



ConneKt...to the festival of colors

**NMA**

**News Room**

*(Major news highlights of the month)*

**Value Creation**

*(NMA's value add to the "K" Factor)*

**Corporate Watch**

*(Financial and Statistical review of select listed Companies)*

**Notifications and Pronouncements**

*(Gist of important case laws, notifications and announcements)*

**Due dates**

*(Your monthly compliance calendar)*

**Business Gags**

*(On a lighter note)*

MARCH 2008

# NEWS ROOM

## **R-ADAG plans Medical cities across country**

As part of its plan for a pan-India foray in the healthcare sector, Reliance ADAG is planning to set up health cities or medical cities across the country. The company is learnt to be in talks to acquire land in Kolkata and Jaipur for the project. According to industry estimates, each of these healthcities would require an investment of about \$250 million or Rs 1,000 crore.

## **GMR plans Rs. 3,300 crore Realty foray in Hyderabad**

THE GMR Group, known for its infrastructure businesses, may soon become a huge player in the real estate sector as well, diversifying into the sector with a Rs 3,300-crore deal. The group, which has built the new airport at Hyderabad, has sought government's permission to develop 60 acres available at the old airport, located in the heart of the southern city.

## **Cairn India to sell 5.37% stake for Rs. 2,534 Crores**

Cairn India, the Indian arm of British oil and gas company Cairn Energy, has decided to sell 5.37 per cent stake to Malaysian state oil and gas firm Petrolia Nasional, or Petronas, and Singapore-based Orient Global Tamarind Fund for Rs 2,534 crore (\$625 million) to fund expansion plans. The company will sell a total 113 million shares – 63.3 million shares to Petronas and 49.7 million shares to Tamarind, New Zealand billionaire Richard Chandler's investment group – at Rs 224.30 each.

## **Tech Mahindra bags \$ 350 mn**

Telecom IT solutions and service provider Tech Mahindra has signed a five-year deal with British Telecom (BT) valued in excess of \$350 million (around Rs 1,400 crore). Tech Mahindra will provide maintenance and support services to BT for business critical BSS (business support system) and OSS (operating support system) applications and platforms. The payment will be made evenly over five years.

## **Tommy Hilfiger eyes 51% stake in Indian biz**

Global premium lifestyle brand Tommy Hilfiger, controlled by buyout private equity Apax Partners, is looking at direct ownership of its India operations by bringing in the maximum permissible 51% foreign direct investment (FDI) allowed in single brand retail.

**NMA ConneKt  
March 2008**

## **IFC picks up 25% in Meghmani Finechem**

The International Finance Corporation (IFC), the private sector lending arm of the World Bank Group, has picked up 25 per cent equity in Gujarat-based Meghmani Finechem Ltd (MFL), a subsidiary of the Singapore-listed Meghmani Organics Ltd (MOL) as a strategic investor for its proposed environment-friendly chlor-alkali plant in the State.

## **Citi, Merrill likely to invest Rs. 2000 Crore in DLF Realty**

Global financial firms Citigroup, Merrill Lynch and DE Shaw are likely to invest Rs 2,000 crore or \$500 million in the DLF Assets '(DAL) real estate investment trust (REIT) The transaction is likely to be completed by early next week. Part of DLF Group, the largest real estate developer in the country, DAL is focused on buying and managing office space. Currently, DAL is a owned by DLF promoters and the listed firm has no equity stake in this firm. .

## **Restructuring of MTNL, BSNL put on hold**

The restructuring of state-owned telecom companies MTNL and BSNL, which is primarily aimed at driving higher synergies in their operations, has been put on hold for the time being.

## **IDFC buys Stanchart AMC for \$ 205 million**

Infrastructure Development Finance Company (IDFC) has bagged Standard Chartered's asset management business (AMC) in India for a total consideration of \$205 million (around Rs 820 crore) in an all-cash deal. This amounts to 5.67 per cent of the total assets under management of Rs 14,141 crore of StanChart's AMC as on February end

## **Haier Appliances plans to acquire Indian brands**

Haier Appliances India, the wholly owned subsidiary of China-based global consumer durable firm Haier Group Corp (HGC), is planning to acquire Indian brands. In line with its expansion plans, the company launched a new range of air conditioner comprising 16 split AC models and nine window AC models along with nine new refrigerator models in frost-free and direct-cool categories.

# VALUE CREATION

## TREATMENT OF FOREIGN RECEIPTS IN INDIA

With a boom in the economy in India and many Indians taking up projects abroad/ spending a number of days abroad on assignments, various challenges have arisen in relation to tax treatment of income earned/ allowances received by such persons.

### **Charge of Income Tax/Resident Classification**

Charge of income tax in India is mainly governed by the factor of residence. In India, as in many other countries, the charge of income tax and the scope of taxable income vary with the factor of residence. There are two categories of taxable entities namely Residents and Non residents

Residents are further classified into two sub-categories

- Resident and ordinarily resident
- Resident but not ordinarily resident.

The law prescribes two alternative technical tests of residence for individual taxpayers. Each of the two tests relate to the physical presence of the taxpayer in India in the course of the "previous year" which would be the twelve months starting April 1 till March 31.

A person is said to be "**resident**" in India in any previous year if he –

- (a) is in India in that year for an aggregate period of 182 days or more; or
- (b) having within the four years preceding that year been in India for a period of 365 days or more and is in India in that year for an aggregate period of 60 days or more.

The above provisions are applicable to all individuals irrespective of their nationality. However, as a special concession for Indian citizens and foreign citizens of Indian origin, the period of 60 days referred to in Clause (b) above, will be extended to 182 days in two cases: (i) where an Indian citizen leaves India in any year for employment outside India; and (ii) where an Indian citizen or a foreign citizen of Indian origin (NRI), who is outside India, comes on a visit to India.

In the above context, an individual visiting India several times during the relevant "previous year" should note that judicial authorities in India have held that both the days of entry and exit are counted while calculating the number of days stay in India, irrespective of the time spent in India on those two days.

A **non resident** on the other hand is merely defined as a person who is not resident in India, i.e. he does not satisfy either of the two prescribed tests for residents.

An individual, who is defined as Resident in a given financial year is said to be "not ordinarily resident" in any previous year if he has been a non-resident in India 9 out of the 10 preceding previous years or he has during the 7 preceding previous years been in India for a period of, or periods amounting in all to, 729 days or less.

### **Taxability under Income Tax Act**

Taxability under the Income Tax Act (ITA) will depend on the residential status and would be non-taxable only if the income is received outside India. This would be so only in the hands of a person who is a resident but not ordinarily resident or a non-resident.

Therefore, as per the ITA, the living allowance that is paid outside India will be taxable in India in any year in which the employee is a resident and ordinarily resident in India. The employee, however, can claim as exempt the expenses, which are actually incurred for stay in the foreign country. It would be for the employee to prove that the expenditure has been actually incurred on the stay in foreign country. Salary paid in India by the Indian employer would be taxable in India, irrespective of the individual's residential status.

### **Taxability based on Double Taxation Avoidance Agreement (DTAA)**

In connection with taxability, one will also have to look at the DTAA between India and the foreign country. It is now settled law that the assessee may choose to follow either the DTAA or the ITA, whichever is more favorable to him. The taxability or otherwise in accordance with the DTAA will have to be looked on a case-to-case, based on the DTAA of that other country.

Since most overseas projects taken over by Indians are concentrated in the US or in the UK, an analysis has been prepared based on the DTAA between India and the US/UK (foreign country) only.

### **DTAA with United States of America/United Kingdom**

In accordance with the DTAA, the income received in the foreign country will be taxable in the following manner:

**In the foreign country** if the employee is a resident of India and the employment is exercised in such foreign country.

**In India** if the employee is a resident of India and the employment is exercised in the US/UK and where all the following tests are satisfied:

- The recipient is present in the foreign country for a period or periods not exceeding in the aggregate 183 days in the relevant taxable year;
- The remuneration is paid by, or on behalf of, an employer who is not a resident of the foreign country; and
- The remuneration is not borne by a permanent establishment or a fixed base or a trade or business which the employer has in the US/UK.

# VALUE CREATION

## TREATMENT OF FOREIGN RECEIPTS IN INDIA (contd....)

### **Residence under DTAA**

For the purpose of the DTAA, the residency is to be determined in the following manner:

The employee will be a resident of the country where under the law of that country he is liable to tax on the basis of his domicile, residence, citizenship or any other criterion of a similar nature. If the employee becomes a resident of both countries on the above basis then he shall be a resident of:

- The country where he has a permanent home. If he has a permanent home in both countries, then in such country where his personal and economic relations are closer.
- The country where he has his habitual abode if he has no permanent home in either country.
- The country as may be determined by mutual agreement between India and the foreign country if he is a national of both countries or neither of them.

### **Relief from double taxation under DTAA**

The DTAA of United States and United Kingdom specify different relief. They have been individually discussed below.

*For USA:* Where the income paid by way of living allowance to any person in US becomes taxable both in India and in US, India shall allow as a deduction from the tax on the income of that resident, an amount equal to the income-tax paid in the US. Such deduction shall not, however, exceed that part of the income-tax (as computed before the deduction is given) which is attributable to the income, which may be taxed in US.

*For UK:* Where the income paid by way of living allowance to any person in the UK, becomes taxable both in India and in the UK, India shall allow as a deduction from the tax on the income of that resident, a proportionate deduction computed in the following manner:

$$\text{(Tax paid in the UK on doubly taxed income) } \times \frac{\text{Income doubly taxed}}{\text{Entire income chargeable in India}}$$

No relief under the DTAA will be available in respect of the salary paid in India.

### **View on Indian Scenario**

With the change in Indian economic scenario due to software boom in early 2000 and other sector boom taking on later, many Indian assesses' have been frequenting foreign countries for work. Those on short term projects also get a neat amount of dearness/ living allowances to take care of their daily requirements in such country.

The Indian revenue department has been immensely transparent in defining the provisions applicable on taxability of foreign receipts in India.

We are not sure here whether the tax payer has been transparent enough in disclosing the above discussed income in his Indian income tax returns. Also whether the tax administrator has scrutinized the income of assessee giving due importance to the above discussed clause. Ultimately the exchequer is at a loss.

# CORPORATE WATCH

## Praj Industries

PRAJ was established in 1984 with the objective of providing cutting edge solutions to the DISTILLERY INDUSTRY. Praj's expertise in fermentation and distillation was complemented by its expertise in wastewater treatment solutions. In 1992 Praj's Sprannihilator System was given an award by the Govt. of India. In 1994, Praj entered the public market and maiden IPO was oversubscribed seven times. Around the same time, Praj also branched out in the international market with orders from Indonesia and Philippines. Today, Praj offers many more solutions for distillery and brewery wastewater treatment and utilization. PRAJ has also spread it's reach beyond India to over 35 countries across 5 continents with over 350 references. Praj is perhaps the world's single largest supplier of molasses based distillery technology, plant and equipment. Praj has also diversified its range of solutions. Fermentation systems include technology packages for multiple feedstock including cane-molasses, cane juice and filtrate, starch based raw material like corn, sorghum, wheat, tapioca, tropical sugar-beet and many more

Chairman of the Company	Pramod Chaudhari
Face Value of the Share	2.00
52 week High	273.45
52 week Low	100.15

*Amount in Rs. (Crores)*

Particulars	Sep 06 (6 months)	Mar 07 (12 months)	Sep 07 (6 months)
Sales Turnover	228.14	592.30	308.78
Other Income	1.83	34.99	26.52
Total Income	229.97	627.29	335.30
Total Expenses including Depreciation	194.35	510.66	270.95
Gross Profit	<b>35.62</b>	<b>116.63</b>	<b>64.35</b>
Interest	0.17	3.11	0.03
Depreciation	1.86	3.16	2.39
PBT	33.60	110.36	61.94
Tax	7.70	23.84	6.25
Net Profit	25.90	86.53	55.69
Equity	8.11	8.39	16.78
<b>Earning Per Share</b>	<b>3.19</b>	<b>10.31</b>	<b>3.32</b>
Face Value	2	2	2

# CORPORATE WATCH

DETAILS AS ON 24<sup>th</sup> March 2008

## Top 3 Shareholdings in the Company

Total Promoters	30.31
Total Non Promoter Corporate Holding	12.60
Total Public and others	41.19

## Top 3 Mutual Fund Holding

Scheme Name	No. of Shares
Morgan Stanley Growth Fund	3,093,955
SBI Magnum Contra Fund (G)	2,729,399
SBI Magnum Tax Gain (G)	1,537,944

## Comparative Data of PRAJ Industries with its Peer Companies

*(in Rs. Crore)*

Company Name	Last Traded Price	EPS (TTM)	PE Ratio	Face Value of Share	Market Capitalisation
Praj Industries	103.55	6.67	15.51	2.00	1,890.50
BHEL	1,871.35	59.85	31.27	10.00	91,606.33
Suzlon Energy	230.40	8.16	28.25	2.00	34,489.32
BEML	945.50	48.18	20.56	10.00	3,937.49

# NOTIFICATIONS AND PRONOUNCEMENTS

## NOTIFICATIONS

The central Government acting through Ministry of Finance has, vide Notification No. 4/2008-Service Tax to 15/2008-Service Tax has notified the following rules:

- 4/2008 - Service Tax Amendment Rules, 2008
- 5/2008 - Export of Services (Amendment) Rules, 2008
- 6/2008 - Taxation of Services (Provided from Outside India and Received in India) (Amendment) Rules, 2008.
- 7/2008 - Works Contract (Composition Scheme for Payment of Service Tax) (Amendment) Rules, 2008
- 8/2008 - amendment in the notification No. 6/2005- Service Tax, dated the 1st March, 2005
- 9/2008 - amendment in the notification No. 26/2005-Service Tax, dated the 7th June, 2005
- 10/2008 - Service Tax (Registration of Special Category of Persons) (Amendment) Rules, 2008
- 11/2008 - amendment in the notification No. 32/2005-Service Tax, dated the 20th October, 2005
- 12/2008 - amendment in the notification No. 1/2006-Service Tax, dated the 1st March, 2006
- 13/2008 - exempts the taxable service provided by a goods transport agency
- 14/2008 - exempts the taxable service provided by a person
- 15/2008 - Service Tax (Publication of Names) Rules, 2008

## CASE LAWS

### INCOME TAX

#### Self Assessment tax

**Kerala State Industrial Development Corporation Ltd. Vs. Add.C.I.T. and Others 18/10/2006 [2008] 298 ITR 367 (Ker)**

#### Decision

Held by the Hon`ble Court that, there is no time limit under section 140A, however read with sec. 139 there is time limit for payment of the balance tax and for filing of return, and assessee paid the tax on next working day therefore the levy of interest is unsustainable

**NMA ConneKt  
March 2008**

#### Unaccounted Income

**C.I.T. Vs. Chana Basha 14/06/2007 [2008] 298 ITR 346 (Mad)**

#### Decision:

Held by the Hon`ble Court that, whenever there is concurrent finding by the below authorities no interference should be called for by the high court.

#### Payment to partners for Specific Services

**CIT Vs. Rajam Ramaswamy And Sons 27/06/2006 [2008] 298 ITR 325(Madras)**

#### Decision:

Held that the disallowances under section 40(b) cannot be made for the specific services rendered by the partner which are not in the capacity of partner

#### Interest on Money borrowed

**Munjal Sales Corporation Vs. CIT and Othrs 19/02/2008 [2008] 298 ITR 298**

#### Decision:

Held that in order to allow interest paid on borrowings in case of partnership firms, the assessee has to first establish that it is allowable u/s 36(1)(iii) and also that it does not exceed the limit laid down in sec. 40(b)(iv). Also held that opening balance of profits of the firm exceeds the loans given to sister concerns, presumed to be given out of its own funds.

#### Expenditure incurred in connection with transfer

**Gopee Nath Paul & Sons Vs. D.C.I.T. 08/03/2005 (2005) 147 Taxman629(Cal.)**

#### Decision:

Held by hon'ble court that any amount the payment of which is necessary for transferring the asset will be treated as expenditure incurred wholly & exclusively in connection with such transfer.

# DUE DATES

Due Date	Assessee Covered	Obligation / Event
<b>PROVIDENT FUND AND ESI</b>		
25th March	PF Applicable Units	EPF Monthly Return.
20th April	PF Applicable Units	EPF Deposit for March 2008
21st April	ESI Applicable Units	ESI Deposits for March 2008
<b>INDIRECT TAX</b>		
25th March	DVAT Assessee	Electronic return for those who have been prescribed to file monthly returns under DVAT for the month of February 2008.
28th March	DVAT Assessee	Monthly Return of VAT for the month of February 2008
31st March	Service Tax Assesses	In respect of payment received towards the value of taxable services in Quarter ending March 2008 for non corporate assesses
31st March	Service Tax Assesses	In respect of payment received towards the value of taxable services in March for corporate assesses
<b>DIRECT TAX</b>		
31st March	Income Tax Assesses	Issue TDS certificate for tax deduction in previous month
7th April	Income Tax Assesses	Deposit of TDS/TCS deducted during the month of March 2008.

# BUSINESS GAGS

## **Everybody, Somebody, Anybody, and Nobody**

*This is the story of four people named Everybody, Somebody, Anybody, and Nobody. There was an important job to be done and Everybody was asked to do it. Anybody could have done it, but Nobody did it. Somebody got angry about that, because it was Everybody's job. Everybody thought Anybody could do it, but Nobody realized that Everybody wouldn't do it. Consequently, it wound up that Nobody told Anybody, so Everybody blamed Somebody.*

## **Drum Up Business**

*Many years ago, a large American shoe company sent two sales representatives out to different parts of the Australian outback to see if they could drum up some business among the Aborigines.*

*Some time later, the company received telegrams from both agents.*

*The first said, "No business here... natives don't wear shoes."*

*The second one said, "Great opportunity here... natives don't wear shoes!"*



*Informed decision-making comes from a long tradition of guessing and then blaming others for inadequate results*

*Scott Adams*

Queries/Feedback/Suggestions on this newsletter may be addressed to:  
Nayyar Maniar & Associates, Chartered Accountants, B-9, LGF, Green Park  
(Main), New Delhi – 110016, India. Ph: + 91-11-46021550-52.

**For past issues of NMA ConneKt, Kindly Visit our Website: [www.nmaconsultants.com](http://www.nmaconsultants.com)**

Disclaimer: The materials contained in this newsletter have been compiled from various sources. This information is for guidance only and should not be regarded as a substitute for appropriate professional advice. Nayyar Maniar & Associates accepts no liability with regard to the information herein or any action that may be taken by readers of this newsletter without any professional advice.