PRE-BUDGET MEMORANDUM 2012

Direct Taxes

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA, NEW DELHI

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1.1 The Council of the Institute of Chartered Accountants of India considers it a privilege to submit this Pre-Budget Memorandum – 2012 on Direct Taxes to the Government. The memorandum contains suggestions for the consideration of the Government while formulating the tax proposals for the year 2012-13.

1.2 Since Direct Taxes Code Bill, 2010 has already been introduced in the Parliament; the ICAI has not given suggestions which require significant policy changes. The suggestions are given under following heads:-

I. Suggestions to improve tax collection.
II. Suggestions to reduce/minimize litigations
III. Suggestions for rationalisation of the provisions of direct tax laws.
IV. Suggestions relating to Income-tax Rules and Forms

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DIRECT TAXES

EXECUTIVE SUMMARY

I. SUGGESTIONS TO IMPROVE TAX COLLECTION

1. Information to be furnished in the Annual Information Return

In respect of the transactions, where the PAN is not provided by the payer, the provisions like TCS may be made applicable to the payee. Accordingly, the payee should be allowed to collect tax at an appropriate rate. Later, in case the deductee provides PAN within a specified period to the deductor, the deductee should be provided with a certificate like TCS certificate for claiming the same in the return of income. In case the deductee does not provide PAN with the specified period, the tax so collected would be added to the revenue of the Government.

2. TDS in respect of maturity of insurance policies which are taxable under section 10(10D)

A provision relating to TDS should be inserted in Chapter XVIIB to cover those payments where the exemption under section 10(10D) is denied to the recipient of income from insurance companies.

And in respect of the cases where the premium paid is above 20% of capital sum assured, the premium paid certificate (receipt) issued by insurance companies for the purpose of 80C should clearly mention that the qualifying amount for 80C deduction in respect of such premium paid is only up to 20% of capital sum assured.

3. **TDS under Section 194A-Interest payments to NBFC**

In order to provide relief to the genuine taxpayers paying interest to NBFC's, section 194A(3)(iii)(a) be amended to treat NBFC's at par with other banking companies.

Further, to ensure compliance of the provisions of the Act for timely collection of taxes and also, provisions of Tax collection at source be made applicable to NBFC's in respect of such interest.

4. **Real estate transactions – Uniformity and reduction in stamp duty rates**

In order to reduce the wide variations in the rates of stamp duty the Central Government should take the initiative and bring about a consensus among the State Governments for prescribing uniform stamp duty rates in accordance with a general agreement between the State Governments and the Central Government. This will go a long way in simplifying capital gains taxation and would also encourage disclosure of the correct consideration received from the transfer of capital assets.

5. **Verification of all income-tax returns**

In order to thoroughly check the filed returns and cross-verified with the information collected through AIR and other sources by the Department, the same may be out-sourced preferably to the professionals understanding the law better and who are in a position to identify the grey areas. This will be just on the line of desk review presently being carried out by the Excise Department. This process once started will ensure better voluntary compliance as every taxpayer filing the return would be aware that the return being filed would be subject to a verification process and those persons who are filing income tax returns but are not declaring their income properly cannot afford to take the liberty of making adjustments which are legally permissible.

6. **Verification of the fact that tax audit has been done by a Chartered Accountant**

   (a) **Tax audit report digitally signed by the tax auditor may be allowed to be uploaded along with the return of income at the earliest;**

   (b) **On the basis of data regarding practicing members provided by ICAI, a validation link may be created on the Directorate of Income Tax website, which would enable the Department to verify the details of member who is conducting the audit. In case the membership details so entered do not match with the ICAI Data, the system should not allow the uploading of the return after two attempts.**

   (c) **To further strengthen the system, a user id and a password may be made available to every practicing member by the Income tax Department, so that the member can view all the tax audit reports uploaded in his name. This in turn would further curb the malpractice of misusing the details of member by the assessee as a tax audit not done by the member may be then reported by him to the Income-tax Department for action at its end.**

II. SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS

1. **"Annual receipts" under section 10(23C)**

   The term "Annual Receipts" be clearly defined as income of the hospitals/ educational institutions arising regularly/every year but excluding value of donation received in kind by way movable assets, land, hospitals/educational equipment, sale consideration received on disposal of land, shares or other movable property, hospital/educational equipment etc.

   Further, it may be specifically provided that donations received towards corpus by way of land, movable assets are excluded from computation

of "Annual Receipts" as prescribed under Rule 2BC of Income-tax Rules.

2. Exemption under section 54 & 54F

a) *In order to avoid avoidable litigation, a Circular be issued clarifying that in a case where an assessee has entered into a Registered Agreement for Purchase of a residential flat in an "Ownership Apartment Scheme" and the assessee has paid more than 50% of the cost of the residential flat within the period prescribed in Sections 54 and 54F and has, within a further period of three years obtained actual possession of the residential flat on payment of its full price, the assessee shall be deemed to have "constructed" a 'residential house' within the meaning of Sections 54 and 54F on the date on which the Agreement for Purchase has been registered and the exemption under the said Sections will be available to the assessee to the extent of the aggregate cost of the residential flat agreed to be purchased.*

b) *The proviso to section 54F(1) provides that exemption will be withdrawn if the assessee purchases any residential house, other than the new asset within a period of one year after the date of transfer of the original asset. And section 54F(2) provides the period of two years for the said withdrawal of exemption. Thus in order to avoid unnecessary litigations, the said inconsistency in sub-section(2) and proviso to the sub-section(1) may be removed.*

3. Section 50C

The provisions of section 50C should be reviewed with reference to the following:

- *In case where 50% or more has been paid as registration money, the date of agreement may be considered for the purpose of valuation and not the date of actual registration of the property.*

- ***If the transactions for sale of property are entered below the circle rate, the provisions of Tax Collection at Source (TCS) may be introduced and tax be collected at a reasonable rate (say @1%). However, after checking the genuineness of the transaction, due refund should allowed as per procedures.***
- ***In order to avoid litigation, it may be clarified that in respect of the assets which are invested into the common pool of the partnership whether section 56 or section 50C, would be applicable.***
- ***Section 50C(2) provides that subject to fulfillment of certain conditions, the Assessing officer may refer the valuation of capital asset to the Valuation officer. The word "may" be substituted with "shall".***

4. Section 94A-Special measures in respect of transactions with persons located in notified jurisdictional area

Section 94A and/or section 206AA may be suitably amended to clarify that section 94A would prevail in case tax is to be deducted with respect to any payment to a person located in a NJA.

5. Section 32 - Depreciation in case of slump sale

An issue arises whether depreciation can be claimed on the basis of proportionate number of days by the transferor and the transferee company in case of slump sale considering the proviso to section 32 read with section 170 of the Act. Section 32 may be amended to clarify the legal position.

6. Section 35AD-Deduction in respect of expenditure on specified business

The term 'New Plant' and 'newly installed capacity in an existing plant' may be defined objectively to ensure clarity and avoid litigation.

Further, threshold for expansion of existing plant may be provided on the lines of 'substantial expansion' as defined for the purposes of sections 80-IC and 80-IE.

7. **Section 115JB-Minimum Alternate tax**

Clause (i) of Explanation 1 to section 115JB may be amended as follows-

"(c) the amount or amounts set aside as provision for diminution in the value of any asset (other than provision for bad and doubtful debts allowed as a deduction u/s 36(1)(viia))"

(i) Necessary amendment may be made in sections 115JB. It may be provided that where format of financial statements presented before the general body/AGM is prescribed under any other law (such as Banking Regulation Act, Electricity Act etc.) or by any regulator such as IRDA then book profit as per profit and loss account drawn up in accordance with such Act or regulation shall constitute the book profit for the purpose of section 115JB and not profit and loss account drawn up as per Schedule VI.

(ii) Considering the above, section 115JB(2) may be amended to provide that every assessee, being a company, shall, for the purposes of this section, prepare its profit and loss account for the relevant previous year in accordance with the provisions of relevant statue.

8. **Section 206AA – Requirement of furnishing of PAN for deduction of tax at source.**

A proviso should be inserted in section 206AA to the effect that the provisions of this section shall not be applicable in respect of the assessee who is not required to obtain Permanent Account Number under section 139A.

9. Hardship arising out of the Apex Court's decision in *Goetze (India) Ltd. v. CIT (2006) 284 ITR 323 (SC)*

(i) Appropriate amendments may be made to enable the assessee to get relief during the assessment proceedings by methods otherwise than by way of filing a revised return.

(ii) *Provisions of section 80A(5) should be modified to permit filing of new claim by the assessee in the course of assessment, even without filing of revised return of income. This will remove unintended hardship.*

10. Introduction of Advance ruling for residents

Advance Ruling scheme should be introduced for resident's tax purposes also. In case of residents also, it has been observed that assessee takes one interpretation of law and executes the transactions which is denied by the department causing hardship of paying taxes which he thought is not actually payable.

Further, in order to avoid unnecessary application, the scheme can be so framed that only transactions involving certain threshold of investment can be applied or fee for advance ruling can be fixed in a way that small and unnecessary applications are avoided.

11. Clarification regarding TDS on Commission to a partner under section 194H read with section 40(b)

***A clarification should be provided to the effect that Commission under section 194H would not include commission paid by the partnership firm to its partners*.**

12. Signing of notices under Section 282A

The computerized notice / document should have a separate control like provision for a digital signature because these are legal / statutory documents and this aspect should specifically be incorporated in section 282A. In respect of manual notices/documents the section should also record that signatures will be mandatory applicable.

13. Applicability of Education Cess and Secondary and Higher Education Cess - Double taxation Avoidance Agreement

Appropriate amendment may be made to clarify that EC & SHEC should not be applicable on the rates specified under DTAA.

14. Section 147/Section 148:

Proper stipulations be laid down for any reopening and the period of reopening be also reduced to 3 years from the end of the assessment year.

The new proviso to section 147 should also state that all matters which have been examined in the original assessment should not be reassessed.

15. Section 195 read with section 194LB

Section 195(1) should be amended to read as follows:

"Any person responsible for paying to a non-resident, not being a company, or to a foreign company, any interest [OTHER THAN INTEREST MENTIONED IN SECTION 194LB] or any other sum chargeable under the provisions of this Act……"

16. Delay by Assessing Officer in giving Order giving effects to Orders of higher Appellate authorities, and also delay in issuing refunds arising out of such Order giving effects:

The time limits for issuing the Order giving effects and Refund Orders should be stipulated in the Act and also the Interest on Refunds should be calculated up to the date of actual issuing of Refund warrants and not only up to the date of granting the refund/date of Order (as per the existing provisions of the Act)

17. Initiation of penalty proceeding in every assessment orders:

(1) Suitable remedial measures should be incorporated in the Act providing relief to the genuine hardship faced by the assessees on account of imposition of penalty even where there is no concealment of income.

(2) Further, in respect for pending cases, to reduce litigations, a scheme on the lines of Kar Vivad Samadhan Scheme (KVSS) may also be introduced. It is suggested that in cases where addition made is NOT more than 50% of income or Rs.10,00,000 whichever is less:

a) Penalty under section 271(1)(c) may be dropped.

b) 50% of the interest levied may be waived off.

c) No further appeals should be allowed to be filed either by the Department or by the assessee similar to existing provisions of Central Excise.

18. Section 132 - Search and seizure

(a) Amendment should be made section 132B to clarify the amount of cash seized to be permitted for adjusting against the advance tax liability of the assessee where specific request is made for such adjustment. This would help in early realization of tax, avoid litigation and save the assessee from mandatory interest charged under sections 234B and 234C.

(b) Since cash is seized at the time of search and lying in PD account of CIT, such cash after adjusting existing tax liabilities, may be

permitted to be adjusted against the tax due as per settlement petition. Suitable amendment / instruction is required to be given to the authorities in the matter since they are not permitting such adjustment for want of clarity.

(c) A provision like 132(5) [omitted by Finance Act, 2002] which provided for provisional assessment be introduced and the asset be released after releasing the amount due as per provisional assessment.

19. Desirability to bring back block assessment system

The continuance of earlier block assessment procedure is desirable. The above approach would assist in:

(a) reducing controversy over the year of taxability of income;

(b) providing suitable incentive for a person to make the necessary disclosure without indulging in litigation and

***(c)* removing administrative difficulties such as multiplicity of appeals, bunching together of assessments etc.**

20. Section 80IA – Unit-wise deduction should be allowed

A specific clarification/provision should be made in section 80 IA itself to provide that deduction under section 80IA is 'UNIT SPECIFIC'. For each unit deduction under section 80IA should be separately calculated.

21. Section 245A-Settlement Commission

(a) The (i) Proviso of section 245(b) along with the Explanation (i) should be omitted.

(b) *In order to further reduce litigations, the limit of Rs. 10, 00, 000 may be reduced to Rs. 5,00,000.*

III. SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS

1. Books of accounts in electronic mode-Section 2(12A)

Section 2(12A) defining books or books of accounts should clearly state that the books maintained in digital form would also be considered as books of accounts for the purposes of the Act. The assessees may scan the original documents and subsequently be permitted to destroy the same as they would available only in digitized form.

The permission to maintain the books in electronic form should be given to companies beyond a certain prescribed size & scale of operations. Consequential amendments may be made and rules prescribed, as deemed necessary to provide guidance and check points to prevent misuse.

2. Section 2(15)- Definition of charitable purpose

(a) **Rs.25 lakhs may be the basic exemption limit, and receipts in excess of Rs.25 lakhs may be subject to tax at maximum marginal rate after deducting the related expenditure.**

(b) Suitable amendment may be made in section 11 to provide relaxation to genuine cases by considering such application of income outside India as application towards charitable purpose. This provision however, may be made subject to some approval mechanism.

3. Receipt of amount under Life Insurance Policy - Section 10(10D)(c)

Instead of any sum received being made chargeable to income tax, only the sum, which is in excess of the premium payments made by the insured to the insurer should be considered as income exigible to tax. Suitable

clarifications should be made accordingly.

4. Section 10(13)- Payment from approved superannuation fund

Section 10(13) may be amended to exempt commuted value received by an employee from the superannuation corpus standing to his credit at the time of resignation, to the extent the same is already taxed at the initial contribution stage under Section 17(2)(vii).

5. Charitable Trusts

(i) A clarification by way of Explanation may be inserted to clarify that receipts of such nature should be not be considered for determining the limit of Rs.25 Lakhs.

(ii) Mandatory application of income by charitable trusts/ institutions under section 10(23C)

Section 10(23C) should be amended to specifically exclude 'corpus donations' from the requirement of mandatory application of income by such trusts/ institutions.

(iii) Registration - Condonation of Delay– Amnesty

A one-time scheme may be framed or a time slot may be allowed so that such unregistered charitable organisations may obtain registration u/s 12AA/12A with condonation of delay.

6. Income of minors - to increase exemption limits under section 10(32)

Suggestion:

The limit should be raised to at least Rs.10,000/- for each minor child.

7. Section 10(47) and section 115A(BA)-Income of infrastructure debt fund

(i) A condition may be prescribed that the infrastructure debt fund notified under section 10(47) should be denominated in Indian Rupees.

(ii) Any distribution from the debt fund to the non-resident investors, whether characterized as interest or not, may be subjected to the concessional tax treatment.

(iii) The benefit of concessional rate of tax of 5% on income received from such fund may be extended to residents also.

8. Medical reimbursements for retired employees:

The provisions of section 17 may be amended to include retired employees for the tax benefit on medical reimbursements/hospitalization expenditure in approved hospitals.

9. Perquisite of rent free accommodation provided as a campus accommodation where factory is located in remote areas

In case where accommodation is provided by the employer in factory campus and staying there is a precondition of employment, such accommodation should be valued at NIL.

10. Interest on borrowed Capital

The deduction in respect of interest on housing loan in case of self occupied property should be increased from Rs. 1.5 Lakhs to Rs. 3 Lakhs.

11. Depreciation

a) The depreciation on books purchased by professionals be restored to its original rate of 100 per cent.

b) Restoration of 100% allowance for small items of assets:

The proviso should be reintroduced, with a condition that the same would not apply where the total value of such additions during the year exceeds 2% of the written down value of the block of depreciable assets or Rs.1,00,000/-, whichever is higher. Such a provision will act as a check on

the temptation to abuse, but at the same time, will serve the purpose of simplicity. A similar provision exists under the Companies Act, 1956.

12. Incentives for R&D:

a) The benefit of section 35(2AB) should be extended for further period of 5 years i.e. upto 31st March, 2017.

b) Suitable provision should be made in the said section to provide that once the approval is granted u/s 35(2AB) the same should be made effective from the date of initiation of the said R&D facility and so, entire expenditure incurred on establishment of such facility should be allowed as deductible u/s 35(2AB).

c) The expenditure incurred on clinical trial carried out outside the in-house R&D facility should be allowed u/s 35(2AB) of the Income-tax Act, 1956.

13. Deduction for payments under Voluntary Retirement Scheme –Section 35DDA:

Section 35DDA(1) may be re-worded as follows:

"Where an assessee incurs any expenditure in any previous year by way of payment of any sum to an employee in connection with his voluntary retirement <u>or purchase of an annuity from an insurance company to cover such payments</u>, in accordance with any scheme or schemes of voluntary retirement, 1/5th of the amount so paid shall be deducted……."

14. Capital raising expenses

Section 35D should be amended to allow deduction for all expenses incurred by an assessee for raising capital in five equal installments over a period of five years.

15. Due date for crediting the contribution of employees to the respective fund–Section 36(1)(va) read with Section 2 (24)(x)

The due date defined under Explanation to Section 36(1)(va) shall be amended and accordingly the due date shall mean the due date for filing return of income under section 139(1), thereby bringing it at par with the due date specified for the Employer's contribution under Section 43B of the Act.

16. Section 36(1)(viii)

Asset Reconstruction Companies (ARC) should be included in the definition of specified entity to be eligible for deduction under section 36(1)(viii).

17. Provision for leave salary – Section 43B(f)

Clause (f) of section 43B may be deleted. Further, deduction for provision made towards leave salary liability based on actuarial valuation may be allowed.

Alternatively, on the lines of gratuity and pension funding, necessary provisions may be included in the Income-tax Act for funding of the leave salary liability and deduction should be allowed on such funding.

18. Section 44AD-Presumptive Income – Some Issues

a) Maintenance of Books of Account

The section may be amended or suitable provision be inserted so as to clarify the intentions of the section. The erstwhile sub-section 4 read as under:

"The provisions of section 44AA and 44AB shall not apply in so far as they relate to the business referred to in the sub section (1) and in

computing the monetary limits under those sections, gross receipts or as the case may be, the income from the said business shall be excluded."

b) Eligible Business

(i) Section 44AD may be amended to clarify whether the receipts of Rs.60 lakhs under section 44AD intend to cover the receipts of a single business or aggregate receipts of all businesses

(ii) The provisions of section 44AD should not be made applicable for all businesses. The scope of section 44AD may be clearly defined to cover particular businesses only.

(iii) Further, it may also be clarified whether the provisions of section 44AD would be applicable for loss making business and businesses having income below taxable limit.

19. Conversion of stock-in-trade into capital asset

A section may be drafted on the lines similar to section 45(2) to provide that the difference between the fair market value on the date of conversion and the cost price or market price of stock in trade which has been considered for the purpose of valuation of closing stock is to be deemed as business profits to be taxed in the year in which capital asset is sold. The fair market value on the date of conversion should be deemed as cost of acquisition of the capital asset.

20. Limited Liability Partnership (LLP)

a) There is need to increase the figure of Rs. 60 lakhs substantively so that private limited companies doing business can also choose the option of conversion to Limited Liability Partnership.

It may be noted that enough safeguards have been provided in the amendment to not to allow distribution of profit and change of partners etc. to avoid misuse of this provision.

(b) Merger and Amalgamation of Limited Liability Partnership to be Revenue Neutral.

Similar provision need to be inserted for LLP allowing merger and demerger and amalgamation to be revenue neutral.

(c) Transfer of capital asset by a Limited Liability partnership (LLP) to Private Company or unlisted public company on account of conversion

Any transfer of capital asset or intangible asset by LLP to a private company or unlisted public company due to conversion subject to fulfillment of certain conditions, may also not be considered as transfer for the purpose of capital gains.

(d) A specific provision be incorporated in the Income-tax Act,1961 itself clearly specifying that the conversion from a general partnership firm to an LLP will have no tax implications.

21. Section 49 –Cost of acquisition with reference to certain modes of acquisition

Section 49(1)(iii)(e) to be amended to include reference to demerger which is exempt under Section 47(vib) and (vic).

22. Forfeiture of Advance Money u/s 51

In order to provide relief to the assessee, any forfeited money in respect of any long term capital asset should be allowed to be deducted after Indexation, if any, from date of forfeiture to the date of sale.

23. **Section 54EC- Capital gain not to be charged on investment in certain bonds**

a) **As the financial year may differ from assessee to assessee, the term "financial year" be substituted with the term "previous year".**

b) **Considering the inflationary conditions in the economy, the limit of Rs.50 Lakhs may be raised to Rs. 1 crore.**

24. **Exemption under Section 54 & 54F**

Section 54F(1) may be re-worded as follows:

"In the case of an assessee being an individual or a HUF the capital gain arises from the transfer of any long term capital asset, not being a residential house and the assessee has within a period of one year before or two years after the date on which the transfer took place PURCHASED/CONSTRUCTED, or has within a period one year before or three years after that date constructed, a residential house, the capital gain shall be dealt with in accordance with the provisions of this section."

25. **Exclusion of rights shares and fresh issue of shares from the ambit of section 56 (2)(viia)**

Rights shares and fresh issue of shares be excluded specifically from the ambit of these provisions.

26. **Tax incentives under Section 72A in respect of Amalgamation or Demerger (to be extended to all businesses):**

a) **The benefit of section 72A may be extended to all businesses including financial services, entertainment/sports, information technology (IT) and IT enabled services.**

b) **Further, the provisions of section 72A may be simplified specially in respect of the conditions applicable for the amalgamating company like losses / depreciation being unabsorbed for at least three years and holding assets on the**

amalgamation date upto ¾ of the book value of fixed assets held two years prior to the said date.

27. Section 72-Carry forward and set off

The brought forward business loss may be allowed to be set off against such short-term capital gain in subsequent assessment years.

28. Deduction for Education expenses

Deduction should be available for purchase of all kinds of books, CD's, computers, internet connection etc. the deduction should also be available in respect of part time course for vocational training etc by all universities and approved institutions.

29. Benefit u/s 80IA shall be allowable to the resulting / amalgamated company in case of demerger / amalgamation

The original position, under which the transferee company enjoys the benefit in case of a demerger or amalgamation, may be reinstated.

30. Deduction in respect of royalty on books – Section 80QQB

Clause (b) of the Explanation to the section should be amended by deleting the word 'commentaries' from the list of exclusions.

In order to ensure that the deduction really benefits those for whom it is intended, the benefit should not be restricted to income derived from the exercise of a profession, but should be available to any author of such books

31. Anonymous donations under section 115BBC

To clarify the intention of the statute, section 115BBC(1)(ii) may be re-worded as follows:-

" the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the ~~aggregate amount of~~

anonymous donations ~~received~~ WHICH ARE SUBJECT TO TAX IN CLAUSE (i) ABOVE."

32. Explanation 2 to section 139(1)-Due date of furnish report under section 92E

(i) Clause (aa) may be appropriately amended as follows –

"in the case of an assessee required to furnish a report referred to in section 92E, the 30th day of November of the assessment year".

(ii) The definition of "specified date" in clause (ii) of Explanation to section 44AB may be amended to provide 30th November of the assessment year as the specified date for assessees who have entered into international transactions. For this purpose, the definition of "specified date" in the Explanation to section 44AB may be amended to align the same with the definition of "due date" under Explanation 2 to section 139(1).

33. Section 139(5)

Section 139(5) may be amended to provide that the revised return can be filed even in the case of belated return.

34. Guidelines for the empanelment of auditors under section 142(2A)

Specific guidelines for the appointment of auditor under section 142(2A) by Chief Commissioner or Commissioner may be issued. The said guidelines may provide for conditions like experience of the auditor in the relevant field, number of years of experience, number of partners etc. Further, in order to maintain quality of work and to provide equitable distribution of work, a restriction on the number of such audits by a particular auditor in a particular year may be imposed.

35. The need for withdrawing section 145A in view of Accounting Standard 2 (Revised) Valuation of Inventories becoming mandatory

The complicated computation required for complying with the provisions of section 145A will not generate any extra revenue as the impact of section 145A is revenue neutral. Hence section 145A needs to be deleted.

36. Rectification of mistake u/s 154 & Appeals u/s 246A

In view of the above section 154(1) may be amended as follows:

> **"With a view to rectify any mistake apparent from the record an income tax authority referred to in section 116 may:**
>
> > **(a)……, (b)……..**
> >
> > **(c) amend any intimation or deemed intimation under section 200A w.e.f. 01/04/2010."**

Further, a clause (s) may be inserted in section 246A(1) as follows:

> **"(s) Any intimation or deemed intimation u/s 200A w.e.f. 01/04/2010."**

37. Credit of Tax Collected at Source relating to earlier years (for which Assessments are already over & time period mentioned in Sec 155(14) has elapsed) demanded by the Government authorities at a later date:

Considering the hardship being faced by assessees in respect of cases mentioned above, the department should give credit for such TDS/TCS even if the assessments have been completed and also the period mentioned u/s 155(14) has expired.

38. Suggestions relating to Tax Deducted at Source

(a) Non-deduction of TDS on Service Tax

No tax at source should be deducted on service tax component of professional fees and other services. The benefit for the exclusion of service tax for calculating TDS should be given for other income also.

(b) Audit of TDS returns

An independent audit provision may be inserted to provide for a comprehensive audit of all the TDS returns filed with the Department. Appropriate forms of audit report can be prescribed to certify about the correctness of the quarterly TDS returns. This will enable the Department to rest be assured about the correctness of the TDS returns filed as well as the remittance of the tax deducted at source to the credit of the Central Government.

(c) TDS on Purchase of Software Licences

A specific provision for deduction of tax at source say @1% on purchase of branded software licences from software dealers be incorporated in the Income-tax Act, 1961

39. Section 193-Interest on Securities

i) The interest on Debentures issued by companies either listed or non-listed may be given threshold limit under clause (v) of Proviso to section 193.

ii) The threshold limit under clause (v) of Proviso to section 193 regarding non-deduction of TDS may be increased to minimum Rs. 10000.

40. Section 195-Time limit for Issuance of "general or special order"

An appropriate time limit say thirty (30) days may be imposed for passing such general or special order by the Assessing officer. Further, where an application is rejected the Assessing Officer may be required to pass a speaking order after providing a reasonable opportunity of being heard to the applicant.

41. Validity of Certificate issued u/s 197

a) the application may be allowed to be made atleast 60 days before the commencement of the financial year.
b) Such application should be disposed off within 30 days.
c) The certificate under section 197 may be issued to be effective from the 1st day of previous year.

42. Clarification sought for generation of TDS certificates in case TDS is deducted @20% u/s 206AA

A clarification regarding the procedure for providing TDS Certificate especially in above mention issue to make the process easy and smooth and better compliance of the Act may be provided.

43. Inclusion of payments and receipts made through the modes like RTGS, NEFT, EFT and ECS as valid modes of fund transfers under sections 269SS and 269T of the Income-tax Act, 1961

Different modes of transfers like RTGS, NEFT, EFT, ECS etc. be included as valid modes of fund transfers under section 269SS and 269T of the Income –tax Act, 1961. Alternatively, section may provide for any mode of payment other than cash on the lines of section 80D.

44. Omission of section 282B-Document Identification Number

Section 282B may be reinstated and the date of implementation of DIN may be postponed till the availability of requisite infrastructure on all-India basis.

45. Increase in Ceiling Limits

The following limits may be increased:

Section	Existing ceiling	Suggested ceiling
40A(3)	Rs.20,000	Rs.50,000
269SS	Rs.20,000	Rs.50,000
269T	Rs.20,000	Rs.50,000

46. **Introduction of Sunset Clauses in Income-tax Act, 1961**

Sunset clauses at suitable places be inserted in the Income-tax Act, 1961.

47. **CER Sale to be treated as Capital Receipt**

This credit should be treated as capital receipt free from any taxes. Alternatively, the amount spent should be eligible for deduction under section 10AA, 80IA, 80IB, 80IC etc.

48. **Corporate Social Responsibility Costs:**

a) **a deduction of the expenditure on community / social development (both capital and revenue) be introduced, specifically covering critical areas like education, health, animal husbandry, water management, women empowerment, poverty alleviation and rural development.**

b) **Even in cases where a company has its own trust or foundation, the deduction in respect of expenditure incurred for CSR activities should be allowed.**

c) **Such expenses, however, should be subject to a limit say 5% of total income.**

49. **Carry forward of excess foreign tax credit**:

Assessees be permitted to carry forward (say for five years) such unutilized credit (in USA such relief is granted vide section 904(c) of Federal Tax Act) for adjustment in future years.

50. **Incentivizing investments in respect of agricultural infrastructure**:

The tax incentives may take the following forms:

i. **deduction of proportionate profits for the total value of turnover arising from such computerized infrastructural facilities (in line with the provisions of section 80IA read in conjunction with**

section 80HHC) for purposes of simplification and avoidance of disputes.

ii. deduction of the total expenditure incurred, both capital and revenue, for creating such infrastructure (similar to the provisions of section 35).

51. Age of Senior Citizen for Tax Benefit

To bring more clarity and equality in every section which deals with the senior citizens, 60 year age shall apply uniformly in the Act and accordingly appropriate amendments may be made in the Act.

52. Gaps in electricity generations

Concessions or additional tax benefits may also be provided where a new building (resident/commercial/hotel etc) installs a solar energy devices & rain harvesting instruments.

53. Procedure for surrender of PAN

Procedure for surrender of PAN & exemption from filing of return of income in respect of Firms whose business discontinued, may be prescribed. With this, firms may be saved from penalty u/s 271F.

54. Differential Stamp duty charges being paid by CA's and Advocates on letter of authority for representing the client

In order to bring uniformity in Court fees for both Chartered Accountants & Advocates for their representing the client before Income-tax Authorities, section 288 which provides "appearance by authorized representative" should be amended to provide for the fees to be charged for authorisation.

55. Book Profit tax (MAT) on Scientific Research Expenditure

In order to promote in-house R&D in India, the amount of weighted deduction u/s 35(2AB) may be allowed to be deducted while computing tax under 115JB.

56. Deduction for Employee Stock Option Cost

Necessary amendment may be made in Income-tax Act or circular should be issued by the CBDT to allow deduction for ESOP cost being employee remuneration cost.

IV. SUGGESTIONS RELATING TO RULES AND FORMS

1. Valuation of Sweat Equity under Rule 3(9)

Rule 3(9) should also be amended to enable an accountant to do valuation of sweat equity. Thus, Rule 3(9) may be re-worded as follows:-

"for the purposes of section 17(2)(vi) the fair market value of a specified security, not being equity shares in a company, on the date on which option is exercised by the employee, shall be such value as determined by a merchant banker OR AN ACCOUNTANT on the specified date."

2. Section 14A/ Rule 8D Disallowance

Rule 8D should either suitably modified or should be scrapped. In case the same has to be retained, it should be amended to provide that the amount of notional disallowance shall not exceed the income earned which is exempt from tax.

3. Depreciation on Computer

In order to clarify the intent and also to avoid futher litigations, Note 7 of Appendix IA of the Income-tax Rules, 1956, may be further amended to provide that "computer" includes printers, scanners and other peripherals.

4. Section 40A(3)/Rule 6DD

Alternatively, insertion of a clause on the lines of erstwhile clause (j) is suggested in section 40A(3) itself.

The following payments may be also prescribed as exempt under Rule 6DD:

(a) payment of octroi at octroi posts;

(b) payments to small transport operators, or drivers, towards freight;

(c) payments at public auctions;

(d) Payments made to public sector companies

(e) Payments for acquisition of asset for the use in the specified business under section 35AD which is allowable as a deduction.

(f) Expenditure not exceeding Rs. 1,00,000 incurred by a resident while on tour outside India.

(g) Payments made to hotel.

(h) other payments where the nature of the transaction is such that it is to be ordinarily paid only in legal tender.

5. Form No.3CD

Clause 17(h) of the Form No.3CD may be re-worded as follows:-

"amount debited to profit and loss account being amount inadmissible under section 40A(3) and 40A(3A) read with rule 6DD and computation thereof"

6. Difficulty being faced in claiming deduction u/s-35AD

A point C- Computation of Income from specified business be inserted in the Schedule BP, below point B- computation of Income from speculative business (as depicted in the detailed suggestion) which may be further linked to CFL schedule which takes data for carry forward of loss from specified business instead of point 2b.

7. **Payment of Interest on External Commercial Borrowing (ECB) TDS U/s 195:-**

It is suggested to deal with the situation (as *mentioned in the detailed suggestion*) a separate clarification should either incorporate in the rules or in the section itself which will help the entities to overcome these types of difficulties.

8. **Revision of Circular No. 715 dated 8-8-1995 and 716 dated 9-8-1995**

In view of existing business conditions, Circular Nos. 715 dated 8-8-1995 and 716 dated 9-8-1995 be revised appropriately.

9. **PAN Number for payments in Hotels / Restaurants:**

Clause(h) of Rule 114B may be continued but its applicability may be restricted to hotels and restaurants for only cash payments above Rs.1,00,000/-.

10. **ITR-6-Difficulty being faced due to wrong calculation of tax payable**

Necessary amendment may be made in the utility of ITR-6 so the assesses do not have to face undue hardship while filing their returns.

11. **Rule 26 - Telegraphic transfer buying rate**

The explanation presently appearing may be substituted by making a reference to the trading rate for that day as declared and available on the website of Reserve Bank of India.

I. SUGGESTIONS TO IMPROVE TAX COLLECTION

1. Information to be furnished in the Annual Information Return

Section 285BA may appropriately be amended to require information regarding the following financial transactions:

(a) Payment received by tour operators exceeding Rs.2 lakh.

(b) Information regarding Government tenders where the value exceeds Rs.10 Lakhs. This information may be provided by the concerned Government Department.

(c) Sales and purchases of shares exceeding Rs.5 crores respectively in the case of day traders. This information can be filed by the concerned brokers who are dealing with the day traders.

(d) Receipt of donations by trusts or Institutions exceeding Rs.1 lakh. Such information may be filed by the concerned trusts or institutions.

(e) Educational fees paid in excess of Rs.1 lakh per annum. The concerned educational institution should furnish the relevant information to the Department.

(f) Compulsory PAN on air-ticket bookings for foreign overseas package tours Information to form part of annual information return under section 285BA

Persons booking international air-tickets should be required to give their PAN while booking tickets when such foreign travel is organised as foreign package tours. This step will bring many high value transactions into the data system, which can be scrutinised for expanding the tax base. Alternatively, the person who is funding the package tour may be required to give his PAN. Those persons who are not having PAN can be asked to give a suitable declaration. To begin with, this requirement may be in respect of those persons who incur expenditure on air travel above a prescribed ceiling limit. Further, the airline companies should be required to forward such

declarations to their respective Assessing Officers. This information can be included as part of the return under section 285BA.

Suggestion:

In respect of the above mentioned transactions, where the PAN is not provided by the payer, the provisions like TCS may be made applicable to the payee. Accordingly, the payee should be allowed to collect tax at an appropriate rate. Later, in case the deductee provides PAN within a specified period to the deductor, the deductee should be provided with a certificate like TCS certificate for claiming the same in the return of income. In case the deductee does not provide PAN with the specified period, the tax so collected would be added to the revenue of the Government.

2. TDS in respect of maturity of insurance policies which are taxable under section 10(10D)

Section 10(10D) provides for non-taxability of sum received from maturity of insurance policies. However, following are some exceptions to this:

(a) any sum received under section 80DD(3) or 80DDA(3)(Substituted by section 80DD by Finance Act, 2003 or

(b) any sum received under Keyman Insurance Policy.

(c) any sum received under an insurance policy issued after 01.04.2003, in respect of which premium payable for any of the years during the term of policy exceed 20% of actual capital sum assured.

Any sum received by the beneficiary on maturity of insurance policies in above-mentioned cases is taxable. However, there are no provisions under chapter XVIIB to deduct tax at source from the sum being paid to the beneficiaries in such cases due to which many policy holders getting maturity from insurance companies without payment of taxes.

Suggestion:

It is suggested:

(a) that a provision relating to TDS should be inserted in Chapter XVIIB to cover such payments where the exemption under section 10(10D) is denied to the recipient of income from insurance companies.

(b) that where the premium paid is above 20% of capital sum assured, the premium paid certificate (receipt) issued by insurance companies for the purpose of 80C should clearly mention that the qualifying amount for 80C deduction in respect of such premium paid is only up to 20% of capital sum assured.

3. TDS under Section 194A-Interest payments to NBFC

Section 194A(3)(iii)(a) provides that the tax on interest other than interest on securities is NOT required to be deducted by a person responsible for paying the same to a resident, if the income is credited or paid to any banking company to which Banking Regulation Act, 1949 applies or any co-operative society engaged in the business of banking (including a co-operative land mortgage bank).

It may be noted that Section 194A does not treat Non- Banking Financial Institutions (NBFCs) at par with the Banking companies or Co-operative Banks. Due to this, the middle class businessmen who have borrowed money from NBFC's are disallowed interest paid on the same due to non-deduction of tax at source under section 194A of the Income-tax Act, 1961. It is suggested that section 194A should not apply to NBFCs as:

a) NBFCs principal business is of lending money under various products just like Banking Company or a co-operative Bank.

b) There is no mechanism for deduction of tax on interest paid by the assessees as the NBFCs collect cheques of EMI for the tenure of loan.

c) NBFCs are also regulated by RBI just like Banking Company and a Co-operative Bank.

Considering the fact that there is no mechanism for deduction of tax on interest paid by the assessees as the NBFCs collect cheques of EMI for the tenure of loan, the non-compliance of the provisions of this section is inevitable. This however, does not affect the revenue collection, but leads to postponement of the same as the tax on that interest received by it the NBFC. However, the said provision creates problem for the assessee who has borrowed money as he is unable to claim deduction in respect of said interest due to operation of section 40(a)(ia).

Suggestion

a) To provide relief to the genuine taxpayers paying interest to NBFC's, it is suggested that the section 194A(3)(iii)(a) be amended to treat NBFC's at par with other banking companies.

b) Further, in order to ensure compliance of the provisions of the Act for timely collection of taxes and also, provisions of Tax collection at source be made applicable to NBFC's in respect of such interest.

4. Real estate transactions – Uniformity and reduction in stamp duty rates

Real estate business is an area where streamlining the tax laws would yield a large amount of revenue to the Government. It is common knowledge that much unaccounted money is involved in real estate transactions. One of the reasons for understatement of sale consideration is the high stamp duty rates levied by the various State Governments. There are wide variations in the rates of stamp duty levied by various States.

In this context, it worthy of note that the Central Government took a major initiatives in the matter of implementation of State-Level VAT in India. An Empowered Committee of State Finance Ministers was formed and consensus was obtained from the State Governments for the introduction of a uniform State VAT legislation. Accordingly, a While Paper was brought by the Central Government and the various State Governments introduced VAT legislations in their respective States which conformed with the principles of State VAT enunciated in the White Paper.

In the matter of Stamp Duty rates also the Central Government can take the initiative and bring about a consensus among the State Governments for prescribing uniform stamp duty rates in accordance with a general agreement between the State Governments and the Central Government. This will go a long way in simplifying capital gains taxation and would also encourage disclosure of the correct consideration received from the transfer of capital assets.

5. Verification of all income-tax returns

There are classes of persons who are filing income tax returns but are not declaring their income properly. Either the income is suppressed or various deductions are being claimed which are not legally permissible. With the increase in the work of the Department it is not practicable to scrutinise each and every return. Taking into consideration this aspect the person filing the return takes a calculated risk. To address this, it is important that all the returns filed are thoroughly checked and cross-verified with the information collected through AIR and other sources by the Department. This process is entirely different from the scrutiny process. In this verification, not only the arithmetical accuracy but the admissibility of the claim regarding the expenditure incurred, income earned or investment made on the basis of the evidence collected from various sources will also be verified. Since this work is voluminous, the same will also be required to be out-sourced preferably to

the professionals understanding the law better and who are in a position to identify the grey areas. This will be just on the line of desk review presently being carried out by the Excise Department. This process once started will ensure better voluntary compliance as every taxpayer filing the return would be aware that the return being filed would be subject to a verification process and he cannot afford to take the liberty of making adjustments which are legally permissible.

6. Verification of the fact that tax audit has been done by a Chartered Accountant

The Income-tax returns are presently to be filed annexure-less by all assessees. This also applies to those assessees who are required to get their accounts audited under section 44AB of the Income-tax Act, 1961. The tax audit report duly signed by a Chartered accountant is now not required to be furnished along with the return of income. Assessees who are required to get their accounts audited under section 44AB are required to furnish in the Income-tax Return form, the figures of the audited financial Statements along with the details of the Chartered Accountant who has audited the same.

Considering the fact that the auditors are not required to verify the details entered in the e-returns, the membership details of the members are being misused by the assesses as the assessees are quoting such details of a member who has not audited his accounts for that year.

Suggestion:

To avoid such misuse, it is suggested that:

(a) Tax audit report digitally signed by the tax auditor may be allowed to be uploaded along with the return of income at the earliest;

(b) On the basis of data regarding practicing members provided by ICAI, a validation link may be created on the Directorate of Income Tax website, which would enable the Department to verify the details of member who is conducting the audit. In case the membership details so entered do not match with the ICAI Data, the system should not allow the uploading of the return after two attempts.

(c) To further strengthen the system, it is suggested that a user id and a password may be made available to every practicing member by the Income tax Department, so that the member can view all the tax audit reports uploaded in his name. This in turn would further curb the malpractice of misusing the details of member by the assessee as a tax audit not done by the member may be then reported by him to the Income-tax Department for action at its end.

II. SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS

1. "Annual receipts" under section 10(23C)

Under section 10(23C)(iiiad) and (iiiae) of Income-tax Act, it is provided that the income of University/Educational institutions/hospitals/ other institutions specified therein will be exempt provided they comply with the conditions stipulated therein. Also it is provided that "aggregate annual receipts" of such institutions shall not exceed the amount of annual receipts as may be prescribed. Though annual receipts have been prescribed as Rs.1 crore vide Rule 2BC of Income-tax Rules, the word "annual receipts" have not been defined in the Income-tax Act.

It is not clear as to whether:

(a) for computing "annual receipts" only the receipts of such institutions from

educational/hospital activities alone are to be considered each year;

(b) Certain receipts of such institutions that are not received on annual basis e.g. receipts from sale of property, equity shares and other proceeds on divestment are to be excluded from the computation of "annual receipts";

(c) In certain cases where such charitable institutions receive donations in in kind in the form of land, movable assets etc. whether "annual receipts" would exclude such receipts since they are not received annually.

Suggestion

It is suggested that "Annual Receipts" be clearly defined as income of the hospitals/ educational institutions arising regularly/every year but excluding value of donation received in kind by way movable assets, land, hospitals/educational equipment, sale consideration received on disposal of land, shares or other movable property, hospital/educational equipment etc.

Further, it may be specifically provided that donations received towards corpus by way of land, movable assets are excluded from computation of "Annual Receipts" as prescribed under Rule 2BC of Income-tax Rules.

2. Exemption under section 54 & 54F

a) Under Section 54 of the Income-tax Act, if an assessee who has earned a Capital Gain on sale of a residential house, has, within the prescribed period, purchased or constructed another residential house, then, to the extent of the cost of the new residential house, no tax in respect of such Capital Gain is payable. There is a similar provision under Section 54F under which the Capital Gains arising on transfer of ANY long term capital asset will also be exempt from tax, if the assessee has, within the prescribed period, purchased or constructed a residential house, to the extent of the cost of such new residential house.

A considerable volume of litigation has arisen in the past on the issue as to 'when' exactly an assessee can be considered to have purchased or constructed a new residential house and also on the issue as to whether the acquisition of the new residential flat in an Ownership Apartments Scheme (OAS) or a Co-operative Housing Society is "purchase" or "construction". This distinction is important because, the prescribed time limits for both are different.

The above controversy has been set at rest by the CBDT in relation to the acquisition of a flat by an allottee under the self-financing scheme (SFS) of the Delhi Development Authority (DDA) by issuing the Circular No. 471 of 15.10.1986. The Circular has clarified that in case of allotment of a flat by the DDA under the SFS, the allotment by DDA will be treated as "construction" of a residential house and that the "construction" shall be deemed to have been made on the date of allotment of the flat on payment of the first installment of the price of the flat even though, full price of the flat has not been paid.

It is submitted that acquisition of a residential flat in an Ownership Apartments' Scheme (OAS), the plans of which have been approved by all the authorities whose approval is necessary under the law, should be treated on par with acquisition of a flat under the SFS of the DDA. On a parity of reasoning, the exemption under Sections 54 and 54F should be available to an assessee who has entered into an agreement for purchase of a residential flat with a Real Estate Developer (RED) and he will be deemed to have 'constructed' the new residential house on the date on which the Agreement for Purchase has been registered with the Registering Authority after payment of the amount payable on signing the Agreement. To avoid misuse of the exemption, a further condition may be imposed that if the person has not paid to the RED more than 50% of the purchase price of the residential flat within the period prescribed under Sections 54 and 54F for

"construction" of a new residential house, and/or, has not got actual possession of the residential flat on payment of full purchase price of the flat within a further period of three years after the expiry of the prescribed period, the exemption shall be withdrawn. The exemption will be to the extent of the total cost of the residential flat as per the Agreement for Purchase. The presumption is that the RED constructs the Ownership Apartment on behalf of the flat owners.

The preponderant view taken by many Tribunals and Courts in several decided cases supports the submission made in the precedent para. See "Shashi Verma V. CIT 224 ITR 106(MP), CIT V. R.L. Sood 245 ITR 727 (DEL), Hilla Wadia . CIT 216 ITR 376 (BOM). However, some Tribunals and Courts have taken a different view. As there have been conflicting Judgements on the issue, many Assessing Officers (AO) take the view that the exemption is available only if the actual possession of the new residential house has been taken after payment of the entire cost of the residential house within the prescribed period. Some have also taken a view that when an assessee joins an "OAS" he is "purchasing" a flat and not constructing a flat. Such a view causes considerable unjustified hardship to the assessees and has resulted in a lot of avoidable litigation.

The aforesaid view taken by some Assessing Officers strikes at the very root of the intention of the Parliament in enacting the Sections 54 and 54F for giving the much needed relief to assessees who need to change a residential house for various genuine and valid reasons, and they have no option but to join on "OAS". It is evident that they do not earn a real capital gain on sale of the first residential house when they have to necessarily utilize that capital gain for acquiring the new residential flat. The real estate prices have been continuously on the increase. Therefore, the new residential flat will usually cost more than the sale price of the one sold. When a person books a flat in a large OAS, he cannot be sure that the scheme will be completed within the

period prescribed in Sections 54 and 54F. In most case, large OAS take a longer period for completion than the one prescribed for 'construction' in Sections 54 and 54F.

It has been an 'oft declared' policy of the Government to take all steps necessary to reduce litigation because of the very large number of pending cases with the Supreme Court and the High Courts. On this issue, there has been considerable avoidable litigation because of differing interpretations taken by AOs, Tribunals and Courts on the question whether acquisition of a residential flat in an OAS is 'purchase' or 'construction' and when the 'purchase' or 'construction' can said to have taken place.

Suggestion:

> ***In order to avoid avoidable litigation, a Circular on the said subject be issued clarifying that in a case where an assessee has entered into a Registered Agreement for Purchase of a residential flat in an "OAS" and the assessee has paid more than 50% of the cost of the residential flat within the period prescribed in Sections 54 and 54F and has, within a further period of three years obtained actual possession of the residential flat on payment of its full price, the assessee shall be deemed to have "constructed" a 'residential house' within the meaning of Sections 54 and 54F on the date on which the Agreement for Purchase has been registered and the exemption under the said Sections will be available to the assessee to the extent of the aggregate cost of the residential flat agreed to be purchased.***

b) The proviso to section 54F(1) provides that the nothing contained in this sub-section shall apply where (a) the assessee (ii) purchases any residential

house, other than the new asset within a period of **one year** after the date of transfer of the original asset.

Further, section 54F(2) provides that where an assessee purchases, within the period of **two years** after the date of the transfer of the original asset, or constructs, within the period of three years after such date, any residential house, the income from which is chargeable under the head "Income from house property", other than the new asset, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such new asset as provided in clause (*a*), or, as the case may be, clause (*b*), of sub-section (1), shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such residential house is purchased or constructed.

It may be noted that the proviso to sub-section (1) discourages the assessee to purchase a new house within a period of one year and sub-section (2) discourages the assessee to purchase a new house within a period of two years. There seems to be inconsistency between the two provisions of the same section.

Suggestion:

> ***It is suggested that the inconsistency in the sub-section(2) and proviso to the sub-section(1) and may be removed to avoid unnecessary litigations.***

3. Section 50C

Section 50C being a special provision for considering full value of consideration in certain cases was inserted by Finance Act, 2002 w. e. f. assessment year 2003-2004. Accordingly, where the consideration received or accruing as a result of the transfer by an assessee of a capital asset,

being land or buildings or both, is less than the value adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall be deemed to be the full value of the consideration received or accruing as a result of such transfer.

Section 50C which provides for adopting value for stamp duty in the place of actual consideration is similar to section 52(2) withdrawn earlier due to Supreme Court decision in KP Varghese case, 131 ITR 597. Our reservations in regard to this provision are for the following reasons:-

(a) Guideline value is not fixed in a scientific manner by the State Government authorities.

(b) Guideline value is fixed for a particular survey number or division number encompassing several properties whose market value can never be the same.

(c) The concept of real income gets affected and capital gains will be computed on basis of notional figure.

(d) Guideline value is periodically increased in some States even though there is no corresponding increase in the market value.

(e) Even under Chapter XXC, guideline value never influenced the decision to purchase any property as the Appropriate Authority always appreciated that market value is different from guideline value. Guideline value is one of the indicative factors but not conclusive as to the fair market value of a property.

(f) Any understatement of consideration should be tackled by investigation mechanism and not by such an amendment.

(h) Reference to Valuation Officer and the value so estimated can be subject matter of prolonged litigation without ultimate increase in revenue.

(i) Computation of capital gain on the basis of unrealized notional value will lead to difficulty in availing exemption by making eligible reinvestment.

(j) Even in cases where transactions are approved by public charity commissioner, Reserve Bank of India, Appropriate Authority (up to1.7.2002) invoking guideline value will lead to anomalous situations.

(k) This provision is prone for subjective assessment and prolonged litigation on complex issues/disputes.

Suggestions

It is suggested that the provisions of section 50C should be reviewed with reference to the following:

- ***In case where 50% or more has been paid as registration money, the date of agreement may be considered for the purpose of valuation and not the date of actual registration of the property.***
- ***If the transactions for sale of property are entered below the circle rate, the provisions of Tax Collection at Source (TCS) may be introduced and tax be collected at a reasonable rate (say @1%). However, after checking the genuineness of the transaction, due refund should allowed as per procedures.***
- ***In order to avoid litigation, it may be clarified that in respect of the assets which are invested into the common pool of the partnership whether section 56 or section 50C, would be applicable.***
- ***Section 50C(2) provides that subject to fulfillment of certain conditions, the Assessing officer may refer the valuation of capital asset to the Valuation officer. It is suggested that the word "may" be substituted with "shall".***

4. Section 94A-Special measures in respect of transactions with persons located in notified jurisdictional area

One of the tax consequences of a country or area being notified as NJA is that payments to persons located in that NJA would be subject to a higher withholding @ 30%. The relevant provision which provides for this implication i.e., section 94(5), would be applicable notwithstanding anything to the contrary contained in the Act.

Section 206AA which provides for higher withholding @ 20% in absence of PAN of payee is also applicable not withstanding anything to the contrary contained in the Act.

Though the intent appears to be that section 94A would override section 206AA, there may be some difficulties in interpretation.

Suggestion

Section 94A and/or section 206AA may be suitably amended to clarify that section 94A would prevail in case tax is to be deducted with respect to any payment to a person located in a NJA.

5. Section 32 - Depreciation in case of slump sale

The proviso to section 32 provides that the aggregate deduction, in respect of depreciation of buildings, machinery, plant or furniture, being tangible assets or know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature, being intangible assets allowable to the predecessor and the successor in the case of succession referred to in clause (xiii) and clause (xiv) of section 47 or section 170 or to the amalgamating company and the amalgamated company in the case of amalgamation, or to the de-merged company and the resulting company in the case of de-merger, as the case may be, shall not exceed in any previous year

the deduction calculated at the prescribed rates as if the succession or the amalgamation or the de-merger, as the case may be, had not taken place, and such deduction shall be apportioned between the predecessor and the successor, or the amalgamating company and the amalgamated company, or the de-merged company and the resulting company, as the case may be, in the ratio of the number of days for which the assets were used by them.

Suggestion:

An issue arises whether depreciation can be claimed on the basis of proportionate number of days by the transferor and the transferee company in case of slump sale considering the proviso to section 32 read with section 170 of the Act. Section 32 may be amended to clarify the legal position.

6. Section 35AD-Deduction in respect of expenditure on specified business

The Finance Act, 2011 has extended the benefit of investment-linked tax deduction to two new specified businesses i.e., the business of (a) developing and building affordable housing project as per notified scheme and (b) production of fertilizers in India.

With regard to production of fertilizers, the benefit would be available if the specified business commences its operations in a 'new plant' or 'newly installed capacity in an existing plant'.

Suggestions

(i) 'New Plant' and 'newly installed capacity in an existing plant' may be defined objectively to ensure clarity and avoid litigation.

(ii) The threshold for expansion of existing plant may be provided on the lines of 'substantial expansion' as defined for the purposes of sections 80-IC and 80-IE.

7. Section 115JB-Minimum Alternate tax

(a) Disallowance of provision for diminution in value of any asset for computation of "book profit", it appears, is to be made in every class of company. However, in case of banking companies the Government may give a relook and consider applicability of the disallowance provision to a banking company. This is because that in computation of business income under normal provision, deduction in respect of provision for bad debts is allowed under express provision contained in section 36(1)(viia) subject to the limit specified in the said section. If provision for bad debts is allowed as deduction in computation of business income under normal provision, there does not appear to be any cogent reason for disallowing the same in computation of "book profit" under section 115JB.

(b) It is claimed by certain assessees that the provision of section 115JB is not applicable to banks, as banks are not required to prepare Profit & Loss Account as per Parts I and II of Schedule VI to the Companies Act, 1956 and they prepare Profit & Loss Account as per Banking Regulation Act.

(c) Section 115JB(2) requires every company to prepare its profit and loss account in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956. Consequent to revision of Schedule VI, it is necessary to amend section 115JB(2).

Suggestion

(i) Clause (i) of Explanation 1 to section 115JB may be amended as follows-

"(c) the amount or amounts set aside as provision for diminution in the value of any asset (other than provision for bad and doubtful debts allowed as a deduction u/s 36(1)(viia))"

(ii) Necessary amendment may be made in sections 115JB. It may be provided that where format of financial statements presented before the general body/AGM is prescribed under any other law (such as Banking Regulation Act, Electricity Act etc.) or by any regulator such as IRDA then book profit as per profit and loss account drawn up in accordance with such Act or regulation shall constitute the book profit for the purpose of section 115JB and not profit and loss account drawn up as per Schedule VI.

(iii) Considering the above, section 115JB(2) may be amended to provide that every assessee, being a company, shall, for the purposes of this section, prepare its profit and loss account for the relevant previous year in accordance with the provisions of relevant statue.

8. Section 206AA – Requirement of furnishing of PAN for deduction of tax at source.

Section 206AA reads as "*Notwithstanding anything contained in any other provisions of this act, any person entitled to receive any sum or income or amount on which tax is tax is deductible under chapter XVIIB, (hereinafter referred as deductee) shall furnish his PAN to the Deductor failing which tax shall be deducted at higher of three rates specified in section 206AA*.

This section however, does not takes into account the situation where payee is not required to take PAN as per the provisions of Section 139A or such payment is not taxable in India (in case of Non Residents).

Due to applicability of this section residents, who are not required to obtain PAN as per section 139A, will also have to take PAN. As this section has a non- obstanate clause, payer has no option but to deduct TDS at a higher rate to comply with the provisions of the said section, though may not be the intention of the legislature.

As no exception has been made as regards the payments to a non-Resident, it is assumed that section 206AA is applicable to the payment made to a non-resident also. However, as per the provisions of Rules 114C(1)(b) of the Income-tax Rules, 1962, specifying the class or classes of persons to whom the provisions of section 139A (PAN) shall not apply, non-resident is not required to get PAN allotted in his name.

Further, it may be noted that Section 195(5) of Direct Taxes Code Bill, 2010 reads as follows:-

"Notwithstanding anything in this Code, the appropriate rate referred to in subsection (1) shall, in a case where the deductee has failed to furnish his permanent account number to the deductor ***(except where the deductee is not required to obtain permanent account number under section 292)****, be the higher of following rates, namely:—*

(a) twenty per cent.; and

(b) the rate specified in sub-sections (2), (3) or sub-section (4), as the case may be."

In line with the provisions of proposed section 195(5) supra those assessees who are not required to obtain PAN should be exempted from the provisions of section 206AA of the Income-tax Act, 1961.

Suggestion:

A proviso should be inserted in section 206AA to the effect that the provisions of this section shall not be applicable in respect of the assessee who is not required to obtain Permanent Account Number under section 139A.

9. Hardship arising out of the Apex Court's decision in *Goetze (India) Ltd. v. CIT (2006) 284 ITR 323 (SC)*

(i) In the above-mentioned case the assessee filed its return of income for the relevant assessment year without claiming a particular deduction. Later on, it sought to claim the deduction by way of a letter addressed to the Assessing Officer. The deduction was disallowed by the Assessing Officer on the ground that there was no provision under the Act to make amendment in the return of income by making an application at the assessment stage without revising the return.

The assessee had relied upon the decision of the Apex Court in National *Thermal Power Company Ltd. v. CIT (1998) 229 ITR 383*, to contend that it was open to the assessee to raise the points of law even before the Appellate Tribunal. In that case, it was held that the Tribunal had jurisdiction to examine a question of law (raised for the first time), which arose from the facts as found by the income-tax authorities and which have a bearing on the tax liability of the assessee.

The Supreme Court held that this decision does not in any way relate to the power of the Assessing Officer to entertain a claim for deduction otherwise than by filing a revised return. Therefore, the assessee can claim deduction only by filing a revised return.

The above-mentioned decision of the Apex Court has unsettled many a case law and has caused unintended hardship to the assessees.

Suggestion:

Appropriate amendments may be made to enable the assessee to get relief during the assessment proceedings by methods otherwise than by way of filing a revised return.

(ii) No deduction is permitted to an assessee under section 10AA and Part C of Chapter VIA if the assessee fails to make a claim in the return of income. This provision is very harsh and disentitles the assessee to legitimately claim otherwise legally allowable due to technical reasons. In many cases, failure to make claim in return may be inadvertent and mere omission. There are wide powers given to the Income tax Authorities under the Income-tax Act to reopen / review / rectify assessment if any error prejudicial to the interest of the Revenue is found.

Also in the case of Goetze (India) Limited Vs CIT (284 ITR 323) the Apex Court has held that it is necessary for an assessee to revise its return of income for raising any new claim which is not raised in the original return of income.

Suggestion:

Provisions of section 80A(5) should be modified to permit filing of new claim by the assessee in the course of assessment, even without filing of revised return of income. This will remove unintended hardship.

10. Introduction of Advance ruling for residents

In order to provide the facility of determining the tax liability of non- residents in advance and with a view to avoid disputes in respect of assessment of income tax liability in the case of non-residents, a scheme of advance ruling was introduced by finance act, 1993.The scheme enables the non-resident to obtain, in advance, a binding ruling from the authority for advance ruling on issues which could arise in determining their tax liabilities. Time consuming and expensive litigation can, then be avoided. Such issues may relate to transactions undertaken or proposed to be undertaken by the non-resident applicant. The Scheme has been very successful in avoiding tax-litigation in case of non- residents.

Suggestion

It is suggested that the same scheme should be introduced for resident's tax purposes also. In case of residents also, it has been observed that assessee takes one interpretation of law and executes the transactions which is denied by the department causing hardship of paying taxes which he thought is not actually payable.

Further, in order to avoid unnecessary application, the scheme can be so framed that only transactions involving certain threshold of investment can be applied or fee for advance ruling can be fixed in a way that small and unnecessary applications are avoided.

11. Clarification regarding TDS on Commission to a partner under section 194H read with section 40(b)

In case of partnership firms Section 40(b)(i), provides that "remuneration" shall mean any payment of salary, bonus, commission or remuneration by whatever name called. Considering a partner and partnership firm as one entity, the provisions of tax deduction at source under section 192 have not

been made applicable on payment of such remuneration, as the same is not taxable under the head “Salaries”.

Further, section 194H provides for tax deduction at source in respect of commission or brokerage. The issue which arises here is whether, the Commission referred to in section 194H would cover commission paid by the Partnership firm to its partners and be liable to Tax deducted at source.

Suggestion

A clarification should be provided to the effect that Commission under section 194H would not include commission paid by the partnership firm to its partners

12. Signing of notices under Section 282A

The new section 282A has been inserted to provide for issue of any income tax notice or other document without it being signed by the requisite authority. This can result in widespread misuse of powers and harassment. The memorandum has explained that this change is being provided for in the context of computerized generation of notices and other documents.

Suggestion

It is suggested that the computerized notice / document should have a separate control like provision for a digital signature because these are legal / statutory documents and this aspect should specifically be incorporated in section 282A. In respect of manual notices/documents the section should also record that signatures will be mandatory applicable.

13. Applicability of Education Cess and Secondary and Higher Education Cess - Double taxation Avoidance Agreement

Under the Income-tax Act, 1961, Education cess and Secondary and Higher education cess are imposed on account of the provisions contained in sub-section (12) of Chapter III of the Annual Finance Act which provides the rates of income-tax. The education cess is to be calculated on the amount of income-tax as specified in sub-sections (1) to (10) of the said Chapter. However, none of these sub-sections deal with the rate specified in DTAA, which becomes leviable by virtue of the provisions of section 90A(2).Therefore, the moot issue is whether the Education cess and Secondary and Higher education cess would be applicable where the rates specified in the respective DTAA becomes applicable by virtue of the beneficial provisions contained in section 90A(2).

It may be noted that at the time when a Double taxation avoidance agreement is entered, the intention is to arrive at an all inclusive fixed rate of tax.

Suggestion:

Appropriate amendment may be made to clarify that EC & SHEC should not be applicable on the rates specified under DTAA.

14. Section 147/Section 148:

i) Nowadays, reopening notices under section 147/section 148 have become a very common occurrence and such notices are being served in thousands across the country. It appears that there is no consideration in following the principles on the subject laid down by the Hon'ble Supreme Court and High Courts over the years. Simple audit observations, even on points of law, are frequently being used as grounds for re-opening leading to extreme harassment to all assessees. In fact, the position has become so bad that even for legislations which have become obsolete like Interest Tax (withdrawn in Finance Act, 2001) reopening being done for very old years since the relevant law permitted reopening without any time limit.

Suggestion:

Therefore, it is suggested that proper stipulations be laid down for any reopening and the period of reopening be also reduced to 3 years from the end of the assessment year.

ii) Proviso to section 147 has been inserted to provide that the Assessing Officer may assess or reassess other than matters which are the subject matter of any appeal, reference or revision. However, in respect of matters which have already been examined at the time of original assessment, the current law as laid down by the various courts categorically stipulates that reassessment of the same cannot be done since it will result in change of opinion. Moreover, it does not make sense to keep on assessing/reassessing the same matter again and again. The annual income tax assessment/reassessment procedure should be normal and routine and should not provide for excessive powers to harass assesses.

Suggestion:

It is suggested that the new proviso to section 147 should also state that all matters which have been examined in the original assessment should not be reassessed.

15. Section 195 read with section 194LB

Section 194LB was introduced by the Finance Act, 2011 which provided in respect of interest payable to a non-resident, not being a company or to a foreign company, by an infrastructure debt fund, tax shall be deducted at the rate of 5% at source.

Further, section 195 provides that in respect of interest or any other sum payable to a non-resident, not being a company or to a foreign company, income-tax at the rates in force shall be deducted at source.

Section 195 does not provide that it shall not apply to the interest mentioned in section 194LB.

Suggestion:

Section 195(1) should be amended to read as follows:

"Any person responsible for paying to a non-resident, not being a company, or to a foreign company, any interest [OTHER THAN INTEREST MENTIONED IN SECTION 194LB] or any other sum chargeable under the provisions of this Act……"

16. Delay by Assessing Officer in giving Order giving effects to Orders of higher Appellate authorities, and also delay in issuing refunds arising out of such Order giving effects:

It has been experienced that when any order of higher appellate authorities is received, and moreover when the order is in favour of the assessee, the Assessing officer delays in issuing the Order giving effects to such appellate orders. Due to this delay, the refund arising from such appellate orders also gets delayed.

Secondly, it is also observed that in most of the cases the issuing of Refund Cheques/ Warrants are purposefully delayed and the interest on such refunds, as per the provisions of the Income-tax Act, is calculated only up to the date of issue of Assessment order / Order Giving effects to appellate orders. This results in, assessee being deprived of interest on the delayed refunds and also assessee does not earn any interest on the Interest on Refunds for the period of such delay of issuing of refund warrants by the Assessing officers.

Suggestion:

It is suggested that time limits for issuing the Order giving effects and Refund Orders should be stipulated in the Act and

also the Interest on Refunds should be calculated up to the date of actual issuing of Refund warrants and not only up to the date of granting the refund/date of Order (as per the existing provisions of the Act)

17. Initiation of penalty proceeding in every assessment orders:

Assessing officers initiate penalty proceedings in each and every assessment order in view of Honble Supreme Court judgement in case of Dharmender Textile 306 ITR 277 [2008], irrespective of the fact whether or not there is any actual concealment of Income or furnishing of inaccurate particulars of income by the assessee. It has been noticed that even in cases where there is difference in interpretation of provisions or wherever there are two views arising, the penalty proceedings are initiated. This is causing undue hardship to the assessees who have to file separate appeal for dropping of such penalty proceedings leading to prolonged litigation.

Suggestion:

(1) Suitable remedial measures should be incorporated in the Act providing relief to the genuine hardship faced by the assessees on account of imposition of penalty even where there is no concealment of income.

(2) Further, in respect for pending cases, to reduce litigations, it is suggested that a scheme on the lines of Kar Vivad Samadhan Scheme (KVSS) may also be introduced. It is suggested that in cases where addition made is NOT more than 50% of income or Rs.10,00,000 whichever is less:

d) Penalty under section 271(1)(c) may be dropped.

e) 50% of the interest levied may be waived off.

f) No further appeals should be allowed to be filed either by the Department or by the assessee similar to existing provisions of Central Excise.

18. Section 132 - Search and seizure

In the case of search under section 132, when cash is seized, it is kept in P.D. account of CIT. This cash is not adjusted against the advance tax inspite of specific request made by the assessee for such adjustment. Even in cases when assessee makes declaration of undisclosed income, the amount of cash seized is not adjusted against the tax liability relating to undisclosed income to be paid by the assessee.

The provision of clause (i) of section 132B (1) regarding application of seized assets is not very clear in this regard. It requires seized assets to be applied first towards the amount of the existing tax liability, if any, and thereafter towards the amount of the tax liability to be determined on completion of the assessment relating to search years including any penalty levied or interest payable in connection with such assessment. The provision is not clear as to what would happen to cash seized till completion of assessment or penalty proceedings.

The provision of sub section (4) of section 132B regarding payment of interest is also not clear as to whether interest is payable on surplus money after adjusting the liability arising on assessment under section 153A or on the total amount of cash seized from the date of seizure till adjustment of the same towards tax liability arising on assessment.

Suggestion:

In view of the above, amendment is required under section 132B clarifying the amount of cash seized to be permitted for adjusting against the advance tax liability of the assessee where specific request is made for such adjustment. This would help in early realization of tax, avoid litigation and save the assessee from mandatory interest charged under sections 234B and 234C.

(b) Further after search, as per amended provision by the Finance Act 2010, where assessee files application with Settlement Commission for settlement of his cases, the cash seized during search be permitted to be adjusted against the tax due as per the offer made by the assessee in the settlement application. It may be mentioned that as per the provision contained in this regard, the assessee has to make additional disclosure of income in the settlement petition and pay the taxes (which is proposed to be minimum Rs. 50 lakhs per case) before filing the application with the Settlement Commission.

Suggestion:

Since cash is seized at the time of search and lying in PD account of CIT, such cash after adjusting existing tax liabilities, may be permitted to be adjusted against the tax due as per settlement petition. Suitable amendment / instruction is required to be given to the authorities in the matter since they are not permitting such adjustment for want of clarity.

(c) Section 132B provides for application for seized or requisitioned asset. The first proviso to section 132B(1)(i) provides that where the person concerned makes an application to the Assessing Officer within 30 days from the end of the month in which it was seized for the release of asset and the AO is satisfied about the explanation provided regarding the source of asset, the asset is released after recovery of the amount of any existing liability.

Further, second proviso to section 132B(1)(i) provides that such asset or a portion thereof shall be released within a period of 120 days from the date on which last of the authorizations for search under section 132 or for requisition under section 132A as the case may be, was executed.

Even after release of Instruction No. 11/2006, dated 1-12-2006 practical difficulty is being faced by assessees as the asset is not released upto the completion of assessment.

Suggestion

In view of the practical difficulty being faced, it is suggested that a provision like 132(5) [omitted by Finance Act, 2002] which provided for provisional assessment be introduced and the asset be released after releasing the amount due as per provisional assessment.

19. Desirability to bring back block assessment system

Since block assessment has been discontinued there is litigation in regard to the year of taxability of certain income/assets discovered in search. If it is provided that an assessee can agree to subject the whole of sums/assets to the taxed in the year of search at a flat rate of 60% (tax which is equal levy of 100% penalty on today's maximum marginal rate). No further proceedings/assessments would become necessary. Taxing into consideration the ground reality such voluntary compliance at every stage should be encouraged. By closing the option of voluntary compliance in search cases at higher cost, the defaulting tax payers will be compelled to opt for litigation for the income, which he had otherwise readily agreed to offer for taxation. In this process he may or may not succeed but can definitely prolong the litigation.

Suggestion

The continuance of earlier block assessment procedure is desirable. The above approach would assist in

(a) reducing controversy over the year of taxability of income;

(b) providing suitable incentive for a person to make the necessary disclosure without indulging in litigation and

(c) removing administrative difficulties such as multiplicity of appeals, bunching together of assessments etc.

20. Section 80IA – Unit-wise deduction should be allowed

Plain reading of section 80IA gives the impression that deduction under section 80IA is available 'unit wise'. But, nowadays, losses of other units are clubbed to deny deduction under section 80IA of the Income-tax Act,1961 on the reasoning that all units constitute one single business. Since total income from eligible business is loss, deduction under section 80IA is disallowed (Even when loss of other unit has been set off against profit of non eligible business income). This practice is discretionary in nature. An assessee/company who is claiming deduction under section 80IA from one unit cannot start another unit of similar business as the initial losses of new unit will get adjusted with the profits of old unit However, if the new unit is started by another assessee/company ,old unit will not suffer any disallowance under section 80IA. This put existing assessee/company into disadvantageous position vis-à-vis new assessee/company. Many Tribunal benches (Bangalore, Mumbai etc.) have already rejected this practice.

Suggestion:

A specific clarification/provision should be made in section 80 IA itself to provide that deduction under section 80IA is 'UNIT SPECIFIC'. For each unit deduction under section 80IA should be separately calculated.

21. Section 245A-Settlement Commission

(a) Section 245A defines “case” to mean any proceeding for assessment under the Act, of any person in respect of any assessment year(s) which may be

pending before an Assessing Officer on the date on which application for settlement of case is made. It further provides that a proceeding for assessment or reassessment or re-computation under section 147, shall not be a proceeding for assessment.

Before the enactment of Finance Act, 2007, no such exclusion was provided for in this sub-section and the proceedings for assessment or reassessment or re-computation under section 147 were also considered as a proceeding for assessment.

There are large number of cases which fall under section 147. In order to further reduce further litigations, it is suggested that the proceedings under section 147 may not be excluded from the definition of "case".

Suggestion:

It is suggested that (i) Proviso of section 245(b) along with the Explanation (i) be omitted.

(b) Section 245A was amended w.e.f. 1.6.2010 to provide that the proceedings for assessment or reassessment resulting from search/ requisition would fall within the definition of a "case" which can be admitted by the Settlement Commission. Consequently, section 245C was amended to provide that the additional amount of income-tax payable on income disclosed in the application should not exceed Rs. 50 Lakhs, for an application to be made before the Settlement Commission in such cases.

In other cases, the additional amount of income-tax payable on income disclosed in the application should exceed Rs. 10 Lakhs, for an application to be made before the Settlement Commission.

Further, the Finance Act, 2011 has now provided that an application can also be made, where the applicant is related to the specified person (Mentioned in (iii) above) and in whose case also proceedings have been initiated as a result of search, provided the additional income-tax payable on the income disclosed in the application exceeds Rs. 10 Lakhs.

Suggestion

In order to further reduce litigations, it is suggested that the said limit of Rs. 10, 00, 000 may be reduced to Rs. 5,00,000.

III. SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS

1. Books of accounts in electronic mode-Section 2(12A)

The existing income tax laws do not specifically clarify or permit the maintenance of books of accounts in electronic form instead of physical books / print outs

With the IT and telecom revolution and the consequent digitization in the past decade, the economies globally are moving towards a paperless environment and there is an increasing reliance on the digitized records.

Further, as the companies are increase in size, the volume of documents generated has increased manifold and there are logistic issues is maintaining the documents such as invoices, contract, ledgers, etc in a physical format.

Maintaining books of account in electronic mode, would not only free the precious and ever shrinking office space of the corporates but also ensures better data storage & IT enabled Record management sorting, Indexing, Bar Coding at document & file level to ensure speedy retrieval.

It may be noted that Section 6 to Section 8 of the Information Technology Act 2000 permits use of electronic records and use of electronic signature while dealing with Government or its agencies. Thus, Government itself accepts the electronic mode while dealing with it.

However, the Section 9 of the said Act does not enforce the electronic form and hence in the absence of a suitable amendment to the Act, it may not be possible to use the electronic records as envisaged by the Information Technology Act, 2000.

Suggestion:

Section 2(12A) defining books or books of accounts should clearly state that the books maintained in digital form would also be considered as books of accounts for the purposes of the Act. The assessees may scan the original documents and subsequently be permitted to destroy the same as they would available only in digitized form.

The permission to maintain the books in electronic form should be given to companies beyond a certain prescribed size & scale of operations. Consequential amendments may be made and rules prescribed, as deemed necessary to provide guidance and check points to prevent misuse.

2. Section 2(15)- Definition of charitable purpose

a) Though as per section 2(15), "charitable purpose" includes the advancement of any other object of general public utility, however, the advancement of any other object of general public utility would not be a "charitable purpose", if it involves carrying any activity in the nature of trade, commerce or business or rendering any service in relation to any trade, commerce or business for a cess, fee or any other consideration irrespective of the nature of use or application or retention of the income from such activities.

In order to provide relief to the genuine hardship faced by charitable organizations which receive marginal consideration from such activities, the Finance Act, 2010 had provided that the benefit of exemption will not be denied to the institutions having object of advancement of general public utility, even where they are engaged in the activity of trade, commerce or business or rendering any service for a cess or fee, provided the aggregate value of receipts from such activities does not exceed Rs.10 lakh in the year

under consideration. Therefore, in effect, "advancement of any other object of general public utility" would continue to be a "charitable purpose", if the total receipts from any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business does not exceed Rs.10 lakh in the previous year. The said limit of Rs.10 lakhs was increased to Rs.25 lakhs by the Finance Bill, 2011 with effect from A.Y. 2012-13. Accordingly, if the receipts from such activities are Rs.25 lakhs or less, it would continue to be a charitable purpose.

However, if the receipts from such activities are Rs.25 lakhs or more, the trust would lose its "Charitable" status. Also, the "charitable" status of the trust or institution is likely to change every year depending on whether or not its receipts exceed Rs.25 lakhs in that year.

In order to overcome this difficulty, instead of denying exemption in cases where the receipts exceed the specified limit, the exemption limit may be fixed at Rs.25 lakhs and receipts over this limit may be subject to the maximum marginal rate after deducting the related expenditure i.e., the net receipts over and above Rs.25 lakhs may be subject to maximum marginal rate.

Suggestion

Rs.25 lakhs may be the basic exemption limit, and receipts in excess of Rs.25 lakhs may be subject to tax at maximum marginal rate after deducting the related expenditure.

b) Sometimes the funds of a charitable trust are utilized for medical treatment outside India, due to absence of similar facilities in India. The object of the trust may be to provide relief to the poor and medical treatment may be that of a poor person. However, it may still not qualify for benefit under section 11 since it has not applied its income for charitable purposes in India.

Suggestion:

Therefore, suitable amendment may be made in section 11 to provide relaxation to genuine cases by considering such application of income outside India as application towards charitable purpose. This provision however, may be made subject to some approval mechanism.

3. Receipt of amount under Life Insurance Policy - Section 10(10D)(c)

Section 10(10D) was amended vide Finance Act, 2003, according to which in case any sum is received under an insurance policy issued on or after 01.04.2003 in respect of which the premium payable for any of the years during the terms of the policy exceeds 20% of actual capital sum assured, the same would be exigible to income-tax.

Suggestion

Instead of any sum received being made chargeable to income tax, only the sum, which is in excess of the premium payments made by the insured to the insurer should be considered as income exigible to tax. Suitable clarifications should be made accordingly.

4. Section 10(13)- Payment from approved superannuation fund

The contributions on behalf of the employees to a superannuation scheme in excess of Rs 1 lakh per annum per employee is taxable under section 17(2)(vii) in the hands of the employee. The employees may withdraw vide receipt of annuities or a lumpsum value in the form of commutation of the annuities, at the time of events such as retirement or resignation.

Section 10(13) of the Act provides for exemption in the hands of the employee in respect of the amount received on commutation of the annuity only in case of :

- retirement at or after a specified age or

- becoming incapacitated prior to such retirement.

Accordingly, it appears that amount withdrawn on the event of resignation is not specifically exempted under Section 10(13).

In view of the same, when an employee receives the commuted value of annuity at the time of resignation, it appears that the same would not be specifically exempt under Section 10(13). As the employee was already taxed for the contribution in excess of Rs. 100,000 at the initial stage, taxing the commuted value on resignation would tantamount to double taxation of the same income.

The principle that the same income cannot be taxed twice over in the hands of the same person is now well settled. The broad scheme of the Act is to charge income to tax but only once in the hands of the same person.

Further, once the amount is taxed in the hands of the employee, the amount taxed can effectively be regarded as payment of chargeable salary to the employee which is applied back by the employee for the purposes of contribution to the fund.

The above incidence of double tax is merely on account of an anomaly post the abolition of the FBT regime when the sections liable to FBT were verbatim moved to Section 17(2). Accordingly, the same is not the intention of the legislature and is a mere anomaly which may be rectified

Suggestion:

> ***Section 10(13) may be amended to exempt commuted value received by an employee from the superannuation corpus standing to his credit at the time of resignation, to the extent the same is already taxed at the initial contribution stage under Section 17(2)(vii).***

5. Charitable Trusts

(i) A charitable trusts or Institution having its main object "Advancement of any other object of general public utility", would lose its charitable status, if the total receipts from any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business exceeds Rs.25 lakh in the previous year. However, in some cases, there is a very thin line of distinction between the said commercial receipts and charitable receipts, owing to which there can be increased litigations. For example receipts from the sale of candles by a trust, sale of milk by a gaushala, although charitable in nature may be treated as business receipts and be included while considering the limit of Rs.25 Lakhs. This may cause genuine hardship to such trusts and institutions.

Suggestion

A clarification by way of Explanation may be inserted to clarify that receipts of such nature should be not be considered for determining the limit of Rs.25 Lakhs.

(ii) Mandatory application of income by charitable trusts/ institutions under section 10(23C)

The amendment by the Finance Act, 2002 requires mandatory application of income by charitable trusts/institutions including those enjoying benefits under section 10(23C) to its objects, subject to accumulation of not more than 15% of its income including income from voluntary contributions. Similar provisions under section 11(1) read with section 12(1) exclude 'corpus donations' (voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution) from the mandatory requirement of application of the income. No such provision has been made in section 10(23C). This will compel the Institutions coming within the scope of section 10(23C) to apply even their corpus donations to the day to-day activities for

getting the exemption. This will be prejudicial to them because they cannot build up the corpus fund.

Suggestion

Section 10(23C) should be amended to specifically exclude 'corpus donations' from the requirement of mandatory application of income by such trusts/ institutions.

(iii) Charitable Trusts– Registration - Condonation of Delay– Amnesty

After the amendment in section 12A, there is no provision in the Act to provide for condonation of delay in applying for registration u/s 12A/12AA. Many charitable organisations are still unregistered and do not apply for registration just because delay will not get condoned. Only because these charitable organisations are not registered they are not coming forward in the main stream of the taxation.

Suggestion:

It is suggested that a one-time scheme may be framed or a time slot may be allowed so that such unregistered charitable organisations may obtain registration u/s 12AA/12A with condonation of delay.

6. Income of minors - to increase exemption limits under section 10(32)

At present income of minors included in the hands of parents is exempt to the extent of Rs.1,500/- for each minor. The average expenditure to meet cost of a minor's education/health/living expenses which has gone up considerably in recent years, limit of Rs.1,500/- fixed is woefully inadequate.

Suggestion:

It is suggested that this should be raised to at least Rs.10,000/- for each minor child.

7. Section 10(47) and section 115A(BA)-Income of infrastructure debt fund

Clause 10(47) was inserted by the Finance Bill, 2007 to exempt any income of an infrastructure debt fund, set up in accordance with the prescribed guidelines and notified by the Central Government.

A condition may be prescribed that such fund should be denominated in Indian Rupees to safeguard against exchange rate fluctuations.

Interest received from such fund is proposed to be taxed at a concessional rate of 5% (on gross basis) in hands of a non-resident investor.

Since the constitution of the special purpose vehicle for garnering low cost funds for infrastructure sector appears to be in the form of a 'fund', there may be ambiguity regarding the characterization of the income from the fund in the hands of the investor as 'interest'.

Further, the benefit of this concessional rate of tax on income received from such fund may be extended to residents also.

Suggestions

(i) A condition may be prescribed that the infrastructure debt fund notified under section 10(47) should be denominated in Indian Rupees.

(ii) Any distribution from the debt fund to the non-resident investors, whether characterized as interest or not, may be subjected to the concessional tax treatment.

(iii) The benefit of concessional rate of tax of 5% on income received from such fund may be extended to residents also.

8. Medical reimbursements for retired employees:

Under section 17 of the Income-tax Act, medical reimbursements to employees are exempted from tax up to Rs.15,000 per annum. Further, the expenditure incurred by the employer for the medical treatment of the employees and his family in approved hospitals is also not treated as a perquisite in the hands of the employee. However, this tax benefit is not available to retired employees.

Suggestion:

It is suggested that the provisions of section 17 be amended to include retired employees for the tax benefit on medical reimbursements/hospitalization expenditure in approved hospitals.

9. Perquisite of rent free accommodation provided as a campus accommodation where factory is located in remote areas

Rent free accommodation provided to an employee is taxable perquisite as per section 17(2). Normally, factory is established in the remote area where there is no other accommodation available. Factory campus accommodation is provided to technical staff to attend emergency work at odd hours. Factory campus accommodation cannot be equated with accommodation provided in the posh city area. There is no perks for the staff staying in the factory campus accommodation.

Suggestion:

It is suggested that where accommodation is provided by the employer in factory campus and staying there is a precondition of employment, such accommodation should be valued at NIL.

10. Interest on borrowed Capital

Keeping in mind the prices of the house properties and also the rate of interest on housing loan, it is felt that the deduction under section 24(b) in respect of Interest on borrowed capital for self-occupied property is very less.

Suggestion:

Therefore, it is suggested that the deduction in respect of interest on housing loan in case of self occupied property should be increased from Rs. 1.5 Lakhs to Rs. 3 Lakhs.

11. Depreciation

(1). Depreciation on books used by professionals

Books are very important tools used by professionals to carry on their profession. Though expenditure on purchase of books is no doubt capital in nature, the books purchased by professionals' have a very short shelf life of around a year or sometimes even less, due to the fast pace of developments in their respective fields, be it medicine or engineering or law or accountancy. Depreciation was always allowed on books at 100 per cent till 1st April, 2003, from which date, by the amendment to Appendix I to the Income-tax Rules, 1962, the rate of depreciation has been reduced to 60 per cent for books not being annual publications. This has created numerous difficulties and hardship for professionals who need to capitalize each and every book purchased by them though its value may not be very significant. It has resulted in additional book-keeping for these professionals. Also, the revenue does not gain from such an amendment as the expenditure on books by professionals would not be material.

Suggestion

In view of the above, it is suggested that the depreciation on books purchased by professionals be restored to its original rate of 100 per cent.

(2). Restoration of 100% allowance for small items of assets

Earlier, assets costing upto Rs.5,000/- were not required to be included in the block of assets for the purpose of claiming depreciation. Instead, the cost of such asset was treated as the amount of depreciation allowance.

The above provision had been introduced with a view to avoid litigation on the point of nature of expenditure (i.e. capital or revenue) in respect of purchase of small items of assets. Earlier, the limit on cost of such assets was Rs.750/. This was then increased by the Finance Act, 1983 to Rs.5,000/-, again for the same reasons.

The omission of this *proviso* has created unnecessary hardship. This was a useful provision to avoid possible litigation on such small items of assets, based on principle of materiality. It is also practically not possible to maintain records for such small purchases.

Suggestion:

It is suggested that the proviso should be reintroduced, with a condition that the same would not apply where the total value of such additions during the year exceeds 2% of the written down value of the block of depreciable assets or Rs.1,00,000/-, whichever is higher. Such a provision will act as a check on the temptation to abuse, but at the same time, will serve the purpose of simplicity. A similar provision exists under the Companies Act, 1956.

12. **Incentives for R&D:**

a) The applicability of provisions of Section 35(2AB) is getting expired on 31/03/2012.

b) Further, as per the Sec. 35(2AB), the expenditure incurred for obtaining approval from any regulatory authority under any Central, State or Provincial Act and filing an application for a patent under the Patent Act, 1970 is

eligible for weighted deduction of 200%. Also, the Approval u/s 35(2AB) is available only after completion of the R&D facility and therefore, the expenditure incurred prior to approval which normally involves substantial expenditure, does not get the benefit of weighted deduction.

c) The expenditure incurred on clinical trial carried out outside the in-house R&D facility is not eligible for deduction.

Suggestion:

a) The benefit of section 35(2AB) should be extended for further period of 5 years i.e. upto 31st March, 2017.

b) Suitable provision should be made in the said section to provide that once the approval is granted u/s 35(2AB) the same should be made effective from the date of initiation of the said R&D facility and so, entire expenditure incurred on establishment of such facility should be allowed as deductible u/s 35(2AB).

c) The expenditure incurred on clinical trial carried out outside the in-house R&D facility should be allowed u/s 35(2AB) of the Income-tax Act, 1956.

13. Deduction for payments under Voluntary Retirement Scheme –Section 35DDA:

Under Section 35DDA, deduction @ 1/5th of the amount paid to the employees is allowed in respect of payments made to employees under voluntary retirement schemes. Thus, the deduction is allowed over a period of 5 years. This section covers "*payment of any sum to an employee at the time of his voluntary retirement*." Many companies have structured different schemes to give voluntary retirement to their employees. Some of them are in the nature of monthly pension or payments spread over a few years. Many

corporate would like to fund these monthly pension, etc. by purchasing an annuity with LIC/any other insurance company. It is submitted that when the annuity is purchased for covering such payments, deduction @ 1/5th shall be allowed under Section 35DDA of the Income-tax Act,1961.

Suggestion

Section 35DDA(1) may be re-worded as follows:

"*Where an assessee incurs any expenditure in any previous year by way of payment of any sum to an employee in connection with his voluntary retirement <u>or purchase of an annuity from an insurance company to cover such payments</u>, in accordance with any scheme or schemes of voluntary retirement, 1/5th of the amount so paid shall be deducted……."*

14. Capital raising expenses

Expenses incurred for raising capital are being treated as capital in nature and no deduction is allowed in tax assessment. Section 35D provides for deduction in respect of some of the expenses, over a period of five years, subject to conditions and limits. Raising capital is necessary activity for carrying out the business activity. Not allowing deduction of expenses for raising capital increases cost of carrying out the business and adversely affects the competitiveness of the business.

Suggestion:

Section 35D should be amended to allow deduction for all expenses incurred by an assessee for raising capital in five equal installments over a period of five years.

15. Due date for crediting the contribution of employees to the respective fund–Section 36(1)(va) read with Section 2 (24)(x)

Section 2(24)(x) of the Act, inter alia defines "Income", to include any sum received by the employer from its employees' as contribution towards certain specified funds. However, deduction for such income are available under section 36(1)(va), provided that the contributions collected by the employer are credited to the respective fund within the due date specified under the relevant legislation of the fund.

The employee's contribution credited to the employees account in the relevant fund after the due date specified under section 36(1)(va) are disallowed to the employer. Further, any payments made by the employer after the due date is also NOT allowed as a deduction in the year of payment. This causes undue hardship to the assessee especially during the economic turbulence.

Further, the Employer's contribution made after the due date specified under the relevant social security legislation but deposited within the due date of filing return of income are allowed under the Act by virtue of Section 43B.

It may be noted that the statutory laws under the respective contribution schemes have provisions to levy interest, penalty etc. for the delayed payment. Hence, disallowing a genuine business expenditure merely on the ground that it has been paid after relevant due date is not justified.

In order to bring parity and also to remove the hardship caused to the assessee, it is suggested that deduction be allowed on the employee's contribution made before the due date of filing the return of income.

Suggestion:

> ***It is suggested that the due date defined under Explanation to Section 36(1)(va) shall be amended and accordingly the due date shall mean the due date for filing return of income under section***

139(1), thereby bringing it at par with the due date specified for the Employer's contribution under Section 43B of the Act.

16. Section 36(1) (viii)

Section 36(1)(viii) provides for deduction (upto a prescribed limit) in respect of any special reserve created and maintained by a specified entity. A specified entity does not include Asset Reconstruction Companies.

Suggestion

It is suggested that Asset Reconstruction Companies (ARC) should be included in the definition of specified entity to be eligible for deduction under section 36(1)(viii).

17. Provision for leave salary – Section 43B(f)

Section 43B(f) provides for deduction in respect of any sum payable by the employer as leave salary on payment basis only. At the time of insertion of section 43B(f), Accounting Standard-15 "Employees benefit" was not into existence. As per the AS-15, leave salary can be differentiated as "short term benefit" and "long term benefit". Short term benefits are allowed to be expensed off during the year. However, long term benefits are treated as "defined benefits plans" and are valued on actuarial valuation. It may be noted that the said AS is also notified under the Companies Act by National Advisory Committee on Accounting Standards and is required to be mandatorily followed by all companies.

Allowing deduction in respect of long terms benefits arising due paid leave only on payment basis may be inappropriate. Thus, it is suggested that the deduction for leave salary liability may not be linked to actual payment.

***Suggestion*:**

Clause (f) of section 43B may be deleted. Further, deduction for provision made towards leave salary liability based on actuarial valuation may be allowed.

***Alternatively*, on the lines of gratuity and pension funding, necessary provisions may be included in the Income-tax Act for funding of the leave salary liability and deduction should be allowed on such funding.**

18. Section 44AD-Presumptive Income – Some Issues

Section 44AD was introduced w.e.f. 01/04/2011 i.e. from AY 2011-12. According to the provisions, in case of an eligible assessee engaged in eligible business, income shall be deemed equal to a sum @8% of the turnover or higher income as per books. Section 44AD is applicable to any business except the business of plying, hiring or leasing goods carriages referred to in section 44AE and whose total turnover or gross receipts in the previous year does not exceed an amount of Rs. 60 lakhs

a) Maintenance of Books of Account

The general interpretation taken from the reading of the section is that once a deemed income @8% is returned u/s 44AD, the assessee will not be required to maintain any accounts as required u/s 44AA.

There is a provision u/s 44AD(5), that if the income is less than 8% then books will be required to be maintained and audited. Unlike the provision in the erstwhile 44AD(4), there is no direct positive provision in present sec 44AD to the effect that section 44AA and section 44AB will not apply and that the turnover covered under section 44AD will be excluded for the purposes of calculating the turnover u/s 44AB.

Such ambiguity has developed confusions and apprehensions in the minds of the assessees who are covered by the section.

Suggestion:

The section may be amended or suitable provision be inserted so as to clarify the intentions of the section. The erstwhile sub section 4 read as under:

"The provisions of section 44AA and 44AB shall not apply in so far as they relate to the business referred to in the sub section (1) and in computing the monetary limits under those sections, gross receipts or as the case may be, the income from the said business shall be excluded."

b) Eligible Business

As per the section 44AD eligible business means:

i) Any business except the business of plying, hiring or leasing goods carriages referred to in section 44AE; and

ii) Whose total turnover or gross receipts, in the previous year does not exceed an amount of sixty lakh rupees.

Suggestion

a) Section 44AD may be amended to clarify whether the receipts of Rs.60 lakhs under section 44AD intend to cover the receipts of a single business or aggregate receipts of all businesses

b) The provisions of section 44AD should not be made applicable for all businesses. The scope of section 44AD may be clearly defined to cover particular businesses only.

c) Further, it may also be clarified whether the provisions of section 44AD would be applicable for loss making business and businesses having income below taxable limit.

19. Conversion of stock-in-trade into capital asset

Section 45(2) covers the situation where capital asset is converted into stock in trade. There is no provision in law which deals with a situation where stock in trade is converted into capital asset of a business. Nowadays there are a large number of instances where stock in trade gets converted into capital asset.

Suggestion:

It is suggested that the said transaction should be regarded as a transfer and consequently section 2(47) may be amended. A section may be drafted on the lines similar to section 45(2) to provide that the difference between the fair market value on the date of conversion and the cost price or market price of stock in trade which has been considered for the purpose of valuation of closing stock is to be deemed as business profits to be taxed in the year in which capital asset is sold. The fair market value on the date of conversion should be deemed as cost of acquisition of the capital asset.

20. Limited Liability Partnership (LLP)

(a) The Ministry of Corporate Affairs, last year has taken up the issue with the Ministry of Finance to allow level playing field to Limited Liability Partnership so that the mode of carrying business in Limited Liability Partnership become popular and the entities presently carrying on business as company can evaluate and if found more suitable switch over to Limited Liability Partnership mode without having any tax implications.

The Ministry of Finance, has considered the proposal and has made certain changes in the Income-tax Act,1961 allowing conversion of Private Limited Companies, non listed public companies into Limited Liability Partnership, without any tax implications. However, the amendment carried out has put a condition that this provision of conversion from a company to LLP will be applicable only to those companies whose sales, turnover and gross receipts have not exceeded Rs sixty lakhs in any of the preceding three years. The underlying object of allowing this conversion is to allow level playing field to those entrepreneurs who did not had the opportunity of choosing the option of carrying on the business or profession either in Limited Liability Partnership or a company as vehicle of Limited Liability Partnership was not in existence before 01.01.2009. As on date an entrepreneur can choose whether to carry on business as an LLP or a Company irrespective of the Sales, Turnover or Gross Receipts. There is no restriction on an LLP about the volume of Sales, Turnover or Receipts. Accordingly this option of conversion from a Company to an LLP be available to largest possible number of entities and therefore the ceiling of Rs.60 lakhs is too low. Such a limit will enable conversion only by small retail businesses. By and large, small retail business is not carried on in the status of a company. The result of this will be that though a provision has been inserted, but in practical terms will be of not be widely utilizable which will defeat the very purpose for which amendment has been affected.

Suggestion:

> ***Accordingly, there is need to increase this figure substantively so that private limited companies doing business can also choose the option of conversion to Limited Liability Partnership.***

It may be noted that enough safeguards have been provided in the amendment to not to allow distribution of profit and change of partners etc. to avoid misuse of this provision.

(b) Merger and Amalgamation of Limited Liability Partnership to be Revenue Neutral.

LLP though named as Limited Liability Partnership but for all practical purposes it is a body corporate having perpetual succession. As business grows there will be merger, amalgamation, demerger of LLP's as well. At present merger and amalgamation of companies is Revenue neutral.

Suggestion

It is suggested that similar provision need to be inserted for LLP allowing merger and demerger and amalgamation to be revenue neutral.

(c) Transfer of capital asset by a Limited Liability partnership (LLP) to Private Company or unlisted public company on account of conversion

Section 47(xiiib) provides that any transfer of capital asset or intangible asset by a private company or unlisted public company to a LLP due to conversion into a LLP subject to fulfillment of certain conditions shall not be considered as transfer for the purpose of capital gains. It may be noted that similar provision has not been provided in a case transfer of such assets where LLP is converted private company or unlisted private company.

Suggestion

Any transfer of capital asset or intangible asset by LLP to a private company or unlisted public company due to conversion subject to fulfillment of certain conditions, may also not be considered as transfer for the purpose of capital gains.

(d) Taxability on conversion of firm into LLP-Clarification required

The Finance Act (No.2), 2009 introduced the taxation scheme relating to Limited liability Partnerships. It provided that a "limited liability partnership" and a general partnership be accorded same tax treatment. i.e. taxation in

the hands of the entity and exemption from tax in the hands of its partners. Accordingly, the definition of the term 'firm' was amended to include within its meaning a limited liability partnership.

The memoranda explaining the introduction of such taxation scheme for LLPs also provided the following:

> *"As an LLP and a general partnership is being treated as equivalent (except for recovery purposes) in the Act, the conversion from a general partnership firm to an LLP will have no tax implications if the rights and obligations of the partners remain the same after conversion and if there is no transfer of any asset or liability after conversion. If there is a violation of these conditions, the provisions of section 45 shall apply."*

Although, the memoranda provided that the conversion from a general partnership firm to an LLP will have no tax implications, no specific provision clarifying the same has been incorporated in the Income-tax Act, 1961.

Suggestion:

> ***In view of the above, it is suggested that a specific provision be incorporated in the Income-tax Act,1961 itself clearly specifying that the conversion from a general partnership firm to an LLP will have no tax implications.***

21. Section 49 –Cost of acquisition with reference to certain modes of acquisition

Section 2(42A) defines the term 'short term capital asset'. Clause (i) (b) to Section 2(42A) provides that in case a capital asset becomes the property of the assessee in the circumstances mentioned on Section 49(1), there shall be included the period for which the asset was held by the previous owner. Further, Section 49(1) refers to

certain modes of acquisition wherein the cost would be substituted by the cost of the previous owner.

Section 49(1)(iii)(e) covers corporate restructurings such as amalgamations, but does not include a reference to a demerger. As a consequence, where a capital asset of the demerged company is transferred to a resulting company, the resulting company would not get the benefit of a period of holding of the demerged company.

The government recognised the importance of demergers in the corporate sector and introduced various amendments to the Act vide Finance Act 1999 to facilitate corporate restructurings through demergers. The Memorandum explaining the provisions of the Finance Bill 1999 has specifically stated that the amendments have been made on the principles that the demergers should be tax neutral and should not attract any additional tax liability.

However, the omission of Section 47(vib) and (vic) in Section 49(1)(iii)(e) would mean that when a capital asset is transferred to the resulting company in a scheme of demerger, holding period of the capital asset would commence from the date of demerger and period for which the capital asset was held by the demerged company would not be considered.

Accordingly, the resulting company would not enjoy the holding period of the demerged company for the capital assets transferred in the demerger, as are available for other corporate restructurings such as amalgamations. To that extent, a demerger would not be tax neutral transaction.

It seems that the omission of demerger sections in Section 2(42A) r.w. Section 49(1)(iii)(e) seems inadvertent and no in sync with the objective of the introduction of the amendments as stated in the Memorandum.

Suggestion

Section 49(1)(iii)(e) to be amended to include reference to demerger which is exempt under Section 47(vib) and (vic).

22. Forfeiture of Advance Money u/s 51

Section 51 provides for deduction of actual amount (without indexation) of advance or other money received and retained by the assessee on previous occasions of negotiating the sale of capital asset, from Cost of Acquisition and indexation is done thereafter based on the CII for the year in which the asset was acquired/ first held by the assessee . The assessee in effect is deprived of the full benefit of indexation which may not be correct intent of the law.

Suggestion:

In order to provide relief to the assessee, any forfeited money in respect of any long term capital asset should be allowed to be deducted after Indexation, if any, from date of forfeiture to the date of sale.

23. Section 54EC- Capital gain not to be charged on investment in certain bonds

Section 54EC provides that the capital gains arising from the transfer of a long term capital assets will be exempt, if the whole or part of the capital gain, is invested in the long term specified assets at any time within a period of six months after the date of transfer. Further, proviso to this section provides exemption shall be available only when investment made in long term specified asset by an assessee during any financial year does not exceed Rs. 50,00,000/-.

Suggestion:

a) ***As the financial year may differ from assessee to assessee, it is suggested that the term "financial year" be substituted with the term "previous year".***

b) ***Considering the inflationary conditions in the economy, it is further suggested that the said limit of Rs.50 Lakhs may be raised to Rs. 1 crore.***

24. Exemption under Section 54 & 54F

Section 54F provides for the exemption from tax on capital gains arising on transfer of any long term capital asset not being a residential house, provided the assessee purchases a residential house within a period of one year before or two years after the date on which the transfer took place, or constructs a house property within a period of three years after date of transfer. It is suggested that in order to cover all possible situations, the money spent on construction of house property before one year of sale should also be allowed under section 54F.

Suggestion:

It is suggested that the section 54F(1) may be re-worded as follows:

"In the case of an assessee being an individual or a HUF the capital gain arises from the transfer of any long term capital asset, not being a residential house and the assessee has within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period one year before or three years after that date constructed, a residential house, the capital gain shall be dealt with in accordance with the provisions of this section."

25. Exclusion of rights shares/ fresh issue of shares from the ambit of section 56 (2)(viia)

Clause (viia) has been inserted under sub-section 2 of section 56 of the Income-tax Act, 1961 by the Finance Act 2010. The said clause provides that the transfer of shares of a company without consideration or for inadequate consideration would attract the provisions of section 56(2), if the recipient is a firm or a company. The purpose is to prevent the practice of transferring unlisted shares at prices much below their fair market value.

Though the intent of the legislature may not be to bring rights shares within the ambit of these provisions however a strict interpretation of the provisions as proposed to be inserted in the Act, would bring rights shares within the mischief of these provisions.

Suggestion:

It is suggested that rights shares and fresh issue of shares be excluded specifically from the ambit of these provisions.

26. Tax incentives under Section 72A in respect of Amalgamation or Demerger (to be extended to all businesses):

The tax benefits under section 72A in respect of amalgamation or demerger are currently limited to industrial undertakings or a ship, hotel, aircraft or banking. It is suggested that in the current liberalized and buoyant environment where various new sectors are growing at a rapid pace, this benefit should now be extended to all businesses including financial services, entertainment/sports, information technology (IT) and IT enabled services.

Suggestion:

a) ***The benefit of section 72A may be extended to all businesses including financial services, entertainment/sports, information technology (IT) and IT enabled services.***

b) Further, the provisions of section 72A may be simplified specially in respect of the conditions applicable for the amalgamating company like losses / depreciation being unabsorbed for at least three years and holding assets on the amalgamation date upto ¾ of the book value of fixed assets held two years prior to the said date.

27. Section 72-Carry forward and set off

At present under the provisions of section 72 of the Income-tax Act, brought forward business loss can be set off against profits and gains of business or profession carried on by an assessee up to subsequent 8 assessment years. Where any surplus arises from sale of the capital asset forming part of block of assets in respect of which depreciation has been allowed (either because the block of assets ceases to exist or because the consideration received exceeds the value of block), such surplus is regarded as "short-term capital gain".

Suggestion:

It is suggested that the brought forward business loss may be allowed to be set off against such short-term capital gain in subsequent assessment years.

28. Deduction for Education expenses

Section 80C allows a deduction in respect of education expenses. The deduction covers only the tuition fees.

Suggestion:

It is suggested that the deduction should be available for purchase of all kinds of books, CD's, computers, internet connection etc. the

deduction should also be available in respect of part time course for vocational training etc by all universities and approved institutions.

29. Benefit u/s 80IA shall be allowable to the resulting / amalgamated company in case of demerger / amalgamation

Section 80-IA of the Income-tax Act, 1961 provides exemption from Income Tax on infrastructure projects subject to specified conditions in order to encourage investment in these areas. Sub-section (12) of the Act provides that in case of demerger or amalgamation, the benefits to the undertaking under Section 80-IA will continue in the hands of the transferee company and will cease in the hands of the transferor company.

However, a new sub-section (12A) was inserted by the Finance Act 2007 as per which the benefits will cease, if there is a transfer in a scheme of amalgamation or demerger, on or after 1st April, 2007. The unfortunate result of this amendment is that neither the transferor nor the transferee company will enjoy the benefit of 80-IA in case there is an amalgamation or demerger.

The original position, under which the transferee company will enjoy the benefit in case of a demerger or amalgamation, needs to reinstated based on the following reasons:

i. Incentives of this nature have been traditionally linked to a unit/undertaking/ investment, and not to an entity. It is logically so, because the objective is to incentivize an investment regardless of which entity houses that investment.

ii. Amalgamations or demergers are restricted forms of transfer which are also subject to (i) stringent guidelines as prescribed in the Income-tax Act, 1961 and (ii) Court supervision and approval. The

benefits under 80IA used to be allowed in the hands of the transferee companies in such restricted forms of transfer. Such rationale remains valid even now and the benefits under Section 80IA may therefore, continue to be available in the hands of the transferee, like in the past, prior to insertion of Sub-section (12A) in the Finance Act 2007.

iii. The benefits of this section, rightly, covers a long span of 15/20 years as infrastructure projects by nature take a long time to give economic returns corresponding to their risks. In such a long span of time, the dynamic and ever changing market place, especially in a growing economy like India, will necessitate a company to undergo many changes (amalgamation or demerger being some of these) in order to continue to operate efficiently. Removal of benefits like that of 80IA would lead to economic inefficiencies by preventing necessary amalgamations or demergers.

iv. The amendment therefore is an undue constraint and may even defeat the original purpose of encouraging infrastructure projects (especially given the long span of time), which are necessary building blocks of our economy.

v. The concept of an amalgamation or demerger deserving appropriate treatment is well recognized under the Income-tax Act,1961 which rightly provides for several benefits for such transactions including exemption from capital gains tax. Further, fiscal benefits similar to 80IA like those under Sections 80IB, 80IC or 10A of the Income-tax Act,1961 continues to be available, rightly, even after any amalgamations or demergers, and these have not been deleted. Extending the timelines for some of these benefits years, in the

Finance Act of 2011 clearly underscores and reiterates their importance.

Suggestion:

The original position, under which the transferee company enjoys the benefit in case of a demerger or amalgamation, may be reinstated.

30. Deduction in respect of royalty on books – Section 80QQB

Section 80QQB provides for a deduction of income up to Rs.3,00,000/- in respect of royalty or copyright fees or lump sum consideration in respect of a book. The term book is defined as, *inter alia,* not including commentaries. The intention appears to be to grant deduction in respect of all books of literary, artistic or scientific nature. It is possible that many books of scientific nature may be regarded as commentaries, and may not qualify for the deduction.

Suggestion:

Since this does not appear to be the intention, it is suggested that clause (b) of the Explanation to the section should be amended by deleting the word 'commentaries' from the list of exclusions.

The benefit appears to be restricted to persons carrying on the profession of an author. This would deny the benefit of the deduction to most authors of literary, artistic, or scientific books, since it is not always possible for a person to sustain himself merely by writing books. Even some of the leading authors and poets may not get the benefit due to this restriction.

Suggestion:

In order to ensure that the deduction really benefits those for whom it is intended, it is suggested that the benefit should not be

restricted to income derived from the exercise of a profession, but should be available to any author of such books

31. Anonymous donations under section 115BBC

Section 115BBC taxes anonymous donations at a flat rate of 30%. The Finance (No.2) Act, 2009 has introduced an exemption limit for taxation of anonymous donations received by charitable trusts and institutions. Accordingly, the total tax payable by such trusts/institutions would be:

(3) Tax @30% on anonymous donations exceeding the exemption limit as calculated above; and

(ii) Tax on the balance income i.e. total income as reduced by the aggregate of anonymous donations received.

The exemption would be the higher of the following:

(i) 5% of total donations received by the trust/institution or

(ii) Rs.1,00,000

Thus a clarification is required as to whether the intention of the statute is to altogether exempt this amount from income-tax or to bring it to tax at normal rates of income-tax.

The issue is explained by way of an illustration:

Total donation = Rs.10 lacs

Anonymous donations = Rs.3 lacs

Exemption under section 115BBC = Rs.1 lac (i.e. higher of Rs.1 lac or 5% of Rs. 0.50 lacs)

Balance anonymous donations = Rs.3 lacs – Rs.1 lacs

= Rs.2 lacs is taxable@ 30% under section 115BBC.

Balance taxable income = Rs.10 lac – Rs.3 lac = Rs.7 lacs would be subject to normal rates of tax. The balance income of Rs.7 lakhs would be exempt only of it is applied for specified charitable purposes.

The language of the section, as it reads at present, exempts Rs.1 lakh unconditionally i.e. no application is required for the purposes of total exemption from tax.

It is felt that this may not reflect the correct intention of the legislature. The amount of Rs.1 Lakh, exempt under section 115BBC, should also be required to be applied for specified purposes for claim of total exemption from tax.

Suggestion:

> ***To clarify the intention of the statute, it is suggested that section 115BBC(1)(ii) may be re-worded as follows:-***
>
> ***" the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the ~~aggregate amount of~~ anonymous donations ~~received~~ WHICH ARE SUBJECT TO TAX IN CLAUSE (i) ABOVE."***

32. Explanation 2 to section 139(1)-Due date of furnish report under section 92E

The due date for filing of a transfer pricing report in Form 3CEB and filing of return of income of corporate assessees who have undertaken international transactions was extended by the Finance Act, 2011from 30th September to 30th November of the assessment year, on account of the practical difficulties in accessing contemporary comparable data before 30th September.

The said extension of due date from 30th September to 30th November of the assessment year is relevant only for companies having international transactions. No extension has been granted to other assessees having international transactions.

The said extension of due date may be uniformly made applicable to all assessees having international transactions, since even non-corporate assessees may face difficulty in accessing contemporary comparable data before 30th September.

Further, the due date for filing tax audit report under section 44AB in such cases should also be extended to 30th November. For this purpose, instead of specifying the dates under section 44AB separately, the definition of "specified date" thereunder may be aligned to the due date of filing of return under section 139(1).

Suggestions

(i) Clause (aa) may be appropriately amended as follows –

"in the case of an assessee required to furnish a report referred to in section 92E, the 30th day of November of the assessment year".

(ii) The definition of "specified date" in clause (ii) of Explanation to section 44AB may be amended to provide 30th November of the assessment year as the specified date for assessees who have entered into international transactions. For this purpose, the definition of "specified date" in the Explanation to section 44AB may be amended to align the same with the definition of "due date" under Explanation 2 to section 139(1).

33. Section 139(5)

Section 139(5) provides for filing of revised return in cases where return has been furnished under section 139(1) or in pursuance of notice under section 142. There is no provision of filing revised return in case where return is filed belatedly under section 139(4).

Suggestion:

It is suggested that section 139(5) may be amended to provide that the revised return can be filed even in the case of belated return.

34. Guidelines for the empanelment of auditors under section 142(2A)

For the purpose of conducting special audit under section 142(2A) of Income-tax Act, 1961 (*corresponding clause 151 of the Direct Taxes Code Bill,2010*) , the auditor is nominated by Chief Commissioner or Commissioner. Presently, no specific guidelines have been issued by the authorities to enable the Chief Commissioners or Commissioners to take an informed decision. Considering the fact, that the tasks involves auditing of complex accounts, some specific guidelines taking into account the experience of the auditor in the relevant field etc may be issued by CBDT. Further, in order to maintain quality of work and to provide equitable distribution of work, a restriction on the number of such audits in a particular year may be imposed.

Suggestion:

Specific guidelines for the appointment of auditor under section 142(2A) by Chief Commissioner or Commissioner may be issued. The said guidelines may provide for conditions like experience of the auditor in the relevant field, number of years of experience, number of partners etc. Further, in order to maintain quality of work and to provide equitable distribution of work, a restriction on the number of such audits by a particular auditor in a particular year may be imposed.

35. The need for withdrawing section 145A in view of Accounting Standard 2 (Revised) Valuation of Inventories becoming mandatory

(i) The Institute has issued definitive Accounting Standards on various subjects. These Accounting Standards have been made mandatory. AS 2 (Revised) Valuation of Inventories has been made mandatory from accounting year starting from 1.4.1999 onwards. The mandatory AS also apply in respect of financial statements audited under section 44AB of the Income-tax Act, 1961.

(ii) After the Notification of Revised AS-2 the costs of purchase consists of the purchase price including duties and taxes other than those subsequently recoverable by the enterprise from the taxing authorities. In other words, the entities have to necessarily follow the exclusive method of accounting and in case they are adopting any other method, the chartered accountant certifying the financial statements has to necessarily qualify the financial statements. The qualification has to be made in the main auditor's report stating that the auditee has not complied with the Accounting Standards notified by ICAI and even the impact of the profit has to be quantified and stated in the qualification.

(iv) The Guidance Note on Tax Audit under section 44AB of the Income-tax Act, which was prepared under the close coordination and advice of the CBDT has come to the considered conclusion that section 145A is revenue neutral. In other words, even after the adjustments specified in that section have been made, there would be no impact on profit or loss of the assessee. The said conclusion was arrived at after a long and detailed deliberation at various levels and after examining basic accounting principles. As such, all entities have to follow the Accounting Standard 2 (Revised) of the Institute. However, separate computation is necessary for the purpose of complying with the provisions of section 145A. Such separate computation has to be made outside the books of account. This computation will form part of annexures to the tax audit report and statement of computation of income. However, it should be noted that any adjustment made to any figure in the profit and loss account must be in accordance with correct accounting principles.

(v) It may be pointed out that any adjustment made in the computation of income is fraught with the danger of an assessee manipulating and in fact reducing the total income. This is so because, there are innumerable adjustments which are required to be made in the computation of income and the impact of these adjustments if not noticed separately, would lead to revenue leakage.

(vi) There are possibilities of different viewpoints being taken on the interpretation of the provisions of section 145A by the Assessing Officers, which is bound to result in protracted litigation and may affect the interests of revenue.

(vii) Now that under the excise law statutory records have been abolished, it is very essential that proper records should be maintained showing the taxes collected and remitted to the Government. Moreover, maintenance of separate records in respect of CENVAT as required by AS 2 will facilitate systematic audit under the provisions of section 14AA of the Excise Act, 1944. Accounting Standard 2 (Revised) Valuation of Inventories and the Guidance Note on CENVAT would contribute immensely in this regard. The "exclusive method" also has a merit in as much as the Modvat receivable account, which is reflected as an asset would truly represent the quantum of Modvat credit as per the Excise Law. In fact the excise authorities do check the books under the Excise Law. If the accounts are maintained on "inclusive method", this check would be impossible.

(vii) The primary reason for introduction of section 145A was to negate the judgement of the Gujarat High Court in the case of *Lakhanpal National Limited v ITO 162 ITR 240 (Guj)* and the order of the Special Bench of the Income-tax Appellate Tribunal in the case of *ITO v Food*

Specialities Limited 206 ITR 119 (AT). With the notification of AS 2, the aforesaid judgement and order would not hold good.

(viii) Accounting Standard 2 (Revised) Valuation of Inventories would result in more transparency in respect of accounting for taxes and duties due to the Government.

Suggestion:

The complicated computation required for complying with the provisions of section 145A will not generate any extra revenue as the impact of section 145A is revenue neutral. Hence section 145A needs to be deleted.

36. Rectification of mistake u/s 154 & Appeals u/s 246A

Section 200A relating to processing of statements of tax deducted at source was inserted by Finance (No.2) Act 2009 w.r.f. 01/04/2010. However, the consequential amendment in section 154 was not made. Section 200A is similar to section 143(1) i.e. intimation only but no remedy is available against processing of statements of TDS u/s 200A under section 246A.

Suggestion:

In view of the above section 154(1) may be amended as follows:

"With a view to rectify any mistake apparent from the record an income tax authority referred to in section 116 may:

(a)……

(b)……..

(c) amend any intimation or deemed intimation under section 200A w.e.f. 01/04/2010."

Further, a clause (s) may be inserted in section 246A(1) as follows:

"(s) Any intimation or deemed intimation u/s 200A w.e.f. 01/04/2010."

37. Credit of Tax Collected at Source relating to earlier years (for which Assessments are already over & time period mentioned in Sec 155(14) has elapsed) demanded by the Government authorities at a later date:

Many government/semi-government authorities (viz. Mining Department) have been demanding TCS of earlier years for which assessments have already been completed, since they had not collected the TCS in the those relevant years. After making payments of TCS the certificates for the same are issued in current year giving reference of expenditure incurred by payer for earlier financial years.

As per the provision of section 155(14) "*the credit of TDS/TCS certificates is available to assessee within 2 years from the end of the assessment year in which such income is assessable*" but since the payment & certificates are received after the above mentioned period, it is difficult to get the credit for the same. The demand at such later date itself is causing undue hardship to the assessee and further the credit for the same is not available to the assessee because the assessments have already been completed. Hence, department should give credit for such TDS/TCS even if the assessments have been completed and also the period mentioned u/s 155(14) has expired.

Suggestion

It is suggested that considering the hardship being faced by assessees in respect of cases mentioned above, the department should give credit for such TDS/TCS even if the assessments have been completed and also the period mentioned u/s 155(14) has expired.

38. Suggestions relating to Tax Deducted at Source

(a) Non-deduction of TDS on Service Tax

TDS provisions should be amended to exclude service tax charged on all services. As per CBDT Circular No. 4 /2008 this benefit is given only in respect of rental income even though the reasoning contained therein would apply to all services.

Suggestion:

It is suggested that no tax at source be deducted on service tax component of professional fees and other services. The benefit for the exclusion of service tax for calculating TDS should be given for other income also.

(b) Audit of TDS returns

A major portion of the revenue by way of income-tax is recovered through deduction of tax at source. The infrastructure available with the Department is not sufficient for an in-depth verification of all the TDS returns. Further, for furnishing the information required under revised clause 27 of Form No.3CD, an in-depth verification of the TDS returns is necessary.

Suggestion

It is suggested that an independent audit provision may be inserted to provide for a comprehensive audit of all the TDS returns filed with the Department. Appropriate forms of audit report can be prescribed to certify about the correctness of the quarterly TDS returns. This will enable the Department to rest be assured about the correctness of the TDS returns filed as well as the remittance of the tax deducted at source to the credit of the Central Government.

(c) TDS on Purchase of Software Licences

Presently, there is no particular section for deduction of tax at source on purchase of branded Software licenses. Due to this, the software customers are forced to consider the purchase as "professional services" on which tax is deducted @ 10% at source.

Software dealers are traders who buy branded software licences of software developers like Adobe, Microsoft etc from their Indian importers/distributors and sell them to government as well as corporate software users. This leads to deduction of tax at source @10% at each sale stage leading to deduction of 20%-30% tax of the total sale value before it reaches the software user. It may be mentioned that in the era of competition the gross margins rarely exceed 4% to 5%.

Suggestion:

A specific provision for deduction of tax at source say @1% on purchase of branded software licences from software dealers be incorporated in the Income-tax Act, 1961

39. Section 193-Interest on Securities

Clause (v) of proviso to Section 193 provides that no tax is to be deducted on interest payable to a resident individual on debentures of a company in which public is substantially interested and subject top fulfilment of other conditions. However, there is no exemption or even a threshold limit for the applicability of TDS provisions in respect of the interest on Debentures issued by companies either Listed or Non-Listed. This causes undue hardship to the unlisted companies as they have to deduct TDS even on Rs. 1 Interest Paid to Debenture holders irrespective of the fact that debenture holders income is having very small income.

Suggestion:

i) The interest on Debentures issued by companies either Listed or Non-Listed may be given threshold limit under clause (v) of Proviso to section 193.

ii) The threshold limit under clause (v) of Proviso to section 193 regarding non-deduction of TDS may be increased to minimum Rs. 10000.

40. Section 195-Time limit for -Issuance of "general or special order"

Section 195(2) provides where a payer considers that whole of the sum being paid to a non-resident is not chargeable to tax, he may make an application to the Assessing Officer to determine by general or special order, the appropriate portion of the sum so chargeable.

It may be noted that no time limit of passing such order has been prescribed in the Act, which causes undue hardship in genuine cases.

Suggestion:

It is suggested that an appropriate time limit say thirty (30) days may be imposed for passing such general or special order by the Assessing officer. Further, where an application is rejected the Assessing Officer may be required to pass a speaking order after providing a reasonable opportunity of being heard to the applicant.

***41.* Validity of Certificate issued u/s 197**

The Certificate under section 197 is at present issued with a validity date from the date of issue. Though the assessee is applying in the month of April, i.e., at the beginning of the financial year, the certificate is issued much late. The date of issue is taken as the validity date owing to which, the

deductors are deducting the tax for the earlier part of income/payments. By any reasonable estimate, any assessee cannot have taxable income for some part of the financial year and exempt income for remaining part of the year.

Suggestion:

a) ***the application may be allowed to be made atleast 60 days before the commencement of the financial year.***
b) ***Such application should be disposed off within 30 days.***
c) ***The certificate under section 197 may be issued to be effective from the 1st day of previous year.***

42. Clarification sought for generation of TDS certificates in case TDS is deducted @20% u/s 206AA

As per current instruction and configuration at TIN system without PAN Number entries cannot be filed in TDS return unless and until there should higher deduction flag with the entries. Right now for banks/ Companies, it is mandatory to generate TDS Certificate online. For deductee's where in the absence of PAN Number TDS was deducted as per the provision of Sec 206AA of the Act. For these entries TDS Certificate are not generated online through TIN system.

Suggestion

A clarification regarding the procedure for providing TDS Certificate especially in above mention issue to make the process easy and smooth and better compliance of the Act may be provided.

43. Inclusion of payments and receipts made through the modes like RTGS, NEFT, EFT and ECS as valid modes of fund transfers under sections 269SS and 269T of the Income-tax Act, 1961

Section 269SS of the Income–tax Act, 1961 requires that acceptance of any loan or deposit exceeding Rupees twenty thousand may be made only by an account payee cheque or an account payee bank draft.

Further, Section 269T of the Income–tax Act, 1961 requires that the repayment of any loan or deposit exceeding Rupees twenty thousand may be made only by an account payee cheque or an account payee bank draft.

However, now-a-days many banking transactions take place by way of Net banking facilities that include Real Time Gross Settlement (RTGS), National Electronic Funds Transfer (NEFT), Electronics Funds Transfer (EFT) and Electronic Clearing Service (ECS). Use of payment gateways for online transactions as well as credit cards is also on the rise. In fact section 80D which provides for deduction in respect of medical insurance premium permits any mode of payment other than cash. Similar provision may be incorporated in section 269SS and section 269T**.**

Suggestion

It is therefore suggested that mode of transfers like RTGS, NEFT, EFT, ECS etc. be included as valid modes of fund transfers under section 269SS and 269T of the Income –tax Act, 1961. Alternatively, section may provide for any mode of payment other than cash on the lines of section 80D.

44. Omission of section 282B-Document Identification Number

In order to improve the standards of service and transparency in the functioning of the Income-tax Department, a computer based system of allotment and quoting of Document Identification Number (DIN) in each correspondence sent or received by the Income-tax Department was proposed to be introduced with effect from 1st October, 2010 to facilitate tracking of documents and alleviate the taxpayers grievances.

Accordingly, section 282B was inserted by the Finance (No.2) Act, 2009, to provide that every income-tax authority shall allot a computer generated Document Identification Number in respect of every notice, order, letter or any correspondence issued by him to any other income-tax authority or assessee or any other person and such number shall be quoted thereon.

Further, it was provided that every document, letter or any correspondence, received by an income-tax authority or on behalf of such authority, shall be accepted only after allotting and quoting of a computer generated Document Identification Number.

Since it is essential to have the necessary infrastructure to cover the full range of services specified in section 282B on pan-India basis, the date for implementation of the DIN was extended by the Finance Act, 2010 to 1st July, 2011.

However, the Finance Act, 2011 omitted this section, on account of the practical difficulties due to non-availability of requisite infrastructure on an all India basis.

It is largely opined that introduction of this provision would increase the accountability of the tax administration. For proper discharge of responsibilities, accountability is a necessary counter balance. Therefore, the provision for implementation of DIN should be reinstated.

Suggestion

> ***Section 282B may be reinstated and the date of implementation of DIN may be postponed till the availability of requisite infrastructure on all-India basis.***

45. Increase in Ceiling Limits

The existing monetary ceiling limits in various sections have been fixed long ago and needs revision upwards. In view of the fact that the corresponding limits in the Direct Taxes Code Bill, 2010 have been increased upwards, it is suggested that the said limits in the Income-tax Act, 1961 may also be increased.

Suggestion:

The following suggestions are made in this regard.

Section	***Existing ceiling***	***Suggested ceiling***
40A(3)	***Rs.20,000***	***Rs.50,000***
269SS	***Rs.20,000***	***Rs.50,000***
269T	***Rs.20,000***	***Rs.50,000***

46. Introduction of Sunset Clauses in Income-tax Act, 1961

In view of the fact that the Direct Taxes Code, 2010 would become applicable from 1.04.2012, suitable sunset clauses be inserted at appropriate places for the smooth transition from Income-tax Act to Direct Taxes Code Bill.

Suggestion:

It is suggested that sunset clauses at suitable places be inserted in the Income-tax Act, 1961.

47. CER Sale to be treated as Capital Receipt

Carbon credit is an incentive available to the Industries reducing CO2 emission by investing in energy efficient technologies. In the present day scenario, the cost of putting additional technology for clean development mechanism is relatively high. The incentive is given to relatively offset the additional cost of Investments in such Capex. Further, this credit can be

viewed as an incentive, which augments country`s foreign exchange earnings.

Suggestion:

This credit should be treated as capital receipt free from any taxes. Alternatively, the amount spent should be eligible for deduction under section 10AA, 80IA, 80IB, 80IC etc.

48. Corporate Social Responsibility Costs:

Corporates are currently involved in various areas of social responsibility/community development as part of nation building. Further, the concept of Corporate Social Responsibility Costs is proposed to be introduced under Companies Act. Providing suitable tax incentives in respect of such Corporate Social Responsibility Costs to accelerate the process and to ensure that the country can reach the goal of being a developed nation in the near future is the need of the hour.

Suggestion:

It is suggested that:

d) a deduction of the expenditure on community / social development (both capital and revenue) be introduced, specifically covering critical areas like education, health, animal husbandry, water management, women empowerment, poverty alleviation and rural development.

e) Even in cases where a company has its own trust or foundation, the deduction in respect of expenditure incurred for CSR activities should be allowed.

f) Such expenses, however, should be subject to a limit say 5% of total income.

49. Carry forward of excess foreign tax credit:

The Income-tax Act,1961 allows for set off in respect of foreign taxes paid on overseas income. However, in case of loss/inadequate profits, no set off may be possible. In the current economic scenario of the global economy, business outlook has become extremely uncertain and results have become very volatile.

Suggestion

It is suggested that assessees be permitted to carry forward (say for five years) such unutilized credit (in USA such relief is granted vide section 904(c) of Federal Tax Act) for adjustment in future years.

50. Incentivizing investments in respect of agricultural infrastructure:

There is an urgent need to invest heavily in building up of a viable and efficient infrastructure in the agriculture sector in India. This would necessitate building up of proper computerized infrastructural facilities and electronic highways for procurement, dissemination of best agricultural practices, weather information, storage practices etc. as well as offering the best possible price to the farmers. Also, this would result in cutting down intermediaries/middlemen and thereby reduce the transaction costs. In fact, the Government has recently launched the ambitious Bharat Nirman Program for upgrading the rural infrastructure covering roads, irrigation, drinking water, electricity, housing and telecom. The Government has also mentioned that this is an area with significant scope for public/private partnership. Proper tax incentives need to be provided for ensuring that the private Corporate Sector can also be involved in this gigantic developmental effort.

Section 80IA of the Income-tax Act,1961 provides for deduction in respect of profits/gains from industrial undertakings engaged in infrastructure development. This covers road, bridge or rail, highway projects, water projects, ports, airports, telecommunication services, industrial parks and

power generation. The definition of infrastructure should be extended to include rural infrastructure like:

- Village kiosks housing IT infrastructure like computers, VSATs, Modems, smart cards, projectors, screens etc.
- Support infrastructure like solar-panels, UPS, Batteries etc. at these locations.
- Water harvesting facilities like check dams, wells ponds and other rain harvesting structures.
- Storages including farmer facility center housing training centers, cafeteria, health clinic, pharmacy, bank counters and necessary parking area.
- Green houses and poly houses.

Suggestion:

The tax incentives may take the following forms:

i. deduction of proportionate profits for the total value of turnover arising from such computerized infrastructural facilities (in line with the provisions of section 80IA read in conjunction with section 80HHC) for purposes of simplification and avoidance of disputes.

ii. deduction of the total expenditure incurred, both capital and revenue, for creating such infrastructure (similar to the provisions of section 35).

51. **Age of Senior Citizen for Tax Benefit**

The Finance Act, 2011 had decreased the age of senior citizen from 65 year to 60 year for getting the benefit of basic threshold limit. However, this relaxation of age limit was not given effect to in other provisions of the Act. Due to this, there are several sections in the Act which provide that for

availing the benefit of the senior citizen, the age criteria of 65 years is to be fulfilled.

Suggestion

To bring more clarity and equality in every section which deals with the senior citizens, it is suggested that 60 year age shall apply uniformly in the Act and accordingly appropriate amendments may be made in the Act.

52. Gaps in electricity generations

In order to provide Environmental friendly solutions and Low cost availability of electricity to end user, alternate & clean energy resources may be promoted more by way of additional exemptions/incentives if, the project gets completed on time.

Suggestion

It is suggested that concessions or additional tax benefits may also be provided where a new building (resident/commercial/hotel etc) installs a solar energy devices & rain harvesting instruments.

53. Procedure for surrender of PAN

In case of firms, who have discontinued their business still have to file return u/s 139(1), since no procedure has been prescribed for surrender of PAN by the discontinued firms. Due to which firms are liable to penalty u/s 271F at any time.

Suggestion:

It is suggested that procedure for surrender of PAN & exemption from filing of return of income in respect of Firms whose business

discontinued, may be prescribed. With this, firms may be saved from penalty u/s 271F.

54. Differential Stamp duty charges being paid by CA's and Advocates on letter of authority for representing the client

For representing the client, an advocate is being charged a fee of Rs.5/- per Letter of Authority while a Chartered Accountant has to pay Rs.100/- per Letter of Authority. In Maharashtra, in respect of representing the client by Chartered Accountants, the Court fees is governed by the provisions of Bombay Stamp Act, according to which the Letter of Authority must be accompanied by a Court fee of Rs.100/- or a stamp paper valued Rs.100/-.

Suggestion:

In order to bring uniformity in Court fees for both Chartered Accountants & Advocates for their representing the client before Income-tax Authorities, section 288 which provides "appearance by authorized representative" should be amended to provide for the fees to be charged for authorisation.

55. Book Profit tax (MAT) on Scientific Research Expenditure

Presently, while computing the 'Book Profit' under Section 115JB, the amount of weighted deduction u/s 35(2AB) is not deducted. In the past, similar adjustment in respect of export profits under Section 80HHC was permitted for purposes of computation of 'Book Profit' under Section 115JB.

Suggestion

In order to promote in-house R&D in India, the amount of weighted deduction u/s 35(2AB) may be allowed to be deducted while computing tax under 115JB.

56. Deduction for Employee Stock Option Cost

Grant of Employee Stock Option is one of the accepted and widely followed practices for remunerating the employees. Detailed guidelines have been prescribed by SEBI in this regard. Further, the SEBI guidelines and Accounting Standards, provides for accounting of difference between option price and market value of security of the date of grant as employee remuneration cost. Under Income-tax Act, difference between the fair market value of shares and exercise price is treated as income in the hands of the employees. Recently, Delhi Tribunal in the case of Ranbaxy (39 SOT 17) has taken a view that ESOP cost is not allowable as deduction. Thus, the situation is that for levy of tax on employee, ESOP is income but the same is not allowed as deduction in the hands of the employer company.

Suggestion:

Necessary amendment may be made in Income-tax Act or circular should be issued by the CBDT to allow deduction for ESOP cost being employee remuneration cost.

IV. SUGGESTIONS RELATING TO RULES AND FORMS

1. Valuation of Sweat Equity under Rule 3(9)

In respect of sweat equity/ ESOP the company law guidelines specify that the valuation is to be done by the statutory auditors/ merchant bankers. Further, Rule 11UA(c)(c) also provides for the purposes of section 56, the fair market value of unquoted shares and securities other than equity shares in a company which are not listed in any recognized stock exchange shall be estimated to be a price it would fetch of sold in the open market on the valuation date and the assessee may obtain a report from a merchant banker or an ACCOUNTANT in respect of such valuation.

However, as per Rule 3(9) of the Income-tax Rules,1962 provides that for the purposes of section 17(2)(vi) the fair market value of a specified security, not being equity shares in a company, on the date on which option is exercised by the employee, shall be such value as determined by a MERCHANT BANKER on the specified date.

Suggestion:

It is suggested that Rule 3(9) should also be amended to enable an accountant to do valuation of sweat equity. Thus, Rule 3(9) may be re-worded as follows:-

"for the purposes of section 17(2)(vi) the fair market value of a specified security, not being equity shares in a company, on the date on which option is exercised by the employee, shall be such value as determined by a merchant banker OR AN ACCOUNTANT on the specified date."

2. Section 14A/ Rule 8D Disallowance

The principle of disallowing the expenditure incurred by the assessee in relation to exempt income is acceptable. But the mode of its implementation and inclusion of indirect expenditure into the scope of disallowance is contrary to the main principle for which these provisions was enacted and are very harsh. The Central Board of Direct Taxes had provided Rule 8D in exercise of its power given U/s 14A(2) of the Act.

Presently, corporate expansion requires huge Capex which is build up through Domestic as well as Overseas Investment which results in to huge interest outgo. As per Rule 8D, average interest paid is considered which also includes interest on this capex.

Moreover, as prescribed under the Rule, disallowance of an amount equal to ½% of the average value of investment, income from which does not or shall not form part of the total income, results in an artificial disallowance. In case of an assessee who has invested in quoted equity shares not yielding any dividend and carries on the same investment without any change from year to year for say 10 years will have to bear with an artificial disallowance of ½% of the average value of investment in each year in spite of the fact that the assessee has neither incurred any expenditure year after year on the said investment nor earned any exempt income.

Rule 8D determines the notional cost for holding investments which may or may not yield an exempt income. Such notional cost for holding the investment has no relationship with actual expenditure incurred and claimed by assessee.

The corporate which have a huge net worth in their books also raise debts to align the “Weighted Average Cost of Capital” & to part finance ongoing capex

and working capital. The strategic investments are made by Corporate out of accumulated profits included in net worth.

Suggestion:

Rule 8D should either suitably modified or should be scrapped. In case the same has to be retained, it should be amended to provide that the amount of notional disallowance shall not exceed the income earned which is exempt from tax.

3. Depreciation on Computer

Also, as per Appendix IA of the Income-tax Rules, 1956, depreciation @60% is allowed on computers including computer software (any programme recorded on any disc, tape, perforated media or other information storage device). In this regard, it may be noted that Calcutta High Court in its decision in the case of Jokai India Ltd. 251 ITR 39 was of the view that printers, scanners and other peripherals are a part and parcel of computer and depreciation against such asset are allowable @ 60%.

Suggestion

In order to clarify the intent and also to avoid futher litigations, it is suggested that the Note 7 of Appendix IA of the Income-tax Rules, 1956, may be further amended to provide that "computer" includes printers, scanners and other peripherals.

4. Section 40A(3)/Rule 6DD

With the deletion of the erstwhile rule 6DD(j) [which provided for non-disallowance if the assessee satisfied the Assessing Officer regarding commercial exigency attending the payment in cash], even genuine and bonafide transactions are subject to disallowance. It would be useful to recall that the constitutionality of the provision was upheld by the SC in the case of *Attar Singh Gurmukh Singh v. ITO (1991) 191 ITR 667 (SC)* only because of the

saving provision incorporated per the said rule, which now stands deleted.

Suggestion

Alternatively, insertion of a clause on the lines of erstwhile clause (j) is suggested in section 40A(3) itself.

The following payments may be also prescribed as exempt under Rule 6DD:

(a) payment of octroi at octroi posts;

(b) payments to small transport operators, or drivers, towards freight;

(c) payments at public auctions;

(d) Payments made to public sector companies

(e) Payments for acquisition of asset for the use in the specified business under section 35AD which is allowable as a deduction.

(f) Expenditure not exceeding Rs. 1,00,000 incurred by a resident while on tour outside India.

(g) Payments made to hotel.

(h) other payments where the nature of the transaction is such that it is to be ordinarily paid only in legal tender.

5. Form No.3CD

Clause 17(h) of Form No.3CD requires the auditor to report the amount debited to profit and loss account being amount inadmissible under section 40A(3) read with rule 6DD and computation thereof. In view of the fact that the Finance Act,2008 has substituted sub- section (3) and (3A) for sub-section (3) w. e.f 1-4-2009, similar amendment should be brought in Form No.3CD also.

Suggestion:

***It is suggested* that clause 17(h) of the Form No.3CD may be re-worded as follows:-**

"amount debited to profit and loss account being amount inadmissible under section 40A(3) and 40A(3A) read with rule 6DD and computation thereof"

6. Difficulty being faced in claiming deduction u/s-35AD

As per the provisions of section 35AD of the Income-tax Act, 1961, an assessee shall be allowed for a deduction in respect of the whole of the capital expenditure incurred, wholly and exclusively, for the purposes of any specified business carried on by him during the previous year in which such expenditure is incurred by him subject to fulfillment of specified conditions.

However, difficulties were being faced by assessees while claiming such deduction u/s 35AD owing to lack of complete information required to be filled in the Form ITR-6.

The relevant extract of Schedule- BP of ITR 6, is as follows:

Schedule BP			Computation of income from business or profession				
OR PROFESSIO	A		From business or profession other than speculative business				
		1	Profit before tax as per profit and loss account			1	0
		2a	Net profit/loss from speculative business incl in 1	2a	0	Home	
		2b	Net profit or Loss from Specified Business u/s 35AD included in 1	2b	0	Index	

It may be noted that there is no particular field in the return form where the amount of deduction claimed under section 35AD could be mentioned. Point 2b of Schedule BP requires only the net profit and loss from specified business u/s 35AD which is included in the general profit and loss A/c. The effect of deduction u/s 35AD is an adjustment which is to be made only for tax calculation purposes and thus is not required to be included in the general Profit and loss account. Schedule BP computes income from business and profession after taking into consideration all adjustments on account of specific deductions or disallowances. However, in the ITR 6, there is no specific field in Schedule BP for reporting the deduction under section 35AD. If the said deduction is claimed under the point 30 "any other amount allowable as deduction", loss arising there from would be treated as

normal business loss which is allowed to be carried forward only for 8 years. Due to this the assessee would not be able to avail the benefit of section 73A (in respect deduction u/s 35AD), which allows loss from specified business u/s 35AD to be carried forward for an indefinite period.

Suggestion:

A point C- Computation of Income from specified business be inserted in the Schedule BP, below point B- computation of Income from speculative business (as depicted in the picture below) which may be further linked to CFL schedule which takes data for carry forward of loss from specified business instead of point 2b.

		x	Chapter-XII-G	33x			
		xi	First Schedule of Income-tax Act	33xi			
		xii	Total (33i to 33xi)			33xii	0
	34	Profit or loss before deduction under section 10A/10AA/10B/10BA (32 + 33xii)				34	0
	35	Deductions under section-					
		i	10A (6 of Schedule-10A)	35i	0		
		ii	10AA (d of Schedule-10AA)	35ii	0		
		iii	10B (f of Schedule-10B)	35iii	0		
		iv	10BA (f of Schedule-10BA)	35iv	0		
		v	Total (35i + 35ii +35iii + 35iv)			35v	0
	36	35v)+2b if 2b > 0				36	0
	37	Net Profit or loss from business or profession after applying		A37		A37	0
B	Computation of income from speculative business						
	38	Net profit or loss from speculative business as per profit or loss account				38	0
	39	Additions in accordance with section 28 to 44DA				39	
	40	Deductions in accordance with section 28 to 44DA				40	
	41	Profit or loss from speculative business (38+39-40)				B41	
C	Computation of income from specified business						
	42	Net profit or loss from specified business as per profit or loss account				42	0
	43	Deductions in accordance with section 35AD				43	
	44	Profit or loss from specified business (42-43)				C44	
D	Income chargeable under the head 'Profits and gains' (A37+B41+C44)					D	0

7. *Payment of Interest on External Commercial Borrowing (ECB) TDS U/s 195:-*

Today almost every country has either removed or has liberalized, the limitation in financial world to borrow the money from across the globe, resulting in the free flow of fund across the globe with minimum regularities requirement. Globalization is spreading rapidly and this has emphasized the need to minimize both efficiency and compliance costs of the tax system.

ECB is one of tool to borrow the cheaper fund by the entities as compared to the cost of fund in borrowing within India itself. Income-tax Act,1956 requires deduction of tax at source under section 195 at the time of crediting the credit or at the time of remitting the payment whichever is earlier on ECB (If applicable). There is no problem while deducting tax at time of making actual payment but confusion arises in a situation where Interest payment term differs from the closing periods. At the time of quarterly/half yearly/ yearly closing, a provisional entry has to be passed in books of accounts for *'Interest Payable but Not due'*. In order to ensure accuracy in recording, this liability has to be accounted for on the closing exchange rate in the books of entities.

If "Interest Payable but not due" is entered in the books of account, then as per the Income-tax Act, the deductor is required to deduct tax at source and deposit same in government account as per the time limit given in the Act. However, before making the TDS payment Rule 37BB requires the deductor to furnish online information in Form 15CA on TIN website along with a certificate in Form 15CB duly verified from the practicing Chartered Accountant.

Since this type of loan in always in foreign currency and Interest entry is also passed in the foreign currency along with TDS amount on applicable rates. The deciding factor of ECB Interest Rate is LIBOR PLUS SPREAD. Like the REPO rate in India LIBOR rate is also changed once in a six month. There is always a possibility that at the time of passing the provisional entry and at time of making actual payment, different LIBOR rates as well as exchange rates are applicable in the market. If there is increase or decrease in the LIBOR as well as in exchange rate then, the actual withholding tax amount will also undergo change. Also, if withholding tax is on the part of the financial institution then it will definitely create argument if the rate decreases. Further, the confusion also arises as to whether the details to be

mentioned in Form 15CA regarding withholding tax deducted and deposited are to be mentioned on the basis of provisional entry or actual payment basis.

Suggestion:

To remove this type of confusion it is suggested to deal with this situation a separate clarification should either incorporate in the rules or in the section itself which will help the entities to overcome these types of difficulties.

8. Revision of Circular No. 715 dated 8-8-1995 and 716 dated 9-8-1995

Circular No. 715, dated 8-8-1995 provides clarifications on various provisions relating to tax deduction at source regarding changes introduced through Finance Act, 1995. Further, Circular No. 716, dated 9-8-1995 provides Clarifications regarding sections 194A, 194C, 194J and 194K, as amended/inserted by the Finance Act, 1995. In view of the changing business environment, the revision of the said circulars is required.

Suggestion

It is suggested that the Circular Nos. 715 dated 8-8-1995 and 716 dated 9-8-1995 be revised appropriately.

9. PAN Number for payments in Hotels / Restaurants:

As per Rule 114B(h), PAN is required to be mentioned for all payments exceeding Rs.25,000/- in hotels and restaurants. Today, most of the clients pay through credit card and it becomes a huge problem to collect PAN number in all instances including online booking. It may be noted that under Rule 114E credit card companies are separately reporting expenses exceeding Rs.2 lakhs per annum on PAN number basis. Also, as per KYC norms, every bank or financial institution is required to take a copy of PAN Card before issuing a credit card or a debit card. The same may be

considered as sufficient compliance in case of payments made through credit cards/ debit cards.

Further, the said limit of Rs. 25,000/- for hotel/restaurant bills was fixed way back in November 1998. In view of the inflationary economic scenario, the same needs to be revisited.

Suggestion:

> ***It is suggested that the clause(h) may be continued but its applicability may be restricted to hotels and restaurants for only cash payments above Rs.1,00,000/-.***

10. ITR-6-Difficulty being faced due to wrong calculation of tax payable

Foreign Companies having income taxable at special rate of tax are facing difficulties in filing their income tax returns. Income in the nature of Fee for Technical Services that attracts tax @ 10% under DTAA, being part of the Profit & Loss account, is shown as income in P&L A/c and adjusted in Schedule BP of the excel utility. However, the Schedule BP does not provide any specific sub-column for furnishing DTAA income. Thus, the DTAA income being taxable @ 10% is shown under schedule for special income. This requires some adjustments in the MAT schedule to nullify the effect of the same.

Further, excel utility computes the total tax liability as total of tax at special rates as well as at normal rates applicable to foreign companies, resulting into double taxation of the same income.

Alternatively, if the income is disclosed only in the schedule of special incomes, the issue that arises is that the income disclosed is not shown in the acknowledgement receipt generated by the system. Also, the tax calculator of the utility computes Education Cess and SHEC on DTAA incomes which are not applicable.

Due to the malfunctioning of utility in ITR -6 for the years 2009-10, 2010-11 & 2011-12, lot of tax demands have been raised.

Suggestion:

Thus, it is suggested that necessary amendment may be made in the utility of ITR-6 so the assesses do not have to face undue hardship while filing their returns.

11. Rule 26 - Telegraphic transfer buying rate

Rule 26 of the Income-tax Rules, 1962 which states that *"For the purpose of deduction of tax at source on any income payable in foreign currency, the rate of exchange for the calculation of the value in rupees of such income payable to an assessee outside India shall be the telegraphic transfer buying rate of such currency as on the date on which the tax is required to be deducted at source under the provisions of Chapter XVIIB by the person responsible for paying such income.*

Explanation : For the purposes of this rule, telegraphic transfer buying rate, in relation to a foreign currency, means [the rate or rates of exchange] adopted by the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955), for buying such currency,[having regard to the guidelines specified from time to time by the Reserve Bank of India for buying such currency], where such currency is made available to that bank through a telegraphic transfer.]"

The telegraphic transfer buying rate, as mentioned above, are easily available on the RBI website and that if for any reason one has to refer to a prior period rate, old rates are also available from RBI Archives on their website, whereas it is very difficult to get past SBI buying rates. The change is revenue neutral but can ease practical difficulties.

Suggestion:

The explanation presently appearing may be substituted by making a reference to the trading rate for that day as declared and available on the website of Reserve Bank of India.

ABOUT ICAI AND DIRECT TAXES COMMITTEE OF ICAI

The Institute of Chartered Accountants of India (ICAI) is a statutory body established under the Chartered Accountants Act, 1949 to regulate the profession of Chartered Accountants in India. During its more than six decades of existence, ICAI has achieved recognition as a premier accounting body not only in the country but also globally, for its contribution in the fields of education, professional development, maintenance of high accounting, auditing and ethical standards. ICAI now is the second largest accounting body in the whole world.

The Council of ICAI functions through various Standing and Non-Standing Committees. Direct Taxes Committee is one of the most important non-Standing Committee's of ICAI. The main function of the Direct Taxes Committee is to examine the direct tax laws, rules, regulations, circulars, notifications, etc., which may be enacted or issued by the Government from time to time and to send suitable memoranda containing suggestions for improvements in the respective legislation. The Direct Taxes Committee is actively involved in the process of formulation of budget by offering pre-budget and post-budget suggestions/comments, suggestions to simplify tax laws and their administration for the purpose of making it more responsive to tax payers.

The Direct Taxes Committee comprises of members from all over the Country having vast experience and expertise in direct tax laws. For the year 2011-12, the Direct Taxes Committee is chaired by CA. Sanjay Kumar Agarwal and consists of the following members:

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CA. G. Ramaswamy, President, ICAI	**CA. Jaydeep Narendra Shah, Vice-President, ICAI**
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Government Nominees	
Shri Ashutosh Dixit, Joint Secretary, TPL-I, CBDT, Ministry of Finance	Shri Deepak Narain, Director, Department of Industrial Policy and Promotion , Ministry of Commerce and Industry
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