BUDGET 2022

A.C. Bhuteria & Co.

CHARTERED ACCOUNTANTS

A. DIRECT TAX PROPOSALS

I. RATES OF INCOME TAX

1. Income Tax Rates Option – A (no change in existing tax structure)

The existing tax structure can be summarized as follows:

I. Individual and HUF –

Total Income	Tax Rate
Upto Rs. 2,50,000	NIL
Rs. 2,50,001 to 5,00,000	5 per cent
Rs. 5,00,001 to 7,50,000	10 per cent
Rs. 7,50,001 to 10,00,000	15 per cent
Rs. 10,00,001 to 12,50,000	20 per cent
Rs. 12,50,001 to 15,00,000	25 per cent
Above 15,00,000	30 per cent

- Surcharge: The amount of income tax as computed above, shall be increased by –
  - Surcharge @ 10% of such Income-tax if total income > Rs. 50 lakhs < Rs. 1 Crore
  - Surcharge @ 15% of such Income-tax if total income > Rs. 1 Crore < Rs. 2 Crores
  - Surcharge @ 25% of such Income-tax if total income (excluding the income by way of dividend or income under the provisions of section 111A and 112A) > Rs. 2 Crore < Rs. 5 Crores
  - Surcharge @ 30% of such Income-tax if total income (excluding the income by way of dividend or income under the provisions of section 111A and 112A) > Rs. 5 Crores
  - Surcharge @ 15% of such Income-tax if total income (including the income by way of dividend or income under the provisions of section 111A and 112A and not covered in the above two surcharge rates) > Rs. 2 Crore

Comments:

- *The same remains unchanged for AY 2022-23.*

II. **Co-operative Society:**

  - A co-operative society resident in India, on satisfaction of certain conditions shall have an option to pay tax at 22 per cent for assessment year 2021-22 onwards as per the provisions of Section 115BAD. Surcharge would be at 10% on such tax.

Comments:

- *The same remains unchanged*

III. **Domestic Company:**

  - Concessional Tax Rate – 22 per cent (Section 115BAA)
  - For new Manufacturing domestic companies – 15 per cent (Section 115BAB
  - The tax rate prescribed U/s 115BAA is 22% which shall be further increased by a surcharge of 10%
  - and health and education cess of 4%. Hence, the effective tax rate U/s 115BAA is 25.168%. However, such companies will not be required to pay Minimum Alternate Tax (MAT) U/s 115JB of the Act.

Comments:

- *The same remains unchanged for AY 2022-23.*

2. Income Tax Rates Option – B (no change in existing tax structure)
The existing tax structure can be summarized as follows:

I. **Individual, HUF, AOP, BOI and AJP-**

➢ Other than Senior Citizen and Super Senior Citizen

Total Income	**Tax Rate**
Upto Rs. 2,50,000	NIL
Rs. 2,50,001 to 5,00,000	5 per cent
Rs. 5,00,001 to 10,00,000	20 per cent
Above Rs. 10,00,000	30 per cent

- Senior Citizen (Resident) (60 years or more but below the age of 80 years)

Total Income	Tax Rate
Upto Rs. 3,00,000	NIL
Rs. 3,00,001 to 5,00,000	5 per cent
Rs. 5,00,001 to 10,00,000	20 per cent
Above Rs. 10,00,000	30 per cent

- Super Senior Citizen (Resident) (80 years and above)

Total Income	Tax Rate
Upto Rs. 5,00,000	NIL
Rs. 5,00,001 to 10,00,000	20 per cent
Above Rs. 10,00,000	30per cent

- **Surcharge**: The amount of income tax as computed above, shall be increased by –
  - Surcharge @ 10% of such Income-tax if total income > Rs. 50 lakhs < Rs. 1 Crore
  - Surcharge @ 15% of such Income-tax if total income > Rs. 1 Crore < Rs. 2 Crores
  - Surcharge @ 25% of such Income-tax if total income (excluding the income by way of dividend or income under the provisions of section 111A and 112A) > Rs. 2 Crore < Rs. 5 Crores
  - Surcharge @ 30% of such Income-tax if total income (excluding the income by way of dividend or income under the provisions of section 111A and 112A) > Rs. 5 Crores
  - Surcharge @ 15% of such Income-tax if total income (including the income by way of dividend or income under the provisions of section 111A and 112A and not covered in the above two surcharge rates) > Rs. 2 Crore

- Cess: "Health and Education Cess" is payable at the rate of four percent on the amount of tax computed, inclusive of surcharge (wherever applicable), in all cases. No marginal relief shall be available in respect of such cess.

Comment

- *The tax rate for AY 2022-23 remains same as specified in AY 2021-22.*

II. **Co-operative Societies –**

Total Income	Tax Rate
Upto Rs. 10,000	10 per cent
Rs. 10,001 to 20,000	20 per cent
Above Rs. 20,000	30per cent

- Surcharge: 12 per cent if the total income exceeds Rs. 1 Crore

III. **Firms:** Tax rate 30%, Cess @4%, Surcharge @12% where total income exceeds Rs. 1 Crore

IV. **Local Authorities:** Tax rate 30%, Cess @4%, Surcharge @12% where total income exceeds Rs. 1 Crore

V. **Domestic Company:**

i) where its total turnover or gross receipt in the previous year 2020-21 does not exceed four hundred crore rupees; Tax rate 25 per cent
ii) other than that referred to in item(i); Tax rate 30 percent

- **Surcharge**:

Taxable Income	Surcharge rate
Upto Rs. 1 Crore	NIL
> Rs. 1 Crore < Rs. 10 Crores	7 per cent
Rs. 10 Crores or above	12 per cent

VI. In case of any company other than one mentioned in Point 2.5, the rate of tax are the same as those specified for the FY 2020-21.

VII. **Marginal Relief on Surcharge :**

Marginal relief has also been provided in all cases where surcharge is proposed to be imposed.

3. Rates for deduction of income-tax at source during the financial year 2022-23

I. The rates for deduction of income-tax at source during the FY 2022-23 under the provisions of section 193, 194A, 194B, 194BB, 194D, 194LBA, 194LBB, 194LBC and

195 have been specified in Part II of the First Schedule to the Bill. The rates will remain the same as those specified in Part II of the First Schedule to the Finance Act, 2021, for the purposes of deduction of income-tax at source during the FY 2021-22. For sections specifying the rate of deduction of tax at source, the tax shall continue to be deducted as per the provisions of these sections.

II. The rates for deduction of income-tax at source from "Salaries" or under section 194P of the Act during the FY 2022-23 and also for computation of "advance tax" payable during the said year in the case of all categories of assessee have been specified in Part III of the First Schedule to the Bill. These rates are also applicable for charging income-tax during the FY 2022-23 on current incomes in cases where accelerated assessments have to be made, for instance, provisional assessment of shipping profits arising in India to non-residents, assessment of persons leaving India for good during the financial year, assessment of persons who are likely to transfer property to avoid tax, assessment of bodies formed for a short duration, etc. There is no change in the tax rates from last year.

III. For two newly inserted provisions 115BBH and 115BBI tax rate is provided in the respective sections and surcharge shall be levied based on status of the taxpayer as is otherwise applicable to such taxpayer.

II. PROMOTING VOLUNTARY TAX COMPLIANCE AND REDUCING LITIGATION

4. Provisions for filing of updated return

Section 139 of the Act casts responsibility on the taxpayer to furnish a return within a definite time period along with provision for filing revised returns and belated returns as under

Section	Particulars	Due Date for return filing
139(1)	Assessee liable to audit under the Income Tax Act or any other law for the time being in force	31st day of October of the relevant A.Y.
139(1)	Assessee required to furnish a report under section 92E	30th day of November of the relevant A.Y.
139(1)	Any other assessee	31st day of July of the relevant A.Y.
139(4)	Belated Return	After the expiry of due date and before 3 months prior to the end of the relevant assessment year or before the completion of assessment, whichever

		is earlier
139(5)	Revised Return	Any time before 3 months prior to the end of the relevant assessment year or before the completion of assessment, whichever is earlier

This additional timeline for filing a revised/belated return may not be adequate when we factor in utilization of the more than abundant information and data available coupled with the "nudge approach" that motivates the taxpayer towards the desired objective of voluntary tax compliance, starting with filing of correct tax returns.

Hence, it is proposed that the taxpayers may be given some more time under the Act to file particulars of their income for a previous year in an updated return through insertion of Section 139(8A) and Section 140B.

I. **Insertion of Section 139(8A)**

a) Any person, whether or not he has furnished a return under sub-section (1), (4) or (5) of Section 139, may furnish and updated return of income within twenty-four months from the end of the assessment year in the prescribed form and manner.

b) Section 139(8A) shall not apply, if the updated return –

- is a return of loss, or
- decreases the total tax liability as determined in returns furnished under sub-section (1), (4) or (5) of Section 139, or
- results in refund, or
- increases the refund as determined in returns furnished under sub-section (1), (4) or (5) of Section 139

c) A person shall not be eligible to furnish an updated return under Section 139(8A), if:

- search has been initiated under Section 132 or books of account, other documents or any assets are requisitioned under Section 132A in the case of such person, or
- a survey has been conducted under section 133A, other than sub-section (2A) of that section, in the case such person, or
- a notice has been issued to the effect that any money, bullion, jewellery or valuable article or thing, seized or requisitioned under section 132 or section 22A in the case of any other person belongs to such person, or

- a notice has been issued to the effect that any books of account or documents, seized or requisitioned under section 132 or section 132A in the case of any other person, pertain or pertains to, or any other information contained therein, relate to, such person.

d) This provision is for the assessment year relevant to the previous year in which such search is initiated or survey is conducted or requisition is made and two assessment years preceding such assessment year.

- an updated return has already been furnished by him under the proposed section, or
- any proceeding for assessment or reassessment or recomputation or revision of income under the Act is pending or has been completed for the relevant assessment year in his case, or
- the Assessing Officer has information in respect of such person for the relevant assessment year in his possession under the Prevention of Money Laundering Act, 2002 or the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 or the Prohibition of Benami Property Transactions Act, 1988 or The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 and the same has been communicated to him, prior to the date of his filing of return under the proposed section, or
- information for the relevant assessment has been received under an agreement referred to in sections 90 (Agreement with foreign countries or specified territories) or 90A (Adoption by Central Government of agreements between specified associations for double taxation relief) of the Act in respect of such person and the same has been communicated to him, prior to the date of his filing of return under the proposed section, or
- any prosecution proceedings under Chapter XXII have been initiated for the relevant assessment year in respect of such person, prior to the date of his filing of return under the proposed, or
- he is a person or belongs to a class of persons, as maybe notified by the Board in this regard.

e) A corresponding amendment is also proposed in Section 139(9) to provide that such updated return shall be defective unless accompanied by a proof of tax payment as required under the proposed Section 140B.

II. **Insertion of Section 140B**

a) Where no return furnished earlier – where no return has been furnished under sub-section (1), (4) or (5) of Section 139 by the assessee, he shall before

furnishing the return under proposed section 139(8A), be liable to pay tax together with applicable interest, fee for delay in furnishing return or any default or delay in payment of advance tax, along with the payment of additional tax. The tax payable shall be computed after considering any advance tax paid, any tax deducted or collected at source, any tax relief claimed under Section 89, any tax relief claimed under Section 90 or 91, any tax relief claimed under Section 90A and any tax credit claimed to be set off in accordance with the provisions of section 115JAA or section 115JD.

Such updated return shall also be accompanied by proof of payment of such tax, additional tax, interest and fee.

b) Where return furnished earlier - where return has been furnished under sub-section (1), (4) or (5) of Section 139 by the assessee, he shall before furnishing the return under proposed section 139(8A), be liable to pay tax together with applicable interest, fee for delay in furnishing return or any default or delay in payment of advance tax, along with the payment of additional tax, as reduced by the amount of interest paid under the provisions of the Act in the earlier return. The tax payable shall be computed after considering the following –

- any tax paid under Section 140A for which credit has been taken in the earlier return,
- any tax deducted or collected at source on any income which is subject to such deduction or collection and which is taken into account in computing total income and which has not been claimed in the earlier return,
- any tax relief claimed under Section 90 or 91 on such income which has not been claimed in the earlier return,
- any tax relief claimed under Section 90A on such income which has not been claimed in the earlier return
- and any tax credit claimed to be set off in accordance with the provisions of section 115JAA or section 115JD, which has not been claimed in the earlier return.

  The aforesaid tax shall be increased by the amount of refund, if any, issued in respect of such earlier return. Such updated return shall also be accompanied by proof of payment of such tax, additional tax, interest and fee.

c) The additional tax payable at the time of furnishing the return under proposed Section 139(8A) shall be –

- Twenty-five percent of aggregate tax and interest payable as determined in clauses (i) and (ii) above : In case such return is furnished after expiry of time available under sub-section (4) or (5) of Section 139 and before

completion of period of twelve months from the end of the relevant assessment year.

- Fifty percent of aggregate tax and interest payable as determined in clauses (i) and (ii) above : In case such return is furnished after expiry of twelve months but before completion of twenty four months, from the end of the relevant assessment year.

  It is also clarified that for the purposes of computation of "additional income-tax", tax shall include surcharge and cess, by whatever name called, on such tax.

d) Interest under Section 234B – Interest under said section shall be computed on the amount equal to the assessed tax or, as the case may be, on the amount by which advance tax paid falls short of the assessed tax. Assessed tax means tax on total income as declared in return to be furnished under proposed Section 139(8A) after considering the following

- any tax paid under Section 140A for which credit has been taken in the earlier return,
- any tax deducted or collected at source on any income which is subject to such deduction or collection, and which is taken into account in computing total income and which has not been claimed in the earlier return,
- any tax relief claimed under Section 90 or 91 on such income which has not been claimed in the earlier return,
- any tax relief claimed under Section 90A on such income which has not been claimed in the earlier return
- and any tax credit claimed to be set off in accordance with the provisions of section 115JAA or section 115JD, which has not been claimed in the earlier return.
- The aforesaid tax shall be increased by the amount of refund, if any, issued in respect of such earlier return.

e) Interest under Section 234A and 234C –

- In case no return furnished earlier: Interest payable under Sections 234A and 234C shall be calculated on the amount of tax on the total income as declared in the return under proposed Section 139(8A)
- In case return furnished earlier: Interest payable under Sections 234A and 234C shall be calculated on the amount of tax on the total income as declared in the return under proposed Section 139(8A), as reduced by the interest paid in the earlier return, if any.

f) In view of the proposed Sections 139(8A) and 140B, consequential amendments in Section 144, Section 153, Section 234A, Section 234B and Section 276CC have also been made.

g) These amendments will take effect from 1st April, 2022

Comments:

- *The amendment seeks to encourage voluntary tax compliance by the taxpayers, promote a litigation-free environment and enhance the revenue realization in the hands of the Income Tax Department.*

- *This extended timeline for voluntary tax compliance upto two years will involve payment of additional tax of twenty-five percent and fifty percent, as the case may be, including any surcharge and cess on such tax, in addition to the tax and interest payable on the additional income being disclosed under the proposed Section 139(8A).*

- *It is like an inbuilt settlement mechanism and a welcome move in the direction and provides the taxpayer an extended opportunity to stay tax compliant.*

- *It seems that once a return is filed all the other provisions of the act relating to assessment, reassessment will also apply to this returns.*

5. Litigation management when in an appeal by revenue an identical question of law is pending before jurisdictional High Court or Supreme Court

Section 158AA of the Act provides that where the Commissioner or Principal Commissioner is of the opinion that any question of law arising in the case of an ssesse (relevant case) is identical with a question of law arising in his case for another assessment year (other case) which is pending in appeal before the Supreme Court against an order of High Court which was in favour of ssesse, he may direct the Assessing Officer to make an application to the Appellate Tribunal stating that an appeal on the question of law in the relevant case may be filed when the decision on the question of law becomes final in the other case, subject to the acceptance of the same by the ssesse.

a) Such a principle could be applied to cases where a question of law is common and where a decision of the jurisdictional High Court, on the same question of law is available. The filing of appeal in such cases can be avoided to reduce the amount of litigation.

b) To provide a procedure when an appeal by revenue is pending on an identical question of law, it is proposed to insert a new section 158AB in the Act, to provide that where the collegium is of the opinion that any question of law arising in the case of an ssesse for any assessment year ("relevant case") is identical with a question of law already raised in

his case or in the case of any other ssesse for an assessment year, which is pending before the jurisdictional High Court under section 260A or the Supreme Court in an appeal under section 261 or in a special leave petition under article 136 of the Constitution, against the order of the Appellate Tribunal or the jurisdictional High Court, as the case may be, in favour of such ssesse ("other case"), it may, decide and intimate the Commissioner or Principal Commissioner not to file any appeal, at this stage, to the Appellate Tribunal under sub-section of section 253 or to the High Court under sub-section (2) of section 260A against the order of the Commissioner (appeals) or the Appellate Tribunal, as the case may be.

c) Further, the Commissioner or Principal Commissioner shall, on receipt of a communication from the collegium, direct the Assessing Officer to make an application to the Appellate Tribunal or jurisdictional High Court, as the case may be, in the prescribed form within sixty days from the date of receipt of the order of the Commissioner (Appeals) or within one hundred and twenty days from the date of receipt of the order of the Appellate Tribunal, as the case may be, stating that an appeal on the question of law arising in the relevant case may be filed when the decision on the question of law becomes final in the other case. The Commissioner or Principal Commissioner shall direct the Assessing Officer to make such an application only if an acceptance is received from the ssesse to the effect that the question of law in the other case is identical to that arising in the relevant case, and in case no such acceptance is received, the Commissioner or Principal Commissioner shall proceed in accordance with the provisions contained in sub-section (2) of section 253 or in sub-section (2) of section 260A.

d) Furthermore, where the order of the Commissioner (Appeals) or the order of the Appellate Tribunal, as the case may be, in the relevant case is not in conformity with the final decision on the question of law in the other case as and when such order is received, the Commissioner or Principal Commissioner may direct the Assessing Officer to appeal to the Appellate Tribunal or the jurisdictional High Court, as the case may be, against such order.

e) It is also proposed that for the purposes of the proposed section, "collegium" shall comprise of two or more Chief Commissioners or Principal Commissioners or Commissioners of Income-tax, as specified by the Board in this regard.

f) With the introduction of section 158AB, a sunset clause is proposed to be inserted in sub-section (1) of section 158AA to provide that no direction shall be given under the said sub-section on or after 1st April, 2022.

g) This amendment will take effect from 1st April, 2022.

Comments:

- *With a view to reduce the number of litigations and the cost of the same, the finance minister has proposed the aforesaid mechanism. This is a welcome amendment as it saves the taxpayers their time, litigation cost as well as related interest costs for pending assessments.*

6. Amendment in section 245MA of the Act related to Dispute Resolution Committee

a) Finance Act, 2021 introduced a new chapter XIX-AA in the Act consisting of section 245MA for constituting Dispute Resolution Committee ("DRC") for specified persons who may opt for dispute resolution under the said section and who fulfil specified conditions mentioned in the said section.

b) After the resolution of the dispute by the DRC the assessed income of the person who had applied to DRC has to be determined, which will be followed by, inter alia, initiation of penalty proceedings, if any and issuance of demand notice under section 156 of the Act. However, the existing provisions of the said section do not contain any provision which will enable the Assessing Officer to pass an order giving effect to the order or directions of the Dispute Resolution Committee under the said Section.

c) It is proposed to insert a new sub-section (2A) in the said section to provide that notwithstanding anything contained in section 144C, upon receipt of order of the Dispute Resolution Committee, the Assessing Officer shall in a case where the specified order is a draft of the proposed order of assessment under sub-section (1) of section 144C, pass an order of assessment, reassessment or recomputation or in any other case, modify the order of assessment, reassessment or recomputation, which shall be passed in conformity with the directions contained in such order of the Dispute Resolution Committee, within a period of one month from the end of the month in which such order is received.

d) This amendment will take effect from 1st April, 2022.

7. Non-allowability of deduction of Health and Education Cess

a) Section 40 of the Act specifies the amounts which shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession". Sub-clause section 40(ii)(a) of the Act provides that any sum paid on account of any rate or tax levied on the profits or gains of any business or profession shall not be deducted in computing business income.

b) However, it was noticed that certain taxpayers are claiming deduction of 'cess' or 'surcharge' under section 40 of the Act with the reason that 'cess' has not been specifically mentioned in the aforesaid provisions of section 40(a)(ii) and thus, was

allowable. This view has been upheld by various Courts. Further, the Courts are also relying upon the CBDT Circular No. 91/58/66-ITJ(19) dated 18-05-1967.

c) Therefore, in order to make the intention of the legislation clear, and to leave no scope for misinterpretation, it is proposed to include an Explanation retrospectively in the Act to clarify that for the purposes of section 40(a)(ii), the term "tax" includes and shall be deemed to have always included any surcharge or cess, by whatever name called, on such tax. Amendment is made retrospectively to make clear the position irrespective of the circular of the CBDT.

d) This amendment will take effect retrospectively from 1st April, 2005 and will accordingly apply in relation to the assessment year 2005-06 and subsequent assessment years.

Comments:

- *It seems that the proposed amendment is a fallout of the recent decision of the Calcutta Tribunal in the case of M/s. Kanoria Chemicals & Industries Ltd ITA No. 2184/Kol/2018 which followed the decisions of the Hon'ble Supreme Court in the case of CIT vs. K. Srinivasan reported in 83 ITR 346.*

- *Since the amendment has a retrospective effect from A.Y. 2005-06 questions arises whether these can lead to reopening or can even be a subject matter of rectification due to retrospective change in law.*

- *Another pertinent question which arises would be the liability to pay interest under the provision of Section 234A, 234B and 234C on pending assessment or in the event of reopening or rectification is resorted to by the department.*

- *The Hon'ble Gujarat High Court in CIT vs. National Diary Development Board reported in 83 taxmann.com 109 and Hon'ble Calcutta High Court in the case of Emami Ltd vs. CIT reported in 12 taxmann.com 64 has held that the assessee cannot be fastened upon interest liability for retrospective amendment in law.*

- *The Hon'ble Supreme Court in J. M. Bhatia's case reported in 1986 AIR 268 and in case of M.K. Venkatachalaivi reported in 1958 AIR 875 has held that retrospective amendment of law does not lead to a debatable issue and can be a subject matter of rectification.*

- *Here it is pertinent to point out that in the context of section 14A which was amended by the Finance Act, 2001 with retrospective effect from 01.04.1962. The proviso to section 14A clearly provided that the Assessing Officer shall not be empowered to initiate reassessment u/s 147 or rectification u/s 154 on or before 01.04.2001.There is no similar provision proposed in this amendment.*

8. Amendments related to successor entity subsequent to business reorganization

Income Tax Proceedings shall be valid even after Completion of Business Reorganization Process, Entities shall file Modified Returns

a) The Finance Bill, 2022 has incorporated some new provisions in order to regulate the assessment proceedings and the procedure of taxation in case of succession to business in the event of reorganization or restructuring of the business.

b) Section 170 provides for assessment in cases of succession otherwise than by death. However, in case of reorganization, once an entity starts the process by filing an application with the adjudicating authority or any High Court, the period of time involved in coming to a conclusion with respect to such reorganization is found to be a long-drawn process and is not time-bound. Also, the reorganization is often from a preceding date.

c) During the pendency of the court proceedings, the income tax proceedings are carried on and often completed in the name of the predecessor entities only. Courts have held such proceedings and consequent assessments illegal and invalid.

d) To address this issue of illegality of proceedings on the predecessor entity, it is proposed to insert a sub-section (2A) to Section 170 to provide that assessment or other proceedings pending or completed on predecessor entity in the event of business reorganization shall be deemed to have been made on successor entity, thereby not illegal.

e) Further, due to the indefinite timeline involved in issuing such orders, there is a gap between the effectivity of such order and the date on which such order is issued by the competent authority. This also affects the final accounts of such entities as they are unable to modify their already filed returns in accordance with the reorganization. Hence, in order to remove this anomaly, it is proposed to insert a new section 170A to the Act, to enable the entities going through such business reorganization to file modified returns for the period between the date of effectivity of the order and the date of issuance of final order of the competent authority.

f) Further, it has been noted that in the cases of business reorganization of sick entities, instances have been found where the Court or Tribunal or an Adjudicating Authority, as defined in clause (1) of section (5) of the Insolvency and Bankruptcy Code, 2016, as the case may be, as a part of the restructuring process, modify the demand created vide various proceedings in the past, by the Income Tax department but there is no procedure or mechanism provided in the Act to reduce such demands from the outstanding demand register, hence, it is proposed to insert new section 156A to the

Act to give effect to the orders of the competent authority and to modify such demands in accordance with such directions.

g) These amendments will take effect from 1st April, 2022 and will accordingly apply to the assessment year 2022-23 and subsequent assessment years

Comments:

- *The Hon'ble Supreme Court in case of Saraswati Industrial Syndicate reported in 1991 AIR 70 has held that on amalgamation the transferor company loses its identity. There are various judicial decisions including that of Supreme Court in case of BMA Capfin Ltd reported in 100 taxmann.com 330 and in Maruti Suzuki case, Delhi High Court in case of Spice Infotainment Ltd reported in ITA 475 of 2011 and Calcutta High Court in case of I.K. Agencies have held that it is a trite law that on amalgamation the amalgamating company ceases to exist in the eyes of law and notices/order on non-existent company is invalid and such order/notices are liable to be quashed.*

- *By the insertion of new sub-section (2A) to 170A, all the proceedings and assessments made on the predecessor entities by the Income Tax Department during the period of time from which application to the competent court for business reorganization has been made till the final order of the court is passed shall be deemed to be have made on the successor entities.*

- *However it seems the proposed amendment does not seek to nullify the current judicial position. Thus order passed in the name of transferor companies will continue to be void.*

- *The proposed amendment directing the Assessing Officer to reduce the demand from their records pursuant to NCLT order for CIRP cases is a very welcome move.*

- *The Hon'ble Supreme Court in Dalmia Bharat's case permitted the transferee company to file the revise return from the appointed date even though the time specified u/s 139 to file revise/belated return had expired in view of express provision contained in the scheme which was sanctioned by the Hon'ble High court. The proposed amendment allowing the transferee company to file revised return is in the line with the judgment of the Hon'ble Supreme Court.*

9. Disallowance under Section 14A in absence of any exempt income during an Assessment Year

a) The existing provisions of Section 14A provides that no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act.

b) Disputes regarding whether disallowance can be made in cases where no exempt income has accrued, arisen or received by the assessee during an assessment year. To settle the same, CBDT issued Circular No. 5/2014, dated 11/02/2014 clarifying that Rule 8D read with section 14A of the Act provides for disallowance of the expenditure even where taxpayer in a particular year has not earned any exempt income. However, some courts were of the view that if there is no exempt income during a year, no disallowance under Section 14A can be made for that year.[1]

c) Such judicial interpretations were contrary to the intention of the legislature because it was leading to allowance of deduction for expenditure relating to exempt income solely on the basis of such exempt income not being accrued/received during the same year.

d) To reinforce the intent behind the legislation, it is proposed to insert an Explanation to Section 14A of the Act to clarify that notwithstanding anything to the contrary contained in the Act, the provisions of the said Section shall apply and shall be deemed to have always applied in a case where exempt income has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such exempt income.

This amendment will take effect from 1st April, 2022.

Comments:

- *It seems that the proposed amendment is fallout of decisions of various High Courts namely Hon'ble Madras High Court decision in the case of CIT vs. Chettinad Logistics Pvt Ltd reported in T.C.A.No.24 of 2017 and Calcutta High Court decision in CIT vs. Ashika Global Securities Ltd reported in ITAT 100 of 2014 which has held that in case there is no exempt income 14A shall have no application.*

- *However even after the proposed amendment it is felt that the Assessing Officer will not be able to resort to Rule 8D unless consequential amendments are made.*

- *It further seeks to clarify the true intent of the legislation and unsettle the legal position in this regard by elucidating that disallowance under this Section shall be attracted even if such exempt income may not have been accrued or arisen or received during the previous year in which the related expenditure has been incurred.*

[1] ITA No. 2924/Mum./2019, ITA No. 2924/Mum./2019, ITA No. 346 to 379/NAG/2014

10. Clarifications on allowability of expenditure under section 37

No deduction or allowance shall be made in respect of expenditure incurred for the purpose which is an offence or prohibited by law

a) Section 37 of the Act provides for allowability of revenue and non-personal expenditure (other than those failing under sections 30 to 36) laid out or expended wholly and exclusively for the purposes of business or profession. Explanation 1 of sub-section (1) of section 37 of the Act provides that if any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure.

b) However, it is seen that certain taxpayers are claiming deductions on expenditure incurred in offering certain benefits or perquisite to a person which are not intended to be allowed under this section, like meeting his expenditure related to travel, hospitality, conference etc. In these cases acceptance of such benefit or perquisite by such person is in violation of a law or rule or regulation or guidelines.

c) CBDT, vide circular No. 5/2012 dated 1.8.2012, clarified the claim of any expense incurred in providing benefits such as Gift, Travel facility, Hospitality, Cash or monetary grant by the pharmaceutical and allied health sector Industries to medical practitioners and their professional associations in violation of the provisions of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 shall be inadmissible under section subsection (1) of section 37 of Act being an expense prohibited by the law.

d) Further, some taxpayers are seen to be claiming deduction on expenses incurred for a purpose which is an offence under foreign law or for compounding of an offence for violation of foreign law, claiming that provisions of Explanation 1 to subsection (1) of section 37 of the Act applies only to offences which are prohibited by the domestic law of the country.

e) In order to make the intention of the legislation clear and to make it free from any misinterpretation, it is proposed to insert another Explanation to sub-section (1) of section 37 to further clarify that the expression “expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law”, under Explanation 1, shall include and shall be deemed to have always included the expenditure incurred by an assessee, —

- for any purpose which is an offence under, or which is prohibited by, any law for the time being in force, in India or outside India; or

- to provide any benefit or perquisite, in whatever form, to a person, whether or not carrying on a business or exercising a profession, and acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guidelines, as the case may be, for the time being in force, governing the conduct of such person; or
- to compound an offence under any law for the time being in force, in India or outside India.

***Comments*:**

- *Consequential to the proposed amendment, it has been made clear that any expenditure incurred by the assessee for any purpose which is in violation or which is prohibited by any law, whether, Indian or Foreign, shall not be allowed as deduction under section 37.*
- *Further payment of compounding fees in respect of compounding of an offence under any law for the time being in force, whether, in India or outside India shall also not be allowable as deduction.*

11. Clarification regarding deduction on payment of interest only on actual payment

a) Section 43B of the Act provides for certain deductions to be allowed only on actual payment. Explanation 3C, 3CA and 3D of this section provides that a deduction of any sum, being interest payable on loan or borrowing from specified financial institution/NBFC/scheduled bank or a co-operative bank under clause (d), clause (da), and clause (e) of this section respectively, shall be allowed if such interest has been actually paid. However, interest referred to in these clauses which has been converted into a loan or borrowing or advance shall not be allowed as deduction.

b) However, in certain cases taxpayers have claimed deduction in respect of conversion of interest payable to debentures on the ground of constructive discharge of liability and several courts have upheld this view including the Supreme Court in the case of *M.M Aqua Technologies Ltd* .

c) Hence, it is proposed to amend Explanation 3C, Explanation 3CA and Explanation 3D of section 43B to provide that conversion of interest payable under clause (d), clause (da), and clause (e) of section 43B, into debenture or any other instrument by which liability to pay is deferred to a future date, shall not be deemed to have been actually paid.

d) These amendments will take effect from 1st April, 2023 and will, accordingly, apply in relation to the assessment year 2023-2024 and subsequent assessment years.

Comments:

- *The Hon'ble Supreme Court in a very recent decision in M.M Aqua Technologies case reported in Civil Appeal Nos.4742-4743 of 2021 has held that conversion of interest on borrowing to Debentures is not covered within section 43B as it talks of conversion of interest on loan or borrowing. To nullify the effect of this judgment amendment has been proposed*
- *Hence, interest on borrowings as referred above can be claimed as deduction by the taxpayers only when it is actually paid, which is the intent of the law.*

12. Computation of interest in case of failure to deduct/collect or payment of tax

a) Section 201 and 206C of the Act provides for payment of interest if a person, principal officer or company does not deduct/collect the whole or any part of the tax or after deducting or collecting fails to pay the tax as required by or under this Act at the rate as specified in the Act.

b) It is proposed to insert a new proviso to the said sub-section to provide that where an order is made by the Assessing Officer for the default referred to in sub-section (1), the interest shall be paid by the person in accordance with such order.

c) This amendment will take effect from 1st April, 2022.

Comments:

- *It had been observed that computation of interest under section 201 and 206C is matter of frequent litigation. Hence, to make it free form misinterpretation this amendment is being proposed.*

III. <u>SOCIO-ECONOMIC WELFARE MEASURES</u>

13. Extension of the last date for commencement of manufacturing or production, under section 115BAB, from 31.03.2023 to 31.03.2024

a) Section 115BAB of the Income-tax Act provides for an option of concessional rate of taxation @ 15 % for new domestic manufacturing companies provided that they do not avail of any specified incentives or deductions and fulfil certain other conditions.

b) Sub-section (2) of section 115BAB of the Act contains the conditions required to be fulfilled by such companies. Clause (a) of said sub-section (2) provides that the new domestic manufacturing company is required to be set up and registered on or after

01.10.2019, and is required to commence manufacturing or production of an article or thing on or before 31st March, 2023.

c) The intent of the introduction of section 115BAB was to attract investment, create jobs and trigger overall economic growth. However, the cumulative impact of the persistence of the COVID-19 pandemic has resulted in some delay in setting up/registration of new domestic companies and the commencement of manufacturing or production by such companies, if they have been set up and registered.

d) In order to provide relief to such companies, it is proposed to amend section 115BAB so as to extend the date of commencement of manufacturing or production of an article or thing, from 31st March, 2023 to 31st March, 2024.

e) This amendment will take effect from 1st April, 2022 and will accordingly apply in relation to the assessment year 2022-23 and subsequent assessment years.

Comments:

- *To establish a globally competitive business environment and for the overall economic growth, the government introduced a concessional tax regime of 15 percent for newly incorporated domestic manufacturing companies to establish a globally competitive business environment. This was an option available to companies which were set up on or after 1st Oct, 2019 and commenced manufacturing or production on or before 31st March, 2023. The period for commencing manufacturing and production operations by such companies has been extended by 1 year, i.e till 31st March, 2024, considering the negative impact of COVID-19 pandemic which created a constraint for businesses to commence their operations. Such lowering of tax rates will enable co-operative societies to enhance their income.*

- *The extension of concessional rate by one year to manufacturing companies is in line government PLI schemes to promote investment under PLI schemes.*

- *This relief is available to companies that do not avail any specified incentives or deductions and fulfil certain other conditions.*

14. Extension of date of incorporation for eligible start up for exemption

a) The existing provisions of the section 80-IAC of the Act *inter alia*, provide for a deduction of an amount equal to one hundred percent of the profits and gains derived from an eligible business by an eligible start-up for three consecutive assessment years out of ten years, beginning from the year of incorporation, at the option of the assesses subject to the condition that,-

- the total turnover of its business does not exceed one hundred crore rupees,

- it is holding a certificate of eligible business from the Inter-Ministerial Board of Certification, and
- it is incorporated on or after 1st day of April, 2016 but before 1st day of April 2022.

b) Due to COVID pandemic there have been delays in setting up of such units. In order to factor in such delays and promote such eligible start-ups, it is proposed to amend the provisions of section 80-IAC of the Act to extend the period of incorporation of eligible start-ups to 31st March, 2023.

c) This amendment will take effect from 1st April, 2022 and will accordingly apply in relation to the assessment year 2022-23 and subsequent assessment years.

Comments:

- *Section 80-IAC is sought to multiple the major economic growth brought by start-ups by providing the eligible start-ups with hundred percent of profits and gains from eligible businesses as deduction for three consecutive years out of the initial ten years from the date of incorporation of the start-up.*

- *In view of the COVID-19 pandemic, the date of incorporation for eligible start-ups to claim the deduction has been extended so as to include startups being incorporated before 31st March, 2023 instead of 1st April, 2022.*

- *The section uses the phrase "eligible business" but the same has not been defined. It is proposed that the section should include the explanation of the phrase so as to avoid a general statement which might call for confusion or contradictory statements*.

15. Rationalization of provisions of the Act to promote the growth of co-operative societies

a) Section 115JC of the Act, inter alia, provides for the alternate minimum tax (AMT) payable by co-operative societies, which is at the rate of 18.5%. However, vide the Taxation Laws (Amendment) Act, 2019, the Minimum Alternate Tax (MAT) rate for companies has been reduced to 15%. Therefore, in order to provide parity between co-operative societies and companies, it is proposed to modify sub-section (4) of section 115JC to reduce the AMT rate at which co-operative societies are liable to pay income-tax to 15%. Consequential amendment is also proposed in clause (b) of section 115JF in relation to the definition of "alternate minimum tax".

b) These amendments will take effect from 1st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

Comments:

- *The Minimum Alternate Tax (MAT) rate for cooperative societies has been reduced from 18.5% to 15% with effect from 1st April, 2023 in order to provide parity between co-operative societies and companies*

16. Tax Incentives to International Financial Services Centre (IFSC)

a) Section 10(4E) provides that any income accrued or arisen to, or received by a non-resident as a result of the transfer of non deliverable forward contracts shall be exempt from tax. However, such non-deliverable forward contracts shall be entered into with an offshore banking unit of IFSC which commenced operations on or before the 31st March, 2024 and fulfils prescribed conditions. This section has been proposed to be amended and the exemption is proposed to be extended to income accrued or arisen to or received by a non-resident as a result of transfer of offshore derivative instruments or over-the-counter derivatives entered into with an Offshore Banking Unit of an International Financial Services Centre.

b) Section 10(4F) provides that royalty income of a non-resident on account of leasing of aircraft in a previous year to an IFSC unit shall be exempt from tax if such unit is eligible for deduction under section 80LA in that year and has commenced its operations on or before the 31st March 2024

- Clause 10F of Section 10 has been amended and with aircrafts 'ship' have also been added in the provision.
- Ship- means a ship or an ocean vessel, an engine of a ship or an ocean vessel, or any part thereof.

c) Clause 4G is proposed to be added in section 10 to provide exemption to any income received by a non-resident from portfolio of securities or financial products or funds, managed or administered by any portfolio manager on behalf of such non-resident, in an account maintained with an Offshore Banking Unit, in any International Financial Services Centre, referred to in sub- section (1A) of section 80LA, to the extent such income accrues or arises outside India and is not deemed to accrue or arise in India.

i. "Portfolio manager" means a person, who pursuant to a contract with a client, advises or directs or undertakes on behalf of the client the management or administration of a portfolio of securities or financial products or funds of the client.

d) Clause (viib) of section 56 is amended to include Category I and Category II of alternative investment fund.

i. Category I: Mainly invests in start- ups, SME's or any other sector which Govt.

considers economically and socially viable.

ii. Category II: These include Alternative Investment Funds such as private equity funds or debt funds for which no specific incentives or concessions are given by the government or any other regulator.

e) Clause (d) of sub-section (2) of section 80LA is being amended to include income arising from transfer of an asset being a 'ship' with aircraft.

f) These amendments will take effect from 1st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years

17. Incentives to National Pension System (NPS) subscribers for state government employees

a) Under the existing provisions of the Act, any contribution by the Central Government or any other employer to the account referred to in section 80CCD of the Act (NPS account), shall be allowed as a deduction to the assesses in the computation of his total income, if it does not exceed 14% of his salary where such contribution is made by the Central Government.

b) This limit was 10% of salary for the contribution by any other employer.

c) In order to ensure that the State Government employees also enjoy the same 14% of salary as deduction, it is proposed to increase the limit of deduction from 10% to 14% for contribution made by State Government for its employees.

d) This amendment will take effect retrospectively from 1st April, 2020 and will accordingly apply in relation to the assessment year 2020-21 and subsequent assessment years; so as to ensure no additional tax liability arises on any contribution made in excess of 10% during such time.

Comments:

- *This amendment has been proposed so that the state government employees also enjoy same benefit as Central Government employees.*

18. Condition of releasing of annuity to a disabled person

a) The existing provision of section 80DD, provide for a deduction to an individual or HUF, who is a resident in India, in respect of

- *expenditure* for the medical treatment (including nursing), training and *rehabilitation* of a dependant, being a person with disability; or

- *amount* paid to LIC or any other insurer or administrator or specified company in respect of a scheme for the maintenance of a disabled dependant.

b) Sub-section (2) of this section provides that the deduction shall be allowed only if the payment of annuity or lump sum amount is made to the benefit of the dependant, in the event of the death of the individual or the member of the HUF in whose name subscription to the scheme has been made.

c) Sub-section (3) of this section provides that if the dependant with disability, predeceases the individual or the member of the HUF, the amount deposited in such scheme shall be deemed to be the income of the assessee of the previous year in which such amount is received by the assessee and shall accordingly be chargeable to tax as the income of that previous year.

d) In the Writ Petition No. 1107, the court observed that there could be harsh cases where handicapped dependants may need payment of annuity or lump sum basis even during lifetime of their parents/guardians.

- Therefore, in order to remove this genuine hardship, it is proposed to allow the deduction under the said section also during the lifetime.

e) It is proposed that the provisions of sub-section (3) shall not apply to the amount received by the dependant, before his death, by way of annuity or lump sum.

f) This amendment will take effect from 1st April, 2023 and will accordingly apply in relation to the Assessment Year 2023-24 and subsequent assessment years.

Comments:

- *This amendment has been proposed so that some handicapped dependants who require payments for lifetime can be free from the hardships.*

19. Exemption of amount received for medical treatment and on account of death due to COVID-19

a) Clause (x) of sub-section (2) of section 56 of the Act, provides that where any person receives, in any previous year, from any person or persons any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum shall be the income of the person receiving such sum.

b) Clause (2) of section 17 of the Act, provides the definition of perquisite but a new subclause is proposed to be inserted wherein any sum received by the employer in

respect of any expenditure incurred by the employee on his medical treatment or treatment of his family member of any illness relating to COVID-19 shall not form part of perquisite.

c) It is also proposed to amend the proviso to clause(x) of sub-section (2) of section 56 and insert two new clauses.

- Any sum of money received by an individual, from any person, in respect of any employer in respect of any expenditure incurred by the employee on his medical treatment or treatment of his family member of any illness relating to COVID-19 shall not be the income of such person.

- Any sum of money received by a member of the family of a deceased person, from the employer of the deceased person (without limit), or from any other person or persons to the extent that such sum or aggregate of such sums does not exceed ten lakh rupees, where the cause of death of such person is illness relating to COVID-19 and the payment is, received within twelve months from the date of death of such person shall not be the income of such person.

d) These amendments will take effect retrospectively from 1st April, 2020 and will accordingly apply in relation to the assessment year 2020-21 and subsequent assessment years

20. Facilitating strategic disinvestment of public sector companies

a) Section 79 of the Act provides for carry forward and set-off of losses in case of certain companies. Sub-section (1) of the said section, *inter-alia*, provides that where a change in shareholding has taken place during the previous year in the case of a company, not being a company in which the public are substantially interested, no loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year, unless on the last day of the previous year, the shares of the company carrying not less than fifty-one per cent of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than fifty-one per cent of the voting power on the last day of year or years in which the loss was incurred. Sub-section (2) of the said section provides certain circumstances in which the provisions of sub-section (1) shall not apply.

- It order to facilitate the strategic disinvestment of public sector companies, it is proposed to amend section 79 of the Act to provide that the provisions of sub-section (1) of Section 79 shall not apply to an erstwhile public sector company subject to the condition that the ultimate holding company of such erstwhile public sector company, immediately after the completion of strategic disinvestment, continues to

hold, directly or through its subsidiary or subsidiaries, at least fifty one per cent of the voting power of the erstwhile public sector company in aggregate.

- It is further proposed to provide that if the above condition is not complied with in any previous year after the completion of strategic disinvestment, the provisions of sub-section (1) shall apply for such previous year and subsequent previous years.

- The terms "erstwhile public sector company" and "strategic disinvestment" shall have the meaning assigned to in clause (ii) and (iii) of the *Explanation* to clause (d) of sub-section (1) of Section 72A respectively.

b) This amendment will take effect from 1st day April, 2022 and will accordingly apply in relation to the assessment year 2022-23 and subsequent assessment years.

Comments:

- *The proposed amendment has been brought to facilitate the strategic disinvestment of erstwhile public sector companies. This will facilitate carry forward of losses of loss incurring government companies undergoing disinvestment.*

- *As per earlier provisions, in the case of a company, not being a company in which the public are substantially interested (Closely held company-generally a Pvt Ltd Company), no losses incurred in any year can be carried forward if the shareholding and voting power of the company has changed more than 49% from the year in which loss was incurred.*

- *As per the proposed amendment, the above provision shall not apply to erstwhile public companies, if it's ultimate holding company remains so, either directly or through its subsidiaries.*

IV. WIDENING AND DEEPENING OF TAX BASE

21. Rationalization of provisions of section 206AB and 206CCA to widen and deepen tax-base

In order to widen and deepen the tax-base and to nudge taxpayers to furnish their return of income, Finance Act, 2021 inserted sections 206AB and 206CCA in the Act. The said sections provide for special provision for deduction and collection of tax at source respectively, in case of specified persons at higher rates specified therein.

a) "Specified person" has been defined to mean a person who has not filed the returns of income for both the two assessment years relevant to the two previous years

immediately preceding the financial year in which tax is required to be deducted or collected, for which the time limit for filing return of income under sub-section (1) of section 139 has expired; and the aggregate of tax deducted at source and tax collected at source in his case is rupees fifty thousand or more in each of these two previous years. Government has provided online utility to taxpayers to check whether the person is specified person or not.

b) Further, the provisions of section 206AB are not applicable in relation to transactions on which tax is to be deducted under sections 192, 192A, 194B, 194BB, 194LBC or 194N of the Act.

c) In order to ensure that all the persons in whose case significant amount of tax has been deducted do furnish their return of income, it is proposed to reduce two years requirement to one year by amending sections 206AB and 206CCA of the Act to provide that “specified person” to mean as a person who has not filed its return of income for the assessment year relevant to the previous year immediately preceding the financial year in which tax is to be deducted or collected, as the case may be, and the amount of tax collected and deducted at source is Rs. 50,000 or more in the said previous year.

d) However, in order to reduce the additional burden on individual and Hindu undivided family (HUF) taxpayers covered under section 194-IA, 194-IB and 194M of the Act for whom simplified tax deduction system has been provided without requirement of TAN, it is proposed that the provisions of section 206AB will not apply in relation to transactions on which tax is to be deducted under the said sections of the Act.

e) In addition to above, it is also proposed to rectify a drafting error in sections 206AB and 206CCA wherein the terms “deductor” and “collectee” respectively were used incorrectly. Further, since the returns are now being furnished electronically, it is also proposed that in place of ‘filing’ of return, the term ‘furnishing’ of return may be substituted.

f) Further, as a consequential amendment in section 194-IB it is also proposed to omit the reference of section 206AB from sub-section (4) of the said section.

g) These amendments will take effect from 1st April, 2022.

Comments:

– *The above provisions have been brought in order to ensure that all the persons in whose case significant amount of tax has been deducted do furnish their return of*

income. For this, it has been proposed to reduce the two year requirement to one year by amending the definition of 'Specified Person' under sections 206AB and 206CCA.

- *In order to comply with the provisions of this Section, the tax deductor is required to obtain copies of return acknowledgements (ITR-V) for the assessment year immediately prior to the previous year in which tax is required to be deducted to ascertain the applicable rate at which tax will be required to be deducted.*

- *Also, to reduce the burden on Individual and HUF taxpayers required to deduct tax without TAN, under sections 194-IA, 194-IB and 194M of the Act, the provisions of section 206AB will not apply to the said sections.*

- *It is also proposed to rectify a drafting error, wherein the terms "deductor" and "collectee" were used incorrectly in sections 206AB and 20GCCA.*

22. Rationalization of provisions of TDS on sale of immovable property

a) Section 194-IA of the Act provides for deduction of tax on payment on transfer of certain immovable property other than agricultural land. Sub-section (1) of the said section provides for deduction of tax by any person responsible for paying to a resident any sum by way of consideration for transfer of any immovable property (other than agricultural land) at the time of credit or payment of such sum to the resident at the rate of one per cent of such sum as income-tax thereon. Sub-section (2) provides that no deduction of tax shall be made where the consideration for the transfer of an immovable property is less than fifty lakh rupees.

b) As per the provisions of the said section, TDS is to be deducted on the amount of consideration paid by the transferee to the transferor. This section does not take into account the stamp duty value of the immovable property, whereas, as the provisions of section per 43CA and 50C of the Act, for the computation of income under the head "Profits and gains from business or profession" and "capital gains" respectively, the stamp duty value is also to be considered. Thus there is inconsistency in the provisions of section 194-IA and sections 43CA and 50C of the Act.

c) In order to remove inconsistency, it is proposed to amend section 194-IA of the Act to provide that in case of transfer of an immovable property (other than agricultural land), TDS is to be deducted at the rate of one per cent of such sum paid or credited to the resident or the stamp duty value of such property, whichever is higher. In case the consideration paid for the transfer of immovable property and the stamp duty value of such property are both less than fifty lakh rupees, then no tax is to be deducted under section 194-IA.

d) Stamp duty value shall have the meaning assigned to it in clause (f) of the Explanation to clause (vii) of sub-section (2) of section 56.

e) This amendment will take effect from 1st April, 2022.

Comments:

- *Section 194-IA is proposed to be amended to remove the inconsistency with section 43CA and section 50C which deems stamp duty value as full value of consideration in case the same is higher than the transaction price.*

- *Since the law specifies for the deduction of tax on the date of payment or credit, whichever is earlier, an issue may arise to determine the point of time in which tax is to be deducted where the amount to be paid for the purchase of immovable property is neither paid nor credited on the enhanced amount on account of stamp duty value.*

- *Another issue arises as to the date of determination of the stamp duty value of the property, whether it would be the date of agreement, or the date of first payment, or any latter date. A clarification is expected in this regard.*

23. TDS on benefit or perquisite of a business or profession

a) As per clause (iv) of section 28 of the Act, the value of any benefit or perquisite, whether convertible into money or not, arising from business or exercise of profession is to be charged as business income in the hands of the recipient of such benefit or perquisite. In many cases, such recipient does not report the same in their return of income, leading to furnishing of incorrect particulars of income.

b) It is proposed to insert new section 194R to the Act to provide that the person responsible for providing to a resident, such benefit or perquisite, should ensure to deduct TDS at the rate of 10 per cent of the value or aggregate value of such benefit or perquisite. This section shall not apply in case the value of such benefit or perquisite is less than or equal to Rs. 20,000/- during the financial year.

c) It is further proposed to provide that in a case where the benefit or perquisite, as the case may be, is wholly in kind or partly in cash and partly in kind but such part in cash and is not sufficient to meet the liability of deduction of tax in respect of whole of such benefit or perquisite, the person responsible for providing such benefit of perquisite shall, before releasing the benefit or perquisite, ensure that tax has been paid in respect of the benefit or perquisite.

d) Further, the provisions of the said section shall not apply to an individual or a Hindu undivided family, whose total sales, gross receipts or turnover does not exceed one crore rupees in case of business or fifty lakh rupees in case of profession during the financial year immediately preceding the financial year in which such benefit or perquisite, as the case may be, is provided.

e) This amendment will take effect from 1st July, 2022.

Comments:

- *The fact as to whether the value any benefit or perquisite whether convertible into money or not arising from the exercise of business or profession has been a subject matter of litigation in the hands of the recipient. There are large number of decisions in the favour of assessee on this aspect, one fails to understand as to how the payer of the benefit or perquisite will be able to determine as to whether benefit or perquisite provided by him is related to business or profession of the payee. It seems that the payer has to tread very cautiously in such situation so as not to fall in the wrong side of the law.*

24. Widening the scope of reporting by producers of cinematograph films or persons engaged in specified activities

a) Under section 285B, the producer of cinematographic films is obliged to furnish within 30 days from the end of the financial year or from the date of completion of the film, whichever is earlier, a statement containing particulars of all payments over Rs. 50,000/- in the aggregate made by him or due from him to each person engaged by him.

b) It is proposed to widen the scope of section 285B to include persons engaged in specified activities to expand the reporting requirements in Form 52A. "Specified Activities" would mean event management, documentary production, production of programs for telecasting on television or over the top platforms or any other similar platform, sports event management, other performing arts or any other activity as the Central Government may, by notification in the Official Gazette, specify in this behalf.

c) This amendment will take effect from 1st April 2022.

Comments:

– *This amendment has been brought to further widening and deepening the tax base, by*

increasing the scope of Section 285B to include the persons engaged in 'Specified activities' as mentioned above.

- *Form 52A will be required to be filed by not only cinematographic film producers, but also by the people engaged in specified Entertainment sectors.*

- *This will help the government to trace the income of people engaged in wider and modern Entertainment services, like Over the Top Entertainment Platforms.*

25. Widening the scope of provisions pertaining to bonus stripping and dividend stripping to be made applicable to securities and units

a) Section 94 of the Act contains anti avoidance provisions to deal with transactions in securities and units of mutual fund which, *inter-alia*, include dividend stripping and bonus stripping.

b) Taxpayers having Short Term Capital Gains bought cum-bonus units and sold it ex-bonus to claim short term capital loss to offset their STCG as a measure to save tax. This practice was called bonus stripping.

c) To curb this, Section 94(8) was introduced. However, the current provisions does not apply to bonus stripping undertaken in case of securities. It is also not applicable to units of Infrastructure Investment Trust (InvIT) or Real Estate Investment Trust (REIT) or Alternative Investment Funds (AIFs) as the definition of the term "unit" has not been modified subsequent to introduction of provisions relating to RETIs, InvITs etc. Further, the current provisions of sub-section (7) of section 94 of the Act, i.e. provisions pertaining to dividend stripping, are not applicable to the units of new pooled investment vehicles such as InvIT or REIT or AIFs.

d) In view of the above, it is proposed to amend section 94(8), pertaining to the prevention of tax evasion through bonus stripping, so as to make the said provision applicable to securities as well.

e) It is also proposed to amend the Explanation to the said section to modify the definition of unit, so as to include units of business trusts such as InvIT, REIT and AIF, within the definition of units.

f) This amendment will take effect from 1st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

Comments

- *Consequent to the aforesaid amendment, the provisions relating to bonus stripping are now applicable to securities (stocks and shares) including units of InvITs, REITs, and AIF, and the provisions of dividend stripping are now applicable to units of InvITs, REITs, and AIF.*

- *In other words, provisions of both bonus and dividend stripping are applicable in case of shares, units of mutual funds, and units of InvITs, REITs, and AIF from April 1, 2023. The loophole has thus been plugged and will increase the revenue collection of the government in addition to STT. Wealthy investors, who had routinely been suppressing their tax liabilities through bonus stripping, will no longer be able to do the same.*

- *The proposed amendment may perhaps lead to spate of bonus issues being made by the companies till 31st March, 2022.*

V. REVENUE MOBILIZATION

26. Scheme for taxation of virtual digital assets

a) Virtual digital assets have gained tremendous popularity in recent times and the volumes of trading in such digital assets has increased substantially. Further, a market is emerging where payment for the transfer of a virtual digital asset can be made through another such asset. Accordingly a new scheme to provide for taxation of such virtual digital assets has been proposed in the Bill.

b) The proposed Section 115BBH seeks to provide that where the total income of an assessee includes any income from transfer of any virtual digital asset, the income- tax payable shall be the aggregate of the amount of income-tax calculated on income of transfer of any virtual digital asset at the rate of 30% and the amount of income-tax with which the assessee would have been chargeable had the total income of the assessee been reduced by the aggregate of the income from transfer of virtual digital asset.

- However, no deduction in respect of any expenditure (other than cost of *acquisition*) or allowance or set off of any loss shall be allowed to the assessee under any provision of the Act while computing income from transfer of such asset.

- Further, no set off of any loss arising from transfer of virtual digital asset shall be allowed against any income computed under any other provision of the Act and

such loss shall not be allowed to be carried forward to subsequent assessment years.

- This amendment will take effect from 1st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

c) Further, in order to widen the tax base from the transactions so carried out in relation to these assets, it is proposed to insert section 194S to the Act to provide for deduction of tax on payment for transfer of virtual digital asset to a resident at the rate of one per cent of such sum. However, in case the payment for such transfer is–

- wholly in kind or in exchange of another virtual digital asset where there is no part in cash; or

- partly in cash and partly in kind but the part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of such transfer, the person before making the payment shall ensure that the tax has been paid in respect of such consideration.

- In case of specified persons, the provisions of section 203A and 206AB will not be applicable. Further, no tax is to be deducted in case the payer is the specified person and the value or the aggregate of such value of consideration to a resident is less than Rs. 50,000 during the financial year. In any other case, the said limit is proposed to be Rs. 10,000 during the financial year.

d) It is also proposed to provide that if tax has been deducted under section 194S, then no tax is to be collected or deducted in respect of the said transaction under any other provision of Chapter XVII of the Act.

e) Furthermore, in any sum paid for transfer of virtual digital asset is credited to any account, whether called "Suspense Account" or by any other name, in the books of account of the person liable to pay such sum, such credit of the sum shall be deemed to be the credit of such sum to the account of the payee and the provisions of section 194S shall apply accordingly.

f) It is proposed to empower the Board to issue guidelines, with the prior approval of the Central Government, to remove any difficulty arising in giving effect to the provisions of the said section and every such guideline issued by the Board shall be laid before each House of Parliament, and shall be binding on the income-tax authorities and on the person responsible for paying the consideration on transfer of such virtual digital assets.

g) It is also proposed to provide that in case of a transaction where tax is deductible under section 194-O along with the proposed section 194S, then the tax shall be deducted under section 194S and not section 194-O. For the purposes of the said section, it is proposed to provide that 'specified person' means a person:—

- being an individual or Hindu undivided family whose total sales, gross receipts or turnover from the business carried on by him or profession exercised by him does not exceed one crore rupees in case of business or fifty lakh rupees in case of profession, during the financial year immediately preceding the financial year in which such virtual digital asset is transferred;

- being an individual or Hindu undivided family having income under any head other than the head 'Profits and gains of business or profession'.

- This amendment will take effect from 1st of July, 2022.

h) Further, in order to provide for taxing the gifting of virtual digital assets, it is also proposed to amend Explanation to clause (x) of sub-section (2) of section 56 of the Act to inter-alia, provide that for the purpose of the said clause, the expression "property" shall have the meaning assigned to it in Explanation to clause (vii) and shall include virtual digital asset.

i) This amendment will take effect from 1st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

j) To define the term "virtual digital asset", a new clause (47A) is proposed to be inserted to section 2 of the Act. As per the proposed new clause, a virtual digital asset is proposed to mean any information or code or number or token (not being Indian currency or any foreign currency), generated through cryptographic means or otherwise, by whatever name called, providing a digital representation of value which is exchanged with or without consideration, with the promise or representation of having inherent value, or functions as a store of value or a unit of account and includes its use in any financial transaction or investment, but not limited to, investment schemes and can be transferred, stored or traded electronically. Non fungible token and; any other token of similar nature are included in the definition.

k) Central Government may notify any other virtual digital asset as virtual digital asset by way of notification in the Official Gazette. The Non-fungible tokens means such digital assets as notified by the Central Government. Further, Central Government can notify such assets which shall not be considered as virtual digital assets for the purposes of the proposed section.

l) These amendments will take effect from 1st April, 2022.

Comments:

- *In the recent years, virtual digital assets like Cryptos, NFTs, etc. have become very popular and their trading volume has seen a substantial increase. Further, payment for the transfer of one virtual digital asset can be made through another one in the emerging markets. That is why the government has proposed a new scheme to provide for taxation on income from such 'Virtual Digital Assets'.*

- *TDS under newly proposed Section 194S is applicable as follows: -*

Entity	*Rate*	*Applicability*
Specified Persons	*1%*	*Value or Aggregate of such value is more than or equal to INR 50,000*
Any other case	*1%*	*Value or Aggregate of such value is more than or equal to INR 10,000*

- *Specified person has been defined as an individual or HUF with turnover less than Rupees one crore in case of Business income and Fifty Lacs in case of Profession OR an individual or HUF having income in any other head other than 'Profit and gains from business or profession'.*

- *There was no clarity of tax treatment on crypto asset, whether it will be taxed as regular income, capital gain or business income. India has shown first hint of acceptance of world-wide crypto-currencies by proposing to tax the same. Crypto's like Bitcoin and Ethereum will be heavily taxed but not banned immediately, they would co-exist with RBI backed digital rupee to be launched in F.Y. 2022-23 powered by the same blockchain technology. Despite RBI strong reservation, budget has for the time being force accepted crypto by proposing tax on its sale.*

- *Sale of crypto asset will be taxed at the rate of flat 30% without set-off of any loss. TDS at the rate of 1% would be deducted from the sale proceeds of crypto asset. TDS will allow government to track transaction. If a taxpayer has different digital assets, it seems to be an issue to set-off the gains from the transfer of one digital asset with the loss from transfer of another.*

- *The gifting of Virtual Digital Assets shall also be taxable, while will be done by amending explanation to clause (x) of sub-section (2) of section 56 of the Act. The term property under the clause shall also include Virtual digital assets.*

27. Withdrawal of concessional rate of taxation on dividend income under section 115BBD

a) Section 115BBD of the Act provides for a concessional rate of tax of 15 % on the dividend income received by an Indian company from a foreign company in which the said Indian company holds 26 % or more in nominal value of equity shares (specified foreign company). This rate was aligned to the rate of tax provided under section 115-O of the Act.

b) Finance Act, 2020 abolished the dividend distribution tax provided in section 115-O to, *inter-alia*, provide that dividend shall be taxed in the hands of the shareholder at applicable rates plus surcharge and cess.

c) In order to provide parity in the tax treatment in case of dividends received by Indian companies from specified foreign companies vis a vis dividend received from domestic companies, it is proposed to amend section 115BBD of the Act to provide that the provisions of this section shall not apply to any assessment year beginning on or after the 1st day of April, 2023.

d) This amendment will take effect from 1st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

Comments:

- *Section 115BBD provides for a concessional rate on dividend income from Foreign Companies. Rate under this section was aligned to the rate of tax provided under section 115-O of the act.*

- *It has been proposed to make changes in the section 115BBD of the Act, providing that the provisions of this section will not be applicable for any assessment year beginning from 1st April, 2023, i.e. from assessment year 2023-24.*

- *It will bring in parity between tax treatments of dividend received from Domestic companies and foreign companies by an Indian Company.*

- *This may discourage foreign companies to remit dividends and this may impact foreign associates and subsidiaries of Indian Companies to remit dividend to India.*

VI. PHASING OUT EXEMPTIONS

28. Withdrawal of exemption under clauses (8), (8A), (8B) and (9) of section 10 of the Income-tax Act, 1961- reg (Phasing out exemptions under section 10)

a) Clause (8) of the Section 10 provides exemption to the income and remuneration of an individual who is assigned duties in India in connection with any co-operative technical assistance programmes and projects in accordance with an agreement entered by the Central Government and the Government of a foreign state. Both the remuneration received by the individual from the foreign state and any other income accruing or arising outside India, and is not deemed to accrue or arise in India, are exempt under the said clause in certain cases.

b) Clause (8A) of the Section 10, inter alia, provides exemption on the remuneration or fee received by certain consultants, directly or indirectly out of the funds made available to an international organisation (agency) under a technical assistance grant agreement between the agency and the Government of a foreign state. The said clause further provides exemption to any income accruing or arising outside India (which does not accrue or arise in India) in respect of which the consultant is required to pay income or social security tax to the Government of the country or the country of his or its origin.

c) Clause (8B) of the Section 10, inter alia, provides exemption to an individual who is an employee of the consultant as referred to in clause (8A), and who is assigned duties in India in connection with a technical assistance programme and project in accordance with an agreement entered into by the Central Government and the agency subject to certain conditions. The said clause further provides exemption to any income accruing or arising outside India (which does not accrue or arise in India) in respect of which the consultant is required to pay income or social security tax to the country of his origin.

d) Clause (9) of Section 10 exempts the income of the family members of any individual or consultant as referred in clauses (8), (8A) and (8B), who accompany such individual or consultant to India, if the income does not accrue or arise in India and in respect of which such member is required to pay income and social security tax to the Government of foreign state or country of origin of such member.

e) It is proposed to insert provisos in clauses (8), (8A), (8B) and (9) of the said section so as to provide that the provisions of the said clauses shall not apply in respect of remuneration, fee and income, as the case may be, referred to in those clauses, of the previous year relevant to the assessment year beginning on or after the 1st April, 2023 and subsequent assessment years.

f) These amendments will take effect from 1st April, 2023 and will, accordingly, apply in relation to the assessment year 2023-2024 and subsequent assessment years.

Comments:

- *The above-mentioned clauses have outlived their utility in an era of simplification of tax laws. Further, if under a tax treaty, India gets a right to tax a particular income and the other country is expected to then relieve double taxation by exemption or credit method, providing exemption by India amounts to surrender of right of taxation by India in favour of the other country.*

VII. RATIONALIZATION MEASURES

29. Amendment in the provisions of section 248 of Income-tax Act and insertion of new section 239A

a) Section 248 of the Act provides that in a case where, under an agreement or other arrangement, a person who has deducted tax on any income paid to a nonresident, other than interest, under section 195 of the Act, he may appeal to the Commissioner (Appeals) for a declaration that no tax was deductible on such income, if he claims that such tax is to be borne by him since no tax was required to be deducted on such income. Such appeal can be filed after making payment of tax so deducted to the credit of the Government account. An appeal under section 248 of the Act should be filed within 30 days of making payment of such tax to the Government account.

b) To obtain a refund of the tax deducted and paid by a person, where it was not deductible, there is no recource to approach the Assessing Officer with such request. He has to necessarily enter the appellate process by filing an appeal before the Commissioner.

c) In view of the above, it is proposed that a new section 239A may be inserted in the Act to provide that such a person, who has made the deduction of tax under such an agreement or arrangement and borne the tax liability, when no tax deduction was required, may file an application for refund of such tax deducted before the Assessing Officer. If such person is still not satisfied with the order, he can go into appeal against such order before the Commissioner.

d) The provisions of section 248 of the Act will not apply in cases where the date of tax payment, to the credit of Central Government is on or after 1st April 2022.

30. Cash credits under section 68 of the Act

a) Section 68 of the Act provides that where any sum is found to be credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.

b) The onus of satisfactorily explaining such credits remains on the person in whose books such sum is credited. If such person fails to offer an explanation or the explanation is not found to be satisfactory then the sum is added to the total income of the person. Certain judicial pronouncements have created doubts about the onus of proof and the requirements of this section, particularly, in cases where the sum which is credited as loan or borrowing.

c) It is noticed that there is a pernicious practice of conversion of unaccounted money by crediting it to the books of assesses through a masquerade of loan or borrowing. *Vide* Finance Act, 2012, it was provided that the nature and source of any sum, in the nature of share application money, share capital, share premium or any such amount by whatever name called, credited in the books of a closely held company shall be treated as explained only if the source of funds is also explained in the hands of the shareholder. However, in case of loan or borrowing, the judicial decisions have held that only identity and creditworthiness of creditor and genuineness of transactions for explaining the credit in the books of account is sufficient, and the onus does not extend to explaining the source of funds in the hands of the creditor.

d) It is proposed to amend the provisions of Section 68 of the Act so as to provide that the nature and source of any sum, whether in form of loan or borrowing, or any other liability credited in the books of an assessee shall be treated as explained only if the source of funds is also explained in the hands of the creditor or entry provider. However, this additional onus of proof of satisfactorily explaining the source in the hands of the creditor, would not apply if the creditor is a well regulated entity, i.e., it is a Venture Capital Fund, Venture Capital Company registered with SEBI.

e) This amendment will take effect from 1st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

Comments:

- *This will discourage Companies specially MSMEs from taking loans. In case of strained borrower –lender relationship, It may happen that the lender may not co-operate with*

the borrower at the time of its assessment. The borrower will always remain clueless of the source of source.

31. Alignment of the provisions relating to Offences and Prosecutions under Chapter XXII of the Act

a) Amendment in Section 276AB –

- *Vide* Finance Act 2002, provisions restricting transfer of immovable property without a prior agreement in the prescribed form and manner, namely Sections 269UC/UE/UL along with other provisions of Chapter XX-C had been made inapplicable with effect from 01.07.2002 and section 269UP was introduced providing that the provisions of the said Chapter shall not apply to, or in relation to, the transfer of any immovable property effected on or after 01.07.2002. As a result, Section 276AB which provides for prosecution for a term ranging from six months to two years along with applicable fine in cases of violation of provisions of said Sections 269UC/UE/UL, becomes irrelevant as launching prosecution against offences committed more than two decades ago, that is prior to 2002 would be beyond reasonable time.

- Owing to the involvement of transfer of immovable property, it is probable that lot of prosecution cases under the said provisions are still in process. Therefore, in order to take those cases to a logical conclusion without any interpretational issue arising on applicability of the section or otherwise, it is proposed to amend section 276AB to align it with the provisions of the Act that have been made inapplicable, by providing a sunset clause.

- It is proposed that no fresh prosecution proceeding shall be initiated under this section on or after 1st April, 2022.

b) Amendment in Section 276B –

- Section 276B provides for prosecution for a term ranging from three months to seven years with fine for failure to pay tax to the credit of Central Government under Chapter XII-D or XVII-B. Under this Section, a person shall be punishable for failure to
  a) deduct the tax as required under the provisions of Chapter XVII-B which deals with deduction of tax at source,
  b) or to pay the tax, as required by or under––
     i) sub-section (2) of section 115-O or
     ii) the second proviso to section 194B

- Finance Act, 1999 had amended Section 194B and omitted the First Proviso and hence, the section currently has only one proviso. In order to avoid any ambiguity, it is proposed to omit the word “second” from sub-clause (ii) of clause (b) of section 276B. Similar amendment is proposed in Section 271C.

c) Amendment in Sections 278A and 278AA –

- Sections 278A and 278AA provide for prosecution in the case of second and subsequent offence against persons for failure to pay tax to the credit of Central Government under Chapter XVII- B for tax deducted at source and relief in case presence of reasonable cause for such failure respectively.

- However, similar prosecution provisions against persons failing to pay tax collected at source is not there. Hence, a new Section 276BB is proposed to be included for punishment of similar nature of offences in relation to tax collected at source through the insertion of the words “or section 276BB” in Section 278A and 278AA.

- These amendments will take effect from 1st April, 2022.

Comments:

- *The amendment to Section 276AB seeks to reduce scope of fresh litigations in a highly litigated subject matter, that is transfer of immovable property, by inserting a sunset clause.*

- *Tax collected at source (TCS) being a fairly new insertion to the Act, the amendment seeks to punish offences relating to collection and/or deposition of TCS in the same manner as tax deducted at source.*

32. Faceless Schemes under the Act

a) Faceless Scheme under Section 92CA, Section 144C, Section 253 and Section 255

- A *number* of measures have been undertaken by the Central Government to make the processes *electronic* by eliminating person to person interface between the taxpayer and the Department to the extent technologically feasible, and provide for optimal utilisation of resources and a team-based assessment with dynamic jurisdiction. This started with faceless assessment in electronic mode involving no human interface between taxpayers and tax officials.

- As a part of *this* process, provisions for notifying faceless schemes under sections 92CA, 144C, 253 and 264A were introduced in the Act through Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 with effect from 01.11.2020 and under section 255, was inserted through Finance Act, 2021 with effect from 01.04.2021:

Sl. No.	Section	Scheme	Date of Limitation
1.	92CA	Faceless determination of arm's length price	31st day of March, 2022
2.	144C	Faceless Dispute Resolution Panel	31st day of March, 2022
3.	253	Faceless appeal to Appellate Tribunal	31st day of March, 2022
4.	255	Faceless procedure of Appellate Tribunal	31st day of March, 2023

- Presently, Section 92CA and section 144C, related to the transfer pricing functions and international *taxation*, are out of the regime of faceless assessment. Any notification of new schemes to follow faceless assessment procedures under these sections, will involve proposed modifications, have an impact on the information technology structure and shall result in destabilization of the systems.

- Further, as for notification of scheme under section 255, the Appellate Tribunal is deemed to be a civil court for all the purposes of section 195 of the Act and Chapter XXXV of the *Code* of Criminal Procedure, 1898. For this, a scheme governing the procedures to be followed by such a body needs to be formulated after due consultations with Ministry of Law & Justice. Similarly, the scheme under section 253 have to follow the scheme under section 255.

- Due to above listed limitations, it is proposed to extend the date for issuing directions for the purposes of sections 92CA, 144C, 253 and 255 till 31st March, 2024.

- These amendments will take effect from 1st April, 2022.

b) Amendment in Faceless Assessment under section 144B of the Act

- As a part of Government's policy on introduction of faceless procedures, section 144B was inserted in the Act to provide the procedure for faceless assessment with effect from 01.04.2021 vide Taxation and Other Laws (Relaxation and Amendment of Certain

Provisions) Act, 2020, and the Faceless Assessment Scheme, 2019 ceased to operate from that date.

- However, in view of the various administrative and operational difficulties being faced in the implementation of Section 144B, it is proposed to amend the said section to streamline the faceless assessment process and address the various difficulties being faced in its implementation.

- Therefore, it is proposed to substitute Section 144B as below –

    - Provisions of the proposed section shall apply for faceless assessment, reassessment or recomputation under Section 143(3) or under section 144 or under section 147 of the Act, as the case may be, in the cases specified therein.

    - The National Faceless Assessment Centre (NaFAC) shall assign the case selected for the purposes of faceless assessment to a specific Assessment Unit (AU) and intimate the assessee that assessment in his case shall be completed in accordance with the procedure laid down in the proposed section

    - The assessee shall be served a notice under Section 143(2) or under sub-section Section 142(1) of the Act, through the NaFAC. The assessee may file his response to the aforementioned notice under Section 143(3), within the date specified in such notice in this regard, to the NaFAC, which shall forward the reply to the AU.

    - Thereafter, the AU may make a request, through the NaFAC, for obtaining such further information, documents or evidence from the assessee or any other person, as it may specify and the NaFAC shall serve appropriate notice or requisition on the assessee or any other person for obtaining such information, documents or evidence. The AU may also make a request, through the NaFAC, for conducting enquiry or verification by Verification Unit (VU) and the request shall be assigned by the NaFAC to a VU through an automated allocation system. The AU may also similarly make a request in respect of determination of arm's length price, valuation of property, withdrawal of registration, approval, exemption or any other technical matter by referring to the technical unit and the request shall be assigned by the NaFAC to a Technical Unit (TU) through an automated allocation system.

    - The assessee or any other person, as the case may be, shall file his response in compliance to the said notice served by NaFAC, at the request of AU, to the

NaFAC which shall forward the reply to the AU. If the assessee fails to comply with the said notice seeking information served by NaFAC, or the earlier notice under Section 143(2) or under Section 142(1), the NaFAC shall intimate the same to the AU. The AU shall serve upon the assessee, through NaFAC, a show cause notice under section 144 giving him the opportunity to explain as to why the assessment in his case should not be completed to the best of its judgement. Further any report received by the NaFAC, from the VU or TU shall also be forwarded to the AU.

- The assessee shall file his response to the show-cause notice under section 144 of the Act, within the time specified in such notice, to the NaFAC which shall forward the same to the AU. If the assessee fails to respond, the NaFAC shall intimate the same to the AU.

- The AU shall, after taking into account all the relevant material available on the record, prepare in writing, an income or loss determination proposal where no variation prejudicial to assessee is proposed and send the same to the NaFAC. If a variation is being proposed then a show cause notice is served on the assessee stating the variations proposed to be made to the income of the assessee and calling upon him to submit as to why the proposed variation should not be made, through the NaFAC

- The assessee shall file his reply to the show cause notice to the NaFAC, on date and time as specified, which shall forward the reply to the AU. If the assessee fails to respond within the specified time, the NaFAC shall intimate the same to the AU. After considering the response of the assessee or the intimation of failure of the assessee to file a response received from NaFAC and all relevant material available on the record, the AU shall prepare an income or loss determination proposal, in writing, and send the same to the NaFAC.

- Upon receipt of the income or loss determination proposal, with or without any variations proposed to the income of the assessee, as the case may be, the NaFAC may, on the basis of guidelines issued by the Board, convey to the AU to prepare draft order in accordance with such income or loss determination proposal, which shall thereafter prepare a draft order, or assign the income or loss determination proposal to a Review Unit (RU) through an automated allocation system, which shall conduct a review of such order, prepare a review report and send it to NaFAC.

- The NaFAC shall forward the review report received from the RU to the AU

which had proposed the income or loss determination proposal. The AU may accept or reject some or all of the modifications proposed in such review report, prepare a draft order accordingly, and send it to NaFAC. The AU shall record reasons in writing if it is rejecting the modifications proposed by the RU.

- The NaFAC shall, upon receiving draft order in a case of eligible assessee, where there is a proposal to make any variation which is prejudicial to the interest of such assessee under sub-section (1) of section 144C for reference to Dispute Resolution Panel, serve such draft order on the assessee. In any case, other than that of eligible assessee under section 144C, the NaFAC shall convey to the AU to complete the assessment in accordance with such draft order, which shall thereafter pass the final assessment order and initiate penalty proceedings, if any, and send it to the NaFAC. The NaFAC shall serve a copy of such final assessment order, notice for initiating penalty proceedings, if any and the demand notice, specifying the sum payable by, or refund of any amount due to the assessee on the basis of such assessment, to the assessee.

- An eligible assessee, as referred to in section 144C, shall, upon receiving the draft order as served on him above, shall file his acceptance of the variations proposed in such draft order or file objections, if any, to such variations, with the Dispute Resolution Panel, under section 144C and the NaFAC, within the period specified in Section 144C(2).

- In case the variations proposed in the draft order are accepted by the assessee or not objected to within the time given in Section 144C(2), the NaFAC shall intimate the AU of the same, which shall complete the assessment, on the basis of the draft order, within the time allowed under Section 144C(4) and initiate penalty proceedings, if any, and send the order to the NaFAC.

- Where the eligible assessee files objections with the Dispute Resolution Panel, against the variations proposed in the draft order in his case, the NaFAC shall send such intimation along with a copy of such objections to the AU. Upon receipt of the directions issued by the Dispute Resolution Panel in the case of an eligible assessee under section 144C, the NaFAC shall forward such directions to the AU. The AU shall complete the assessment within the time allowed in Section 144C(13) and initiate penalty proceedings, if any, in conformity with the directions issued by the Dispute Resolution Panel under Section 144C(5), and send a copy of such order to the NaFAC.

- The NaFAC shall, upon receipt of final assessment order, in the case of an eligible assessee under section 144C or in other cases, serve a copy of such order and notice for initiating penalty proceedings, if any, on the assessee, along with the demand notice, specifying the sum payable by, or the amount of refund due to, the assessee on the basis of such assessment. The NaFAC shall, after completion of assessment, transfer all the electronic records of the case to the Assessing Officer having jurisdiction over the said case for such action as may be required under the Act.

- The proposed section also provides that faceless assessment shall be made in respect of persons or class of persons, or incomes or class of incomes, or cases or class of cases or such territorial area, as may be specified by the Board.

- The proposed section also provides that Board may, for the purposes of faceless assessment, set up the following Centre and units and specify their functions and jurisdiction, namely:—

  i) a National Faceless Assessment Centre to facilitate the conduct of faceless assessment proceedings in a centralised manner;

  ii) assessment units (referred to as AU), as it may deem necessary to conduct the faceless assessment, to perform the function of making assessment, which includes identification of points or issues material for the determination of any liability (including refund) under the Act, seeking information or clarification on points or issues so identified, analysis of the material furnished by the assessee or any other person, and such other functions as may be required for the purposes of making faceless assessment and the term "assessment unit", wherever used in this section, shall refer to an Assessing Officer having powers to the extent so assigned by the Board;

  iii) verification units (referred to as VU), as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of verification, which includes enquiry, cross verification, examination of books of account, examination of witnesses and recording of statements, and such other functions as may be required for the purposes of verification and the term "verification unit", wherever used in this section, shall refer to an Assessing Officer having powers so assigned by the Board;

Further, the function of verification unit under this section may also be performed by a verification unit located in any other faceless centre set up under the provisions of this Act or under any scheme notified under the provisions of the Act and the request for verification may also be assigned through the National Faceless Assessment Centre to such verification unit.;

iv) technical units (referred to as TU), as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of providing technical assistance which includes any assistance or advice on legal, accounting, forensic, information technology, valuation, transfer pricing, data analytics, management or any other technical matter under this Act or an agreement entered into under sections 90 or 90A, which may be required in a particular case or a class of cases and the term "technical unit", wherever used in this section, shall refer to an Assessing Officer having powers so assigned by the Board;

v) review units (referred to as RU), as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of review of the income determination proposal assigned under sub-clause (b) of clause (xix) of sub-section (1), which includes checking whether the relevant and material evidence has been brought on record, relevant points of fact and law have been duly incorporated, the issues on which addition or disallowance should be made have been incorporated and such other functions as may be required for the purposes of review and the term "review unit", wherever used in this section, shall refer to an Assessing Officer having powers so assigned by the Board.

- It is also proposed that the AU, VU, TU and the RU shall have the following authorities, namely:—
  - Additional Commissioner or Additional Director or Joint Commissioner or Joint Director, as the case may be;
  - Deputy Commissioner or Deputy Director or Assistant Commissioner or Assistant Director, or Income-tax Officer, as the case may be;
  - Such other income-tax authority, ministerial staff, executive or consultant, as considered necessary by the Board.

- The proposed Section also provides that all communication, among the AU, RU, VU or TU or with the assessee or any other person with respect to the information or documents or evidence or any other details, as may be necessary for the purposes of making a faceless assessment shall be through the NaFAC, between the NaFAC and the

assessee, or his authorised representative, or any other person and all internal communications between the NaFAC and various units shall be exchanged exclusively by electronic mode. However, this provision shall not apply to the enquiry or verification conducted by the verification unit in the circumstances as may be specified by the Board in this regard.

- It is further proposed that for the purposes of faceless assessment, an electronic record shall be authenticated by the NaFAC by way of an electronic communication, by the AU or VU or TU or RU, as the case may be, by affixing digital signature and by the assessee or any other person, by affixing his digital signature or under electronic verification code, or by logging into his registered account in the designated portal. It is also proposed that every notice or order or any other electronic communication shall be delivered to the addressee, being the assessee, by way of placing an authenticated copy thereof in the registered account of the assessee or by sending an authenticated copy thereof to the registered email address of the assessee or his authorised representative or by uploading an authenticated copy on the assessee's Mobile App, and followed by a real time alert.

- The proposed section further seeks to provide that the assessee shall file his response to any notice or order or any other electronic communication, through his registered account, and once an acknowledgement is sent by the NaFAC containing the hash result generated upon successful submission of response, the response shall be deemed to be authenticated. The time and place of dispatch and receipt of electronic record shall be determined in accordance with the provisions of section 13 of the Information Technology Act, 2000.

- A person shall not be required to appear either personally or through authorised representative in connection with any proceedings before any unit set up under the proposed section.

- Further, it is proposed that in a case where a variation is proposed in the income or loss determination proposal or the draft order, and an opportunity is provided to the assessee by serving a notice calling upon him to show cause as to why the assessment should not be completed as per such income or loss determination proposal, the assessee or his authorised representative, as the case may be, may request for personal hearing so as to make his oral submissions or present his case before the income-tax authority of the relevant unit. Where the request for personal hearing has been received, the income-tax authority of relevant unit shall allow such hearing, through NaFAC, which shall be conducted exclusively through video conferencing or video telephony, including use of any telecommunication application software which

supports video conferencing or video telephony, to the extent technologically feasible, in accordance with the procedure laid down by the Board. Any examination or recording of the statement of the assessee or any other person (other than the statement recorded in the course of survey under section 133A) shall be conducted by an income-tax authority in the relevant unit, exclusively through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony, to the extent technologically feasible, in accordance with the procedure laid down by the Board.

- It is proposed that the Board shall establish suitable facilities for video conferencing or video telephony including telecommunication application software which supports video conferencing or video telephony at such locations as may be necessary, so as to ensure that the assessee, or his authorised representative, or any other person is not denied the benefit of faceless assessment merely on the consideration that such assessee or his authorised representative, or any other person does not have access to video conferencing or video telephony at his end. The Principal Chief Commissioner or the Principal Director General, as the case may be, in charge of the NaFAC shall, with the prior approval of the Board, lay down the standards, procedures and processes in the specified manner for effective functioning of the NaFAC and the units set up, in an automated and mechanised environment.

- The proposed section also seeks to provide that if at any stage of the proceedings before it, the AU having regard to the nature and complexity of the accounts, volume of the accounts, doubts about the correctness of accounts, multiplicity of transactions in the accounts or specialized nature of business activity of the assessee, and the interests of the revenue, is of the opinion that it is necessary to do so, it may, upon recording its reasons in writing, refer the case to the NaFAC stating that the provisions of sub-section (2A) of section 142 may be invoked in the case. The Principal Chief Commissioner or the Principal Director General, as the case may be, in charge of the NaFAC shall, in accordance with the procedure laid down by the Board in this regard, if he considers appropriate that the provisions of sub-section (2A) of section 142 may be invoked in the case, forward the reference received from the AU to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner having jurisdiction over such case, and inform the AU accordingly. Such case shall also be taken up for transfer to the jurisdictional Assessing Officer with the approval of the Board. Where a reference has been received the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, having jurisdiction over such case, he shall direct the Assessing Officer having jurisdiction over such case to invoke the provisions of sub-section (2A) of section 142. However, where a reference has not been forwarded to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, having jurisdiction over such case, the AU

shall proceed to complete the assessment in accordance with the procedure laid down in the proposed section.

- It is also proposed to provide that the Principal Chief Commissioner or the Principal Director General, as the case may be, in charge of National Faceless Assessment Centre may, at any stage of the assessment, if considered necessary, transfer the case, in addition to a case referred to in (y) to the Assessing Officer having jurisdiction over such case, with the prior approval of the Board. It is also proposed to define the terms such as electronic verification code, assessment unit, technical unit, verification unit, review unit etc. used in the proposed section.

- This amendment will take effect from 1st April, 2022

- Sub-section (9) of section 144B of the Act provides that assessment made under Section 143(3) or under Section 144 [other than the cases transferred under Section 144B(8)], on or after the 1st day of April, 2021, shall be non est if such assessment is not made in accordance with the procedure laid down under this section. The said sub-section refers to violation of the procedure laid down by the law whereas a large number of disputes have been raised under this sub- section involving technical issues arising due to use of information technology, leading to unnecessary litigation. It is, therefore, proposed to omit this sub- section i.e., sub-section (9) of section 144B from its date of inception.

- This amendment will take effect retrospectively from 1st April, 2021.

Comments

- *The* proposed *amendment seeks to extend timeline for notification of directions for faceless assessment procedures in cases related to international taxation and appeals before the Appellate Tribunal till 31st March, 2024, on grounds of structural changes involved and limitations in implementation.*

- *Apart from certain technical changes in the procedure laid down and omission of* sub-section (10) and clause (q) of the Explanation to the Section 144B to *streamline the faceless assessment proceedings, the proposed amendment for omission of sub-section (9) of said section seeks to reduce unnecessary litigation arising due to non-adherence to the procedure laid down under the said section on technological grounds.*

- *However, since the inception of Section 144B, many assessments have been completed without adhering to the said procedure and the same were challenged in the courts of*

law on grounds of violation of principles of natural justice. Invariably, courts ruled in the favour of the assessee in all such cases.

- *The true intent and spirit of the Faceless Assessment Scheme is the service of 'draft assessment order' and reasonable opportunity of being heard to the assessee at every step during the assessment proceedings. If the procedure so laid down is omitted to be followed in part or full, the assessments so made shall remain violative of the principles of natural justice and may ultimately defeat the purpose of the Scheme which was to reduce tax terrorism and minimize human discretion in assessment cases. The procedure of issuing 'draft assessment order' has been replaced by 'income or loss determination proposal'. The change in terminology is interesting and it is expected that the same contains well-reasoned findings of the Assessing Officer.*

- *It is also noticed that where assessment order is passed in violation of principles of natural justice, Department is allowed another opportunity to make fresh assessment by following the prescribed procedure. Assessees do not get relief in such cases and Assessing Officers are further emboldened to make the same additions despite flouting norms of the Faceless Assessment Scheme.*

- *Further, retrospective amendment in law will not impact assessments already settled in the courts of law.*

- *Hence, in our view, the intent behind the proposed omission is not clear as it may cause further litigation instead of reducing it.*

33. Set off of loss in search cases - Amendment in the provisions of section 79A of the Act

a) Chapter VI of the Act deals with aggregation of income and set off or carry forward of loss. In Sections 70-80 of the Act there are specific provisions relating to set off or carry forward and set off of losses while computing the income under various heads and with respect to different classes of persons.

b) It is noticed that in some cases, assessees claim set off of losses or unabsorbed depreciation, against undisclosed income corresponding to difference in stock, undervaluation of stock, unaccounted cash payment etc. which is detected during the course of search or survey proceedings. Currently there is no provision in the Act to disallow such set-off and no distinction is made between undisclosed income which was detected owing to search & seizure or survey or requisition proceedings and income assessed in scrutiny assessment in the regular course of assessment though for incomes falling in section 68, section 69, section 69B etc., such restriction is there.

c) Allowing the adjustment of undisclosed income detected as a result of search or requisition or survey against the loss or unabsorbed depreciation is resulting in short levy of tax. The provision of non-adjustment of loss or unabsorbed depreciation against undisclosed income detected as a result of search or requisition or survey would help in ensuring that proper tax is paid on income detected due to a search or survey and also result in increased deterrence against tax evasion.

d) Therefore, it is proposed to insert a new section 79A in the Act to provide that notwithstanding anything contained in the Act, where consequent to a search initiated under section 132 or a requisition made under section 132A or a survey conducted under section 133A, other than under sub-section (2A) of section 133A, the total income of any previous year of an assessee includes any undisclosed income,no set off, against such undisclosed income, of any loss, whether brought forward or otherwise, or unabsorbed depreciation under sub-section (2) of section 32 shall be allowed to the assessee under any provision of this Act in computing his total income for such previous year.

e) Further, the term "undisclosed income" is proposed to be defined for the above purpose as—

any income of the previous year represented, either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of a search under section 132 or a requisition made under section 132A or a survey conducted under section 133A, other than that conducted under sub-section (2A) of section 133A, which has—

(a) not been recorded on or before the date of search or requisition or survey, in the books of account or other documents maintained in the normal course relating to such previous year; or

(b) not been disclosed to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner before the date of search or requisition or survey, or

any income of the previous year represented, either wholly or partly, by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course relating to the previous year which is found to be false and would not have been found to be so, had the search not been initiated or the survey not been conducted or the requisition not been made.

f) This amendment will take effect from 1st April, 2022 and will accordingly apply in relation to the assessment year 2022-23 and subsequent assessment years.

Comments:

- *Section 97A has been inserted in order to prevent short levy of tax resulting from adjustments for undisclosed incomes which are later identified on search or requisition or survey due to set off of losses or unabsorbed depreciation claimed in relation to those undisclosed incomes.*

- *This section also seeks to prevent short levy of tax resulting from claim of expenses which are later found to be false on search or requisition or survey.*

- *"Undisclosed income" for the purpose of this section means income represented as money, jewellery, bullion, or any other valuable article or any transactions which have not been recorded in the books of accounts before the date of search or requisition.*

34. Proposals relating to returns and assessments

Income escaping assessment and search assessments

a) Finance Act 2021 introduced a new Section 148A wherein before issuance of notice U/s 148, the Assessing Officer shall conduct enquiries, and provide an opportunity of being heard to the assessee. After considering his reply, the Assessing Office shall decide, by passing an order, whether it is a fit case for issue of notice under section 148 and serve a copy of such order along with such notice on the assessee. The assessing officer is required to take prior approval of specified authority before passing order U/s 148A. It is proposed that where such order has been passed, no further approval is required to be taken before issue of notice U/s 148. ***(Applicable from 01.04.22)***

b) It is proposed that the word 'flagged' shall be omitted in clause (i) to Explanation 1 of Section 148, meaning thereby *that for purposes of Section U/s 148A, the information may not need to be indicated by system and proceedings may be initiated based on the judgement/discretion of the Assessing Officer.* ***(Applicable from 01.04.22)***

c) It has also been proposed that for clause (ii), the following clauses shall be substituted, namely:–

"(ii) any audit objection to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act; or

(iii) any information received under an agreement referred to in section 90 or section 90A of the Act; or

(iv) any information made available to the Assessing Officer under the scheme notified under section 135A; or

(v) any information which requires action in consequence of the order of a Tribunal or a Court."

d) It has also been proposed that in after Explanation 2 to Section 148, the phrase containing 'three assessment years immediately preceding the assessment year relevant to the previous year in which search is initiated' shall be replaced. The intent of the amendment is not clear as no specific time frame has been provided and it may be inferred that where the reassessment orders are to be framed in pursuance to the search proceedings U/s 132, the same shall not be restricted to three years. ***(Applicable retrospectively from 01.04.21)***

e) It has also been proposed where reassessment proceedings are initiated pursuant to conditions contained in Explanation 2 to Section 148 i.e. search case U/s 132, survey U/s 133A or where any money, bullion, jewellery etc is seized, then such assessment or reassessment order would not be passed by an Assessing Officer below the rank of Joint Commissioner without the prior approval of specified authority. ***(Applicable from 01.04.22)***

f) As per earlier provisions, it was contained in clause (b) to Section 149 that notice beyond the period of three years from the end of the relevant assessment year can be taken only in a few specific cases where the Assessing Officer has in his possession evidence which reveal that the income escaping assessment, **represented in the form of asset, amounts to or is likely to amount to fifty lakh rupees or more**, notice can be issued beyond the period of three years but not beyond the period of ten years from the end of the relevant assessment year. The same is proposed to be amended to include expenditure in relation to an event or occasion or an entry/entries in the books of account. ***(Applicable from 01.04.22)***

g) Another restriction was provided by Finance Act 2021 that the notice U/s 148 of the Act cannot be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit prescribed under the provisions of clause (b), as they stood immediately before the proposed amendment. In place of the same, "a notice under section 148 or section 153A or section 153C could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section or section 153A or section 153C, as the case may be" shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 2021. ***(Applicable retrospectively from 01.04.21)***

Comments:

- *The Hon'ble Supreme Court in the case of Indian & Eastern Newspaper reported in 1979 AIR 1960 has held that audit objection cannot be the basis for reopening of the assessment. The proposed amendment seeks to nullify this judicial position.*
- *The proposed amendments may have significant implication. In the existing section 149(1)(b), the Assessing Officer could have issued notice u/s 148 if he is in possession of evidences represented in the form of asset, which has escaped assessment. Now, this section is being amended to cover expenditure in respect of a transaction or in relation to an event or occasion; or an entry or entries in the books of account. Thus, loan entries or share application/capital entries, marriage expenses, etc may also be the basis for reopening.*
- *The proposed amendment may have serious implication in search cases as the insertion of section 153A/153C in the first proviso to section 149 may imply that now the assessing officer has power to reopen case for ten years preceeding the year of search. Interestingly, the proposed amendment is retrospective from 01.04.2021, implying that all search cases after 01.04.2021 shall get covered by the proposed amendment.*
- *Penalty provisions U/s 271AAB are attracted in the cases wherein the search proceedings are conducted. The same mentions a term "specified date" which is relevant for payment of taxes. Explanation to the said section defines the term "specified date". This earlier used to refer only to section 153A and the same has been amended to include section 148.*
- *It seems that the order of the Calcutta, Dehli, Bombay and Allahabad High Courts quashing the notices issued under section 148 post 01.04.2021 without following the procedure laid down in the section 148A will not be impacted by these amendment.*

35. Rationalization of the provisions of sections 271AAB, 271AAC and 271AAD of the Act

a) Sections 271AAB, 271AAC and 271AAD of the Act under Chapter XXI contain provisions which give powers to the Assessing Officer to levy penalty in cases involving undisclosed income in cases where search has been initiated u/s 132 or otherwise, or for false entry etc. in books of account.

b) Under Chapter XXI of the Act which deals with penalties, Commissioner (Appeals) has concomitant powers with Assessing Officer to levy penalty in eligible cases under section 270A, section 271, section 271A, section 271AA, section 271G, section 271J which deal with deliberate concealment, non-disclosure and omission by an assessee to evade tax.

c) Similarly, sections 271AAB, 271AAC, 271AAD penalise actions pertaining to undisclosed income, unexplained credits or expenditures, or deliberate falsification or omission in books of accounts. Therefore, in order to improve deterrence against non- compliance among tax payers, it is proposed to amend the sections 271AAB, 271AAC and 271AAD by enabling the Commissioner (Appeals) to levy penalty under these sections to the along with Assessing Officer.

d) These amendments will take effect from 1st April, 2022.

Comments:

- *Provisions of section 271AAB, 271AAC and 271AAD of the Act bestow powers on the Assessing Officer to levy penalty in case the assessee had been involved in deliberate concealment, non-disclosure and/or omission of any income or in order to evade tax.*

- *Sections seek to provide amendments to extend the powers to the Commissioner to penalize actions of assessee.*
- *Prima facie, it seems that section 271AAD is applicable only when the books of accounts are maintained. Thus, if books of accounts are not maintained, then penalty under this section may not be applicable, though it may be initiated under other provisions of the Act.*
- *Instances of False entries:*

Particulars	*For instances*
(i) forged or falsified documents such as a false invoice or a false piece of documentary evidence	*Purchasing goods from one party and Invoice from another party* *Purchasing goods at a lower rate and shown in books of accounts that goods was purchased at a higher rate*
(ii) invoice in respect of supply or receipt of goods or services or both without actual supply or receipt of such goods or services or both issued by the person or any other person; or	*Bogus Purchases and Sales*
(iii) invoice in respect of supply or receipt of goods or services or both to or from non-existing person.	*Entries from jamakharchi / shell companies.*

36. Amendment in the provisions of section 272A of the Act

a) Section 272A of the Act provides for penalty for failure to answer questions, sign statements, furnish information, returns or statements, allow inspections etc. At present, the amount of penalty for failures listed under sub-section (2) of section 272A is one hundred rupees for every day during which the failure continues.

b) Section 272A ensures compliance with various obligations under the Income- tax Act by penalising non-compliance and acting as a deterrent.

c) However, the penalty of one hundred rupees had been commented upon by the CAG in their report on the entertainment sector as being too low. The penalty had not been increased since the section was introduced in 1999 and does not have an adequate deterrence value.

d) Therefore, it is proposed to increase the amount of penalty for failures listed under sub-section (2) of section 272A to five hundred rupees from the existing sum of one hundred rupees.

e) This amendment will take effect from 1st April, 2022.

Comments:

- *Section 272A has been amended to charge a penalty of rupees five hundred per day as against rupees hundred per day, on failure to provide reasonable answers, signed statements, allow inspections, etc.*

37. Amendment in the provisions of section 179 of the Act

a) Section 179 of the Act contains provisions which enables Income tax authorities to recover tax due from a private company from its directors, under certain circumstances where such tax cannot be recovered from the company itself. However, the title of the section inadvertently refers to the liability of directors of private company in liquidation.

b) It is proposed to amend the title of the section to “Liability of directors of private company”.

Comments:

- *The liability of directors of a private company under this section is not conditional upon the company being in liquidation and the section makes no reference to liquidation. It is proposed to amend the title to make it uniform with the provisions.*

38. Rationalisation of the provisions of Charitable Trust and Institutions

a) Exemption to funds, institutions, trusts etc. carrying out religious or charitable activities is provided under clause (23C) of section 10 of the Act and sections 11 and 12 of the Act. Entities can also claim exemption U/s 12AA/12AB. It is proposed to rationalize the provisions of both the exemption regimes by bringing consistency and ensuring their effective monitoring.

b) It is proposed to amend clause (b) of sub-section (1) of section 12A of the Act and tenth proviso to clause (23C) of section 10 of the Act to provide that where the total income of the trust/institution under both regimes, without giving effect to the relevant provisions, exceeds the maximum amount which is not chargeable to tax, such trust/institution shall keep and maintain books of account in form and manner as may be prescribed.

c) It is proposed to insert a new section 271AAE in the Act to provide for penalty on trusts/institutions under both the regimes equivalent to amount of income applied by such trust/institution for the benefit of specified person(s) where the violation is noticed for the first time during any previous year and twice the amount of such income where the violation is noticed again in any subsequent year.

d) It is proposed to define the term 'specified violation' by insertion of Explanation to the fifteenth proviso to clause (23C) of section 10 of the Act and to sub-section (4) of Section 12AB, which has come to the Notice of Principal Commissioner/Commissioner or on reference made by Assessing Officer or any such violation comes within the ambit of risk management strategy. In the event of any of the aforesaid instances, the Principal Commissioner/Commissioner may call for documents from the trust/institution in order to satisfy himself regarding the specified violation and pass an order cancelling/refusing to cancel the registration.

e) Such charitable entities are not allowed to accumulate more than 15% of their income or accumulate for specific purpose upto 5 years, other than corpus donations. It is proposed to amend the provisions of sub-section (3) of section 11 of the Act to provide that any income referred to in sub-section (2) which is not utilised for the purpose for which it is so accumulated or set apart shall be deemed to be the income of such person of the previous year being the last previous year of the period, for which the income is accumulated or set apart, but not utilised for the purpose for which it is so accumulated or set apart. On similar lines, it is proposed to insert Explanation 3 to the third proviso to clause (23C) of section 10 of the Act to state that a trust/institution shall have to furnish statement in prescribed form to the Assessing Officer before due date of filing return of income U/s 139(1) where 85% of income is not applied to objects during the previous year but is accumulated/set apart.

f) It is proposed to make amendment that for the purpose of exemption under clause (23C) of Section 10, the trust/institution is required to furnish the return of income for the previous year in accordance with the provisions of sub-section (4C) of section 139 of the Act, within the time allowed under that section.

g) It is also proposed to make suitable amendments under both exemption regimes to provide that for the purposes of determining the amount of expenditure, the provisions of sub-clause (ia) of clause (a) of section 40 and sub-sections (3) and (3A) of section 40A, shall, mutatis mutandis, apply as they apply in computing the income chargeable under the head "Profits and gains of business or profession".

h) It is proposed to make amendments under both exemption regimes that where the property held under a trust/institution includes any temple, mosque, gurdwara, church or other place notified under clause (b) of sub-section (2) of section 80G, any sum received by such trust or institution as a voluntary contribution for the purpose of renovation or repair of such temple, mosque, gurdwara, church or other place, may, at its option, be treated by such trust or institution as forming part of the corpus of the trust or the institution, subject to certain conditions.

i) The meaning of the word application has been clarified to mean actually paid. Any sum payable by any trust shall be considered as application of income in the previous year in which such sum is actually paid by it irrespective of the previous year in which the liability to pay such sum was incurred by such trust according to the method of accounting employed by it.

Comments:

- *There are various charitable institutions which have registered themselves as entities carrying out activities for charitable purposes but in essence are conducting business activities/trade with the purpose of evasion of taxes. Finance Bill 2022 has introduced provisions for maintenance of books of accounts for trusts/institutions. It has also introduced a provision for imposing penalty where the trust/institution applies its income for benefit of specified persons. The amount of penalty is 100% in case of first violation and 200% in case of subsequent violations. It should act as a deterrent for trustees to utilise funds of charitable trusts/institutions for their benefit.*

- *The Assessing Officer and Principal Commissioner/Commissioner have been vested with powers to call for documents and records to check whether any 'specified violation' has taken place in the case of charitable trust/institution. The provision intends to bring discipline in record keeping by such entities to establish that income has not been applied for objects other than those for which it was established and operational activities are carried out in line with its objectives.*

39. Reduction of Goodwill from block of assets to be considered as 'transfer'

a) Section 50 provides for certain modification in the applicability of the provisions of sections 48 and 49 for computation of capital gains in case of depreciable assets where the capital asset is an asset forming part of a block of asset in respect of which depreciation has been allowed under the Income-tax Act.

b) Proviso to the said section provides that in a case where goodwill of a business or profession forms part of a block of assets for the assessment year beginning on the 1st day of April, 2020 and depreciation thereon has been obtained by the assessee under the Income- tax Act, the written down value of that block of asset and short term capital gain if any, shall be determined in such manner as may be provided by rules.

c) It is proposed to amend section 50 to insert an Explanation to clarify that for the purposes of the said section 50, reduction of the amount of goodwill of a business or profession, from the block of asset in accordance with sub-item (B) of item (ii) of sub-clause (c) of clause (6) of section 43 shall be deemed to be transfer.

d) This amendment will take effect retrospectively from 1st April, 2021 and will, accordingly, apply in relation to the assessment year 2021-2022 and subsequent assessment years.

***Comments**:*

- *Since the amendment to the effect that goodwill of a business or profession is not a depreciable asset has been made applicable from assessment year 2021-2022 the above amendment will take effect retrospectively from 1st April 2021 and will accordingly apply in relation to the assessment year 2021-22 and subsequent assessment years.*

40. Definition of the term "slump sale"

a) Slump sale is defined in clause (42C) of section 2 of the Act, as the transfer of one or more undertaking, by any means, for a lump sum consideration without values being assigned to individual assets and liabilities in such sales. Vide the Finance Act, 2021, the definition of "slump sale" was amended to expand its scope to cover all forms of transfer under slump sale. However, inadvertently, in the last sentence there is reference to the word "sales" instead of "transfer".

b) Therefore, it is proposed to carry out consequential amendment by amending the provision of clause (42C) of section 2 of the Act, to substitute the word "sales" with the word "transfer".

c) This amendment will take effect retrospectively from the 1st April, 2021 and will accordingly apply in relation to the assessment year 2021-22 and subsequent assessment years.

41. Surcharge on AOP

a) In globalised business world there are several work contract where work mandatorily requires consortium. Generally members of consortium are companies, in such cases AOP suffers a graded surcharge of 37% which is much more than the surcharge levied on the companies.

b) The proposal to cap surcharge applicable to AOP related to consortium or Joint Development Agreement at the rate of 15% is expected to provide tax relief to real estate and infrastructure business. Rationalisation of surcharge on AOP related to consortium will help in development of business of land aggregators, joint developers and joint owners.

B. GOODS AND SERVICE TAX

1. Payment of tax, interest, penalty and other amounts

a) Section 49(4) of the CGST Act, 2017 is proposed to be amended **to provide for certain restrictions along with such conditions** for utilizing the amount available in the electronic credit ledger for making any payments towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act and rules made thereunder.

b) Section 49(10) of the Act has been proposed to be substituted to **allow a registered person to transfer any amount** of tax, interest, penalty, fee or any other amount **available in the electronic cash ledger to the electronic cash ledger** for IGST, CGST, SGST, UTGST or cess or IGST, CGST **of a distinct person. However, there should not be any liability appearing in his electronic liability register**.

c) Section 49(12) has been proposed to be inserted wherein, subject to certain conditions and restrictions, **the Government may specify such maximum proportion of output tax liability which may be discharged through the electronic credit ledger** by a registered person or a class of registered persons. It means that a registered taxable person will have to pay certain amount of GST in cash even though there is eligible ITC in his electronic credit ledger, which is an additional financial burden.

2. **Payment of Interest on delayed payment of Tax**

A retrospective amendment in Section 50(3) has been made wherein the liability to pay interest on excess / wrong ITC availed will arise only if such excess ITC has been availed and utilized, thereby reducing the net output tax liability. This is more of a clarificatory amendment to levy interest only if the ITC has been wrongly availed and utilized.

3. **Collection of Tax at Source**

Time limit for rectification of any omission or incorrect particulars in a statement furnished under Section 52(4) of the Act, has been proposed to be extended to 30th November following the end of the financial year. Earlier it was due date for furnishing of statement for the month of September following the end of the financial year.

4. **Refund of Tax**

a) It is proposed to extend the time limit for making an application of refund of tax before expiry of two years instead of earlier six months from the last day of the quarter in which such supply was received by a specialized agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries or any other person or class of persons, as notified under section 55. This amendment is in line with other provisions of Section 54 of the CGST Act, 2017.

b) It is proposed to extend the scope of withholding of or recovery from refunds in respect of all types of refund by the proper officer. The Proper Officer may deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay; or withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty.

c) It is proposed to clarify the "relevant date" – in case of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit where a refund of tax paid is available in respect of such supplies themselves, or as the case may be, the inputs or input services used in such supplies. The relevant date is proposed to be to the due date for furnishing of return under section 39 in respect of such supplies.

5. Rationalization of Interest

It has been proposed to reduce the rate of interest from 24% to 18% under Sections 50(1), 50(3), 54(12) and 56 with retrospective effect from 1st July, 2017, which is a welcome change.