



INDIA UPDATE

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GDP REGISTERS 9.3% GROWTH IN QUARTER ENDED MARCH 2006 & INDUSTRIAL OUTPUT UP 9.5% IN APRIL 2006

IMPRESSIVE PERFORMANCE OF AGRICULTURAL SECTOR BOOSTS GDP GROWTH:

The Gross Domestic Product (GDP) growth rate registered by the Indian economy in the last quarter (January 2006 to March 2006) of the fiscal year 2005-06 was 9.3% compared to 8.6% in the corresponding quarter of the previous fiscal year. This is the second highest quarterly growth rate since 2000-01. The previous highest quarterly growth rate (11.0%) was recorded in the third quarter of 2003-04. It is also noteworthy that the per capita income during 2005-06 increased to Rs 25,825 (at current prices), an increase of 11.2% over the previous fiscal.

Spurt in the growth of agriculture and allied sector was the single biggest factor that contributed to the increase in the quarterly GDP growth rate and this also had a positive impact on the GDP growth rate for the last fiscal year. The GDP growth rate for the last fiscal year (April 2005-March 2006) was 8.4% compared to 7.5% in the previous fiscal year. Farm sector growth, according to revised estimates of annual national income for 2005-06 released by the Central Statistical Organisation (CSO) on 31st May 2006, increased to 3.9%, up from 0.7% in the previous fiscal year (2004-05).

Further, in the last quarter of the fiscal year 2005-06, the farm sector grew 5.5% compared to 1.5% in the corresponding quarter of previous fiscal year. As far as non-farm sector growth is concerned, manufacturing grew 9.0% in 2005-06 compared to 8.1% in the previous fiscal year. The worst performance during the fiscal was witnessed by the mining and quarrying sector which declined to 0.9% from 5.8%. However, the growth rate for this sector was 3.0% in the last quarter of the fiscal year 2005-06 signifying some improvement in this sector. As far as the last quarter the fiscal year 2005-06, while the electricity sector has shown considerable improvement (6.1% from 1.4%), the community, social & personal services sector has declined to 7.6% from 12.7% in the corresponding quarter of the previous fiscal year. The sector-wise GDP growth rates are given hereunder:

The sector-wise GDP growth (%) for the 4th Quarter (January-March 2006) & for Y.E. March 2006:

Industry	Q4 (Jan06- Mar 06)	Q4 (Jan05- Mar 05)	2005-06	2004-05
Agriculture, Forestry & Fishing	5.5	1.5	3.9	0.7
Mining & Quarrying	3.0	3.7	0.9	5.8
Manufacturing	8.9	8.1	9.0	8.1
Electricity, Gas & water Supply	6.1	1.4	5.3	4.3
Construction	12.0	13.5	12.1	12.5
Trade, Hotels, Transport & Communication	12.9	11.0	11.5	10.6
Financing, Insurance, Real Estate & Business Services	10.5	10.7	9.7	9.2
Community, Social & Personal Services	7.6	12.7	7.8	9.2
GDP At Factor Cost	9.3	8.6	8.4	7.5

INDUSTRIAL OUTPUT UP 9.5% IN APRIL 2006:

As per the data released by the CSO on 12th June 2006, Industrial output has posted growth of 9.5% in April 2006 as against 8.1% in the same month last fiscal due to robust performance of the manufacturing sector. Manufacturing, which

has the highest weight (two-third) in the index of industrial production (IIP) basket, rose by 10.4% compared with 9.2% in April 2005, according to official data released on Monday. The mining sector lagged behind with growth of only 4.3%, while the electricity sector increased by 5.6%. The corresponding growth in mining and electricity was 2.8% and 3.1% in April 2005.

View of our Economist:

The growth rate of 9.3% achieved by the Indian economy in the last quarter of Fiscal Year 2005-06 is creditable considering the fact that non-farm sector growth rate slipped to 10.2% from 10.4% in the corresponding quarter of the previous fiscal year. Eventhough the slippage in non-farm sector is a worrying factor, the industrial output growth of 9.5% in April 2006 indicates that things are improving in this sector too. The higher growth rate in exports compared to imports in the month of April 2006 is also a welcome sign but exports need to go up considerably if the current account deficit is to be reduced significantly. This is because, the chances of imports coming down in the short term is not possible unless the oil price comes down significantly which may not happen in the near future.

RBI INCREASES REPO/REVERSE REPO RATES

On a review of current macroeconomic and overall monetary conditions, the Reserve Bank of India has decided to increase the reverse repo rate under the Liquidity Adjustment Facility (LAF) by 25 basis points to 5.75 per cent from 5.50 per cent with immediate effect. Simultaneously, the repo rate under the LAF, which continues to be linked to the reverse repo rate with a spread of 100 basis points, is also being increased by 25 basis points to 6.75 per cent from 6.50 per cent with effect from 8th June 2006.

EMPOWERED GOM RESOLVES SEZ ISSUES

The Empowered Group of Ministers (EGOM) on Special Economic Zones (SEZs) has provided guidance to sort out some operational problems relating to implementation of the SEZ Scheme, including the minimum land area requirement and processing area as below, after consultations with all concerned Ministries and Departments:

- a) The minimum land area requirement as already notified in the SEZ Rules by the Ministry of Commerce & Industry will remain as it is for the information technology (IT) sector viz., 10 hectares and minimum built-up area of 100,000 sq. metres for IT;
- b) For gems & jewellery, the minimum land area requirement will be 10 hectares and 50,000 sq. metres of built-up area; and
- c) For bio-tech and non-conventional energy, the minimum land area requirement will be 10 hectares and 40,000 sq. metres of built-up area.

For all other multi-product, multi-services and sector-specific Zones, the land area requirement will remain the same, as already notified in the SEZ Rules i.e., multi-product – 1000 hectares; multi-services – 100 hectares and sector-specific – 100 hectares. EGOM has also stipulated that the processing area in SEZs will be 35%.

Mr. Kamal Nath, the Minister for Commerce & Industry, has said that with the resolution of the issues relating to implementation of SEZs, there would be a significant flow of investment into the Zones. He further said that "Investment of the order of Rs.1000 billion over the 3 years in infrastructure development of SEZs and in setting up of units therein has been estimated on the basis of projections made by the promoters at the time of seeking approval for establishment of SEZs by them.

COMPANIES ACT AMENDED TO FACILITATE MCA21 PROJECT

Amendments in the Companies Act, 1956 have been passed by the Parliament on 15th May 2006 to facilitate the implementation of MCA21 Project, a major e-Governance initiative of the Ministry of Company Affairs.

The amendments have become necessary as the Companies Act, 1956 does not contain adequate enabling provisions to support certain online electronic processes that have since become available due to technological advancement and are essential for the successful implementation of the MCA-21 Project.

The Act is amended to enable allotment of Director Identification Number (DIN) to any individual, intending to be appointed as a director in a company or to any existing director of a company, for the purpose of his identification as such, through electronic or other form and to provide for penalty for any violation in this regard. Provisions are made to support certain electronic processes in connection with the manner in which electronic records shall be filed with the prescribed fee, authenticated, recorded, registered, maintained and inspected. The Act is amended to ensure secure e-filing and authentication of documents consistent with IT Act, 2000 by making it mandatory for those who have to file such documents, through Digital Signature Certificates (DSCs).

A new section 610C is inserted to enable power to modify any provisions of the Act, by notification, in relation to electronic records including the manner and format in which the electronic records shall be filed.

AMENDMENTS TO SEBI REGULATIONS ON SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS

The Securities and Exchange Board of India has, on 26th May 2006, amended the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 by amending the definition of the term "Promoter" and also by specifying that acquisition of shares beyond the existing shareholding of 55% or more (75% or more in the case of companies who have secured relaxation pursuant to Rule 19(2)(b) of the Securities Contracts (Regulation) Rules, 1957, or in terms of any relaxation granted from strict enforcement of the said rule holding) would invite public announcement. The amendments have been effected to the following clauses in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

(i) In regulation 2, in sub-regulation (1), clause (h) shall be substituted with the following, namely –

“(h) ‘promoter’ means -

(a) any person who is in control of the target company;

(b) any person named as promoter in any offer document of the target company or any shareholding pattern filed by the target company with the stock exchanges pursuant to the Listing Agreement, whichever is later; and includes any person belonging to the promoter group as mentioned in Explanation I:

Provided that a director or officer of the target company or any other person shall not be a promoter, if he is acting as such merely in his professional capacity.

Explanation I: For the purpose of this clause, 'promoter group' shall include:

(a) in case promoter is a body corporate:-

- a subsidiary or holding company of that body corporate;
- any company in which the promoter holds 10% or more of the equity capital or which holds 10% or more of the equity capital of the promoter;
- any company in which a group of individuals or companies or combinations thereof who holds 20% or more of the equity capital in that company also holds 20% or more of the equity capital of the target company; and

(b) in case the promoter is an individual:-

- the spouse of that person, or any parent, brother, sister or child of that person or of his spouse;
- any company in which 10% or more of the share capital is held by the promoter or an immediate relative of the promoter or a firm or HUF in which the promoter or any one or more of his immediate relative is a member;
- any company in which a company specified in (i) above, holds 10% or more, of the share capital; and
- any HUF or firm in which the aggregate share of the promoter and his immediate relatives is equal to or more than 10% of the total.

Explanation II: Financial Institutions, Scheduled Banks, Foreign Institutional Investors (FIIs) and Mutual Funds shall not be deemed to be a promoter or promoter group merely by virtue of their shareholding. Provided that the Financial Institutions, Scheduled Banks and Foreign Institutional Investors (FIIs) shall be treated as promoters or promoter group for the subsidiaries or companies promoted by them or mutual funds sponsored by them."

(ii) In Regulation 3 –

(A) in sub-regulation (1), in clause (e), in sub-clause (iii) –

- in item (a), for the words "Indian promoters" occurring at the beginning, the words "Qualifying Indian promoters" shall be substituted;
- item (b) shall be substituted with the following, namely: "(b) qualifying promoters."
- in the Explanation –

1. For the word "promoter" occurring in the opening part, the words "qualifying promoter" shall be substituted;

2. In sub-clauses (a) and (b) the word 'promoter' wherever it occurs shall be substituted with the words 'qualifying promoter';

(B) For sub-regulation (1A), the following shall be substituted, namely –

"(1A) For the removal of doubt, it is clarified that nothing contained in sub-regulation (1) shall affect the applicability of the listing requirements."

(iii) In regulation 10, the provisos and the Explanation shall be omitted;

(iv) In regulation 11 –

(A) Sub-regulation (2) shall be substituted with the following, namely -

"(2) No acquirer, who together with persons acting in concert with him holds, fifty five per cent (55%) or more but less than seventy five per cent. (75%) of the of the shares or voting rights in a target company, shall acquire either by himself or through persons acting in concert with him any additional shares or voting rights therein, unless he makes a public announcement to acquire shares in accordance with these Regulations.

Provided that in a case where the target company had obtained listing of its shares by making an offer of at least ten per cent. (10%) of issue size to the public in terms of clause (b) of sub-rule (2) of rule 19 of the Securities Contracts (Regulation) Rules, 1957, or in terms of any relaxation granted from strict enforcement of the said rule, this sub-regulation shall apply as if for the words and figures 'seventy five per cent (75%)', the words and figures 'ninety per cent (90%)' were substituted."

(B)The existing provisos and the Explanation occurring after sub-regulation (2) shall be omitted;

(C) Sub-regulation (2A) shall be substituted with the following, namely:

"(2A)Where an acquirer who (together with persons acting in concert with him) holds fifty five per cent (55%) or more but less than seventy five per cent (75%) of the shares or voting rights in a target company, is desirous of consolidating his holding while ensuring that the public shareholding in the target company does not fall below the minimum level permitted by the Listing Agreement, he may do so only by making a public announcement in accordance with these regulations:

Provided that in a case where the target company had obtained listing of its shares by making an offer of at least ten per cent. (10%) of issue size to the public in terms of clause (b) of sub-rule (2) of rule 19 of the Securities

Contracts (Regulation) Rules, 1957, or in terms of any relaxation granted from strict enforcement of the said rule, this sub-regulation shall apply as if for the words and figures 'seventy five per cent (75%)', the words and figures 'ninety per cent (90%)' were substituted."

(v) In regulation 20, in sub-regulation (7), the second proviso shall be substituted with the following, namely –

"Provided further that nothing contained in sub-regulation (7) shall be construed to authorise an acquirer who makes a public announcement in terms of sub-regulation (2A) of regulation 11 to acquire any shares during the offer period in the open market or through negotiation or in any other manner otherwise than under the public offer."

(vi) In regulation 21 –

(A) The proviso occurring after sub-regulation (1) shall be omitted;

(B) Sub-regulation (2) shall be substituted with the following, namely –

"(2) If the acquisition made in pursuance of a public offer results in the public shareholding in the target company being reduced below the minimum level required as per the Listing Agreement, the acquirer shall take necessary steps to facilitate compliance of the target company with the relevant provisions thereof, within the time period mentioned therein."

(C) Sub-regulation (3) shall be substituted with the following, namely -

"(3) Where the public offer is made under sub-regulation (2A) of regulation 11 the minimum size of the public offer shall be the lesser of the following –

(a) twenty per cent of the voting capital of the company; or

(b) such other lesser percentage of the voting capital of the company as would, assuming full subscription to the offer, enable the acquirer, together with the persons acting in concert with him, to increase his holding to the maximum level possible, which is consistent with the target company meeting the requirements of minimum public shareholding laid down in the Listing Agreement."

CBEC CIRCULAR ON CHANGES CONCERNING EOUS AND GEMS & JEWELLERY

The Central Board of Excise & Customs (CBEC), Department of Revenue, Ministry of Finance issued a circular implementing changes brought about in the Annual Supplement to the Foreign Trade Policy effective from 01.04.2006. The Circular has introduced several simplifications of EOUs.

It extends the facility of importing goods without payment of duty on the basis of pre-authenticated procurement certificates to such units which have physical export turnover of Rs.150 million and above in the preceding financial year and have a clean track record. Earlier, such procurement certificate was required to be obtained from the jurisdictional office of Customs and Central Excise. Where EOU exports goods under Shipping Bill procedure, the existing procedure required the unit to get a shipping bill number by visiting the jurisdictional Customs office. In the circular, the procedure has been simplified and the CBEC has permitted the units to use shipping bill with running serial no. beginning from the first day of the financial year. In order to redress the reported problems regarding delays in declaring a warehousing station, a time bound requirement has now been put in place for declaring warehousing stations. Under the new procedure, a site verification report has to be given within 7 days by the jurisdictional Superintendent to his superiors. Under the new guidelines, the entire procedure of verification will have to be completed in less than 30 days.

Some other procedures and requirements concerning EOUs have already been relaxed by issue of two notifications on 17th May, 2006 under the Customs and Central Excise Act (Notification Nos. 44/2006-Cus and 31/2006-CE respectively). Under these notifications, some important changes introduced include:

Permission to exporters to supply spares and components to the original buyer at any time within the warranty period of the exported articles. Earlier, the requirement was that such spares be supplied along with the export articles.

EOUs are now permitted to obtain duty-free export promotion materials like brochures, literature, pamphlets etc.

for a value up to 1.5% of their export turnover during the previous year.

All EOUs have now been permitted to remove capital goods from their unit for test, repair etc. within the country without requiring any prior permission of the Customs and Central Excise Officers. They are only required to give a prior intimation and have to maintain proper accounts of removal and receipt of such goods.

EOUs have been permitted to effect inter-unit transfer of manufactured goods without prior permission. They only need to give prior intimation to the Development Commissioner and to the Customs & Central Excise authorities.

For the Gems & Jewellery exporters, the units are now allowed to export cut and polished, precious and semi-precious stones for treatment abroad. They can re-import such stones upon payment of duty on the fair cost of treatment and cost of materials used in such treatment.

CBDT GUIDELINES FOR NOTIFICATION OF ZERO COUPON BONDS

The Central Board of Direct Taxes ('the CBDT') has issued the guidelines for the notification of zero coupon bonds and for the computation of pro-rata discounts on such bonds, which are effective from 1 April 2006.

Zero coupon bond means a bond issued by any infrastructure capital company, infrastructure capital fund or public sector company after 1 June 2005 in respect of which no payment and benefit is received or receivable before maturity or redemption and which is notified by the Central Government of India.

Rule 8B of the Income-tax Rules, 1962 gives guidelines for notification of zero coupon bonds.

An application should be made in Form No. 5B at least three months before the date of issue of the bonds and the bonds to be notified should be issued no later than two years from the date of application.

- Every application should be accompanied with the copies of the following documents:

Certificate of incorporation under the Companies Act, 1956, or

Trust deed registered under the provisions of the Registration Act, 1908, or

Relevant act or statute under which the public sector company is formed.

- The following conditions need to be fulfilled:
 1. The period of life of the bond should not be less than ten years and not more than twenty years.
 2. The issuer should have an investment grade rating from at least two SEBI registered credit rating agencies.
 3. The issuer should make necessary arrangements for listing the zero coupon bond on a recognized stock exchange in India
 4. The issuer should furnish an undertaking that the money realized on the issue of the zero coupon bond shall be invested in the prescribed manner
 5. The Central Government shall notify the bonds which satisfy the conditions, in the Official Gazette, giving the particulars viz, Name of the bond, life of the bond, the time schedule of the issue of the bond, the amount to be paid on maturity or redemption of the bond, the discount, and the number of bonds to be issued.
 6. The issuer is required to submit within two months from the end of each financial year a certificate from an accountant specifying the amount invested in each year.
 7. The Central Government has the power to reject an application or withdraw the notification if the applicant fails to fulfill any of the conditions.

Rule 8C provides the computation of pro-rata amount of discount on a zero coupon bond for the purpose of clause (iiia) of section 36(1) of the Act.

- the period of life of the bond should be converted into number of calendar months and where the calendar month in which the bond is issued or it matures or is redeemed contains a part of a calendar

month then, if such part is fifteen days or more, it should be increased to one calendar month and if such part is less than fifteen days it should be ignored.

- o the amount of discount should be divided by the number of calendar months determined.
- o where one or more than one calendar month out of calendar months determined in accordance with clause (a) is or are included in a previous year, the amount determined in accordance with clause (b) should be multiplied by the number of calendar months so included and the amount so arrived at should be taken as the pro-rata amount of discount for that previous year.

DRAFT GUIDELINES ON FAIR PRACTICES CODE FOR NBFCs

The Reserve Bank of India (RBI) has issued draft guidelines on fair practices code for Non-Banking Financial Companies (NBFCs). The Guidelines would be firmed up after considering responses from all the interested parties. The matters covered in the aforesaid draft guidelines are as under:

(i) Applications for loans and their processing:

(a) Loan application forms should include necessary information which affects the interest of the borrower, so that a meaningful comparison with the terms and conditions offered by other NBFCs can be made and informed decision can be taken by the borrower.

(b) The NBFCs should devise a system of giving acknowledgement for receipt of all loan applications. Preferably, the time frame within which loan applications will be disposed of should also be indicated in the acknowledgement.

(ii) Loan appraisal and terms/conditions

The NBFCs should convey in writing to the borrower, the amount of loan sanctioned along with the terms and conditions including annualised rate of interest and method of application thereof and keep the acceptance of these terms and conditions by the borrower on its record.

(iii) Disbursement of loans including changes in terms and conditions

The NBFCs should give notice to the borrower of any change in the terms and conditions including disbursement schedule, interest rates, service charges, prepayment charges etc. NBFCs should also ensure that changes in interest rates and charges are effected only prospectively. A suitable condition in this regard should be incorporated in the loan agreement.

(iv) Post disbursement supervision

(a). Post disbursement supervision by NBFCs should be constructive and the genuine difficulties which the borrower may face, may be given due consideration.

(b) Before taking a decision to recall / accelerate payment or performance under the agreement or seeking additional securities, NBFCs should give notice to borrowers in consonance with the loan agreement.

(c) NBFCs should release all securities on repayment of all dues or on realisation of the outstanding amount of loan subject to any legitimate right or lien for any other claim NBFCs may have against borrower. If such right of set off is to be exercised, the borrower shall be given notice about the same with full particulars about the remaining claims and the conditions under which NBFCs are entitled to retain the securities till the relevant claim is settled /paid.

(v) General

(a) NBFCs should refrain from interference in the affairs of the borrower except for the purposes provided in the terms and conditions of sanction of the loan (unless new information, not earlier disclosed by the borrower, has come to the notice of the lender).

(b) In case of receipt of request for transfer of borrowal account, either from the borrower or from a lender which proposes to take over the account, the consent or otherwise i.e. objection of the NBFC, if any, should be conveyed within 21 days from the date of receipt of request. Such transfer shall be as per transparent contractual terms in consonance with law.

(c) In the matter of recovery of loans, the NBFCs should not resort to harassment.

(vi) The Board of Directors of NBFCs should also lay down the appropriate grievance redressal mechanism within the organization to resolve disputes arising in this regard. Such a mechanism should ensure that all disputes arising out of the decisions of lending institutions' functionaries are heard and disposed of at least at the next higher level. The Board of Directors should also provide for periodical review of the compliance of the Fair Practices Code and the functioning of the grievances redressal mechanism at various levels of management. A consolidated report of such reviews may be submitted to the Board at regular intervals, as may be prescribed by it.

(vii) Fair Practices Code based on the guidelines outlined hereinabove should be put in place by all NBFCs with the approval of their Boards at the earliest possible, but not later than June 30, 2006. NBFCs will have the freedom of drafting the Fair Practices Code, enhancing the scope of the guidelines but in no way sacrificing the spirit underlying the above guidelines. The same should be put up on their web-site, if any, for the information of various stakeholders.

APEX COURT: IT DEPARTMENT BOUND TO PAY INTEREST ON INTEREST FOR DELAYED PAYMENT OF INTEREST

In a landmark decision which is bound to have a significant impact on the way the Income Tax Department treats payment of interest on refund, the Apex Court (the Supreme Court), in the case of Sandvik Asia Ltd. (the Petitioner) V. CIT & Ors. (2006) 280 ITR 643 (SC), has ruled that the Income Tax Department is bound to pay interest on interest if there is delay on the payment of interest on the refund amount.

Facts of the case:

For the A.Y. 1978-79, the petitioner paid advance tax of Rs.11,181,844. By the assessment order dated March 2, 1981, the petitioners' income for the said period was assessed at Rs.15,417,090 and the tax liability was determined at Rs.8,903,368. The excess advance tax of Rs.2,278,476 was refunded. In appeal, by order dated August 23, 1985, the income of petitioner was reduced to Rs.9,393,108 and the tax liability was determined at Rs.5,424,561. Accordingly, further refund of Rs.3,478,807 was granted on April 30, 1986. As against the petitioners' claim of interest to the tune of Rs.4,258,766, it was allowed only to the extent of Rs.173,940 on November 29, 1986, and the claim for the balance amount was rejected. The revision filed by the petitioner was rejected on February 28, 1990.

However, the Supreme Court by its order dated April 30, 1997, directed the Commissioner of Income-tax, Pune to consider the revision petition in the light of the Supreme Court's decision in Modi Industries Ltd. v. CIT, (1995) 216 ITR 759. By order dated September 29, 1997, the Commissioner of Income-tax-(1), Pune, directed the payment of interest according to the decision in Modi Industries' case (1995) 216 ITR 759 (SC) and accordingly, the Joint Commissioner of Income-tax, SR-II, Pune by his order dated March 27, 1998, while giving effect to the order of the Commissioner of Income-tax, dated September 29, 1997, granted interest amount to the tune of Rs.4,084,906 in addition to Rs.173,940 which was paid on November 29, 1986, thereby totalling the interest amount to Rs.4,258,846. The said interest amount was paid on March 27, 1998.

After receipt of the said interest amount, the petitioner preferred an application contending that due to delay in payment of the amount of interest, the petitioner was entitled to claim further interest on the said amount of interest. The claim of the petitioner was rejected by the impugned order dated September 25, 2000. The petitioner filed a writ petition seeking interest on the delay in payment of interest. Similar petitions were filed for the A.Ys. 1977-78, 1981-82 and 1982-1983. The Bombay High Court (267 ITR 78) dismissed the petitions of the petitioner holding that there was no provision in the Act for the payment of interest on interest, and the interest could not be granted also on equitable grounds.

Decision:

On appeal to the Supreme Court, it held that there is no provision in the Act for the payment of compensation, but compensation for the delay is required to be paid in view of its decision in Narendra Doshi's case (2002) 254 ITR 606. The Supreme Court further held that the Act recognises the principle that a person should only be taxed in

accordance with law, and hence, where excess amounts of tax are collected from an assessee or any amounts are wrongfully withheld from an assessee without authority of law, the Revenue must compensate the assessee. The Supreme Court was of the opinion that the petitioner was entitled to interest even u/s.244/244A of the Act. The Supreme Court held that the facts clearly showed that the petitioner was undisputably entitled to interest u/s.214 and u/s.244 of the Act as held by the various High Courts and also by it. The petitioner's money had been unjustifiably withheld by the Department for 17 years without any rhyme or reason. The interest was paid only at the instance and intervention of the Supreme Court. Interest on the delayed payment of refund was not paid to the petitioner on 27-3-1981 and 30-4-1986 due to erroneous view taken by the Department. Interest on refund was granted to the petitioner after substantial lapse of time, and hence, it was entitled to compensation for this period of delay.

The Supreme Court held that the High Court had failed to appreciate that while charging interest on the assessee, the Department first adjusts the amount paid towards interest, so that the principal amount of tax payable remains outstanding and they are entitled to charge interest till the entire outstanding is paid. But when it comes to granting of interest on refund on taxes, the refunds are first adjusted towards the taxes and then the balance towards interest. Hence, as per the stand that the Department takes, they are liable to pay interest only up to the date of refund of tax, while they take the benefit of the assessee, funds by delaying the payment of refund without incurring any further liability to pay interest. This stand taken by the Department is discriminatory in nature and thereby causes great prejudice to the assessee. The Supreme Court directed the payment of simple interest at 9% per annum from the date it became due till it was actually paid, within one month of its order, failing which, the Department was liable to pay penal interest at 15% per annum.

ITAT : ONUS OF PROVING THAT DEBT HAS BECOME BAD DOES NOT REST ON THE ASSESSEE

A special bench of the Income Tax Appellate Tribunal (ITAT) in Mumbai has ruled that the onus of proving that debt has become bad does not rest on the assessee. The bench, in its order has also clarified that tax deduction on such cases can be claimed in the year in which the amount is written off in the balance sheet.

The bench was set up following a number of conflicting rulings on the issue. Such disputes arise when taxpayers follow the mercantile method of accounting wherein the sales given on credit are also accounted for in the books.

As there were a few cases where deduction in respect of bad debts written off was denied by the assessing officers and since the Government received representations on this matter, the Government effected amendment in the Income Tax Act in the year 1989, to facilitate deduction in the year in which the bad debts were written off. If any bad debt which was written off in the books earlier was recovered subsequently, the same can be taxed under Section 41 of the Income Tax Act. However, even this amendment did not solve the problem since the assessing officers started asking taxpayers to prove that debt being written off was really bad. Their contention was that for categorizing any debt as bad, the assessee is required to prove that the same has become bad. This again led to a spate of litigations and finally the matter was referred to the Special Bench of the Tribunal in view of conflicting decisions.

The decision of the special bench has now put to rest all controversies by ruling that taxpayers need not establish that the debt has become bad. (Source: Economic Times)

ITAT: TRAINING FEES PAID IN RESPECT OF KNOW-HOW TAXABLE IN INDIA AS KNOW-HOW NOT A "PROPERTY" FOR ARTICLE 12 OF DTAA

In a significant order which is bound to have considerable impact, the Income-tax Appellate Tribunal - Mumbai Bench (ITAT) has held in the case of Hindalco Ltd. that the training fees paid to a US based company, which are integral to the import of know-how from that company, are taxable in India. It also made a very significant ruling that "Know-how" is not a "Property" for the purpose of Article 12 of Double Taxation Avoidance Treaty (DTAA) between India and USA.

Hindalco had not disputed the taxability of the fees for assistance provided by the US Company. However, it claimed exemption on another set of payments, a quarterly fee for training of Hindalco's personnel. At the core of the dispute is Article (12) of DTAA. Article 12 (4) covers royalties and fees for "included services" which are taxable.

The facts of the case are as follows. Hindalco had entered into a technical assistance agreement with Reynolds (Europe), USA. Under the arrangement, the assessee had to pay \$50,000 (net of taxes) each calendar year as fees for technical services and another \$12,500 as basic fees for training of Hindalco's personnel at the Reynold's facilities abroad. For training at Hindalco's premises in excess of 120 man days, training fees were fixed at \$650 per person per day while for training at Reynold's subsidiaries outside India, fees were payable at \$200 per person per day.

Hindalco took a stand that training fees cannot be construed as fees for included services that are taxable. Instead, training fees are to be considered as integral and "inextricably and essentially linked" to the sale of know-how, and therefore of property, and hence are outside the tax purview in India.

The ITAT disagreed with this view and held that training fees in this context are not exempt from tax because 'know-how' cannot be treated as 'property' for the purposes of Article 12. Based on judicial precedents, including those by western courts, and the context in which Article 12(5) exists in tax treaties, ITAT held that the scope of 'property' under Article 12 is very limited and narrow.

The ITAT held that the provision under Article 12 of the Indo-US DTAA is meant to put the taxation of fees for a subsidiary transaction on a par with the taxation of the main transaction. According to ITAT, the meaning of the expression "sale of property" as used in Art 12(5) is limited in that the expression refers only to sale of property that would not give rise to compensation that could be construed as royalty. This is a landmark judgment as until now know-how was treated as 'property' for the purpose of Article 12(5) of the Indo-US treaty, and therefore exempt from income-tax in India.

The impact of this decision would not be limited to transactions between India and USA but also on similar transactions between India and other countries since other tax treaties also have identical provisions.

Source: Economic Times

ITAT: PRINTER & SCANNER BEING INTEGRAL PART OF COMPUTER SYSTEM ARE TREATED AS COMPUTER FOR CLAIMING DEPRECIATION

The Kolkatta bench of the Income Tax Appellate Tribunal has held in ITO V. Samiran Majumdar (98 ITD 119 (Kol.)) that printer and scanner are integral part of computer system and therefore they are to be treated as computer for claiming depreciation under Section 32 of the Income Tax Act, 1961.

The assessee had claimed depreciation on printer and scanner @ 60% but this was not allowed by the Assessing Officer, on the ground that these machines were not a computer. On appeal, the CIT(A) allowed the assessee's claim. However, the department went on appeal to the Tribunal.

The Tribunal, while arriving at its decision, considered the following:

- Definition of the term 'computer system' under Explanation (a) to Subsection (xi) of Section 36(1) of the Income-tax Act.
- Definition of the term 'computer' given by the ICAI in its study material of PEE-II Information Technology Paper VI.
- The test laid down by the Allahabad High Court in the case of CIT v. Kanodia Warehousing Corporation, [1980] 121 ITR 996/3 Taxman 223, where the subject matter involved a Plant.
- Full Bench decision of the Supreme Court in the case of CIT v. Karnataka Power Corpn., [2001] 247 ITR 268/[2000] 112 Taxman 629, wherein it was held, "the question whether a building can be treated as plant, basically, is a question of fact and where it is found as a fact that a building has been so planned and constructed as to serve an assessee's special technical requirements, it will qualify to be treated as a plant".

The Tribunal, after analysing the matter in detail in the light of above definitions and decisions, held that printer and scanner are integral part of the computer system and therefore, are eligible for depreciation @ 60%.

STP UNITS REGISTER SOFTWARE EXPORTS OF OVER RUPEES ONE TRILLION IN 2005-2006

Member units of Software Technology Parks of India (STPI) have exported software of over Rs. 1,008.09 billion estimated by the end of Financial Year 2005-2006. The total exports by STP units in the year 2004-05 were Rs. 740.19 billion. The growth in exports for the Financial Year 2005-06 as compared to Financial Year 2004-05 is an impressive 36%. The highest exports by STPI registered units were from the state of Karnataka (Rs. 370 billion), followed by Maharashtra (Rs 155 billion) and Tamil Nadu (Rs. 139.60 billion).

INDIA JOINS THE ELITE 100 MILLION MOBILE CLUB

With the country's gross subscriber base touching almost 150 million, India joined the world's 100 million mobile club. India has now become the fifth to join the elite club – the others being China, the USA, Japan and Russia. One of the key factors contributing to the growth of mobile subscribers has been, among others, the continuously declining tariffs and improving affordability of service and handsets.

It may be pointed out that two years ago the country's telephone subscriber base was only 75 million which has now ballooned to more than 150 million taking the tele-density of the country from the meager 7.08 per cent to 13.54 per cent.

CECA BETWEEN JAPAN & INDIA LIKELY BY END 2006

INDIA is moving towards an economic partnership agreement with Japan. Carefully sidestepping a free trade agreement (FTA) since such pacts have been questioned by the Congress leadership as well as the finance ministry, the two countries are looking at a pact which will be similar to the Comprehensive Economic Cooperation Agreement (Ceca) signed with Singapore and Mauritius. The Indian Commerce & Industry Minister, Mr. Kamal Nath said such an agreement was vital to the interests of both nations and pointed out that Japanese FIIs were the second-largest in terms of portfolio investment in India. "We are not talking about an FTA. What we are looking at is economic partnership that can drive investment and technology flows," India-Japan trade stands at around \$5 billion while Japanese investments in India amount to \$2.5 billion. It is felt that the proposed pact would boost both trade as well as investment. "We expect to take a view by the end of this year," Mr Kamal Nath said.

Source: Economic Times

SNAPSHOT OF GLOBAL MARKETS - MAY 2006

KEY STOCK MARKET INDICES

INDEX	OPENING (01/05/2006)	HIGHEST IN MAY 2006	LOWEST IN MAY 2006	CLOSING (31/05/2006)
BSE SENSEX	12103.78	12671.11	9826.91	10398.61
S&P CNX NIFTY	3557.55	3774.15	2896.40	3071.05
DOW JONES I.A.	11415.89	11709.09	10980.29	11168.31
NASDAQ COMPOSITE	2328.42	2352.56	2135.81	2178.88
FTSE 100	6023.00	6133.50	5510.50	5723.80
NIKKEI	16929.83	17375.25	15422.53	15467.33

PRICES OF KEY COMMODITIES (US\$)

COMMODITY	OPENING (01/05/2006)	HIGHEST IN MAY 2006	LOWEST IN MAY 2006	CLOSING (31/05/2006)
GOLD - SPOT (NY)	657.60	726.75	637.40	643.50
SILVER - SPOT (NY)	13.83	15.15	12.10	12.67
PLATINUM - SPOT(NY)	1155.00	1330.00	1150.00	1288.00
COPPER (COMEX)	3.375	4.070	3.450	3.717
ALUMINIUM (COMEX)	1.285	1.430	1.204	1.204
BRENT CRUDE (IPE)	72.50	75.50	67.63	70.41
NYMEX CRUDE OIL	73.90	76.30	68.40	71.29

KEY GLOBAL CURRENCY RATES AGAINST USD

CURRENCY	OPENING RATE (01/05/2006)	HIGHEST IN MAY 2006	LOWEST IN MAY 2006	CLOSING RATE (31/05/2006)
EURO/USD	1.2635	1.2965	1.2556	1.2826
GBP/USD	1.8262	1.9025	1.8203	1.8721
USD/JPY	113.88	114.16	108.98	112.17
USD/INR	44.96	46.23	44.62	46.23

MAJOR CURRENCIES AGAINST INR

CURRENCY	OPENING RATE (01/05/2006)	HIGHEST IN MAY 2006	LOWEST IN MAY 2006	CLOSING RATE (31/05/2006)
USD/INR	44.96	46.23	44.62	46.23
EURO/INR	56.80	59.29	56.64	59.29
GBP/INR	82.10	86.54	82.05	86.54
JPY/INR	39.58	41.32	39.51	41.22

INTEREST RATES

MIBOR

PERIOD	OPENING RATE (01/05/2006)	HIGHEST IN MAY 2006	LOWEST IN MAY 2006	CLOSING RATE (31/05/2006)
OVERNIGHT	5.60	5.60	5.58	5.60
14 DAY	6.12	6.23	6.02	6.11
1-MONTH	6.43	6.52	6.37	6.39
3-MONTH	6.86	7.03	6.78	6.82

LIBOR - USD

PERIOD	OPENING RATE (01/05/2006)	HIGHEST IN MAY 2006	LOWEST IN MAY 2006	CLOSING RATE (31/05/2006)
1-MONTH	5.05	5.11	5.05	5.11
3-MONTH	5.15	5.24	5.15	5.24
6-MONTH	5.25	5.33	5.25	5.33
12-MONTH	5.38	5.43	5.38	5.43

LIBOR - EURO

PERIOD	OPENING RATE (01/05/2006)	HIGHEST IN MAY 2006	LOWEST IN MAY 2006	CLOSING RATE (31/05/2006)
1-MONTH	2.67	2.79	2.64	2.79
3-MONTH	2.86	2.93	2.86	2.93
6-MONTH	3.03	3.10	3.02	3.10
12-MONTH	3.31	3.36	3.30	3.32

LIBOR - GBP

PERIOD	OPENING RATE (01/05/2006)	HIGHEST IN MAY 2006	LOWEST IN MAY 2006	CLOSING RATE (31/05/2006)
1-MONTH	4.63	4.66	4.63	4.66
3-MONTH	4.68	4.71	4.68	4.71
6-MONTH	4.74	4.82	4.74	4.78
12-MONTH	4.90	5.02	4.90	4.94

LIBOR - JPY

PERIOD	OPENING RATE (01/05/2006)	HIGHEST IN MAY 2006	LOWEST IN MAY 2006	CLOSING RATE (31/05/2006)
1-MONTH	0.078	0.161	0.078	0.150
3-MONTH	0.114	0.300	0.114	0.300
6-MONTH	0.196	0.400	0.196	0.400
12-MONTH	0.390	0.590	0.390	0.580

US T-BILL

PERIOD	OPENING RATE (01/05/2006)	HIGHEST IN MAY 2006	LOWEST IN MAY 2006	CLOSING RATE (31/05/2006)
	Discount/Yield	Discount/Yield	Discount/Yield	Discount/Yield
1-MONTH	4.51/4.61	4.67/4.76	4.51/4.61	4.67/4.75
3-MONTH	4.70/4.82	4.76/4.88	4.68/4.80	4.74/4.86
6-MONTH	4.79/4.98	4.89/5.08	4.79/4.98	4.89/5.08

KEY CENTRAL BANK RATES

	31/05/2006	1 MONTH PRIOR	3 MONTH PRIOR	6 MONTH PRIOR	1 YEAR PRIOR
US FEDERAL RESERVE FUNDS RATE	5.00	4.75	4.50	4.00	3.00
EUROPEAN CENTRAL BANK RATE	2.50	2.50	2.25	2.00	2.00
BANK OF ENGLAND RATE	4.50	4.50	4.50	4.50	4.75
RESERVE BANK OF INDIA - BANK RATE	6.00	6.00	6.00	6.00	6.00

* US FED Rate increased to 5.00% with effect from 10th May 2006

PRIME RATES

CURRENCY	RATE (31/05/2006)
USD	8.00
EURO	3.50
GBP	4.50
JPY	1.38
INR	10.25 to 10.75

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