www.taxguru.in

17th June, 2019

The Finance Minister,
Ministry of Finance,
Department of Revenue,
Room No.46, North Block,
New Delhi – 110 001

Sir,

Sub:-Submission of Pre-Budget Memorandum in response to Union Budget, 2019.

Respectfully Showeth,

We would like to bring into your kind notice that Income Tax Bar, Jalandhar is a registered body representing Chartered Accountants and Advocates engaged in representation and filing work of Income Tax Returns from Jalandhar, Hoshiarpur, Kapurthala, Nawanshahar, Phagwara etc. The Income Tax Bar consists of more than One Hundred Members who represent major chunk of tax payers in the above mentioned cities. The Income Tax Bar is always working for the knowledge updation, technological changes and strive for knowledge sharing and excellence in the field of taxation. The Income Tax Bar believe in maintaining good cordial relations with the Income Tax and GST Authorities and keep them informed about the difficulties faced by the general public on day to day matters. It is understood that the Union Budget, 2019 is likely to be tabled in the Parliament on 5th July, 2019 by your goodself, the prestigious Income Tax Bar, Jalandhar would like to give few recommendations/suggestions by way of Memorandum as called for by your office for considering them while framing and tabling the budget in the Lok Sabha. The said recommendation/suggestions are given below for your kind consideration and perusal of the matter:-

S.No.	*Relevant Section*	*Issue*	*Recommendation/Suggestion*
1.	Section 14A of the Income Tax Act, 1961 read with Rule 8D of the Income Tax Rules, 1962 when read in conjunction with Circular No.5/2014 dated 11th February, 2014.	Under section 14A of the Income Tax Act, 1961, any expenditure incurred in relation to income not includible in the total income is disallowed for the purposes of computing total income under the Act. In furtherance, the Central Board of Direct Taxes vide its Circular No.5/2014 issued on 11th February, 2014 specifically dealt with the contentious issue of where disallowance is attracted	*Since the contention / understanding of the department as per the contents of Circular No.5/2014 lead to multifarious interpretations which do not go in rhyme with the spirit of the relevant section 14A of the Act which intends to disallow only that expenditure which is incurred in relation to income not forming part of total income.* *In furtherance, the clarification issued by the CBDT vide its Circular No.5/2014 was tested before the various Courts/Tribunals including the jurisdictional High Court of*

www.taxguru.in

		under section 14A of the Income Tax Act even in those cases where corresponding exempt income has not been earned during the respective financial year under consideration. The said circular categorically pointed out that by emphasizing that Heading of Section 14A and the relevant noting adjacent to Rule 8D particularly incorporates the expression `*Includible"* thereby leading to the irresistible conclusion that it is not necessary that exempt income should necessarily be included in a particular year's income for disallowance to be trigged and it is not material that the assessee should have in fact earned exempt income so as to warrant disallowance. The said interpretation and understanding of the Board as per version of Circular cited above has been massively litigated before the Tribunals, before various High Courts & before the Hon'ble Supreme Court of India. The majority view expressed by the Hon'ble Forums undisputedly provided that there has to be an income which stands exempted from tax and included in the total income and in proportion to which only the expenditure actually incurred can be disallowed. The notional interpretation of Circular No.5/2014 when read in	*Punjab & Haryana at Chandigarh in PCIT – 1 vs. Vardhman Chemtech Pvt Ltd (ITA No.322/2016) and before the Hon'ble Supreme Court of India in CIT Central -1 vs. Chettinad Logistics Pvt Ltd (SLP Civil Diary No.15631/2018) besides various other forums. Since, as per the majority view expressed by courts, disallowance under section 14A cannot be invoked in absence of exempt income actually earned and the associated expenditure actually incurred and attributable in proportion to the income which is exempt under the provisions of Act.* *In light of the interpretations extended to the Circular No.5/2014, it is suggested to rationalize the provisions of section 14A rwc No.5/2014 to specifically provide that the disallowance will be attracted only in the event of exempt income actually earned by the assessee and the expression includible representing the understanding of the department be revamped so as to exclude any disallowance made to the total income even in absence of the exempt income actually earned by the assessee.*

		conjunction with section 14A of the Act as per the understanding of the Board has led to widespread litigation only on the pretext that even in absence of exempt income, expenditure can still be disallowed.	
2.	Section 119(2)(b) of the Income Tax Act, 1961	Section 119(1) of the Income deals with the Instructions to Subordinate Authorities. In furtherance, Sub-Section (2) categorically provides that `Without prejudice to the generality of the foregoing power, (b) the Board may, if it considers desirable or expedient so to do for avoiding genuine hardship in any case or cases by general or special order authorize [any income tax authority not being a Commissioner (Appeals)] to admit an application or claim for any exemption, deduction, refund or any other relief under this Act after the time/period stipulated for by or under this Act for making such application or claim and deal with the same on merits in accordance with law. In furtherance of any adverse order passed by the competent authority, it is not clear as to whether the aggrieved assessee can approach the Income Tax Appellate Tribunal by way of appeal under section 253 of the Income Tax Act, 1961.	*It is suggested that in the event of any rejection / non-acceptance, refusal / dismissal of assessee's claim/prayer before the competent authority, the action of the authority be made specifically challengeable before the Income Tax Appellate Tribunal under the relevant provisions of the Act. Since, in the event appeal is not maintainable owing to the deficient provisions and the assessee will have to approach the writ courts by way of Writ Petition for redressal of its grievance, therefore an additional appellate forum may please be designated and specified wherein the claims arbitrarily rejected can be raised for the just decision of the case.*
3.	Section 115BBE of the	Section 115BBE ever	*It is suggested that since Clause (a)*

	Income Tax Act, 1961	since its introduction has been the subject matter of debates, dialogues and argumentation. In addition, the section 115BBE received systematic revamp vide its substitution by the Taxation Laws (Second Amendment) Act, 2016 w.e.f. 01st April, 2017. Further embedding an exorbitant, excessive and unreasonably high rate of taxation which roughly touches 86 percent (Including recourse to section 271AAC) appears not less than a be a nightmare & a source of inherent distress. In addition, Clause (a) appended to 115BBE(1) has also been made applicable to cases where the assessees on their own motion include any income referred to in section(s) 68 to 69D of the Income Tax Act, 1961 in their total income accompanied by reflecting the same while filing their returns under section 139 of the Income Tax Act, 1961.	*particularly recognizes the fact that the assessee on its own motion/voluntarily includes any income referred to in section 68 to 69D and the same is reflected in the ROI filed with the department, the applicability of exorbitant rate of taxation in such a case which roughly touches 86% will discourage and deter voluntary compliance.* *In addition, enforcing concessional rate of tax equivalent to 30% of such income as falling within the bracket of sections 68 – 69D and clause (a) appended to section 115BBE(1) will inspire confidence and conviction in the non-adversarial tax regime especially for those who believe in voluntary compliance. Furthermore, in the event and in case, the assessee as per provisions of Clause (a) is able to explain the source/origin of the income falling within 68-69D bracket, the benefit of preponderance of probability be extended and there should not be any question of treating the same as deemed income under section 68-69D liable to be assessed at the unreasonably high pitched rate of taxation. This goes in rhyme with the recent pronouncement of the Income Tax Appellate Tribunal, Chandigarh Bench in ITA No.1494/Chd/2017.*
4.	Section 139(4) of the Income Tax Act, 1961	Section 139(4) of the Income Tax Act, 1961 deals with the provisions pertaining to filing of belated returns with the department through different modes available. In addition, section 139(4) was substituted by Finance Act, 2016 w.e.f. 01st April, 2017 to provide that Any person who has not furnished a return	*It is suggested that the embargo introduced by way of consequential amendment to section 139(4) be repealed and/or vacated and the erstwhile provision embedded in section 139(4) prior to its substitution be restored so as to give inherent push to those who for reasons beyond their control and/or for other reasons fail to go in for voluntary compliance and file ROI within the time prescribed. The substituted provision incorporated by way of amendment through Financial*

		within the time allowed to him under sub-section (1) of section 139, he may furnish the return for any previous year at any time before the end of the relevant assessment year or before the completion of assessment whichever is earlier. In the event, the assessee who is *bonafide* in making compliance with his statutory obligation to file return of income fails to file by the same before the end of the relevant assessment year or before his assessment is completed by the department (whichever period is earlier), he will not be in a position to file the same beyond the period allowed unless exceptions expressly warrant.	*Act, 2016 be decamped and a revamped/erstwhile version of the provision be re-introduced to facilitate more returns, more revenue, more contribution and effective partnership in the non-adversarial tax regime.*
5.	Section 80TTA providing for deduction in respect of interest on deposits in savings account	Section 80TTA specifically provides for deduction to an Individual / HUF to the extent of Rs.10,000/- in respect of interest on deposits (not being time deposits) in a savings account with a)Banking Company subject to conditions prescribed b)Cooperative Society subject to conditions prescribed or c)Post Office subject to conditions prescribed. However, there is likelihood that the individuals / HUFs entitled for deduction would not park their funds in the savings account	*It is suggested that the scope of deduction available in respect of the interest attributable to savings account parked with a)Banking Company b)Cooperative Societies c)Post Offices Subject to conditions be considerably enhanced to cover deposits repayable on expiry of fixed periods i.e. FDRs. In addition, the threshold also be enhanced keeping in view the inflationary tendencies etc. as amount of Rs.10,000/- is considerably on the lower side.*

www.taxguru.in

		keeping in view the exceptionally moderate rate of interest and the possibility that they are likely to convey/transfer significant part of their earnings to schemes catering to the repayments on expiry of fixed periods is on the larger side. This apart, the threshold limit of deduction upto Rs.10,000/- is on the lower side keeping in view the inflationary tendencies and various other parameters..	
6.	Section 80TTB providing for deduction in respect of interest earned on deposits in case of senior citizens	Section 80TTB was introduced by the Finance Act, 2018 so as to allow deduction in respect of interest earned on deposits maintained with a)Banking Company subject to prescribed conditions b)Cooperative Society subject to prescribed conditions c)Post Office subject to prescribed conditions to the extent of Rs.50,000/- in the case of Senior Citizens meaning an individual who is of the age of sixty years or more at any time during the relevant previous year. Since senior citizens predominantly have income in form of interest attributable to time deposits / National savings certificate purchased from Post Offices which happens to be fixed income generating investment schemes. Since, income by way of interest arising to senior citizens in respect of	*It is suggested that the provisions pertaining to section 80TTB accordingly be streamlined so as to include within its ambit any interest accruing to the senior citizens by way on National Savings Certificate(s). Since, section 80TTB is a benevolent and public spirited provision calling for deduction(s) on interest earned by senior citizens, streamlining the provisions pertaining to interest earned on NSCs purchased from Post Offices will further inspire public confidence in the non-adversarial tax society thereby making it more tax compliant.*

www.taxguru.in

		National Savings Certificates has not been expressly dealt with by the provisions of section 80TTB of the Act.	
7.	Section 273B of the Income Tax Act, 1961	Section 273B of the Income Tax Act, 1961 provides for non-imposition of penalty in section specific violations as mentioned therein in the event of a reasonable cause shown to the satisfaction of authority. The expression reasonable cause as mentioned therein is capable of stretchy meanings / interpretations with one set of cause meeting the ends of reasonability while the other may not. In view of discretion based concession and in view of different meanings accorded to the expression `Reasonable Cause', a need arises as to what constitutes `Reasonable Cause' in different set of facts.	*It is suggested that since the expression `Reasonable Cause' has per se not been defined in the statute and is at the mercy of the authority concerned, its abuse cannot be wholly ruled out. In addition, technical glitches/snags in the internet at the time of uploading / efiling the reports / documents required to be electronically uploaded on the portals also be considered to be a reasonable cause for the purpose of levying penalty under the section specific violations expressed for in provisions of section 273B of the Act.* *In a recent order, Hon'ble ITAT Jodhpur Bench in ITA No.567/Jd/2018 dated 06th May, 2019 in Kankaria Industries vs. ITO, categorically dealt with the levy of penalty under section 271BA accompanied by deciding the moot question as whether technical glitches in internet connectivity constitutes reasonable cause for the purpose of section 273B. Hon'ble Bench duly considered technical glitches in internet connectivity as a `Reasonable Cause' embedded in section 273B thereby deleting the penalty levied.*  *Hon'ble Supreme Court in Hindustan Steel Limited vs. State of Orissa 1970 SCR (1) 753 also settled in context of penalty as `An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted*

www.taxguru.in

			in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. *Accordingly, the provisions be streamlined and the technical glitches be imported in the statue as a reasonable cause for the purpose of section 273B of the Act.*
8.	Section 2(24)[xviii) of the Income Tax Act, 1961	Section 2(24) of the Income Tax Act, 1961 defines the expression called `Income'. Furthermore, provision of section 2(24)(xviii) introduced by the Finance Act, 2016 includes assistance in form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee other than two exceptions provided therein. It is not clear in so far as the proceeds attributable on account of any assistance received in form of subsidy / grants / reimbursement / duty drawback received on capital account would constitute the part of Income for the purposes of the Income Tax Act, 1961.	*It is suggested that subsidies, cash assistance, duty drawback, reimbursement, waiver or any other concession (whether in kind or in cash) from the Central Government or a State Government or a Local Authority or a body or agency on the capital account be excluded from the definition of the expression `Income' as defined in section 2(24)[vxiii) introduced by the Finance Act, 2015 w.e.f. 01st April, 2016. However subsidies / cash-incentives, reimbursements/ duty drawback, waivers received on revenue account can continue to attract tax within the rigours of section 2(24)[xviii) of the Income Tax Act, 1961.* *Hon'ble Supreme Court in a recent pronouncement titled as CIT – 1, Kohhapur vs. Chaphalkar Brothers (2018) 400 ITR 279 held in context of subsidy received on capital account in form of incentives to be considered as a receipt not exigible to tax. The Supreme Court took note of its earlier judegement in CIT – Madras vs. Ponni Sugars & Chemicals Ltd (2008) 306 ITR 392 (SC) wherein it was settled that character of the receipt in the hands of the assessee has to be determined with respect to the purpose for which the subsidy is given. In other words, in such cases one has to apply the 'purpose test'. The point of time when the subsidy is paid is not relevant. The source is immaterial; the form of subsidy is also immaterial. If the object of the*

			subsidy scheme was to enable the assessee to run the business more profitably, then the receipt was on revenue account. On the other hand, if the object of the assistance under the subsidy scheme was to enable the assessee to set up a new unit or to expand its existing units, then the receipt of the subsidy was on capital account. Therefore, it is the object for which the subsidy/assistance is given which determines the nature of the incentive subsidy. The form of the mechanism through which the subsidy is given is irrelevant.
9.	276B of the Income Tax Act, 1961	Section 276B of the Income Tax Act, 1961 deals with the prosecution arising out of the failure to pay to the credit of Central Government Tax deducted at source by an assessee or under the provisions of Chapter XVII-B or, tax payable by him as required by or under:- i)sub section (2) of section 115-O or (ii)the second proviso appended to section 194B of the Act. The terms of violation committed as a consequence of the default specified under section 276B will range upto 3 months but which may extend to seven years along with fine and the punishment imposed will be rigorous in nature. It is undisputed that over a period of time, prosecutions under section 276B are launched in a very causal, routine and mechanical manner and even for those defaults which apparently appear to have been committed	*It is recommended that in light of the compelling circumstances where the amount of tax involved is not substantial and the assessee could not deduct tax due to its ignorance, bonafide belief that TDS is not applicable on a particular transaction etc. but at a later stage deposits the same on its own motion to avoid litigation with the department after due date stipulated for in the act but prior to the issuance of any notice / communiqué by the department, lenient statutory measures may kindly be enforced against such assessees. This apart, provisions of other statutes that stand in Pari Materia with the subject under consideration can also be taken into account in order to buttress the legitimate & warrantable claim that prosecutions should not been launched in a tyrannical, dictatorial and oppressive manner.* *Furthermore, myriad cases are noticeable where prosecutions have been launched without even thoughtfully understanding the gravity of default committed by the assessee. In certain cases, even where assessees fail to deduct tax at source and also fail to pay the same to the credit of Central Government, prosecution proceedings under*

www.taxguru.in

		but factually have not been committed. Section 276B categorically provides that If a person fails to pay to the credit of the Central Government – a)tax deducted at source by him as required by or under the provisions of Chapter XVII-B; or…… The language used *per se* is in respect of the identifiable tax which stood deducted and the default arose on account of its consequential non-deposit with the Central Government as per provisions stipulated for under the law. In addition, complications/difficulties have been encountered while understanding the scope for which the prosecutions are necessitated under section 276B of the Act and prosecutions are launched even in those cases where tax at source has not been deducted and/or there is a resultant failure to deduct accompanied by the parallel default in depositing the same to the credit of Central Government. In addition, as per Press Release dated 06th August, 2013 of the Ministry of Finance, the criterion of minimum retention period of 12 months has been dispensed with and the prosecutions can be launched by the department at the spur of moment without	*section 276B are launched in an arbitrary fashion whereas literally, this is clearly not the spirit of the intended provision. Another thought-provoking circumstance can be where the assessees has not deducted tax at source at the relevant point of time on the doubtful assumption that provisions are not applicable in its case, but at a later stage to avoid any litigation with the department pays the same to the credit of the Central Government after the due date prescribed under the Act, they are subject to prosecution under section 276B of the Act which is totally contrary to the spirit of the provisions of the section 276B.* *Hon'ble Patna High Court in Sonali Auto Private Limited vs. State of Bihar, Criminal Misc. Petition No.16498 of 2014 (2017) 396 ITR 636 has taken a lenient view of the matter in view of the Board Instruction No.1335 dated 28th May, 1980 and settled, `If assessee deducted TDS but same was not deposited within specified time due to oversight on part of its accountant, prosecution proceedings against assessee after three years would be contrary to CBDT instruction and, thus, deserved to be quashed. Reliance was also placed upon the pronouncement of the Hon'ble Punjab & Haryana High Court in Bee Gee Motors & Tractors vs. ITO & Vijay Singh vs. Union of India (Madhya Pradesh High Court).*

www.taxguru.in

		acknowledging the default committed. In furtherance, section 276B is without threshold/monetary ceiling which also is in itself discriminatory and invidious and seems to give way to a guerrilla trial. It is also significant to note that erstwhile service tax law provided a threshold limit of Rs. 2 crores for initiating prosecution proceedings in case of failure to pay service tax collected to the credit of the Central Government within a period of 6 months from the date on which such payment becomes due meaning thereby that both retention period and the threshold limits were prescribed for duly launching prosecution proceedings.	

In view of the above, it is humbly prayed that the above recommendations//suggestions may kindly be considered and taken on record in the formation of the Union Budget, 2019 , in so far as the direct taxes proposals are concerned. The said recommendations//suggestions have been drafted keeping the view the judicial precedents and genuine hardship faced by the tax payers at large in the present scenario.

Thanking you,

Yours truly,

CA. Jatinder Malik,
(President Income Tax Bar, Jalandhar)
Mobile No.9815076727

Adv. Gulshan Kataria
(Secretary, Income Tax Bar, Jalandhar)
Mobile No.9417046036

Adv.Sameer Bhatia
(Chariman, Direct Tax Committee)
(Income Tax Bar, Jalandhar)
Mobile No:- 9041304900

www.taxguru.in

Copy to :-

1.The Hon'ble Prime Minister of India,
2.The Revenue Secretary, Department of Revenue, Ministry of Finance, Govt. of India, New Delhi.
3.The Chairman, Central Board of Direct Taxes, New Delhi.
4.The Chief Commissioner of Income Tax, Ludhiana.
4.The Principal Commissioner of Income Tax, Jalandhar – 1, Jalandhar.
5.The Principal Commissioner of Income Tax, Jalandhar – 2, Jalandhar.
6.The Print Medias.