Tax and Law News

Expenditure on exempt income

The expenditure incurred in relation to an exempt income can be disallowed only if the assessee has earned such income. In the relevant case, an assessee had not received any dividend income from its investments in shares during the previous year. However, it claimed deduction for interest paid on loan obtained for making such investments. The assessing officer (AO) was of the view that though there was no dividend income earned by the assessee during the year, even if any income was to accrue to the assessee it would have been dividend, which is exempt from tax. Accordingly, he disallowed claim of assessee, under section 14A of the Income-Tax Act, 1961. **The tribunal held that disallowance under section 14A of the Act can be made in respect of that expenditure which has been incurred in relation to income which does not form part of total income**. Otherwise, words 'does not form part of the total income' used in section 14A of the Act would become otiose. As there was no dividend income earned by the assessee, provisions of section 14A were not applicable and accordingly, interest paid on loan was allowable as a deduction.

Commission paid as bribe not expenditure

The commission paid by an assessee to government doctors for prescribing medicines traded by it, tantamount to illegal gratification or bribe and it being an offence punishable under the Prevention of Corruption Act, cannot be allowed as business expenditure. The assessee dealing in medicines had paid commission to various doctors (government and private) for prescribing his medicines to patients and claimed the same as deduction. The AO disallowed the claim for commission paid to government doctors on the ground that such commission tantamount to an illegal gratification/ bribe. The High Court observed that government servants are prohibited from realizing any money in discharge of his official duties unless provided/ permitted by the relevant conduct rules. **Accordingly, it was held that such expenditure being an offence, cannot be allowed as business expenditure under section 37 of the Act**.

Income Tax dept may widen tax base

The income tax department is looking at measures to further widen the tax base. So although collections through tax deducted at source (TDS) have risen 51% in 2007-08, it will focus on further strengthening the system. Non-compliance of TDS provisions by government ministries and some states has been plaguing the tax department since last year.

The finance minister has also instructed field formations to prosecute habitual tax offenders, in a bid to curb evasion and boost collections. The CBDT is expected to further revise its collection targets for the fiscal and subsequently hopes to widen the tax base as well.

"The tax base is widening and more returns are being filed," Chidambaram said, adding, "The total number of returns is likely to cross 3 lakh crore in 2008-09."

Meanwhile, the 360-degree profiling of tax evaders, announced last year has also been implemented. Information from all sources such as the customs department, the CBI and the tax department is being used to prepare complete profile of known tax violators, Chidambaram said.

The finance minister also said expressed keenness to expand the annual information returns. Projects to be implemented during the course of the year, including biometric PAN cards and the computerization initiative were also discussed. The income tax department will soon begin issuing biometric PAN cards, though initially only new applicants, as reported by FE earlier.

Chidambaram said the bids would soon be invited by the CBDT to manufacture such cards with biometric features. The first phase of the integrated taxpayer database which would link the I-T department offices across the country would be rolled out by June 21 and the entire system would be in place by the end of the year.

Is India Inc ready for IFRS?

The year 2011 and India Inc will experience drastic changes in the way financial statements are reported. India is among the 150-odd countries that have decided to adopt the International Financial Reporting Standards (IFRS) in 2011.

IFRS, previously known as International Accounting Standards (IAS), are standards and interpretations adopted by the International Accounting Standards Board (IASB). IASB adopted IAS in April 2001, and renamed it IFRS.

However, the question remains: is corporate India ready to join the ranks of the EU, Australia, Singapore, and Sri Lanka, which are among the 100 IFRS-compliant countries?

1. IFRS compliance would require changes right from the grassroots level, beginning with academic inputs and training. And this is not going to be an easy task, given the limited time frame before the new standards come into force.
2. The transition will be a tough challenge for the country as it requires a shift in the academic approach,

along with regulatory challenges. The Institute of Chartered Accountants of India (ICAI) and the government will have to play a larger role in countering industry problems

3. The major problem that industries are likely to face is a talent crunch since, even in the current scenario, there is a scarcity of qualified resources.
4. Companies need to start following a planned strategy as early as possible, as the failure to do so would put them in an awkward situation. The understanding and implementation of IFRS is not easy, and only if companies start following certain common standards now, would they be able to shift towards the new standards from 2011.
5. Modifications will be required in the Income-tax Act, as well as the Companies Act to complement the changes arising from the new standards.
6. India has begun integrating with global financial markets. When companies are crossing national boundaries, reporting financial statements under IFRS is a necessary to facilitate cross-border transactions and makes comparisons easier.
7. There is a need to give accounting staff appropriate training. Companies need to draw up detailed plans for migrating to IFRS as early as possible, to make the transition smooth and flawless.
8. Accounting teams should be conversant not only with new standards but also with information technology to support the new financial reporting architecture.

'File your tax returns in time or face action

With Finance Minister P Chidambaram hopeful of collecting an ambitious Rs 4 lakh crore in direct taxes in the current financial year, the authorities have been instructed to take up as many surveys as possible besides conducting raids on suspect big evaders to meet the target. Soon after inaugurating the two-day conference of chief commissioners and directors-general of Income Tax on June 9, Chidambaram had said that the department had already taken up 15 cases of 'non-filer' (those who have never filed a return) and 'stop-filer' (those who have stopped filing returns) for prosecution.

Hinting at stern action against willful evaders, the FM had announced that a general direction had been given to taxmen that if during a survey or a search a person is found that he had never filed a return (non-filer) or has stopped filing return (stop-filer) in the last three years, steps must be taken for his prosecution. According to existing provisions of the I-T Act, failure to file returns may land a person in prison for a term extending up to seven years in case he is found to have evaded tax of more than Rs 1 lakh, or a penalty of Rs 5,000 for those on whom tax dues are found but returns are not filed.

Though the law on filing mandatory returns has been in existence for a long time, the very reiteration of the fact indicates the government's intention to invoke its provisions to catch wilful evaders.

Under Section 139 (1) of the I-T Act, it is compulsory for every person falling in the tax bracket to file the annual return before the prescribed date, even if his or her tax liabilities have been taken care of by the employer through TDS.

In case you have forgotten to file return, there is a provision under Section 139 (4) to file belated returns but that leeway is available only up to a year from the end of the relevant assessment year for which you missed it.

Section 276 CC (I) of the I-T Act provides for penalty for willful evaders. It says that in a case where the amount of tax, which would have been evaded if the failure had not been discovered exceeds Rs 1 lakh, the person can face rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine.

Inflation jumps to 7-year high of 8.75%

Inflation rose to a seven year high of 8.75% in the last week of May, as compared to 8.24% in the previous week. This is the fastest rise in inflation since February 2001. However, the worst is yet to come. The latest figure does not reflect the recent increase in auto fuel prices announced on June 4. Economists apprehend that another increase in the rate at which banks borrow from the central bank may be in the offing even as inflation may surge past the double digit mark in about a weeks' time.

The government, which cut import duties on edible oils, fuels and other food items and banned the export of pulses, wheat, rice and cement, however, maintains that inflation would ease in about six to eight weeks.

"The latest data released on Friday does not factor in the fuel price increase or the electricity tariff hike in some states. When these get reflected in the index, inflation is expected to go up further. Wholesale price inflation may move up to 10.2% to 10.3% in a week, perhaps even higher. Another round of repo rate hike may be around the corner," said HDFC chief economist Abheek Barua. The RBI had raised repo rate by 25 basis points to 8% earlier in the week in a bid to absorb the excess liquidity in the market and subdue demand.

In the week ending May 31, prices of primary articles having a weight of 22% in the index moved up 0.9%, on the back of rising prices of eggs, condiments and spices, urad, barley, fruits, vegetables, mutton, milk and wheat.

Non-food article prices too rose in the week. Manufactured food products like rape and mustard oil, cotton seed oil, groundnut oil, rice bran oil and coconut oil too rose during the week. Prices of beverages, tobacco, textiles, paper products, leather products, chemicals, non-metallic minerals, machinery and machine tools too became costlier in the range of 0.2% to 3.9%, with the highest increase in textile products. Fuel prices remained steady. The official data released by the commerce ministry also revised the inflation for the week ended April 5 to 7.71%, up from 7.14%, suggesting that the latest figure too could be understated.

Amid concerns that faster inflation and higher borrowing costs will slow growth and hurt profits, the government has projected 8.5% growth this fiscal. Finance minister P Chidambaram had said recently that unless global crude oil prices and food prices soften, domestic inflation may not cool down. While forecasting this year's growth, the minister had also assured of more steps to tame inflation.

No interest on default tax if TDS not deducted by employer

THE Delhi Income-Tax Tribunal has held that where the employer did not deduct tax at source (TDS) on salary of its employee as required under statutory provisions and employee's only source of income was salary, **the employee would not be liable to pay interest under section 234B of the Income-Tax Act, 1961. The assessing officer (AO) disallowed exemption claimed by employee under section 10(10CC) of the Act, which led to additional liability, leading to levy of interest under section 234B**.

The tribunal held that if employer has not correctly deducted TDS from salary, he can always make good short deduction of TDS in one month by higher deduction of TDS in other months in the same financial year. A salaried employee would not know that there had been short, wrong or no deduction of tax at source unless the financial year is over and by the time he would come to know about short recovery or no recovery of TDS, the time for payment of advance tax would be over. He can then only file a return of his total income and pay tax thereon. **So, it was held that employee would not be liable to pay interest under section 234B.**

India may be forced to delay new accounting norms

India may be forced to delay the implementation of accounting standards, adopted by the International Accounting Standards Board, beyond 2011 as corporate sector, especially public sector, is not doing enough to meet the deadline.

Going by the current pace of work by the government, market regulator and Corporates, there are apprehensions that India may not be able to implement the International Financing Reporting Standards (IFRS) by 2011, or may have to postpone some of its clauses.

India is one of the 150-odd countries which have decided to adopt the International Financial Reporting Standards (IFRS) by 2011.

IFRS are standards and interpretations adopted by the International Accounting Standards Board (IASB) which are recognised all over the world.

The major problem that industries are likely to face is a talent crunch since even in the current scenario there is a scarcity of qualified resources.

Companies need to start following a planned strategy as early as possible, as the failure to do so would put them in an awkward situation. The understanding and implementation of the IFRS is not easy, and only if companies start following certain common standards now, would they be able to shift towards the new standards from 2011.

The government would also have to modify the Income-tax Act, as well as the Companies Act to complement the changes arising from the new standards.

India has begun integrating with global financial markets. When companies crossing national boundaries, reporting financial statements under IFRS are necessary to facilitate cross-border transactions and make comparisons easier. The transition will be a tough challenge for the country as it requires a shift in the academic approach, along with regulatory challenges.

The Institute of Chartered Accountants of India (ICAI) and the government would have to play a larger role in countering industry problems. Further, the Corporates would have to prepare the balance sheets as per IFRS norms for 2010 for comparison. The companies should start working on urgent basis.

In fact, the government and the market regulator SEBI should consider charging a nominal fee from all the listed companies to set up a fund under the National Accounting Standards Board to implement the project.

Once implemented, Indian companies working in many countries will not have to file separate accounts for each country as the IFRS norms are accepted by all major countries. Even the US is moving towards that direction.