such notified goods the purchasing dealer has to deduct the tax equals to the output tax payable. Earlier the purchasing dealer was required to deduct the TDS and pay to the Government within the specified time. There is an additional relaxation given to the dealer for adjusting the input tax credit against the tax deducted amount. For example, the purchasing dealer has excess input tax credit of Rs. 50000/- and tax deducted at Rs. 80000/-, then in such case he will be required to pay Rs. 30000/- to the department. The set off provision is given under this section through the amendment. There were goods notified in the budget proposal, but Notifications is not yet issued.
6. **Section 29(3)** state that a registered dealer selling non taxable goods or opting to pay tax by way of composition under section 15 and selling goods or permitted to pay tax under section 16 (Special Accounting scheme) and selling goods in excess of prescribed value shall issue a bill of sale containing particulars as may be prescribed.
7. **Section 31(5)** state that every registered dealer shall furnish every year to the prescribed Authority, a statement relating to his turnover in such form, containing such particulars and within such period as may be prescribed has been omitted. So there is no requirement of filing Form VAT 115 with effect from 01.8.2008 which means from the financial year 2008-2009.



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8. **Section 45(8)** dealing with recovery of tax, penalty or any other amount from certain other persons shall apply for recovery of dues if any from any other person
9. **Section 46 (2-A)** state that where the business of a registered dealer is transferred as a whole on account of change in ownership, sale, merger, amalgamation, lease or transfer of the business to a Joint venture, on cancellation of registration subject to such restrictions and conditions as may be prescribed, the registered dealer may opt to transfer any excess input tax credit that has not been adjusted by him or refunded to him to transferee. Therefore the benefit of input tax credit will be made available to the transferee when sale of business takes place from one registered dealer to another.
10. **Section 47A** deals with rounding of tax, interest, penalty, refund or any other amount due. If such amount contains a part of rupee consisting of less than fifty paise then it should be ignored and more than that, then it should be rounded off.
11. **Section 52** deals with production and inspection of documents and powers of entry, search or seizure. The powers are given to the commissioner to exercise all or any of the powers specified in the section either generally or specifically.
12. **Section 63** state that any officer or any other person objecting the appeal passed by the appellate Authority under section 62 can file an appeal to Appellate Tribunal. Even the orders against the Joint commissioner as exercised under section 63-A can also be appealed to Appellate Tribunal
13. **Section 72(1):** -A penalty of Rs. 50/- per day if default is less than 5 days and above 5 days , If tax due is less than Rs.250/-, then maximum penalty Rs. 250/- and If tax due is for more than Rs.250/-, a penalty of Rs. 50/- per day and should not exceed tax due
 - Further Penalty: if default is less than ten days - 5% of tax due or Rs. 50/- which ever is higher and if default more than ten days 10% of tax due
 - **Section 72(2):-** If the dealer furnishes a return and overstates his input tax credit in excess of 5% of actual liability to tax, then penalty is levied. The Amendment is made and while calculating overstatement of input tax credit, 5% of his actual tax credit should be considered. It is effective from the 01.08.2008
14. **Section 74: Penalties- Keeping of Records:** Audited statement of Accounts (Form VAT 240) is also a part of Records and if it is not filed within the prescribed time then penalty of Rs. 5000/- plus Rs. 50/- per day will be levied after giving an opportunity of being heard.
15. **Exclusion** in Serial no 23 of Third schedule: Phenyl, Liquid toilet cleaners, floor cleaners, mosquito coils, mosquito repellants and the like used for non agricultural or non- horticultural purposes. Thereafter they will be levied at 12.5% from 01.08.2008
16. **Additions** to Third schedule: Plastic boxes, cases and crates for conveyance or packing of goods shall be at 4% with retrospective effect from 01.05.2005.
17. Serial no 6 of **sixth schedule** describe Lamination, rubberisation, coating and similar process taxable at 4%. Therefore Processes also includes powder coating.

K V A T Notifications

1. **Vide Notification III No FD 182 CSL 2008, Bangalore dated 31.07.2008** The Government of Karnataka exempts all varieties of imported textiles and fabrics other than specified in third schedule. The third schedule includes declared goods as well as readymade garments. Even branded brooms manufactured out of grass, natural fibres and natural sticks are exempted. Even Ice sold to fishermen as specified is exempted. But legally there is no powers to exempt a class of dealers
2. **Vide Notification IV No FD 182 CSL 2008, Bangalore dated 31.07.2008** The tax rate on Vermicelli is reduced to 4%.
3. **Vide Notification V No FD 182 CSL 2008, Bangalore dated 31.07.2008** This notification is similar



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to Notification No FD 115 CSL 2007(4) dated 30.03.2007 the notification reduces the rate of tax to 4% on sale of used motor vehicles including used motor cycles. The tax shall be on difference between the sale price and amount paid towards purchase. Now the dealer of used motor vehicle and cycles will have to pay tax at the rate of 4% on the sale of used motor vehicle and cycle. No deduction of input tax is claimed by the dealer in respect of purchase of such motor vehicle sold and any goods used in such motor vehicle sold and Such motor vehicle has been registered in the State prior to its sale, under the provisions of the Motor Vehicles Act, 1988. If the price fixed by the second hand car dealer is Rs. 550000/- plus VAT at Rs. 6000/- . The purchase cost is Rs. 400000/- plus VAT Rs. 50000/- . The tax refundable shall be Rs. 44000/- (Rs. 50000 – 6000). As the restrictions state that no deduction of input tax should be claimed by the dealer in respect of any goods used in motor vehicles sold. There is no restriction for availing input tax credit on purchase of Motor vehicle. The condition would have stated that no deduction of input tax on purchase of Motor vehicles including motor vehicle

4. **Notification II No FD 182 CSL 2008:** No levy of Entry tax at 2% with effect from 01.08.2008 on entry of Readymade garments into a local area for consumption, use or sale
5. **Vide Notification VI No FD 182 CSL 2008, Bangalore dated 31.07.2008** The tax rate on corn cobs, powder and grits is reduced to 4%
6. **Vide Notification VII No FD 182 CSL 2008, Bangalore dated 31.07.2008** The tax rate on textiles machinery and spares are part of capital goods and liable to tax at 4% with effect from 01.08.2008.

International Financial Reporting Standard - A Challenge

Back Ground:

The International Accounting Standard Board (IASB) published its standards in a series of pronouncements called International Financial Reporting Standards (IFRS). The IFRS includes IFRSs, IAS (International Accounting Standards), IFRICs and SICs. IFRSs are designed to apply to the general purpose financial statements and other financial reporting of all profit oriented entities whether organized in corporate or in other forms. Under IFRS complete set of financial statements includes a statement of financial position, a statement of comprehensive income, a statement of changes in equity etc.

Need of IFRS:

In Indian context, after liberalization a number of multinational companies have established their business and invested in India and India has emerged as growing economy with 8% to 9% GDP growth. The entities in India are increasingly

accessing the global capital market for their fund requirements and many Indian companies have listed their securities in the stock exchanges across the world.

World has trusted Indian entities and started investment, in the year 2008 alone, India has received 11\$ Billion in the form of FDI and 41\$ Billion in the form of FII and figures are increasing. Also Indian entities have started acquiring the entities outside India.

In the year 2007 value of acquisition is around 32\$Billion, major deals namely Corus by Tata, Jaguar & Land Rover, a iconic brands by Tata Motors , Novelis by Hindalco, Whyte & Mockey by United Spirits etc.

In view of the liberalization and globalization of capital markets, call for single set of high quality accounting standards is required and many countries of European Union, Australia, New Zealand and Russia have already adopted the IFRSs.



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Challenges (??):

No doubt, convergence with IFRSs definitely enhance the image of Indian entities and quality of financial reporting, reduction in the conversion cost, acceptance by International credit rating agencies and global analysts etc. However, convergence with IFRS have the difficulties and challenges, few of them which are discussed below:

Conceptual difference: Many IFRSs have conceptual difference with the corresponding Indian accounting standards namely in presentation, valuation and writing off of inventory, scope of the assets, recognition of liability towards employees benefits, definition of related parties, creation of provisions on the basis of constructive obligation. These conceptual differences need to be resolved either by taking up with the IASB, or removing the difference by the ICSI itself.

ICAI identified flowing IFRSs should be taken up with the IASB

- IAS 17 -Leases
- IAS 19- Employee Benefits
- IAS 27- Consolidated and Separate Financial Statements
- IAS 28- Investments in Associates
- IAS 31- Interest in Joint Venture
- IAS 37- Provisions, Contingent Liabilities and Contingent Assets.

ICAI identified following IFRSs and whether these should be taken up with the IASB or should be removed by the ICAI itself.

- IAS 12- Income Taxes
- IAS 24- Related Party Disclosures
- IAS 41- Agriculture
- IFRS 3- Business Combinations
- IFRS 6- Explorations for and Evaluation of Minerals Resources
- IFRS 8- Operating Segments

Fair Valuation:

IFRS are based on a fair value concept which gives more importance than the traditional concept of prudence and conservatism which is followed in India since many years, this fundamental shift in the accounting treatment and

presentation would have a significant impact in case of accounting for financial instruments, fixed assets and depreciation.

Also there will be difficulties in measuring fair value of financial instruments and business combination and instruments that are not traded in the market.

In India it will be more challenging and expensive as there is lack of availability of required professionals with required skill set and affordability of the Indian corporate.

Legal Framework:

Success of convergence with IFRSs is also dependent on cooperation of various Government Agencies like Ministry of Corporate Affairs, SEBI, Ministry of Finance and RBI, etc., in changing several rules and regulations with regard to accounting treatment of transactions, valuations, financial reporting etc.,

For example Schedule VI of the Companies Act, 1956 prescribes the format for presentation of financial statements and accounting treatment for certain transaction which is significantly different from reporting under IFRSs, similarly under Income Tax Act, Banking Regulation Act, IRDA etc. Last but not the least translation of IFRSs into our national language Hindi is also one of the Challenge.

Principles Based:

As per IAS 1, an entity shall not describe Financial Statements as complying with IFRSs unless they comply with all the requirements of IFRS.

The IFRSs are principles based and onus is on the auditor to comply accounting standards in true spirit, rather than taking advantage of loopholes to suppress or mislead the information. Compliance with Accounting Standards is not same thing as compliance with law, taking the advantage of loopholes in compliance with accounting standards is unethical.

Accounting scandals such as Enron Corporation, WorldCom etc, are some of the live example. Any reinstatement of results would be detrimental to the companies' and damage investors' confidence.



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Conclusion:

Convergence with IFRSs, definitely is going to be challenging but at the same time there would be significant benefit to Indian corporate in the form of quality and transparent reporting which is accepted globally and reducing the cost of conversion and also beneficial to investor, creditor and, other stakeholders.

However, it requires detail study of the impact on reporting and financial system, redesigning of MIS, Accounting manual, etc. At the same time ICAI has to issue elaborated guidelines in respect roles and responsibilities of auditor.

-- CA Rantha



Travel in Tranquility

Alexander, a great warrior dreamt of conquering the Whole world and expanding his territory. The warriors along with him moved from kingdom to kingdom to fulfill his dreams. Thus expansion of ones area is not new. Likewise in the modern industrial arena also expansion strategy is one of the step to attain the long term objective of a business house.

Every day we come across Big Names like Dell, Microsoft, and IBM who continuously pursue their expansion plans. Accordingly the CEO's, CFO's, employees travel to various entities of the company to explore new business ideas, to give shape to their ideas, to execute their ideas, to train the entity's employees etc.

India is a developing country and the import of technical knowhow and services from foreign-service providers is vital for getting the stature of a developed country. But, the taxation system has been a discouraging for such Companies. There is a tax deduction at source by Indian Companies while making payment abroad to the delegates visiting India. With the emergence of Fringe Benefit Tax in Direct Taxation there is an increase in the cost of business arrangement.

Every multi national companies have its branches spread across the globe and such branch will be a permanent establishment in India. Most of the executives have their suitcases always packed as they are hardly stationed in one country. Their business commitments require exhaustive travelling. Let us take example that Dell, plans to send its technical experts to India to aid its proposal to set up new manufacturing centre in Gurgaon. Dell, India having a permanent establishment in India agrees to reimburse the transportation cost of the experts from their residence outside India to work place and back home. The question arises whether such a reimbursement will be considered as any facility provided liable to FBT.

Surprisingly, the Authority for Advance Ruling has considered in the case of R&B Falcon (A) Pvt Ltd vs. CIT [Civil appeal No. 3326 of 2008 – SLP (C) No 10451 of 2007] that such reimbursement is liable to FBT since the employees are not resident in India. The authority has read the term as 'residence' means 'residence in India' under Section 115(WB)(3).

When the same was appealed to the Supreme Court, the apex court annulled the ruling and held that AAR was not correct in its view in reading the words 'In India' after the word residents in the provision, as FBT being tax on expenditure does not make such distinction. However, the nature of expenses is key in determining the applicability of FBT and it is to be determined by assessing authority. It also held that since the company has permanent establishment in India and also pays income tax, so any expenditure incurred for bringing employees from abroad would fall within the ambit of section 115WB(1) and as such exempted under the sub-section 3 of Section 115WB.

This judgment has come as a savior to many companies who see India as a destination of planting their ideas and innovations. Now the Big Corporate can welcome personnel to visit without bearing the tension being taxed. Such judgments rendered in the interest of general public will win the confidence in the legal system and hence it heartily welcomed.

-- Rundan, Nagesh, Swapna & Sumana



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Role of People

As known to the whole world that India has unity in diversity. Since from time immemorial people belonging to different religion are practicing their own customs and practices. It may be Hinduism, Islam, Jainism, Buddhism, Christianity etc. The history of India shows that, the great leaders without any religion and caste discrimination have fought together and sacrificed their lives to restore peace in the country and spread the message of non-violence.

Their contribution is a gift to the world. Leaders like Mahatma Gandhi had a vision in mind to free the country from invaders and enable people to live in harmony. But is the same vision nurtured by us?

We have been facing serious threats from enemy countries. Countries are envy of the growth of our country and always try to disrupt our integrity. Even today, it cannot be denied that, our country is free from attacks. Terrorism is one of the greatest weapons for people with such evil intentions.

Our responsibility does not end with electing a Candidate to form a Government. It is not possible for Government alone to fight against Terrorism. It

is very difficult for the small number of troops to eradicate terrorism.

The time is ripe for each one of us to face this situation and challenge it. It is the duty of every citizen to contribute towards this war against terrorism. Our Constitution defines that it is our **fundamental duty to uphold and protect the sovereignty, unity and integrity of India** [Part VIA Article 51A (c)].

Every citizen who fights against Terrorism is a Soldier. Unless we are aware of about terrorism, we cannot succeed. It is not only the awareness, it requires us to be always vigil of the people and things around us, raise alarm wherever there is suspicion, to well equip ourselves to face the situations bravely, and also to be tactful to handle the situations when there is bomb blasts and other natural calamities.

A remarkable step taken by law making and law protection authorities is highly applaudable. The Hon'ble Chief Justice and Hon'ble Justices of Karnataka High Court have joined their hands with Police by way of conducting camps to educate the people and make themselves aware about prevention and management of disaster incidents.

Unity is strength and with this strength we have to retain the status of India as a country having unity in diversity. As rightly said by Swami Vivekananda "*if we love our country then we should struggle for higher and better things*".

-- Sumana & Vasanth Kumar

Ever Wondered what the Government does with Old Money ?

You'd probably like to have the government send it to you, naturally! But the Treasury Department has other ideas. Every day, it collects worn and dirty bills, 4-5 tons of them! Which are too old and worn to be used. These bills are destroyed in a machine called a macerator, which shreds \$1,000,000 a minute into tiny confetti-sized pieces of paper.

Not all damaged money is worthless. If, for example, you have a bill with part of it torn away, you can redeem it. If you have at least 3/5 of the bill, you can send it to the Treasury Department and get a fresh, new bill of the same value. If you have more than 2/5 of the bill but less than 3/5, you can redeem it for half the value of the bill.

The composition of the paper on which our money is printed is one of the government's most highly guarded secrets!



The Article

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61 to Freedom !!! Jai Hind

Time to pay tribute an our remembrances, for those many lives
which involved themselves to bring us Independence



Aug. 15, 1947: Mountbatten swears in
Jawaharlal Nehru as the first Prime Minister of
India

TRAIN TO PAKISTAN; India 1947.

Trains packed with refugees - Hindus and
Sikhs headed for India, and Muslims headed
for Pakistan - were convenient targets for
gangs of killers on both sides of the border.
Inadequately protected 'Refugee Specials'
were typically stopped, and the occupants
butchered, several times in the course of the
journey.



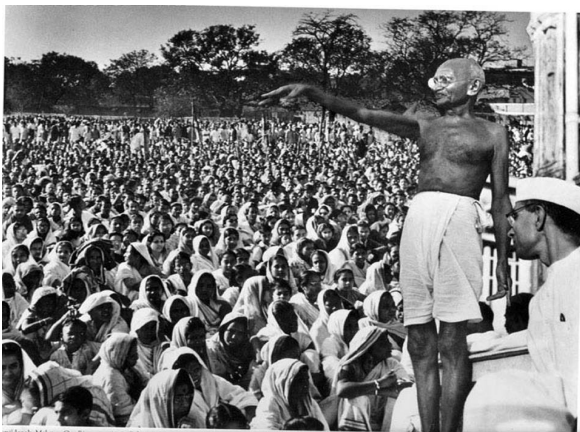
The Dead - Punjab, 1947



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1971: Indira Gandhi reviews the troops, in the context of military and diplomatic preparations for the **Bangladesh War.**



Mahatma Gandhi Addressing people



Nehru and Gandhi at AICC meeting, July 1946



1948: The news of Gandhi's assassination hits the streets. A stunned crowd gathers in Calcutta.



"The Article" Volume II, Issue 3



1948: Crowds in New Delhi gather and await, for a glimpse of Gandhi's funeral procession.

It is our duty to preserve this Freedom!





"The Articled"

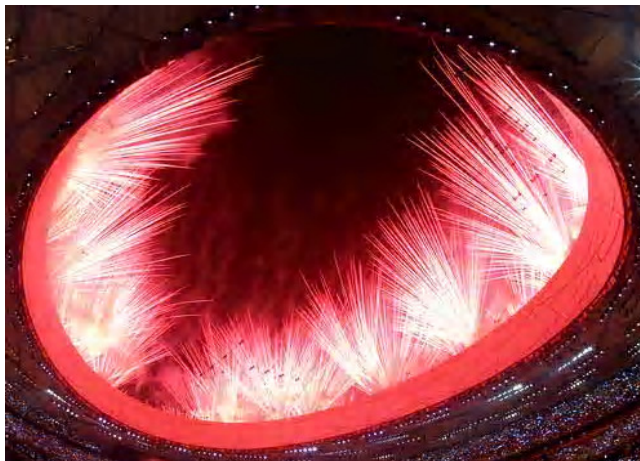
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It's Just Spectacular.....

7 years- 14000 people- \$ 100 million - countless rehearsals- that's what it took to achieve this perfection. An ecstatic China finally got its Olympic moment with an astonishing opening ceremony. Perhaps people in the world have never before witnessed such a solemn, modern, unique and attractive opening ceremony.

Chinese President Hu Jintao declared the 29th Olympiad Games officially open shortly before the lighting of the flame at the Beijing National Stadium by retired gymnast Li Ning, a six-time medalist at the 1984 Los Angeles Games.

All the programs on the opening ceremony expressed the 5000 year modern and ancient culture of China. Most of the viewers were also been lured by the fireworks display in and around the national stadium.



The ceremony kicked off with equal-parts pinwheel and power, as some of the 29,000 fireworks lit up the main route to the Olympic Stadium.

A countdown to the opening ceremony was led by a legion of 2,008 drummers who pounded out a magnetic beat in accord, before the stadium darkened and only their glowing red drumsticks were visible.

The intense drumming gave way to the eccentric as flying gymnasts soared across the stadium, while an illuminated replica of the Olympic rings was raised above the arena.

Papermaking was commemorated in unique fashion as traditional landscape paintings were projected onto a huge scroll and actors spelt out Chinese characters with their twisting bodies.

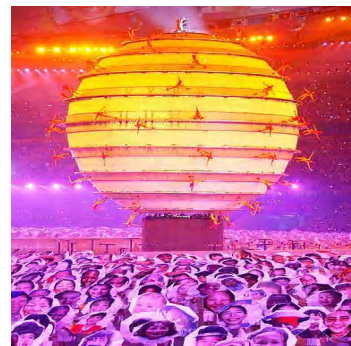
A series of giant grey boxes then surged out of the ground depicting printing blocks from Ancient China before they morphed into the Great Wall.

A traditional scene from a Chinese opera ensued, featuring portrayals of Terracotta soldiers. That gave way to a large group of blue-robed oarsmen with giant paddles, who depicted the Silk Road that linked China to the West.

Dancers covered in sparkling lights then emerged and came together to replicate the form of the Bird's Nest, as a young girl clinging to a kite string floated overhead.

Gasps of astonishment came from the crowd as a giant 16-tonne blue globe rose from the floor before the show culminated with British singer Sarah Brightman and Chinese star Liu Huan performing You and Me — the official theme song of the Beijing Games.

Then came the moment which everyone awaited for has 10300 athletes participating in the games entered the stadium. Greece came first in accordance with the tradition with China at the rear. The other contingent entered the stadium in the order of how many brush strokes it took to write the first letter of their country's name in Chinese. Overall the opening ceremony received a perfect 10 across the globe an event to be remembered and cherished for long time.





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Taxing Times

The facility of filing income-tax returns electronically (e-returns) has received overwhelming response from the taxpayers. As on 31st July 2008, 12.49 lakh e-returns were filed compared to 1.46 lakh e-returns filed up to the same date last year, an increase of 755 percent. About 97 percent of the 12.49 lakh e-returns have been filed voluntarily by individuals, professionals and small businesses.

Largest number of e-returns were filed from Maharashtra (278,112), followed by Delhi (153,992), Karnataka (144,287), Tamil Nadu (118,354) and Gujarat (115,798). Last year (fiscal 2007-08), up to 31st March 2008 about 21.93 Lakh e-returns were filed from all over India, out of which over 14.6 Lakh e-returns were filed voluntarily.

E-returns have been received from far-off regions across the country such as Jammu & Kashmir, Nagaland, Manipur, Andaman & Nicobar Islands, Lakshwadeep, etc., indicating the broad and far reach of Internet and e-filing across the country. A number of e-returns have also been filed from outside India.

E-filing has several advantages – cost of filing is low, ease of filing is high, it can be filed anytime from anywhere, there is no need to visit the tax office, return filed is more accurate, there is no fear of losing tax records, returns can be processed faster and refunds issued faster and more accurately. The facility for e-filing is available through the website <http://www.incometaxindiaefiling.gov.in>.

The Editorial

Chief Editor : Soumithra Jathar

Co- Editors : Udaya Raman, Deepak Gulecha

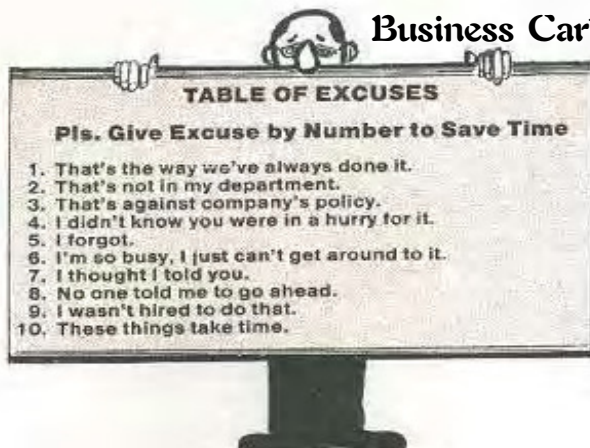
Review Heads :

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Mr. Vasanth, CA Rajni, CA Annapurna.**

Guest Articles :

**CA Kantha.
Mr. Vasanth & Ms. Sumana
Mr. Haris Parmar**

Business Cartoon



Write to The Editor

“Continuous learning process” is the essence of our profession. To keep ourselves in pace with the emerging concepts is what we have endeavor through this “The Articled”. We also intend to build this into a common knowledge-sharing platform 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/deepak@dnsconsulting.net or write to: The Editor, #10, South Park Road, Nehru Nagar, Sheshadripuram, Bangalore – 20.

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