From the Front Page

₹10,600-cr notice: In compliance with laws, will cooperate with ED, says Flipkart

The case of alleged FDI rules violation against Flipkart has been under the ED scanner since 2012, and the agency, as per official sources, has found alleged violations of Fema under various counts, including an instance of transfer and issue of security to a person/entity outside India. The US-based retail giant Walmart Inc had picked a 77% stake in Flipkart for $16 billion in 2018. Its founders and many of its investors had taken a partial or complete exit at that time. Sachin Bansal had exited from Flipkart, selling his about a 5.5% stake.

Last month, Flipkart Group had announced raising $3.6 billion (about ₹26,805.6 crore) in funding led by GIC, Canada Pension Plan Investment Board (CPP Investments), SoftBank Vision Fund 2 and Walmart, valuing the e-commerce giant at $37.6 billion. With this deal, SoftBank re-entered Flipkart's cap table. SoftBank had sold its approximately a 20% share when Walmart bought a stake in Flipkart. Flipkart, which competes with companies including Amazon and Reliance JioMart in the Indian e-commerce space, has seen significant growth over the past many years.

Banks see slippages rise in cash collection-driven segments

CSB Bank MD & CEO CVR Rajendran said last month that a fall in the prices of gold led to margin calls and demands for additional money from borrowers. This phenomenon also played a part in the rise in bad loans. Both SBI and CSB Bank said that as lockdowns are lifted, people should be able to travel to bank branches and make good the margin shortfall.

Commercial vehicle loans have also come under pressure in Q1 as lockdowns and mobility restrictions prevented the movement of trucks carrying goods and even three-wheelers used for commutes in smaller towns. Bajaj Finance said in July that the three-wheeler business, which accounts for 30% of the company's ₹11,347-crore auto loan portfolio, was particularly hit in the second wave.

Rajeev Jain, MD, Bajaj Finance, said the reason slippages were under control in Q1FY21 was the loan moratorium. "We do realise and we've said that many times, that's the only business where we fundamentally deal with mass customers. We were far more impacted or they're far more impacted," he said.

The impact of movement restrictions was yet more pronounced in rural markets. Ramesh Iyer, vice-chairman & MD, Mahindra & Mahindra Financial Services, told analysts that rural prosperity hinges on the movement of goods and that took a hit during the second wave. "The other sentiment that we saw in the rural market that impacted us is this, many of the customers did have money, but were not able to come to pay or we were not able to go and collect," Iyer said.

Since the repayment stress in Q1 was due in large parts to lockdowns, the lifting of restrictions across most states in June had a beneficial impact on most lenders. SBI said that in the last one-and-a-half months, it has been able to pull back ₹4,700 crore of slippages. Most other lenders, too, have reported a recovery in collection efficiencies during June and July. However, the outlook for retail asset quality remains uncertain. Most banks and non-bank lenders expect its trajectory to depend on the likelihood of a third wave of the pandemic breaking out.

Other major cases

ITC
SC rules in the firm's favour in a ₹803-cr excise duty case in 2004; Govt refuses to oblige, issues an ordinance to change law retrospectively; settlement cost the firm ₹350-crore.

Sanofi-Shantha Biotech
French firm bought Indian company via takeover of owner ShanH in 2009; I-T raises tax demand; Hyderabad HC in 2014 rules against govt.

Aditya Birla Nuvo
For purchase of Idea stake from AT&T, Indian firm asked to pay tax as AT&T refused; demand raised on Tata's purchase of AT&T holding in Idea also.

SABMiller-Foster deal
Tax demand on transfer of IPR assets of Foster; Delhi HC rules no tax liability in India

Vedanta
Its $981 mn takeover of Sesa Goa through arms abroad

GE-Genpact
American firm sells 60% in Genpact to two PE firms via foreign entities

Govt does sudden U-turn, buries retrospective tax

In all, 17 cases of such retrospective taxation have been pursued by the Indian taxman while the assessment process is on in relation to another two; the modest success on the revenue front has been more than offset by the loss of reputation as a predictable tax dispensation.

Finance secretary TV Somanathan told *FE*: "The move is part of the overall strategy of boosting the country's future rate of growth and reaching our goal of a $5-trillion economy. This (amendment) is to make India an even more attractive destination for investment, both domestic and foreign, as we have a predictable and low-rate tax regime for corporates." Somanathan said: "We are consistent with earlier position — we have the sovereign right to tax and we preserve that right. We don't we accept that the sovereign right of Parliament is being arbitrated in foreign courts. Yet, we won't enforce tax demands based on retrospective change and amount collected to be refunded without interest."

Revenue secretary Tarun Bajaj said: "Companies (affected by retrospective tax law) should also be reaching out to us, and try to work out solutions."

Calling the government's latest move a welcome step, noted tax expert Mukesh Butani said: "The bill essentially proposes to set May 28, 2012 (the date when Finance Bill of 2012 was passed by the Parliament approving the retrospective amendment) as the date and tax demands raised prior to that date will stand nullified, subject to conditions such as withdrawal of pending litigation etc." The outcome of this is that Cairn Energy case which was reopened using the retrospective amendment and the reassessment proceedings would stand nullified.

"The second part deals with a situation where as a result of the retrospective law, a demand has created due to application of law as a result of which its tax refund situation has been impacted and the third deals with situations where a demand has arisen on account of withholding tax obligation thrust on the payer of such consideration. The amendments also deals with situations where penalty proceedings have been initiated and they would stand nullified even in situations where demand has been raised," Butani explained.

Besides, the Bill seeks to ward of any risk posed to taxpayers due to public interest litigation against the government. The situations covered include appeals before the high court, Supreme Court and foreign arbitral award. The bill provides that the validation clause insofar as the recovery of demand is concerned will cease to apply.

In the Cairn Energy case, even before the arbitral award was pronounced by the Permanent Court of Arbitration at The Hague, India had seized and sold shares of Cairn in its erstwhile India unit, confiscated dividends and withheld tax refunds totalling ₹7,600 crore. The Hague court asked the government to compensate Cairn "for the total harm suffered" together with interest and cost of arbitration.

In its order in the Cairn case, three-member tribunal, including India's nominee J Christopher Thomas QC, said the retrospective tax demand was "in breach of the guarantee of fair and equitable treatment". Affirming its jurisdiction over the case, the tribunal said the Cairn case was not just a tax-related, but an investment-related dispute. The India government's contention was that tax orders, including those under retrospective laws, cannot be arbitrated under bilateral investment treaties (BITs). Affirming this stance, the government brought in a new model BIT in 2016, explicitly excluding tax matters from its purview.

On its part, Cairn has been trying to recover the sums by attaching and monetising Indian assets overseas – of late, to New Delhi's embarrassment, it secured a French court order to seize about 20 Indian government properties worth ₹177 crore in Paris. The government recently said it had roped in an international law firm to handle the enforcement proceedings. An unsuccessful attempt was earlier made by the government to settle the Cairn dispute under Vivad se Vishwas, under which the company was required to pay around half the amount due sans interest and penalties.

Cairn tax dispute pertains to the instance where as part of an internal rearrangement through a firm in European tax haven of Jersey, Cairn UK transferred shares of Cairn India Holdings to Cairn India.