DIRECT TAXES PROFESSIONALS' ASSOCIATION
Income Tax Building, 3, Govt. Place West, Ground Floor, Kolkata 700001 Ph - 033-22420638

URGENT

Ref. No. DTPA/Rep/21-22/004 **13th December 2021**

Smt. Nirmala Sitharaman
Hon'ble Minister of Finance and Corporate Affairs
Government of India
Department of Revenue
North Block
New Delhi - 110001
fmo@nic.in

Respected Madam,

At the outset we convey our good wishes for NEW YEAR in advance. We would like to make the following suggestions as our Pre Budget Memorandum for 2022-23:

1. **Personal Income tax**:
   a) We appreciate the alternate tax regime offered for personal taxation under section 115BAC. However please allow benefit of section 80D for medical insurance premium to help taxpayers to keep their medical policies alive in view of exorbitant expenses for hospitalisation & treatment even in case of taxpayers opting for sec. 115BAC. Benefit of tax rebate u/s 87A should be allowed in case of taxpayers opting for sec. 115BAC. The TDS from Salary u/s 192 may be deducted based on tax liability in case of taxpayers opting for sec. 115BAC.
   b) Personal Income tax Exemption Limit and Slab Rates needs to be reviewed. It will be appropriated if exemption limit is across the board fixed at Rs. 4 Lakhs and Tax Rate for the Slab Rs. 5 Lakhs to 10 Lakhs is considered and fixed at 10 per cent; next slab may be Rs. 10 Lakhs to 20 Lakhs with tax rate of 15 per cent and on income in excess of Rs.20 Lakhs tax may be charged at 25 per cent. Such a tax

regime will help in developing tax culture and true disclosure of income by all.

2. **Section 10(10) – Regarding exemption in respect of Gratuity**:

As per present section gratuity is exempt in respect of Central Government employees as is received by them under the rules or gratuity received under the Payment of Gratuity Act or gratuity received by employees of other organizations as is calculated as per the prescribed method subject to limit as may be prescribed by the Central Government by notification in the official gazette, having regard to the limit applicable to Central Government employees.

In view of aforesaid language used in respect of employees other than the employees of the Government department and employees covered under the Payment of Gratuity Act, notification is required to be issued from time to time by the Central Government.

Recommendation: It is suggested that the requirement of separate notification by the Central Government in respect of employees other than the employees of the Central Government can be done away by straightaway providing the limit as is applicable to Central Government employees or as is provided in Payment of Gratuity Act.

[It may be stated that presently the notification increasing the exemption limit to **Rs.20 lacs** has not been issued for the purpose of clause (iii) of section 10(10) of Income-tax Act whereas the limit for the Central Government employees as well as under Gratuity Act has been raised quite some time ago and employees as well as employers are in difficulty in the absence of the notification increasing the exemption limit. Such problems can be avoided, if necessary, amendment, as suggested above, is made in the section.]

3. **Section 10(10B) – Exemption in respect of compensation received on retrenchment**:

The section provides that compensation received on retrenchment by a worker under the Industrial Dispute Act or under any other Act or Contract of Service, etc. subject to the limit of the amount as calculated as per section 25F of Industrial Dispute Act or amount as may be notified which at present is Rs.5

lacs. The term 'worker' has been defined to mean the worker under the Industrial Dispute Act, 1947.

In case the exemption is available only to a worker covered under the Industrial Dispute Act, then compensation has obviously to be paid to such workmen u/s 25F of Industrial Dispute Act and, accordingly, there is no need of any other limit prescribed under this section. Further, reference to any other Act, Contract, Award, etc. is redundant.

Recommendation: It is suggested that the scope of section 10(10B) should be extended to all the employees whether under the Industrial Dispute Act or not and a limit for the purpose of exemption should be prescribed, may be the limit on the basis of retrenchment compensation for which a workman is entitled u/s 25F of Industrial Dispute Act or any other limit as may be considered appropriate.

4. **Restructuring of provisions regarding charitable institutions:**

Presently there are different provisions applicable to charitable institutions u/s 10(23C) and section 11 to 13 of the Act. Definition of term 'charitable purpose' has been given in section 2(15) of the Act. There is lot of litigation presently as regards the definition of charitable purpose as well as of application of income etc. As per the existing provisions a charitable institution is permitted to accumulate its income for a period of five years and income applied for capital expenses is also allowable as deduction. In view of the fact that capital expenditure is allowed as application towards charitable purpose, it has become a general phenomenon that educational institutions, hospitals, etc. in some cases, are being run as industry and are charging high fees for the services provided by them and amount is accumulated and is spent for setting up another school, college or hospital. Accordingly, the whole purpose of the institution, being charitable, has been defeated in many cases and practically they are being run as commercial institution. Inspite of amendment in the definition of the term 'charitable purpose' in section 2(15) of Income-tax Act, the purpose has not been served.

Recommendation: In order to avoid the litigation and also to create a situation that institution really works as a charitable institution it is suggested that:-

(i) The objects and purpose of an institution be examined in detail while granting registration to a charitable institution by the

Commissioner of Income-tax. For this purpose, detailed guidelines as regards the charitable purpose should be there by way of notification in the rules. The Commissioner once examine and grant registration, the institution will continue to be recognised as charitable. May be for this purpose an independent authority known as a 'Charity Commissioner' be appointed by the Government, as it exists in certain states. The system of fresh registration and renewal introduced by the Finance Act, 2020 seems unnecessary and needs review.

(ii) As at present 15% of income should be permitted to be accumulated without any condition.

(iii) The restriction, as at present, that no charitable institution can carry on the business unless specific conditions provided under section 11(4A) are complied with, should be done away with. Income of a business, applied for a charitable purpose, should be considered as receipt of charitable institution. In respect of the business separate books of account may continue to be maintained. WE suggest that the income arising from such business should be considered as receipt / income and such income may be allowed to be utilised for the purpose of charitable activities being run by the institution.

5. **Weighted deduction on scientific research expenditure section 35**

a) It is well recognised that scientific research is the lifeline of business in all countries of the world. Indian residents are paying huge sums by way of technical services, fees to foreign technicians to upgrade their products and give the customers what latest technology gives globally. If in-house research is continuously encouraged, outgo on account of fees for technical services will reduce and this will help indigenous businesses to grow. Like made in India, ease of doing business and encouragement to start up initiatives of the government, innovation and scientific research initiative should be given equal weightage.

b) Withdrawal of weighted deduction in respect of scientific research expenditure will put a dent to the '**Make in India**' initiative of the Government.

c) **Recommendation:** It is recommended that weighted deductions allowed under the Income Tax Act, 1961 to various modes of scientific research expenditure should be continued. **The Government can also consider introducing benefits in the form of Research Tax Credits which can be used to offset future tax liability (like those given in developed economies).**

6. Allow deduction for corporate social responsibility expenditure Sec. 37

a) At present the Income Tax Act provides that the expenses incurred by the taxpayer on the activities relating to CSR referred to in Section 135 of the Companies Act, 2013 shall not be deemed to be incurred for the purpose of business and hence, shall not be allowed as a deduction for computation of income. **The corporate sector spending on CSR is for laudable purposes andeffectively assisting the Government in undertaking social projects for the country**. Therefore, the deduction must be allowed for expenses on CSR for the purpose of Income tax**.**

b) **Recommendation: It is recommended that a deduction of CSR expenses incurred by the taxpayers pursuant to the policy of the Central Government and provisions of the Companies Act should be allowed in computing business income.**

7. **Monetary Limit for Tax Audit of Accounts:**

a) Considering the inflation, the Monetary Limit for Tax Audit of Accounts under section 44AB should be reviewed and increased to Rs. 2 Crore in place of present Rs. 1 Crore.

b) In this context we would like to bring to your kind notice that eligible business for the purpose of section 44AD is considered if total turnover or gross receipt in the previous year does not exceed Rs. 2 Crore. That means that if they opt for presumptive Income scheme, the tax audit is not required even if the gross turnover is up to Rs. 2 Crore. On similar lines the monetary limit for tax audit should be enhanced to Rs.2 Crores.

8. Presumptive Income is case of professionals:

a) The Presumptive Income is case of professionals is considered under section 44ADA at the rate of 50 per cent of gross receipts which is quite excessive even while we compare with the presumptive income of 8 per

cent or 6 per cent, as the case may be, for computing profit and gains of business, as prescribed under section 44AD. The presumptive income in case of professionals should be at the rate of 30 per cent of gross receipt. It may be noted that RV Easwar Committee had suggested the rate of one third of gross receipt of professional receipts. The realistic presumptive rate will encourage more and more professional to opt for the scheme under section 44ADA.

9.**Deduction under Sec. 54EC:**

We suggest that the monetary limit of investment in specified bonds should be increased from present Rs. 50 Lakhs to at least Rs. 1 Crore on sale of each long-termasset. Secondly the time limit for making investment in such Bonds should be allowed upto the due date of filing the Income Tax Return by the assessee instead of present time period of only 6 months from the date of sale of original asset. This will be in line with the time limits provided for the purpose of sec. 54 and 54F.

Moreover the benefit of section 54 EC should also be extended to capital gains on all assets. It should not be restricted to only in case of capital gain arising from land or building or both.

10. Capital Gain Exemption Sec. 54F:

The existing section 54 F provides for deduction of Long-Term Capital Gain if the sale consideration is utilised in purchasing of or construction of a residential house within specified period. We suggest that the deduction should be allowed on purchase of any immovable property whether residential or business or office premises. Such an amendment will also help the housing sector and will make the deduction more useful. It may be mentioned that for the purpose of this deduction the sale consideration of original asset has to be invested instead of only capital gain as is the case for deduction under sec. 54.

11. Reference to Valuation Officer under sec. 55A:

The tolerance limit of 20 per cent variance in value of immovable asset should be incorporated for the purpose of reference to Valuation Officer.

12. Amendment of section 56:

The receipts excluded from the purview of section 56 (2) should also include the amount received by a member of Hindu Undivided Family

(HUF) from the HUF. There are considerable litigations on the point. These are unnecessary and may be stopped by inserting above amendment.

13. **Increase threshold limit under Section 80C of the Act:**

Over the years, investments made in various avenues available under Section 80C of the Income tax Act have has been helping the Government to raise funds as well as the individuals to save tax. The Government may look at increasing the overall deduction limit to at least Rs 250,000 to boost further investment and increase tax savings for the individual and HUFs.

Further the amount to be deposited in PPF account may be increased to Rs. 2,50,000 in place of present Rs.1,50,000. The contribution by HUF should also be allowed.

14. Tax under sec. 115BBE:

Earlier the assessee was not concerned whether the department is treating it as deemed income or business income **as the income was taxable maximum at the rate of thirty percent. But after amendment in section 115BBE from assessment year 2017-18 this matter has become very important and if the department treats surrendered income as deemed income it will be subject to tax at the rate of 60 per cent plus 25 per cent surcharge and education cess. The effective aggregate rate u/s 115BBE now 78 per cent. If the A.O. makes addition penalty under section 271AAC may also be levied @ 10 per cent of tax, which will make the overall burden @84 per cent on assessee. It is prohibitive and needs urgent review. It is desirable that tax under sec. 115BBE should be at best 30 per cent or the maximum marginal rate. The rate was basically increased drastically due to demonetisation. It should be brought back to pre asst. year 2017 -18 level.**

It may kindly be appreciated that additions under sec. 68. 69, 69A, 69B and 69C of the Income Tax Act, 1961 are deemed additions and not necessarily the actual or real income.

15. Minimum Alternate Tax – Section 115JB:

a) **Recommendation:**

We suggest an alternate to MAT.

It may be provided that the aggregate exemptions and deductions allowable to any taxpayer will be pegged to 80 per cent of gross total income. Meaning thereby that all taxpayers contribute some tax to the Government. For making the new system workable exemptions and deductions may be placed under Chapter VIA of the Income Tax

Act. Adoption of this approach will help in reducing litigation and help in better tax collection. Even the Charitable Societies, Hospitals etc. making profit will also pay tax in this process.

b) Without prejudice to the above suggestion, we feel that with phasing out of exemptions and incentives under the Act, the current rate of MAT of 15% w.e.f. asst. year 2020-21 is quite high and has impacted significantly cash flow of companies who otherwise have low taxable income or have incurred tax losses. With the phasing out of exemptions and deductions available under the Act, the burden of MAT should also be reduced to 12 per cent(in place of current level) so that it may commensurate with the phasing out of tax exemptions and incentives.

c) Presently, the amount of loss brought forward or unabsorbed depreciation whichever is less as per books of account is allowed as a deduction while computing book profit for the purpose of MAT please refer Expl 1 part 2 item (iii) to 115JB. The said provision adversely affects companies which have huge book losses and lesser unabsorbed depreciation as they will have to pay MAT despite having ample amount of book losses thereby affecting their cash flows. It is suggested to review the provision to make it liberal. Both depreciation and brought forward losses should be fully allowed even for the purpose of MAT. The methodology for computing loss brought forward and unabsorbed depreciation as per books of account may be specifically provided in section 115JB of the Act.

15A. Disclosure during Income Tax Search/ Survey : The CBDT had issued following Instruction dated March 23, 2003:

In the light of the statements recorded followed by retractions on the ground of coercion and threat in the course of search and survey operations, the Board issued the Instructions F.No. 286/2/2003 – IT (Inv.) dated March 23, 2003 stating as follows:

"Instances have come to the notice of the Board where assessees have claimed that they have been forced to confess undisclosed income during the course of the search and seizure and survey operation. Such confession, if not based on credible evidence, are retracted by the concerned assessees while filing return of income. In these circumstances, confession during the search and seizure and survey operation do not serve any useful purpose. It is, therefore, advised that there should be focus and concentration on collection of evidence of income which leads to information on what has not been disclosed or is not likely to be disclosed before the Income-tax department. Similarly, while recording statement during the course of search and seizure operation, no attempt should be made to obtain confession as to the undisclosed income."

In practice the above Instruction is generally ignored by the officials of department going for Search or Survey. In fact it is not practicable for the taxpayer to ascertain during search itself that how much income he should declare in absence of necessary details and due to the necessity to consult his business associates, family members and staff. With a view to streamline the process of search and survey and with a view to do justice we make the following suggestions :

a) **The copy of statement recorded during Search should be given to taxpayer with copy of Panchnama itself. In case of survey also the copy of statement recorded should be instantly provided during Survey.**
b) **A copy of search warrant should be given to party on the day of search.**
c) **The copy of seized documents and books should be provided to the taxpayer within 15 working days of completion of search or from the date receipt of application from the taxpayer.**
d) **The taxpayer should be permitted to make disclosure of income within 15 working days after providing him the copy of seized documents/ books. The benefit of tax rate / exemption from penalty, available in case of disclosure should be made available in case of disclosure within 15 working days as aforesaid.**
e) **The above changes will be helpful in avoiding the present trend of retractions.**

17. **Avoidance of repetitive appeals on the same issue: Section 158A/ 158AA**

In regard to repetitive appeals though there are presently provisions of sections 158A and 158AA of the Income-tax Act, but these provisions are not effective and same are not being used at all. These should be followed.

Recommendation: It is suggested that the law should clearly provide that in case an issue has been decided either in favour or against the assessee in an earlier year, there will be no need to file appeal either by the assessee or the department in a subsequent year in case the issue is identical. Provisions of section 154 of the Act should be applicable in such cases to rectify all subsequent assessments in the light of decision in respect of appeal in earlier year by ITAT, High Court or the Supreme Court. In other words, in case an issue has been decided by CIT(A) in favour of the assessee, in subsequent years it should not be necessary for the assessee to file the appeal before CIT(A) and the order for a subsequent year should be rectifiable in the light of decision of higher authorities. **The Assessing Officer in the assessment may make an addition in respect of particular issue but will not raise the demand in case the issue is already in favour of the assessee. Similarly, if the issue is against the assessee and he is agitating in further appeals, the order of higher authorities will be applicable to subsequent years also.**

17. **Initiation of proceedings against directors u/s 179 of the Income-tax Act:**

In many cases provisions of section 179 are being resorted by the Assessing Officer even prior to decision in appeal by CIT (A) or ITAT and also without firstly exhausting its remedy for recovery of tax demand against the company. Provisions of section 179 are to be resorted to only if the demand has been finally settled and the Assessing Officer is not able to recover the same from the company. Proceedings are not to be used for harassment of the directors, or threatening them by attaching their personal bank accounts. Necessary provision needs to be made in the section to exclude action at least in case of Independent Directors.

18. Scope of Section 207(2) may be extended to HUFs

Section 207 (2) of the Income tax Act provides that: The provisions of sub-section (1) [relating to payment of advance tax] shall not apply to an Individual residents in India, who –

a) Does not have any income chargeable under the head "Profits and gains of business or profession"; and
b) Is of age of 60 years or more at any time during the previous year.

Recommendation: For many provisions including section 80C the HUFs are treated at par with Individual tax payers. We recommend that sub-section(3) may be inserted to section 207 to provide that the provisions of sub-section (1) of section 207 shall not apply to Hindu Undivided Family if it does not have any income chargeable under the head "Profits and gains of business or profession" and the Karta of the HUF is of age of 60 years or more. Such provision will immensely help the HUFs being looked after by senior citizen as its Karta.

19.**Taxability of income on notional basis:**

The concept of taxability of income on notional basis either under the head 'income from house property' or under other provisions of Income-tax Act should be done away. Only the actual income received by an assessee should be chargeable to tax.

Similarly, no disallowance of any expenditure actually incurred by an assessee as per the method of accounting employed by it should be made and for this purpose provisions like section 43B etc. should be deleted.

20.**Time limit for carrying out appeal effectby the Assessing Officer orpassing Order by Appellate Authority:**

Presently, the Act provides for time limit for completing assessment by the Assessing Officer. There is no doubt as regards the legal position that in case the assessment order is not framed within the specific time limit, the Assessing Officer cannot make the assessment order thereafter. Similar should be the position in regard to **appeal effect**. In case the Assessing Officer does not take the necessary action within the stipulated time limit, the action will be deemed to have resulted in favour of the assessee and no adverse order can be passed. Otherwise, placing time limits for appeal effect, etc. have not brought any effective result and still the matters continue to be pending with the Assessing Officer for quite long time.

Recommendation: In case the appeal is not decided by CIT(A) within the time limit u/s 250(6A) of the Act, the appeal should be deemed to be allowed.

Making the aforesaid provisions in the Act will not in any way bring any adverse result for the obvious reason thatwhen there is compulsion under law the Assessing Officer or the CIT(A) will definitely take the necessary action within the stipulated time limit. It will bring a discipline in the performance of the officers.

21. **Exercising of powers u/s 263 of the Act:**

It is being practically seen that powers u/s 263 are exercised in a routine manner and in spite of detailed submissions or legal requirements, no care is taken by the concerned officers. It is necessary that the provisions should be more specific, duly supported by the necessary guidelines for exercising the powers under these sections. For this purpose, there should also be proper training and also check within the department so that actions taken are upheld in appeals. It is well known that because of casual approach of the officers actions taken under above sections in most of the cases fail in appeals. We welcome the amended provisions of sec. 147, 148 and new section 148A inserted in Finance Act, 2020.

22.**Provisions regarding levy of penalty for under-reporting or mis-reportingof income: Sec. 270A**

As is well known there had been substantial litigation in respect of provisions of section 271(1)(c) of the Act. Provisions of section 270A have been inserted

w.e.f. A.Y. 2017-18. The terms 'under-reporting' or 'mis-reporting' are likely to be subject matter of litigation. Further, it is also not clear that at what stage the Assessing Officer will levy the penalty and will determine whether it is a case of under-reporting or mis-reporting. Accordingly, provisions need to be simplified so as to avoid litigation in this regard.

Recommendation: It is suggested that:-

(i) As a general principal penalty will be leviable only after the decision in appeal by ITAT, which is against the assessee and the issue has not been admitted by the High Court as substantial question of law. In case the issue has been admitted by the High Court as substantial question of law, as a matter of principle, it cannot be said that penalty is leviable in respect of the same. Further, in case the tribunal has allowed the deduction for an expenditure, penalty will not be leviable even if the department is contesting in the High Court.

(ii) In case the addition has been upheld by ITAT, as a simplification of the penalty provisions it should be provided that penalty will be leviable equivalent to, say, 30% of the tax amount payable on such addition. The law straightaway should provide that assessee has to pay 30% of tax as additional amount in the nature of penalty. In case addition made by the Assessing Officer has been deleted in appeals, the assessee should equally be entitled to compensation for the harassment and cost of litigation and for this purpose a straightaway tax rebate of, say, 20% of the amount of tax leviable on such addition should be allowed to the assessee.

23.**Initiation of prosecution: Sec. 276C**

23.1 We welcome the **CBDT Circular 24/2019 dated 09.09.2019**, which considered the issue of premature initiation of prosecution i.e., before the issue is tested in appellate proceedings and CBDT has provided specifically that the prosecution complaint should not be launched unless penalty is confirmed by the Income tax Appellate Tribunal. **The Spirit of the said Circular should be inserted in section 276C itself to provide that prosecution under sec. 276 C should be initiatedif tax sought to be evaded is more than Rs.25 Lakhs andProsecution should be launched only after the penalty is confirmed by the ITAT.**

The said Circular dated 9.9.2019 broadly states that prosecution can be launched only in following cases:

1. **If tax sought to be evaded is more than Rs.25 Lakhs and**
2. **Prosecution should be launched only after the penalty is confirmed by the ITAT**
3. Prosecution is a criminal proceeding. Therefore, based upon evidence gathered, offence and crime as defined in the relevant provision of the Act, the **offence has to be proved beyond reasonable doubt.** To ensure that only deserving cases get prosecuted the Central Board of Direct Taxes also instructed that prosecution may be initiated only with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers as mentioned in Para 3 of the Circular.

The said Circular is available on the Government website at the link:https://www.incometaxindia.gov.in/communications/circular/circular-24-2019-11-09-2019.pdf

This Circular is curative, clarificatory and remedial in nature and it ought to be given retrospective effect and apply to all pending cases where the complaint is filed and should not be restricted only to those pending cases where complaint is yet to be filed. It is a settled law that a curative, clarificatory and remedial amendment must be given retrospective effect. For this proposition reliance is placed on following judicial pronouncements:

i) When a provision is inserted/deleted to remedy unintended consequences it should be given a retrospective effect - **CIT vs. Alom Extrusions Ltd. [2009] 319 ITR 306 (SC)**.

ii) When a provision is inserted/deleted so as to mitigate hardship caused to the assessee, it should be given retrospective effect - **CIT vs. Calcutta Export Company [2018] 404 ITR 654 (SC).**

Accordingly, we request that CBDT should issue a clarification that the said circular will apply to all matters which are pending in Courts and the complaints already filed may be withdrawn based on any undertaking or conditions, as may appear just and equitable to Your Honours.

23.2 The limit prescribed under the said Circular **"the tax sought to be evadedis more than Rs.25 Lakhs" is on the lower side considering the**

diminishing value of money. Therefore,**our humble suggestion is that the Monetary limit should be revised to at least Rs.1 Crore of tax for initiating any prosecution.**

23.3 Your honour has taken commendable steps by removing prosecution provisions under the Companies Act, 2013. On the same line, it is appropriate time that prosecution provisions under the Income tax Act also should be omitted. There are enough provisions for levy of penalty in appropriate cases.

24.**Specific provisions in the Act for payment or refund of interest to and from department:**

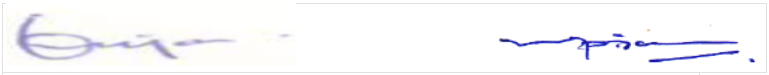
As per the existing legal position any interest paid by theassessee to the department is not allowable whereas any interest received from the department is chargeable to tax. Difficulty, however, arises in the case where the department has allowed the interest to an assessee on the amounts of refund but subsequently as a result of appeal order, such interest has to be paid back to the department. **Recommendation:**

a) There should be specific provisions in the Act that any repayment of interest earlier allowed by the department and included in the taxable income is allowable as deduction in the year such interest is re-paid to the department.

b) Further, it should be specifically provided in the Act that amount of interest allowed by the department will be chargeable only in the year in which amountis actually received by the assessee by way of cheque or credit in the bank account or on intimation or information is received for adjustment of refund against any demand. Similarly, deduction is to be allowed in the year the assessee has actually repaid the interest to the department.

c) As a matter of clarification it may also be specifically provided under law that any interest paid by theassessee to the department will not be allowable as deduction and any refund out of the same received in subsequent year will not be included in the taxable income.

Kindly consider the above suggestions. We assure your honour of our full co-operation in encouraging taxpayers to make proper tax compliance.



AdvKamal Kumar Jain Narayan Jain
President, DTPAChairman, Representation Committee
Email : kamalkrjain@yahoo.com Emailnpjainadv@gmail.com

CC to :
Chairman,
Central Board of Direct Taxes, North Block, New Delhi-110001