DTPA
Direct Taxes Professionals' Association
ज्ञानं एक्यं च न्यायार्थम
Estd. 1982

Feb. - Mar., 2022

E-Journal

A Publication of The Professionals, for The Professionals, by The Professionals

Headlines

Dear Members,

It give me immense pleasure to release the another edition of our DTPA e-journal. There are 82 amendments in the direct tax in this finance budget by the honorable finance minister. Journal committee has tried to incorporate the proposed amendments and there implication in this issue which members may found useful for them.

The world economy is further facing new challenges due to war between Ukraine and Russia but in the meanwhile covid-19 cases are reducing on daily basis. While the situation remains highly fluid and the outlook is subject to extraordinary uncertainty, the economic consequences are already very serious. Energy and commodity prices including wheat and other grains have surged, adding to inflationary pressure from supply chain disruption and the rebound from the Covid-19 pandemic. Price shock will have an impact worldwide.

I would sincerely request all the members to contribute useful articles and compilation, which I assure, will find place in the next E-Journal, if found worthy of publication.

Wishing you Happy Holi In advance.

With regards

CA MAHENDRA K AGARWAL
Chairman - DTPA Journal Committee
8th March, 2022

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Dear DTPA Family,

It gives me immense pleasure to communicate with you again with the festive season around starling with Maha Shiv Ratri and followed by Holi.

Friends, I am sure we must have completed our Tax Audit work within the due date and must be busy with our deadlines relating to filing of GST and Income tax Returns.

Friends, Our Honorable Finance Minister Smt. Nirmala Sitharaman presented the Union Budget in the Parliament on 1st February, 2022. I congratulate her for presenting a dynamic budget and not falling to the political pressures on account of the impending elections. The announcement of the introduction of India's own digital currency is a welcome move.

Friends India's GDP has grown at the rate of 9% in 2021 as against at 7.3% in 2020 and it has further projected a growth of 9% for 2022 and 7.1% in 2023, making India the fastest growing economy in the world. It is a good opportunity for the professional brotheren to expand over areas of practice in view of the positive economic outlook.

Friends, I am glad that all my office bearers, Committee Member and Sub Committees Advisor, Chairperson, Co-chairperson and Convener , Study Circle's Convener and Deputy Convener all are giving their best in conducting local seminars both physically and virtually and ensures imparting of continuous education to our members . It is the motto of our association.

I once again wish that you all enjoy the festival of Holi and to celebrate "AZADI KA AMRIT MOHOTSAV".

With Best Wishes

Adv Kamal Kumar Jain
President - DTPA
8th March, 2022

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ANALYSIS OF SOME AMENDMENTS IN INCOME TAX BY THE FINANCE BILL, 2022

Narayan Jain, LL.M., Advocate

Synopsys:

Introduction: The Finance Bill, 2022 was introduced by the Hon'ble Finance Minister in Lok Sabha on 1st Feb., 2022. There are as many as 84 amendments relating to Income Tax alone.The taxpayers were expecting higher Income tax

exemption limit as well re-orientation of slabs for reduced tax liability. The deductions have also remained almost same. There are 84 amendments in Incomer Tax alone. On going through fine print we find some provisions are going to create some hassle for taxpayers. A few important amendments proposed by the Hon'ble Finance Minister are discussed here.

1. Amendment/ Insertion of Definitions :

a) Definition of the term "slump sale": Sec 2(42C): Slump sale is defined in clause (42C) of section 2 of the Act, as the **transfer of one or more undertaking, by any means, for a lump sum consideration without values being assigned to individual assets** and liabilities in such sales. Vide the Finance Act, 2021, **the definition of "slump sale" was amended to expand its scope to cover all forms of transfer under slump sale.** However, inadvertently, in the last sentence, there is a reference to the word "sales" instead of "transfer". Therefore, it is proposed to carry out consequential amendment by amending the provision of section 2(42C) to substitute the word "sales" with the word "transfer". This amendment will take effect **retrospectively from assessment year 2021-22**.

b) Definition of the term "virtual digital asset"- Section 2(47): "virtual digital asset" has been defined in a new clause (47A) proposed to be inserted to section 2. As per the proposed new clause, a **virtual digital asset is proposed to mean any information or code or number or Token (not being Indian currency or any foreign currency), generated through cryptographic means or otherwise, by whatever name called, providing a digital representation of value which is exchanged with or without consideration, with the promise or representation of having inherent value, or functions as a store of value or a unit of account and includes its use in any financial transaction or investment, but not limited to, investment schemes and can be transferred, stored or traded electronically. Non-fungible token and; any other token of similar nature are included in the definition**. (also see more details under section 115 BBH).

2. Rationalisation of the provision of Charitable Trust and Institutionsetc. Section 10(23C)/ 11/12/12AA/12AB:

a) Various **differences between exemption under Section 10(23C) and Section 11/12** have been removed by extending the provisions relating to **accumulation of income, filing of return, maintenance of books of accounts, accreted income, etc.** to such institutions claiming exemption under Section 10(23C)/11/12.

b) Income of any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 or any trust or institution registered u/s 12AA or 12AB of the Act is exempt subject to the fulfilment of the conditions provided under various sections. The exemption to these trusts or institutions is available under the two regimes :

(i) Regime for any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 (hereinafter referred to as trust or institution under first regime); and

(ii) Regime for the trusts registered under section 12AA/12AB (hereinafter referred to as trust or institution under the second regime).

c) In the Finance Bill, it has been proposed to rationalise the provisions of both the exemption regimes by-

(i) ensuring their effective monitoring and implementation;

(ii) bringing consistency in the provisions of the two exemption regimes; and

(iii) providing clarity on taxation in certain circumstances.

d) Books of account to be maintained by the trusts or institutions under both theregimes:

(i) Where the total income of any trust or institution under the second regime, as computed under the Income Tax Act without giving effect to the provisions of section 11 and section 12, exceeds the maximum amount which is not chargeable to income-tax in any previous year, it is required to get its accounts audited. Similar provision exists for the trusts or institutions under the first regime in the tenth proviso to section 10(23C).

(ii) However, there is no specific provision under the Act providing for the books of accounts to be maintained by such trusts or institutions. In order to ensure proper implementation of both the exemption regimes, it is proposed to amend clause (b) of section 12A(1)of the Act and tenth proviso to section 10(23C) o provide that where the total income of the trust or institution under both regimes, without giving effect to the provisions of section 10(23C) or section 11 and 12, exceeds the maximum amount which is not chargeable to tax, such trust or institution shall keep and maintain books of account and other documents in such form and manner and at such place, as may be prescribed.

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

3. Disallowance under section 14A in absence of any exempt income during an assessment year: Section 14A provides that no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income that does not form part of the total income as per the provisions of the Act (exempt income). Over the years, disputes have arisen in respect of the issue whether disallowance under section 14A of the Act can be made in cases where no exempt income has accrued, arisen or received by the assessee during an assessment year. CBDT had issued Circular No. 5/2014, dated 11/02/2014, clarifying that Rule 8D read with section 14A of the Act provides for disallowance of the expenditure even where tax payer in a particular year has not earned any exempt income. However, still some courts have taken a view that if there is no exempt income during a year, no disallowance under section 14A can be made for that year. The Finance Minister has now proposed to insert an Explanation to section 14A to clarify that notwithstanding anything to the contrary contained in this Act, the provisions of section 14A shall apply and shall be deemed to have always applied in a case where exempt income has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such exempt income. This amendment will take effect from **1st April, 2022**.

4. Exemption of amount received for medical treatment and on account of death due to COVID-19 section 17(2) and 56(2): The Finance Ministry had announced on 25th June 2021 that income-tax shall not be charged on the amount received by a taxpayer for medical treatment from employer or from any person for treatment of COVID-19 during FY 2019-20 and subsequent years. It was further announced that in order to provide relief to the family members of such taxpayer, income-tax exemption shall be provided to ex-gratia payment received by family members of a person from the employer of such person or from other person on the death of the person on account of COVID-19 during FY 2019-20 and subsequent years. Also, it was stated that the exemption shall be allowed without any limit for the amount received from the employer and the exemption shall be limited to Rs. 10 lakh in aggregate for the amount received from any other persons. The FM has proposed to amend sec. 17(2) and sec. 56(2) to give legal effect to the said announcement. The amendments will take effect retrospectively from assessment year 2020-21 and subsequent assessment years.

5. Disallowance of certain expenditure under section 37: Section 37 provides for allowability

of revenue and non-personal expenditure (other than those failing under sections 30 to 36) laid out or expended wholly and exclusively for the purposes of business or profession. Explanation 1 to section 37(1) provides that if any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure. However, it is seen that certain taxpayers are claiming deductions on expenditure incurred in offering certain benefits or perquisite to a person which are not intended to be allowed under this section, like meeting his expenditure related to travel, hospitality, conference etc. In these cases acceptance of such benefit or perquisite by such person is in violation of a law or rule or regulation or guidelines, as the case may be, governing the conduct of such person.

CBDT, vide circular No. 5/2012 dated 1.8.2012, noted that the Indian Medical Council in exercise of its statutory powers amended the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (the regulations) on 10.12.2009 had imposed a prohibition on the medical practitioner and their professional associations from taking any Gift, Travel facility, Hospitality, Cash or monetary grant from the pharmaceutical and allied health sector Industries. Accordingly, CBDT clarified that the claim of any expense incurred in providing above mentioned or similar benefits in violation of the provisions of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 shall be inadmissible under section 37(1) being an expense prohibited by the law. This disallowance was directed to be made in the hands of such pharmaceutical or allied health sector Industries or other assessee which has provided aforesaid benefits and claimed it as a deductible expense in its accounts against income. The Courts had different views on allowability of such expenses.

The Finance Minister has now proposed to insert another **Explanation to section 37(1)** to further clarify that the expression "expenditure incurred by an assesse for any purpose which is an offence or which is prohibited by law", under *Explanation 1*, shall include and shall be deemed to have always included the expenditure incurred by an assessee, —

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

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

iii). to compound an offence under any law for the time being in force, in India or outside India. This amendment will take effect from **1st April, 2022**.

6. Treatment of cess and surcharge - Section 40(a): Section 40(a) provides that any sum paid on account of any rate or tax levied on the profits or gains of any business or profession or assessed at a proportion of, or otherwise on the basis of, any such profits or gains shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession". Supreme Court had held that Cess and Surcharge as not allowable expenditure but Some Courts had allowed the same. Hence, in order to make the intention of the legislation clear and to make it free from any misinterpretation, FM has proposed to clarify that the term "tax" includes and shall be deemed to have always included any surcharge or cess, on such tax. The amendment is made retrospectively from assessment year 2005-06 to make clear the position irrespective of the circular of the CBDT.

7. Deduction on payment of interest only on actual payment - Section 43B: Section 43B of the Act provides for certain deductions to be allowed only on actual payment. Explanation 3C,

3CA and 3D of this section provides that a deduction of any sum, being interest payable on loan or borrowing from specified financial institution/NBFC/scheduled bank or a co-operative bank under clause (d), clause (da), and clause (e) of this section respectively, shall be allowed if such interest has been actually paid and any interest referred to in these clauses which has been converted into a loan or borrowing or advance shall not be deemed to have been actually paid. However, certain taxpayers are claiming deduction under section 43B on account of conversion of interest payable on an existing loan into a debenture on the ground that such conversion is a constructive discharge of interest liability and, therefore, amounted to actual payment which has been upheld by several Courts. In view of the above, the FM has proposed to amend Explanation 3C, 3CA and 3D of section 43B to provide that conversion of interest payable under clause (d), clause (da), and clause (e) of section 43B, into debenture or any other instrument by which liability to pay is deferred to a future date, shall also not be deemed to have been actually paid. This amendment will take effect from FY 2022- 23.

8. Reduction of Goodwill from block of assets to be considered as 'transfer' under Section 43(6) (c)(ii) andSection 50: From the assessment year 2021-2022, goodwill of a business or profession is not considered as a depreciable asset and there would not be any depreciation on goodwill of a business or profession in any situation. In case where goodwill is purchased by an assessee, the purchase price of the goodwill will continue to be considered as cost of acquisition for the purpose of computation of capital gains under section 48 of the Act subject to the condition that in case depreciation was obtained by the assessee in relation to such goodwill prior to the assessment year 2021-22, then the depreciation so obtained by the assessee shall be reduced from the amount of the purchase price of the goodwill.

The Finance Minister has proposed to clarify that for the purposes of section 50, reduction of the amount of goodwill of a business or profession, from the block of asset in accordance with section 43(6) (c)(ii) Item B, shall be deemed to be transfer. The amendment will take effect retrospectively from **assessment year 2021-22.**

9. Treating Cash credits as Income under section 68: Section 68 provides that where any sum (including any loan or borrowing) is found to be credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that year. The onus of satisfactorily explaining such credits remains on the person in whose books such sum is credited. It was provided vide Finance Act, 2012, that the nature and source of any sum, in the nature of share application money, share capital, share premium or any such amount by whatever name called, credited in the books of a closely held company shall be treated as explained only if the source of funds is also explained in the hands of the shareholder. However, in case of loan or borrowing, the judicial decisions have held that only identity and creditworthiness of creditor and genuineness of transactions for explaining the credit in the books of account is sufficient, and the onus does not extend to explaining the source of funds in the hands of the creditor.The FM has now proposed to amend section 68 to provide that the nature and source of any sum, whether in form of loan or borrowing, or any other liability credited in the books of an assessee shall be treated as explained only if the source of funds is also explained in the hands of the creditor or entry provider. That means now source of source will also have to be proved by the borrower. This amendment will take effect from assessment year 2023-24.

10. Releasing of Annuity in case of a disabled dependent person under sec. 80DD:

a) The existing provision of section 80DD, inter alia, provide for a deduction to an individual or HUF, who is a resident in India, in respect of (a) expenditure for the medical treatment (including nursing), training and rehabilitation of a dependant, being a person with disability; or (b) amount paid to LIC or any other insurer or administrator or specified company in respect of a scheme for the maintenance of a disabled dependant.

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

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

d) In the Writ Petition No. 1107 of 2017 Ravi Agrawal versus Union of India and Another, Justice A.K. Sikri observed that that there could be harsh cases where handicapped dependants may need payment of annuity or lump sum basis even during lifetime of their parents/guardians. It was further observed that the Centre may take into consideration all the aspects, including those where a disabled dependant might need payment on annuity or lump sum basis even during the lifetime of the parents or guardians.

e) Therefore, **in order to remove this genuine hardship, it is proposed to allow the deduction under the said section also during the lifetime, i.e., upon attaining age of sixty years or more of the individual or the member of the HUF in whose name subscription to the scheme has been made and where payment or deposit has been discontinued. Further, it is proposed that the provisions of sub-section (3) shall not apply to the amount received by the dependant, before his death, by way of annuity or lump sum by application of the condition referred to in the proposed amendment.**

f) The amendment is in line with the decision in Writ Petition No. 1107 of 2017 Ravi Agrawal versus Union of India and Another.

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

11. Bonus stripping and dividend stripping to be made applicable to securities and Units of Business Trusts and Alternative Investment Funds (AIFs) Section 94:

a) Section 94 of the Act contains Anti Avoidance provisions to deal with transactions in securities and units of mutual fund which, inter-alia, include dividend stripping and bonus stripping. However, the current provisions of sub-section (8) of section 94 do not apply to bonus stripping undertaken in case of securities. It is also not applicable to units of Infrastructure Investment Trust (InvIT) or Real Estate Investment Trust (REIT) or Alternative Investment Funds (AIFs) as the definition of the term "unit" has not been modified subsequent to introduction of provisions relating to RETIs, InvITs etc. Further, the current provisions of section 94(7) of the Act, i.e. provisions pertaining to dividend stripping, are not applicable to the units of new pooled investment vehicles such as InvIT or REIT or AIFs.

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

c) **It is also proposed to amend the Explanation to the said section to modify the definition of**

unit, so as to include units of business trusts such as InvIT, REIT and AIF, within the definition of units.

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

12. Last date for commencement of manufacturing or production under Section 115BABin case of domestic companies has been extended from 31-03-2023 to **31-03-2024**. The section provides to levy tax at concessional rate of 15 per cent where the company has been set up and registered on or after 1.10.2019 and has commenced manufacturing or production of an article or thing on or before 31.3.2024 (earlier 31.3.2023) if conditions u/s 115BAB(2) are fulfilled.

In case the the income of the person includes any income which has neirhger been derived from nor incoidental to manufacturing & production of an article or thing, such income **shall be taxed @ 22 per cent** and NO deductuionm or allowance in respect of any expenditure or allowance has been claimed in computing the Income. [Proviso to sec 115BAB(1)]

13. Tax on virtual digital assets/ CRYPTOCURRENCY Sec 115 BBH

a) Virtual digital assets have gained tremendous popularity in recent times and the volumes of trading in such digital assets has increased substantially. Further, a market is emerging where payment for the transfer of a virtual digital asset can be made through another such asset. Accordingly a new scheme to provide for taxation of such virtual digital assets has been proposed in section 115BBH in the Finance Bill, 2022.

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

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

d) Further, **no set off of any loss arising from transfer of virtual digital asset** shall be allowed against any income computed under any other provision of the Act and **such loss shall not be allowed to be carried forward** to subsequent assessment years. This amendment will take effect from 1st April, 2023 and will accordingly **apply in relation to the assessment year 2023-24** and subsequent assessment years.

e) TDS u/s 194S: Further, in order to widen the tax base from the transactions so carried out in relation to these assets, it is proposed to insert section 194S to provide for deduction of tax on payment for transfer of virtual digital asset to a resident **at the rate of one per cent of such sum**. However, in case the payment for such transfer is–(i) **wholly in kind or in exchange of another virtual digital asset** where there is no part in cash; or (ii) partly in cash and partly in kind but the **part in cash is not sufficient to meet the liability of deduction of tax** in respect of whole of such transfer, **the person before making the payment shall ensure that the tax has been paid in respect of such consideration.**

f) Not applicable: In case of **specified persons**, the provisions of section 203A and 206AB will not be applicable and **no tax is to be deducted in case the payer is the specified person and the value or the aggregate of such value of**

consideration to a resident is less than Rs. 50,000 during the financial year. In any other case, the said limit is proposed to be **Rs. 10,000** during the financial year.

g) For the purposes of the said section, it is proposed to provide that **'specified person'** means a person:— (i) being an individual or Hindu undivided family whose total sales, gross receipts or turnover from the business carried on by him or profession exercised by him **does not exceed one crore rupees** in case of business or Rs.50 lakh in case of profession, during the **financial year immediately preceding the financial year in which such virtual digital asset is transferred**; (ii) being an individual or Hindu undivided family **having income under any head other than the head** 'Profits and gains of business or profession'.

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

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

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

k) It has also been proposed to provide that in case of a transaction where tax is deductible under section 194-O along with the proposed section 194S, then the **tax shall be deducted under section 194S and not section 194-O**.

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

l) Gift of virtual digital assets – Section 56(2): Further, in order to provide for taxing the gifting of virtual digital assets, it is also proposed to amend Explanation to clause (x) of section 56(2) to *inter-alia,* provide that for the purpose of the said clause, the expression "property" shall have the meaning assigned to it in Explanation to clause (vii) and **shall include virtual digital asset**. Where virtual digital assets are received without consideration or inadequate consideration, it shall be taxable in the hands of the recipient under sec. 56(2), if the value exceeds Rs. 50,000.

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

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

n) Central Government may notify any other virtual digital asset as virtual digital asset by way

of Notification in the Official Gazette. The **Non-fungible tokens means such digital assets as notified by the Central Government**. Further, Central Government can notify such assets which shall not be considered as virtual digital assets for the purposes of the proposed section.These amendments will take effect from 1st April, 2022.

o) Views on Crypto: The budget has highlighted India's focus on digital innovation and the promotion of block-chain technology. The budget will provide a boost to the economy and rekindle the hope in **millions of crypto investors** in India. The announcement of Union Budget 2022 on the launch of Digital Rupee by the RBI **as India's first Centrally Backed Digital Currency (CBDC) in FY2022-23 has to a limited extent for the purpose of levy of Income Tax given legitimacy to the "virtual" digital assets**. However controversy still persists and the Government needs to consider the entire issue of **Cryptocurrency or"virtual" digital assets.** The introduction of CBDC with the backbone of Block-chain will give us hold a powerful position in the global economy. It sends a clear signal of **India being a digital-first, efficiency-driven, and transparency-led system**. **While taxation brings some legitimacy to the industry, the tax of 30 per cent u/s 115 BBH and that too with the riders that losses will not be allowed to be set off or to be carried forward and expenses will not be allowed from the gain from transfer of Cryptocurrency or"virtual" digital assets, are something that is discouraging**. The tax rate on **Cryptocurrency or"virtual" digital assets. is** almost on par with tax imposed on gains from speculative activities **like lottery, gambling and other gaming activities**. Crypto is an asset class and an investment product. The proposed **30 per cent tax might act as a dampener** for greater adoption. **While the government has allowed carrying forward of losses in the shares trading business, Crypto trading should have been given the same treatment. It may be noted that RBI Deputy Governor Mr. T Rabi Sankar** recently said crypto currencies are even **worse than Ponzi schemes and threaten the financial sovereignty of a country**. He observed that **crypto-technology is underpinned by a philosophy to evade government controls, he said they may bypass the regulated financial system** and more substantially, **cryptocurrencies can wreck the currency system, monetary authority, banking system, and in general the Government's ability to control the economy**.

p) Tax on Transfer of Cryptocurrency/ other Virtual Digital Asset- Section 115BBH will be applicable w.e.f. 1st July, 2022.

14. ALTERNATE MINIMUM TAX-sec. 115JC W.E.F. Asst Year 2023-24:

a) Rate of AMT under sec. 115JC is reduced from 18.5% to 15% in case of Co-op. Societies. Similarly rate of AMT in case of Firms, Individuals and other Non-Corporate Tax Payers should also have been reduced to 15%, which is the rate of MAT in case of Corporates. Sec. 115JEE (2) provides that the provisions of Amt shall not apply in case of Individuals, HUFs, AOP or Body of Individuals (whether incorporated or not) or an Artificial Juridical Person referred to in sec. 2(31), if the ADJUSTED does not exceed Rs.20 Lakhs.

b) Some Key Points related to AMT:
a) Section 115JC lays down that an assessee liable to AMT should obtain a report before the specified date referred to in sec. 44AB, in a prescribed format from a Chartered Accountant, certifying that the adjusted total income and the alternate minimum tax have been computed in accordance with the provisions of Chapter XIIBA and furnish the same on or before the due date of filing of the return u/s. 139(1).

c) Adjusted Total Income: Sec. 115JC(2) defines that Adjusted Total Income shall be the

Total Income before giving effect to Chapter XII-BA (sec. 115JC to 115JF) **as increased by** :

- Deductions claimed u/s 80 HH to 80RRB

- Deductions claimed u/s 10AA in respect of newly established units in SEZ

- Deductions claimed if any u/s 35AD as reduced by the amount of depreciation allowable in accordance with the provisions of sec. 32, as if no deduction u/s 35AD was allowed in respect of the assets on which the deduction u/s 35AD is claimed.

- The deduction allowable u/s 80 C to 80GGC; sec. 80 U are not to be added back in calculation of Adjusted Total Income

d) Even if in any subsequent year the chapter of 115JC is not applicable, the assessee can claim credit of AMT in such previous year u/s 115JD.

Rate of surcharge in case of Co-operative societies (not opting for Section 115BAD) is reduced from 12% to 7% where income is between Rs. 1 crore and Rs. 10 crores. Para 124 of Speech of FM.

15. Amendments relating to Survey, Search & Seizure Insertion of New Section 79A: No set off of losses consequent to Survey, Search, and Requisition

a) Sections 70 to 80 contain specific provisions relating to set off or carry forward of losses and set off of unabsorbed depreciation while computing the income under various heads and with respect to different classes of persons.

b) The Memorandum explaining the provisions of Finance Bill, 2022 states that in some cases, assessees claim set off of losses or unabsorbed depreciation, against undisclosed income corresponding to difference in stock, undervaluation of stock, unaccounted cash payment etc. which is detected during the course of search or survey proceedings. At present there is no provision in the Act to disallow such set-off and no distinction is made between undisclosed income which was detected owing to Survey, Search & Seizure or Requisition proceedings and income assessed in scrutiny assessment in the regular course of assessment, though for incomes falling in section 68, section 69, section 69B etc. such restriction is there.

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

d) With this backdrop, the Finance Minister has proposed to insert a new section 79A to provide that notwithstanding anything contained in the Income tax Act, where consequent to a Search initiated under section 132 or a Requisition made under section 132A or a Survey conducted under section 133A, [other than under section 133A(2A)], the total income of any previous year of an assessee includes any undisclosed income, **NO set off, against such undisclosed income, of any loss, whether brought forward or otherwise, or unabsorbed depreciation** under section 32(2) shall be allowed to the assessee under any provision of the Income tax Act in computing his total income for such previous year.

e) Definition of the term **"undisclosed income"**

as proposed for the above purpose: (i) Any income of the previous year represented, either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of a Search under section 132 or a Requisition made under section 132A or a Survey conducted under section 133A, other than that conducted under section 133A(2A), which has -

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

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

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

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

f) Prior Approval of superior authority proposed to be reinstated again before passing of the assessment order consequent to search, survey and requisition: Under the new scheme of Search assessments which was inserted by the Finance Act 2021, in Section 147 to Section 151, there was no provision of prior approval of superior authority before passing of such assessment order(s). Therefore, an Assessing Officer in search and seizure case can pass the order without seeking any prior approval of the superior authorities. This was in strange contrast to the erstwhile law on search and seizure assessments wherein Section 153D mandated that a prior approval is necessary for a valid assessment under Section 153A.

g) The Finance Bill 2022, has proposed to insert a new **section 148B** to provide that NO order of assessment or reassessment or recomputation shall be passed by an Assessing Officer below the rank of Joint Commissioner, except with the prior approval of the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director, in respect of assessments consequent to search, survey and requisition to reduce avoidable inaccuracies.**It has been proposed that this amendment will take effect from 1st April, 2022.**

h) The intent of making it mandatory that the assessments of search cases should be made with the prior approval of superior authority, so that the superior authority apply their mind on the materials and other attending circumstances on the basis of which the officer is making the assessment and after due application of mind and on the basis of seized materials, the superior authority have to approve the Assessment order. Approval of assessment in search cases is to entrust the duty which the Addl. CIT/ Joint CIT, with his experience and maturity of understanding should scrutinize the seized documents and any other material forming the foundation of Assessment.

i) Enhancement of the period of limitation of framing search assessments : For Searches initiated on or after 1st April, 2021, the period of

limitation for framing assessments is as provided in Section 153. It has been proposed to amend section 153, by inserting a new clause to provide for exclusion of the period of limitation for the purpose of assessment, reassessment or re-computation, (not exceeding 180 days) commencing from the date on which a search is initiated under section 132 or a requisition is made under section 132A and ending on the date on which the books of account or other documents, or any money, bullion, jewellery or other valuable article or thing seized under section 132 or requisitioned under section 132A, as the case may be, are handed over to the Assessing Officer having jurisdiction over the assessee, in whose case such search is initiated or such requisition is made or to whom any money, bullion, jewellery or other valuable article or thing seized or requisitioned, belongs to or to whom any books of account or documents seized or requisitioned, pertains or pertain to, or any information contained therein, relates to.**It has been proposed that this amendment will take effect retrospectively from 1st April, 2021.**

j) Certain proposed amendments/ insertions in order to align the scheme of search assessments with the intent of the Income tax Act : The Finance Bill 2022 has proposed to amend **section 132(8)** to make the provisions of that section also applicable to assessment or reassessment or re-computation under section 143(3) or section 144 or section 147, as the case may be.The Finance Bill 2022 has also proposed to amend clause (i) of section 132B (1) as well as section 132B(4) to provide that these provisions shall also apply to assessment or reassessment or recomputation. These amendments will take effect from **1st April, 2022.**

16. Income Tax authorities for the purposes of Survey under section133A

a) Section 133A enables an Income-tax authority to enter any place of business or profession or charitable activity within his jurisdiction to verify the books of account or other documents, cash, stock or other valuable article or thing, which may be useful for or relevant to any proceeding under the Income Tax Act. Explanation to section 133A provides the definition of an Income tax authority for the purposes of section 133A.

b) Through Taxation and Other Laws (Amendment and Relaxation of Certain Provisions) Act, 2020, the Explanation was amended to provide that any the **Income tax authority who is subordinate to the Principal Director General of Income-tax (Investigation) or the Director General of Income-tax (Investigation) or the Principal Chief Commissioner of Income-tax (TDS) or the Chief Commissioner of Income-tax (TDS)**, as the case may be **shall only be considered as Income-tax authorities** for the purposes of section 133A.

c) The Finance Minister has now proposed to amend the said Explanation to section 133A to provide that **Income tax authority shall be sub-ordinate to Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner, as the case may be, specified by the Board.** This amendment will take effect from 1st April, 2022.

Suggestion: The widening of the meaning of Income tax authority for the purpose of section 133A will virtually empower A.O. and all officials which was restricted to officials sub-ordinate to concerned high authority in Investigation Wing and TDS Wing only. The Finance Minister should revisit the amendment and restrict the scope as was hitherto provided. It is well known that taxpayers are unnecessary likely to be harassed if all authorities are empowered to conduct survey under section 133A.

17. Updated Return of Income u/s139 (8A)/ 140B

Updated Return of Income :

a) Sec. 139(4) permits filing of a Belated Return before 3 months prior to the end of relevant asst year andSec. 139(5) also permits furnishng of a Revised Return before 3 months prior to the end of asst. year An updated income-tax return can be filed within 2 years from the end of the relevant assessment year on payment of additional tax [except in case of search, seizure or other specified circumstances Page 16 & 17 of Memorandum].

b) The FM has proposed to insert section 139 (8A) to provide that: (i) Any person, whether or not he has furnished a return under section 139(1), (4) or sub-section (5), for an assessment year, may furnish an updated return of his income, for the previous year relevant to such assessment year, within 24 months from the end of the assessment year.

a) Option not available in certain cases: It may be noted that the option shall not be available if search has been initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A, or a survey has been conducted under section 133A, [other than sub-section (2A)], in the case such person, or notice has been issued to the effect that any money, bullion, jewellery or valuable article or thing, seized or requisitioned under section 132 or section 132A in the case of any other person belongs to such person, or pertains to, or any other information contained therein, relate to, such person.

b) Additional tax : Such updated return if filed within one year from the end of assessment year shall be subject to payment of 25 per cent additional tax and if it is filed after one year but before 2 years, the additional tax shall be 50 per cent.

c) The provision shall apply from current Financial year relevant to **asst year 2022-23**. The Self assessment tax and additional tax shall be payable before filing the Updated Return.

d) Sec. 140B has been inserted requiring tax to be paid before furnishing updated Return. If tax and interest not deposited,the Updated Return will be treated as DEFECTIVE.

18. Faceless Assessments under section 144B: Section 144B sub-sections (1) to (8) have been substituted. And sub-sections (9) and (10) have been omi have been omitted. It may be noted that sub-sections (9) provided that assessment made u/s 143(3) or 144 other than cases transferred u/s 144B(8) on or after 1.4.2021) shall be non-est if such assessment is NOT made in accordance with the procedure laid down in this section. The OMISION of Section 144B(9) is against the spirit of law and in violation of principles of natural justice. A separate article on the topic appears on the Faceless Assessment. (Please refer the same for details).

19. Amendments relating to Reassessment etc. Sections 148/ 148A/149(1)/153Band amendments to correct the inadvertent drafting errors:

a) Period of Deemed escapement of Income for preceding 3 Assessment Years removed : The Finance Bill 2022 has proposed to omit Explanation 2 of section 148 - the reference to 3 assessment years preceding the assessment year relevant to the year of search.

b) The Finance Act, 2021, had under the newly substituted Section 148 viz. "Issue of Notice where income has escaped assessment." Explanation 2 has been brought into place to cover search, survey or requisition cases initiated or made or conducted, on or after 1st April, 2021, wherein it shall be deemed that the Assessing officer has information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the **three assessment years immediately preceding the assessment year relevant to the previous year in which the search is initiated or requisition is**

made or any material is seized or requisitioned or survey is conducted. Further it is pertinent to mention that the newly inserted Section 148A provides that before issuance of notice under Section 148, the Assessing Officer shall conduct enquiries, if required, and provide an opportunity of being heard to the assessee. After considering his reply, the Assessing Office shall decide, by passing an order, whether it is a fit case for issue of notice under section 148 and serve a copy of such order along with such notice under section 148 on the assessee. The Assessing Officer shall before conducting any such enquiries or providing opportunity to the assessee or passing such order obtain the approval of specified authority. **However, the proviso to section 148A states this procedure of enquiry, providing opportunity and passing order, before issuing notice under section 148 of the Act, shall not be applicable in search or requisition cases.**

c) Since there is an interplay between Section 148 and Section 148A, if an Assessing Officer desires to go beyond three assessment years immediately preceding the assessment year relevant to the previous year in which the search is initiated, whether he or she is duty bound to follow the procedure laid down in Section 148A of conducting enquiries, providing opportunity and passing order before issuing notice(s) under section 148 of the Act for such assessment years beyond the three assessment years. The change proposed by the Finance Act, 2022 will remove the confusion.

d) The first proviso to section 148 inserted w.e.f. 1st April, 2021 provides that "No notice under section148 shall be issued unless there is information with the Assessing Officer which suggests that the Income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the A.O. has obtained prior approval of the specified authority to issue such notice."

e) After the **first proviso to section 148** a new proviso has been proposed to be inserted to provide further that **"NO such approval shall be required where the A.O. with the prior approval of the Specified Authority has passed an Order under clause (b) of section 148A to the effect that it is a fit case to issue a notice under this section." This amendment will take effect from 1st April, 2022.**

f) Proposed Amendment to First Proviso to Section 149(1) : The Finance Bill, 2022 has proposed to amend the First Proviso to section 149(1) so far as no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if a notice under section 148 or section 153A or section 153C could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of section 149 or section 153A or section 153C, as the case may be, as they stood immediately before the commencement of the Finance Act, 2021. This amendment will take effect retrospectively from 1st April, 2021.

g) Proposed Insertion in Section 153B: The Finance Bill, 2022 has proposed to insert sub-section (4) in section 153B to provide that nothing contained in the said section shall apply to any search initiated under section 132 or requisition made under section 132A on or after the 1st April, 2021. This amendments will take effect retrospectively from 1st April, 2021.

h) The amendments relating to penalty are dealt with under " Penalties".

20. Amendments relating to TDS and TCS

a) Rationalization of provisions of TDS on sale of Immovable Property (Sec 194-IA) : Section 194-IA provides for deduction of tax on payment on transfer of certain Immovable Property other than agricultural land. Sub-section (1) of the said section provides for deduction of tax by any

person responsible for paying to a resident any sum by way of consideration for transfer of any immovable property (other than agricultural land) at the time of credit or payment of such sum to the resident at the rate of one per cent. of such sum as Income-tax thereon. Sub-section (2) provides that no deduction of tax shall be made where the consideration for the transfer of immovable property is less than Rs.50 Lakh.As per the provisions of the said section, TDS is to be deducted on the amount of consideration paid by the transferee to the transferor. This section does not take into account the stamp duty value of the immovable property, whereas, as the provisions of section per 43CA and 50C of the Act, for the computation of income under the head "Profits and gains from business or profession" and "capital gains" respectively, the stamp duty value is also to be considered. Thus according to Finance Minister, there is inconsistency in the provisions of section 194-IA and sections 43CA and 50C.In order to remove inconsistency, the FM has proposed to amend section 194-IA to provide that in case of transfer of an immovable property (other than agricultural land), **TDS is to be deducted at the rate of one per cent. of such sum paid or credited to the resident or the Stamp Duty value of such property, whichever is higher**. In case the consideration paid for the transfer of immovable property and the stamp duty value of such property **are both less than Rs. 50 lakh**, then no tax is to be deducted under section 194-IA.Stamp duty value shall have the meaning assigned to it in clause (f) of the Explanation to section 56(2)(vii).This amendment will take effect from 1st April, 2022.

b) TDS on benefit or perquisite of a business or profession Sec. 194R:

As per section 28(iv), **the value of any benefit or perquisite, whether convertible into money or not, arising from business or exercise of profession is to be charged as business income in the hands of the recipient of such benefit or perquisite**. However, in many cases, **such recipient does not report the receipt of benefits in their return of income, leading to furnishing of incorrect particulars of income**.Accordingly, in order to widen and deepen the tax base, the FM has proposed to insert a new section 194R **to provide that the person responsible for providing to a resident, any benefit or perquisite, whether convertible into money or not, arising from carrying out of a business or exercising of a profession by such resident, shall, before providing such benefit or perquisite, as the case may be, to such resident, ensure that tax has been deducted in respect of such benefit or perquisite at the rate of 10 per cent of the value or aggregate of value of such benefit or perquisite. For the purpose of this section, the expression 'person responsible for providing' has been proposed to mean a person providing such benefit or perquisite or in case of a company, the company itself including the principal officer thereof.**Further, in a case where the benefit or perquisite, as the case may be, **is wholly in kind or partly in cash and partly in kind but such part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of such benefit or perquisite, the person responsible for providing such benefit of perquisite shall, before releasing the benefit or perquisite, ensure that tax has been paid in respect of the benefit or perquisite**.**However, NO** tax is to be deducted if the value or aggregate value of the benefit or perquisite paid or likely to be paid to a resident does not exceed **Rs.20,000 during the financial year**. Further, the provisions of the said section shall not apply to an individual or a Hindu undivided family, **whose total sales, gross receipts or turnover does not exceed one crore rupees in case of business or Rs.50 lakh in case of professionduring the financial year immediately preceding the financial year** in which such benefit or

perquisite, as the case may be, is provided.This amendment will take **effect from 1st July, 2022**.

c) As per section 194-S, 1% tax to be deducted from the payment of consideration to a resident person on transfer of **Cryptocurrencyor virtual digital asset.** Please also see provisions relating to tax under sec. 115BBH on transfer of **Cryptocurrency or virtual digital asset, applicable w.e.f. asst year 2023-24.**

d) Rationalization of provisions of section 206AB and 206CCA to widen and deepen tax-base: In order to widen and deepen the tax-base and to nudge taxpayers to furnish their return of income, Finance Act, 2021 had inserted sections 206AB and 206CCA. The said sections provide for special provision for **deduction and collection of tax at source respectively, in case of specified persons, at Higher Rates** specified therein.For this purpose, **"Specified person"** has been presently defined to mean a person who has not filed the returns of income for both the two assessment years relevant to the two previous years immediately preceding the financial year in which tax is required to be deducted or collected, for which the time limit for filing return of income under section 139(1) has expired; and the aggregate of tax deducted at source and tax collected at source in his case is Rs.50,000 or more in each of these two previous years. The Government has provided online utility to taxpayers to check whether the person is specified person or not. Further, the provisions of section 206AB are not applicable in relation to transactions on which tax is to be deducted under sections 192, 192A, 194B, 194BB, 194LBC or 194N.In order to ensure that all the persons in whose case significant amount of tax has been deducted do furnish their Return of Income, **the Finance Minister has now proposed to reduce two years requirement to one year by amending sections 206AB and 206CCA of the Income tax Act** to provide that **"specified person" will now mean as a person who has not filed its return of income for the assessment year relevant to the previous year immediately preceding the financial year in which tax is to be deducted or collected, as the case may be, and the amount of tax collected and deducted at source is Rs. 50,000 or more in the said previous year.**However, in order to reduce the additional burden on individual and Hindu undivided family (HUF) taxpayers covered under **section 194-IA, 194-IB and 194M of the Act for whom simplified tax deduction system has been provided without requirement of TAN, it is proposed that the provisions of section 206AB will not apply** in relation to transactions on which tax is to be deducted under the said sections of the Act.In addition to above, it has also been proposed to rectify a **drafting error** in sections 206AB and 206CCA wherein the terms "deductor" and "collectee" respectively were used incorrectly. Further, since the returns are now being furnished electronically, it is also proposed that **in place of 'filing' of return, the term 'furnishing' of return may be substituted**.Further, as a consequential amendment in section 194-IB it is also **proposed to omit the reference of section 206AB from sub-section (4) of the said section**.These amendments will take effect from 1st April, 2022.

21. Consequence for failure to deduct/collect or payment of tax – Computation of interest (Section 201) :

a) Section 201 deals with the consequences for persons who fail to deduct tax or after deducting, fail to deposit the same to the credit of the Central Government. Sub-section (1A) of the said section provides that if any person who is liable to deduct tax at source does not deduct it or after so deducting fails to pay the same to the credit of the Central Government, then he shall be liable to pay simple interest at the rates specified therein. Similarly, sub-section (7) of section 206C provides that if any person who is liable to collect tax at source does not collect it or after so

collecting fails to pay the same to the credit of the Central Government, then he shall be liable to pay interest at rates specified therein.

b) It has been observed that computation of interest under the said provisions in case where the default for deduction/collection of tax or payment of tax continues is subject matter of frequent litigation.

c) In order to make the intention of the legislation clear and to make it free from any misinterpretation, it has been proposed to:

(i) Amend section 201(1A) to provide that where any order is made by the Assessing Officer for the default under sub-section (1) of the said section, the interest shall be paid by the person in accordance with the order made by the Assessing Officer in this regard;

(ii) Amend section 206C(7) **to provide that where any order is made by the Assessing Officer for the default under sub-section (6A) of the said section, the interest shall be paid by the person in accordance with the order made by the Assessing Officer** in this regard.

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

22. Refund of TDS was not required to be deducted from payment made to non-residents Section 239A: Assessee can approach an AO to get the refund of TDS which he claims that it was not required to be deducted **from payment made to non- residents**.

PENALTIES

23. Penalty under section 271AAB, where search has been initiated

a) Anomaly prior to introduction of Finance Bill 2022: It is pertinent to mention here that after the introduction of new scheme of search assessment by virtue of Finance Act, 2021, Section 153A has been made inoperative for searches initiated on or after 1st April, 2021. For such searches initiated on or after 1st April, 2021, the return shall be filed under section 148 only and not under section 153A. However, an enabling necessary amendment to this effect has not been made in the definition of "Specified Date" under Section 271AAB so far as to also include a return filed under section 148 in Search and Seizure cases. Due to this, there was lack of clarity on application of penalty provisions of "Section 271AAB: "Penalty where search has been initiated" in case of searches initiated on or after 01st April, 2021.

b) With a view to overcome this anomaly, the Finance Bill, 2022 has proposed to amend the definition of **"specified date"** in Explanation in clause (a) to section 271AAB to make it also applicable to a notice issued under section 148 or under section 153A in case where search is initiated on or after 1st April, 2021.

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

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

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

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

c) Similarly, sections 271AAB, 271AAC, 271AAD penalise actions pertaining to undisclosed income, unexplained credits or expenditures, or deliberate falsification or omission in books of accounts. Therefore, in order to improve deterrence against non- compliance among tax payers, the Finance Bill, 2022 has proposed to amend the sections 271AAB, 271AAC and 271AAD by enabling the Commissioner (Appeals) also to levy penalty under these sections, like the Assessing Officer.

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

25. Penalty under Section 271AAEto be levied on Trusts or Institutions if income is applied for the benefit of a Trustee or a specified person

a) Under section 13, Trusts or Institution under the present regime are required not to pass on any unreasonable benefit to the trustee or any other specified person. In order to discourage such misuse of the funds of the trust or institution by specified persons, it is proposed to insert a new section 271AAE in the Act to provide for penalty on trusts or institution under both the regimes which is equal to amount of income applied by such trust or institution for the benefit of specified person where the violation is noticed for the first time during any previous year and twice the amount of such income where the violation is notice again in any subsequent year. The proposed section seeks to operate without prejudice to any other provision of chapter XXI. Thus, if any penalty is leviable under any of the other provisions of this chapter, in addition to the proposed penalty, that penalty would also be applicable.

b) The proposed new section seeks to provide that, if during any proceeding under the Act, it is found that a person, being any trust or institution under the first or the second regime, has violated the provisions of twenty-first proviso to clause (23C) of section 10 (proposed to be inserted by the Finance Bill and discussed in subsequent paragraphs) or clause (c) of sub-section (1) of section 13, as the case may be, the Assessing Officer may direct that such person shall pay by way of penalty, -

i) a sum equal to the aggregate amount of income applied, directly or indirectly, by such person, for the benefit of any person referred to in sub-section (3) of section 13 where the violation is noticed for the first time during any previous year; and

ii) a sum equal to two hundred percent of the aggregate amount of income of such person applied, directly or indirectly, by such person, for the benefit of any person referred to in sub-section (3) of section 13, where violation is noticed again in any subsequent previous year.

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

26. Penalty under Section 272A on failure to comply with the statutory requirements penalty is increased from Rs. 100 to **Rs. 500 per day**.

a) Section 272A of the Act provides for penalty for failure to answer questions, sign statements, furnish information, returns or statements, allow inspections etc. At present, the amount of penalty for failures listed under sub-section (2) of section 272A is Rs.100 for every day during which the failure continues.

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

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

d) Therefore, it has been proposed to increase the amount of penalty for failures listed under sub-section (2) of section 272A to Rs. 500 (for every day during which the failure continues) from the existing sum of Rs.100 (for every day during which the failure continues).

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

(Narayan Jain is founder General Secretary and Past President of DTPA; former National Vice President of AIFTP and author of the books "How to Handle Income Tax Problems" and "Income Tax Pleading & Practice" with CA Dilip Loyalka).

b) In Asstt. CIT v. Rameshchandra R. Patel [2004] 89 ITD 203 (Ahd.) (TM) it was held that the **assessee had a right to retract but that has to be based on evidence brought on record to the contrary and there must be justifiable reason and material for accepting retraction** i.e., cogent and sufficient material have to be placed on record for acceptance of retraction. All that has to be done by the assessee if he is to retract the statement which was recorded in the presence of witnesses unless there is evidence of pressure or coercion. **Further corroboration of retracted statement is necessary** where the assessee established **at the earliest possible opportunity by leading reliable evidence and proving thereby the erroneous or incorrect nature of the facts admitted or confessed** and also where evidence available on record is inconsistent with the confessional statement.

4. Intimation of retraction to higher authorities: In Principal CIT v. Roshan Lai Sancheti [2019] 306 CTR (Raj) 140, the Court held that "Statement recorded under sec. 132(4) and later confirmed in statement recorded under sec. 131, cannot be discarded simply by observing that the assessee has retracted the same because **such retraction ought to have been generally made within reasonable time or by filing complaint to superior authorities or otherwise brought to notice of the higher officials by filing duly sworn affidavit or statement supported by convincing evidence.** Duration of time when such retraction is made assumes significance and in the present case **retraction has been made by the assessee after** 237 days.

5. Statements made involuntarily i.e. obtained under coercion, threat, duress, undue influence etc.: In Deepchand & Co v. ACIT [1995] 51 TTJ (Bom.) 421, the ITAT, Mumbai held that there is no supporting evidence to confirm the additions except the statements of two partners recorded at the time of search. It would not be out of context to mention that **the statements recorded by the search party for 2 days cannot be considered to be free, fearless and voluntary.** There is a considerable substance in the assessee's contention that the **statements were recorded under pressure and force.** The Tribunal had held that retraction should be allowed if it is based on proper principles and evidence. In the ordinary course, no assessee would say that he had much concealed unaccounted money as mentioned in the statements herein. Putting in the mouth of the assessee that so much amount was unaccounted and concealed would itself indicate that the admission was forcible and not voluntary.

6. Retraction after obtaining copy of Statement on ground of mistaken belief either of fact or law:

a) In Jyotichand Bhaichand Saraf & Sons (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle 11(1) (ITAT Pune) [2012] 139 ITD 10 (Pune), during search action, statement of the Director of assessee was recorded on 6th November 2001. **The assessee was given copies of the statement recorded under section 132(4)on 20th May 2002.** On receipt of copy of the statement, assessee realized that there was a mistake in the declaration of income. The assessee submitted a letter clarifying the mistake on 21st June 2002 to

the Assessing Officer and retracted the statement made under mistake of fact. The assessment was accordingly made but was set aside by the CIT under sec. 263 stating that the same was prejudicial to the interest of the revenue and was made by A.O. without application of mind. On appeal, ITAT held that the department has not brought on record any **corroborative evidence** so as to establish undisclosed income having been invested in agricultural land. **Statement of the assessee cannot be sole basis without any cogent and corroborative evidence**. The mistake in the statement is immediately clarified on the receipt of the statement by the appellant. Moreover, no material/evidence was found during the course of search action indicating on-money payment or any undisclosed investment in land. **The statement was given under mistaken belief of law** that **the suppressed sale is unaccounted/ undisclosed income** instead of correct legal position that the gross profit arising from unaccounted sale is the undisclosed income. Statement of Director indicate that **he was not mentally composed at relevant point of time.**

b) Amritsar ITAT Bench in Asstt. CIT v Janak Raj Chauhan[2006] 102 TTJ 316 (Asr.), observed that admission made at the time of search is an important piece of evidence, but the same is not conclusive. It is open to the assessee to show that it is incorrect and same was made under mistaken belief of law and fact.

c) Hotel Kiran v. Asstt. CIT [2002] 82 ITD 453 (Pune) – Admission by a person is a good piece of evidence though not conclusive. The Legislature in its wisdom has provided that such a **statement under sec. 132(4) may be used** as evidence in any proceedings under the Act. However, **there are exceptions to such admission where the assessee can retract from such statement/admission. The first exception exists where such statement is made involuntarily, i.e., obtained under coercion, threat, duress, undue influence, etc.** But the burden lies on the person making such allegation to prove that the statement was obtained by the aforesaid means. **The second exception** is where **statement** has been given under **some mistaken belief either of fact or of law.** If he can show that the **statement** has been made on mistaken belief of facts, and the facts on the basis of which **admission** was made were incorrect.

7. Principles of Natural Justice to be applied: ITAT, Jodhpur Bench in Maheshwari Industries v. Asstt. CIT [2005] 148 Taxman 74 (Jodh) (Mag.) held that additions should be considered on merits rather than merely on the basis of the fact that the amount was surrendered. It is settled legal position that unless the provision of statute warrant **or there is a necessary implication on reading of section that the principles of natural justice are excluded, the provision of section should be construed in manner incorporating principles of natural justice and quasi-judicial bodies should generally read in the provision relevant section a requirement of giving a reasonable opportunity of being heard before an order is made which will have adverse civil consequences for parties effected.**

8. Mode and Manner of Retraction: Retraction of a statement later on, which was made during the search operation is not an easy way to escape the tax implications and **requires corroborative evidence and documents to support the retraction and show the circumstances as to why the person is retracting his statement made earlier.** The person has to go through minute scrutiny by the tax authorities and the Courts later on, if the need be. The following aspects should be kept in mind:

a) **Affidavit** – A retraction should be made on an affidavit along with supporting evidences, if any;

b) **Affidavit of witnesses** – Additional affidavit of the witnesses present during search may also

be filed. Such statement holds good value and may aid the assessee in getting relief.

c) **Elaborate** – It must clearly lay down the facts of the case and detail the evidences showing inter alia use of force, coercion, intimidation or any mistake of fact/law, whatever may be the case.

d) **Highlight Error** – In case of a mistake of fact or law, it must clearly lay down as to what mistake took place in making the statement, the reason for the same and the actual correct position. Evidences in support of the correct facts must also be attached.

e) **Inform Senior Officers** – In addition to the A.O., Authorised Officer (who conducted the Search), a retraction which is made on affidavit or otherwise should also be communicated to higher authorities.

f) **Earlier the better** – Any retraction should be done at the earliest without any delay. A retraction made immediately may strengthen the case of the assessee whereas a belated retraction will in most cases would be seen as an afterthought.

9. Some decisions where Retraction of Statement was held VALID:

a) Pullangode Rubber Produce Co. Ltd. v. State of Kerala [1973] 91 ITR 18 (SC) : Their Lordships while observing that **admission is an extremely important piece of evidence, held that, it cannot be said to be conclusive and the maker can show that it was incorrect.** [Also refer S. Arjun Singh v. CWT [1989] 175 ITR 91/[1988] 41 Taxman 272 (Delhi)].

b) Avadh Kishore Das v. Ram Gopal AIR 1979 SC 861: The Supreme Court held that **evidentiary admissions are not conclusive proof of the facts admitted and may be explained or shown to be wrong, but they do raise an estoppel and shift the burden of proof on to the person making them.** The Supreme Court further held that **unless shown or explained to be wrong, they are an efficacious proof of the facts admitted.**

c) In CIT Central-III v. Lavanya Land Pvt. Ltd. and Others [2017] 397 ITR 246 (Bom.), the Hon'ble Bombay High Court dismissed an appeal filed by the revenue against the order of the ITAT, Mumbai had set aside the additions made by the revenue based on the statement made by person during search which was later retracted by him. In this case, a search was conducted at the premises of one of handlers of the assessee company and his statement was recorded which showed an admission that a large sum of money was received by him to purchase lands in the name of the assessee company. The statement was retracted by him after a period of two and a half months. On appeal, the ITAT Mumbai set aside the addition made. **Adverting to the fact that the concerned person has retracted his statement, the Tribunal arrived at the conclusion that merely on the strength of the alleged admission in the statement, the additions could not be made as the essential ingredients of Section 69C of the IT Act enabling the additions were not satisfied**. This was not a case of 'no explanation'. Rather, the Tribunal concluded that **the allegations made by the authorities are not supported by actual cash passing hands.** Bombay High Court, held while dismissing the appeal of the revenue: "It is not possible for us to reappraise and re-appreciate the factual findings. The finding that Section 153C was not attracted and its invocation was bad in law is not based just on an interpretation of Section 153C but after holding that the ingredients of the same were not satisfied in the present case. That is an exercise carried out by the Tribunal as a last factfinding authority. Therefore, the finding is a mixed one. There is no substantial question of law arising from such an order and which alternatively considers the merits of the case as well."

d) Retraction of statements recorded at odd hours: The admissibility of retraction of

statements which were given in an exhausted state and at odd hours was allowed by Gujarat High Court in Kailashben Manharlcil Choksi v. CIT [2010] 320 ITR 411 (Guj,). It was held that a statement which has been recorded u/s 132(4) at odd hours is not a voluntary statement if it is subsequently retracted. The Court observed that the main grievance of the A.O. was that **the statement was not retracted immediately and it was done after two months. It was an afterthought and made under legal advise.** High Court held :**Merely on the basis of admission the assessee could not have been subjected to such additions unless and until, some corroborative evidence is found in support of such admission. The Court also held that the statement recorded at such odd hours cannot be considered to be a voluntary statement, if it is subsequently retracted and necessary evidence is led contrary to such admission.**

e) Principal CIT, Central III v. Krutika Land (P.) Ltd. [2019] 103 taxmann.com 9 (SC): During search certain incriminating documents were found in possession of one DD, handling land acquisition on behalf of assessee-company and his statement was recorded. He stated that there were amounts disbursed for purchase of lands and a certain amount of cash had also been received by him to purchase lands. However, later he had retracted his statement. A.O. issued notice under section 153C and initiated proceedings against assessee and made additions under section 69C. High Court held that since seized documents did not belong to assessee but were seized from residential premises of one Mr. DD who had later retracted his statement, no action under section 153C could be undertaken in case of assessee. It further held that since entire decision was based on seized documents and there was no material to conclusively show that huge amounts revealed from seized documents were actually transferred from one side to another, additions under section 69C were not sustainable. SLP of Revenue was dismissed.

f) Satinder Kumar (HUF) v. CIT [1977] 106 ITR 64 (HP): It was held that it is true that an admission made by an assessee constitutes a relevant piece of evidence but **if the assessee contends that in making the admission he had proceeded on a mistaken understanding or on misconception of facts or on untrue facts** such an admission cannot be relied upon **without first considering the aforesaid contention.**

g) Asstt. CIT v. Jorawar Singh M. Rathod [2005] 148 Taxman 35 (Ahd. – Trib.) (Mag.): Assessee stated in retraction that **during recording of statement he was under constant threat of penalty and prosecution and was confused about various questions asked by the search party about documents, papers, etc., of other persons found from his premises. He declared the sum under pressure which was evident from the fact that no such corroborative evidence, asset or valuables were found in form of immovable or movable properties from his residence** in support of the amount of disclosure which was later on retracted but not accepted by the department. The Tribunal **observed**: "…It is true that simple denial cannot be considered as a denial in the eyes of law but at the same time it is also to be seen (that) the material and valuables and other assets are found at the time of search. **The evidence ought to have been collected by the revenue during the search in support of the disclosure statement." The retraction was held valid.**

h) S.R. Koshti v. CIT [2005] 193 CTR (Guj.) 518: **If assessee under a mistake, misconception or on not being properly instructed, is over assessed, the authorities are required to assist him and ensure that only legitimate taxes due are collected. The decision in CIT v. Durga Prasad More [1973] CTR (SC) 500, was**

followed i.e., test of human probabilities. The High Court said "We do not find any material on record on which basis it can be said that the disclosure of the assessee of Rs. 16 lakhs is in accordance with law or in spirit of section 132(4)…".

i) CIT (LTU) v. Reliance Industries Ltd. [2019] 102 taxmann.com 372 (Bombay)/[2020] 421 ITR 686 (Bombay) [SLP granted in [2020] 114 taxmann.com 320 (SC)], the **Appellate Authorities allowed payments made to 'S', a consultant holding that there was sufficient evidence justifying the payments made and A.O. other than relying upon statement of 'S' recorded in search had no independent material to make disallowance.** The CIT (Appeal) and Tribunal concurrently held that 'S' retracted his statement within a short time by filing an affidavit. Subsequently his further statement was recorded in which he also reiterated the stand taken in affidavit. **The High Court slammed AO for making disallowance of payment merely relying on statement of payer recorded during search, which said that 'S' had not rendered any service to assessee so as to receive such payments. The allowance of payments made to 'S',** a consultant, was allowed as business expenditure. The assessee had set up a captive power generating unit and provided electricity to its another unit. It claimed deduction u/s 80-IA in respect of the profits arising out of such activity. It contended before the A.O. that the valuation of electricity provided toanother unit should be at the rate at which the electricity distribution companies were allowed to supply electricity to consumers. The issue had been examined by the Bombay High Court on earlier occasion in Income Tax Appeal No. 2180 of 2011 and the view taken by the Tribunal in similar circumstances was upheld. Similar view was taken in CIT v. Godawari Power & Ispat Ltd. [2014] 42 taxmann.com 551/223 Taxman 234 (Chhattisgarh); and Pr.CIT v. Gujarat Alkalies & Chemicals Ltd. [2017] 395 ITR 247/88 taxmann.com 722 (Gujarat) and allowed the expenditure.

j) Other cases in which Retraction was accepted: These are CIT v. Uttamchand Jain [2009] 182 Taxman 343 (Bom) / [2010] 320 ITR 554 (Bombay); CIT v. Rakesh Ramani [2018] 94 taxmann.com 461 (Bom.)/ [2018] 256 Taxman 299 (Bom.) / 168 DTR 356 (Bom.)(HC); Surinder Pal Verma v. Asstt. CIT [2004] 89 ITD 129 (Chd.) (TM)**;** Asstt. CIT v. Anoop Kumar [2005] 147 Taxman 26 (Asr.) (Mag.); Gyan Chand Jain v. ITO [2001] 73 TTJ (Jodh.) 859- Part Relief allowed.

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IMPORTANCE OF DRAFTING IN FACELESS ASSESSMENT AND APPEALS

Paras Kochar, Advocate

The CBDT duly notified the E- Assessment Scheme, 2019 (later revamped as the 'Faceless assessment Scheme'), which sought to impart greater efficiency, transparency and accountability by eliminating the interface between the assessee and the tax authority, and by introducing a team-based assessment system built around technology-driven processes and functional specialisation. Similarly, Faceless Appeal Scheme 2021 has also been notified subsequently with has been made effective from 28-12-2021.

Infaceless proceedings being commenced by income tax department, assessment proceedings and appeals proceedings are most important for the taxpayers and the taxmen. Drafting plays an important role in these two proceedings as the assessee has to draft submissions in response to various notices being issued by the faceless assessment/appeal authorities and the taxpayersare required to submit a detailed submission before the Assessment or Appeal Units. The written submissions made before Assessment or Appeal Units shall be the only plea before the authorities and what is written will be documented and shall be conclusive. Hence it becomes pertinent to write the way one thinks and wants to convey those thoughts to the authorities in the same manner.

So now as we know that drafting is very essential and based on how well the document or submission is drafted, the same shall determine the fate of the assessment or appellate order.

Drafting of submissions→ The drafting of submission is an art and since there will be no human interface under face less assessment. The success of assessment mainly depends on drafting of submission. The taxpayer or his authorized representative should draft in such a manner that every aspect is clear to the assessing officer. The taxpayer should furnish each and every detail asked for and if due to any reason he is unable to furnish, he should give plausible reason for the same. The taxpayer should read the notice very carefully and should satisfy all the queries in detail. For instance, if notice contain query like this' Submit explanation for creditworthiness, identity and genuineness of loan creditors in respect of loan borrowed during the year in light of section 68 of income Tax Act. The taxpayer is required to draft a detailed submission citing various judgements of various courts along with facts of loan creditors. Drafting of submission covering section 68 is like drafting of appeal. Furthermore, In case of purchase where seller is not registered under GST and he is not traceable, the taxpayer must furnish PAN, Aadhar card, Trade license etc.

The language of submission should be very simple and clear. A well written document makes a complex situation also easy to read. The best checkpoint is, can a layman understand at least the basic pretext of the document? If the answer is yes, then the drafting ought to be correct. Avoid use of heavy jargons unless confident of the usage of same. There will be different types of officers and no one knows the standard of knowledge of English of such officers. They may or may not be very expert in English. However. the submission

should contain all the facts of the case in detail and should be properly explained the annexures to be furnished with the submission should be clearly readable.If you are unable to submit some documents in response to queries raised in notice u/s 142(1) of Income Tax Act ,you should explain the reasons for not submitting documents during course of hearing.

Representation Before Assessment Unit

Submissions made before AU are most critical submissions in the litigation process. This is the first written submissions made by the assessee and therefore, I cannot emphasize more the relevance to mention correct and clear factual details. Unfortunately, it's the most neglected stage of drafting and most of the time that leads to increased litigation process. Correct representation before the AU, at several occasions aid in better reliefs and speaking orders.

Points to be considered while drafting submission before A.U.

- This is the first submission and one has to be very careful in facts reproduced before AU. All the submissions should be dated, should mention the basic details of clients like PAN, assessment year, and should mention specifically the notice against which, assessee is responding.
- Start by stating all undisputed facts of the case
- Put forth your arguments for each and every issue raised by the AU
- Co-relate your contentions with the documents filed.
- Support your arguments by quoting relevant case laws- only if absolutely required. Avoid referring to several decisions at a time. If a decision by the Supreme Court or the jurisdictional High Court is available regarding the issue, refer to that. Facts should be clear, judgments can follow.
- Reply to show cause notices should be exhaustive and elaborate.
- If attachments are made with the written submissions, please mention the page number and annexure no in the written submission, cross referencing is essential.

Representation Before Assessment CIT(A)

Commissioner of Income Tax (Appeals) are the first appellate authorities. Drafting at this stage is more legal and refined. Apparently, in most of the cases, this is the last opportunity to provide an exhaustive written submission. Income Tax Appellate authorities normally does not ask for written submissions and hence this stage i.e. before CIT(A) is utmost relevant to produce elaborate submissions considering facts and legal precedence.

Points to be considered while drafting submission before CIT(A)

- Belief in the case is vital.
- If one does not trust the assessee and his views, that shall depict in the submissions and drafting.
- Conviction can be portrayed only when the person who drafts confides in it.
- Be thorough with the assessment order and facts and also the procedure before CIT(A).
- Collect all evidences and documents and submit before authorities as additional evidences before ITAT is difficult to establish.
- Always accompany the written submissions with paper book of documentary evidences.
- General facts of the case and assessment

history needs to reproduced first. Specific facts to each ground to be written with submissions.

- Submissions should first mention facts and then judicial reference.
- Previous assessment years history if relevant to be mentioned. Submissions to be made grounds wise and without prejudice submissions to follow the main ground.
- One needs to clear and bifurcate between additional grounds and additional submissions. Any new facts to be given in form of additional evidences.
- Sequence your arguments from best to less weighted.

General Safeguards

Be prompt in furnishing documents within date of hearing. Ifdue to any reason you are unable to furnish the documents, submit adjournment petition asking for adjourning the hearing with plausible reasons. However, try to submit at least part details with submission. Adjournment May not be granted frequently now and chances of getting long adjournmentsare very remote now as because in the new portal, an option of adjournment of up to 15 days is only available.

If the portal is inoperative, the taxpayers/AR should take the screen shot of the problems caused and file written submission, as soon as the portal is operative and give reasons for delay.

The taxpayers should develop a habit of checking their emails regularly as the notices are only served on email now. For a small delay in checking the mail, the taxpayers might miss the compliance dates and unnecessary show-cause or ex-parte orders might be passed which will increase litigation and cause stress and challenges.

Conclusion

To summarize, drafting is a skill and can be developed only by practicing it. The more one interests herself with the intricacies, the better, he will become in the process. Good writing can reflect the intentions and perceptions of the writer clearly and avoids or reduces complications. Effective drafting is not using flamboyant language but it is the combination of extensive research about the law, knowing the distinct facts, learning on what not to write or disclose and being crisp and expressive at the same time. There is no common yardstick to drafting and what the article speaks is general understanding based on my experience however, specific situations may result an exception to general rules. I would conclude by saying, good drafting is all about expressing yourself and making the reader understand the same thoughts as the writer perceives. It is one continuous journey to keep learning, growing and evolving.

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CHARITABLE TRUST- AMENDMENTS PROPOSED IN FINANCE BILL, 2022

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Definition of Charitable Trust under Income Tax Provision

Charitable Trusts and Societies etc.are governed by two sets of provisions of Income Tax Act. One set of provisions are contained u/s. 10(23C) and another set of provisions are in sections 11 to 13 of the Income Tax Act. We are putting forward our views towards the provisions laid down u/s. 11 to 13 of the Income Tax Act.

A charitabletrust is generally in the nature of an **irrevocable** trust established for charitable purposes. A charitable trust enjoys a varying degree of **tax benefits**.In India, trusts set up for the social causes and approved by the Income Tax Department get not only exemption from payment of tax but also the donors to such recognized trusts are eligible to claim deduction in accordance with section 80Gfrom their taxable income. The legal framework in India recognizes activities including ***"relief of the poor, education, medical relief, preserving monuments and environment, and the advancement of any other object of general public utility".*** The receipts from ***advancement of any other object of general public utility***during the previous year, shouldnot exceed 20% of the total receipts, of the trust or institution undertaking suchactivities, of that previous year;***as charitable purposes***.However,there have been cases when the benefits provided to such organizations have been misused and in order to curb this, Government have been trying to bring in changes/ amendments to the way such trusts are subjected to tax.

Amendments are being made in the provisions of both the exemptions regime of the Income Tax Act with the objective of: -

- Ensuring their effective monitoring and implementation
- Bringing consistency in the provisions of the two exemptions regimeand
- Providing clarity on taxation in certain circumstances.

Registrations of Trust

Under the Provisions of Sections 12A/12AA of Income Tax Act, Charitable & Religious Trusts and Institutions are required to obtain registration under section 12A/12AA of the Income Tax Act, 1961 (hereinafter called 'Act'), in order to claim the benefit u/s 11 of the Income tax Act that the income of the said organization be excluded from total income as defined u/s 2(45). Prior to insertion of section 12AA coming into force, such trusts were required to obtain registration under section 12A. The registration so obtained under the above sections is a one-time registration and is valid for perpetuity unless and until revoked by the issuing authority.

The process as laid down by the above sections has been in vogue for many years and a large number of charitable and religious organizations have obtained registration and have been enjoying the benefits under the Act for quite some time and at times the benefits so provided have also been misused by some organizations. To curb the misuse, the Government has been bringing about many changes to the way the organizations are

subject to tax and in the process has brought out amendmentsin the procedure such charitable/religious organizations are registered with Income Tax authorities by making changes to Sec 11(7) and by introducing a **New Sec 12AB in Finance Act 2020.**

Also, the Government has no comprehensive data of all entities registered under the IT Act claiming exemptions under various sections of the Act and therefore to have a complete and authenticated data, brought various amendments into the statute regarding registrations and approvals to such institutions/trusts.

Analysis of New Registration Regime

Previously, Registrations granted under section 12AA or section 12A were perpetual in nature unless cancelled by the Principal CIT or CIT ('Competent authority') under the provisions of sub section (3) & (4) of section 12AA. New provisions introduced by the Finance Act, 2020 have removed the concept of perpetuity and have provided that the registration of even existing organizations registered u/s 12A and 12AA of the Income Tax Act would be renewable after 5 years.

Section 12A(1) provides for the conditions to be fulfilled by any trust or institution subject to which exemption under sections 11 and 12 shall be available to it. One of the conditions is that the trust or institution is registered under section 12AB [Section 12A(1)(ac)].

The Finance Act, 2020 has made changes to completely overhaul in the registration process of charitable and religious organizations. The procedure for registration of every organization under the new scheme shall be completely electronic under which a unique registration number (URN) shall be allotted.

The registrations are divided into following categories:

- Existing trusts/institutions registered under section 12A/12AA need to be re-registered under section 12AB.
- Provisional registrations and the conversion of provisional registration into a normal registration.
- Renewal of Registration granted under section 12AB:
  - ✓ Registration granted under section 12AB (other than provisional registrations).
  - ✓ Re-registration for confirming the modification of object clause.
  - ✓ Registration to be made operative if it becomes inoperative due to approval under section 10(23C)/10(46).

The validity of the registration granted under section 12AB shall be for five years except in the case of provisional registration which shall be valid for three years.

Provisional Registration shall be granted for three years for new organizations and that too without any enquiry. However, in such cases application for normal registration needs to be made at least 6 months before the expiry of the period of the provisional registration or within 6 months of commencement of its activities, whichever is earlier. Normal registration shall be granted after such enquiry as provided in the Act and the registration granted shall be valid for five years from the first of the assessment years for which it was provisionally registered. In other words, a provisional registration cannot

remain effective once the activity commences and therefore, the provisional registration is actually not available for 3 years.

The application for registration or re-registration under the Act in Form No. 10A required to be filed on or before 30th June, 2021, as extended to 31st August, 2021 vide Circular No.12 of 2021 dated 25.06.2021, may now be filed **on or before 31st March, 2022.**

Trust Registration Procedure under new regime under section 12AB& 80G

It is mandatory for a trust to get the registration under section 12AB of the Income-tax Act, 1961 so as to claim an exemption under Section 11.

A trust is required to apply for registration in **Form No. 10A**

On furnishing application in Form 10A forapproval/provisional approval, Form 10AC (Order for registration or provisional registration or approval or provisional approval) is issued and sent to the respective primary/secondary email ID's as mentioned in theLogin of the Income Tax Portal.

Documents Required:

- where the trust is created, or the institution is established, under an instrument, self-certified copy of the instrument creating the trust or establishing the institution;
- where the trust is created, or the institution is established, otherwise than under an instrument, self-certified copy of the document evidencing the creation of the trust, or establishment of the institution;
- self-certified copy of registration with Registrar of Companies or Registrar of Firms and Societies or Registrar of Public Trusts, as the case may be;
- self-certified copy of the documents evidencing adoption or modification of the objects, if any;
- where the trust or institution has been in existence during any year or years prior to the financial year in which the application for registration is made, self-certified copies of the annual accounts of the trust or institution relating to such prior year or years (not being more than three years immediately preceding the year in which the said application is made) for which such accounts have been made up; note on the activities of the trust or institution;
- self-certified copy of existing order granting registration under section 12A or section 12AB, as the case may be; and
- self-certified copy of order of rejection of application for grant of registration under section 12A or section 12AB, as the case may be, if any.

Types of Donations received by Charitable Trust

- VoluntaryDonation:Voluntary Contributions notbeing contributions made with a specific direction that they shall form part of the Corpus of the Trust / Institution: Such contributions are covered under section 12 and shall be deemed to be income derived from property held under trust wholly for charitable or religious purposes.
- Corpus Donation:'Corpus Donation' is a donation of permanent nature and somewhat like capital of an organization. A donation will be treated as a corpus donation only if accompanied/followed by a specific written direction of the donor.

Before amendment by the Finance

Act, 2021, the corpus donation was altogether exempt from Income tax. However, after the amendment, the corpus donation shall be exempted from tax only when the corpus donations are invested in the modes and forms as prescribed under section 11(5) of the Income Tax Act, 1961.

As per amendment Corpus Donation received up to 31st March, 2021 are not required to be statutorily invested as per section 11(5) and can be used in any manner whatsoever.

Audit of Books of Account

As per section 12A(1): The provisions of sec. 11 and 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled…
Section 12A(1)(b)"Where the total income of the trust or institution as computed under the Act without giving effect to the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to Income-tax in any previous year, the accounts of the trust or institution for that year have been audited by an accountant and furnish the report of such audit in the prescribed form(10B) duly signed and verified by such accountant".However, there are no specific mention regarding maintenance of accounts.

In other words, if the total income is exceeding the basic exemption limit of Rs 250000 (currently) then books of accounts are required to be audited by the Chartered Accountant, and Audit report (Form 10B) is required to be furnished before the due date, specified for furnishing of audit report.

Filing of Return of Income

As per section 139(4A)
Sub-section (1) of section 139 provides for filing of return of income by every assessee whose income exceeds maximum amount which is not chargeable to income tax. Sub-section (4A) provides that in case of charitable trust referred to in section 11 income shall be considered without giving any exemption and provisions of sub-section (1) shall be applicable. Since in case of Charitable trust whose accounts are required to be audited, are required to furnish the return on or before 31st October of the relevant Assessment Year. If it does not claim exemption under sections 11 and 12 then the due date shall be 31st July of the assessment year.

Consequences of violating the provisions

- Trust or Institute will not get exemption under section 11 and 12 for the year until it furnishes Income tax return and audit report, even if it is registered under section 12AB.
- Penalty of **Rs.500 per day w.e.f. 01/04/2022** (Earlier Rs.100 per day), under section 272A(2)(e), may be imposed on failure of filing of Income Tax Return.

Accumulation of Income by Charitable as per section 11(2)

It may be noted that under the existing provisions, two kinds of accumulation ispossible:

- Accumulation up to 15% of income under section 11(1). Such accumulations are not subject to application within a maximum permissible period of 5 years. In other words, 15% of income can be retained by a charitable organization without applying it for charitable purposes in the year in which the income was accrued. This 15% accumulation is an indefinite accumulation and the organization does not have to apply it for charitable purposes in subsequent years. It can be retained as a part of its corpus of capital.

- Accumulation beyond 15% of income under section 11(2). Such accumulations are subject to application within a maximum permissible period of 5 years. In other words, income in excess of 15% cannot be retained by a charitable or religious organization, if the income is not spent in the current year, in such a case the assessee is permitted u/s 11(2) to spend it within the next 5 years for the specified purpose as decided and informed to the A.O. in Form No. 10 electronically.

In short, where a trust or institution is unable to apply 85% of its income from property held under them, the income is still exempt if the following conditions are met.

- The income is deemed to have been applied for charitable purposes in specified scenarios. [section 11(1)]
- 85% of income is neither applied nor deemed to have been applied, the trust is allowed to accumulate such unapplied portion of income under specified conditions to claim the exemption. [11(2)]

Such income so accumulated, or set apart, is not included in the total income of the trust in the year of receipt of income.

- For this purpose, such trust has to inform the concerned Assessing Officer the purpose and period (which in no case can exceed 5 years) for which the income is accumulated or set apart. This information has to be given electronically in **Form No. 10**. The benefit of accumulation is not available if Form No. 10 is not uploaded before the due date of furnishing return of income specified under section 139(1) for the fund or institution.
- Further, the money so set apart or accumulated should be invested in the modes specified in section 11(5).
- The benefit of accumulation is not available if return of income is not furnished before the due date of furnishing return of income under section 139(1)

Consequences of Default of Section 11(1) & 11(2)

If in any year, the income which is accumulated for the specified purpose (or purposes) of the trust, is applied to purposes other than charitable or religious purposes or ceases to be accumulated for application for such purposes, it will become chargeable to tax as the income of that year.

- If in any year, the accumulation cease to remain invested in securities/ modes specified in section 11(5) then also the income so accumulated will become chargeable to tax as the income of that year.
- If the accumulations are not utilized for the specified purposes during the period of accumulation or within the year uptowhich period the accumulation was sought, then the accumulations to the extent they are not so utilized, will become chargeable to tax as income of the previous year immediately following the expiry of that period.**However, it may be noted that the Finance Bill, 2022 has now proposed to amend w.e.f. asst. year 2023-24, the provisions of section 11(3) to provide that any income referred to in section 11(2) which is not utilized for the purpose for which it is so accumulated or set apart shall be deemed to be the income of such person of the previous year being the last previous year of the period, for which the income is accumulated or set apart under sec. 11(2) clause (a), but not utilized for the purpose for which it is so accumulated or set apart.**
- Sometimes failure to apply the income so accumulated or set apart in the specified manner may arise due to circumstances beyond the control of trustees. In such a case, the Assessing Officer may, on the receipt of an application from the person in receipt of the income, allow such income to be applied for such other charitable/ religious purposes in India as are in conformity with the objects of the trust/institution.

Taxability of unreasonable benefit to trustees or specified person

Section 13(1)(c) of the Income Tax Act provides in relation to trusts governed by section 11 that same shall not be eligible for exemption u/s. 11 or 12 in case, any part of income or any property of the trust during the previous year is used or applied directly or indirectly for the benefit of any person referred to in sub-section (3) of section 13. Sub-section (2) of section 13 further provides that any part of such income or property shall be deemed to have been used or applied for the benefit of specified person in case adequate consideration has not been received for any property or services or excess payment has been made by way of salary etc. or for purchase of any property.

Following are considered as specified persons as per section 13(3):

- Author/Founder of Trust
- Person who made donation of more than Rs.50,000
- Trustee or manager of trust
- Relative of Founder, donor, member, trustee and manager
- Any concern in which any of the above person has substantial interest.

Penalty for providing Unreasonable benefit to trustees or to a specified person

In order to discourage such misuse of the funds of the trust or institution by specified persons, it has been proposed in Finance Bill, 2022 to

insert a new section 271AAE in the Act to provide for **penalty on trusts or institution under both the regimes which is equal to amount of income applied by such trust or institution for the benefit of specified person** where the violation is noticed for the first time during any previous year and **twice the amount of such income where the violation is notice again in any subsequent year**.

- a sum equal to the aggregate amount of income applied, directly or indirectly, by such person, for the benefit of any person referred to in sub-section (3) of section 13 where the violation is noticed for the first time during any previous year; and
- a sum equal to 200% percent of the aggregate amount of income of such person applied, directly or indirectly, by such person, for the benefit of any person referred to in sub-section (3) of section 13, where violation is noticed again in any subsequent previous year.

Recent Amendments- FORM 10BD Statement & Certificate of Donation:

- As we are aware, section 80G of the Income tax Act,1961 provides for deduction on payment of donations. Until the last financial year there was no way to counter check the accuracy of the donations paid. The income tax department allowed deduction based on the claim made by the assessee or at the most based on the copy of the donation receipt presented by the assessee.
- However, the CBDT through **Notification No. 19/2021 dt 26th March, 2021**, has notified **Form 10BD** to facilitate more transparency and accuracy on the reconciliation of deductions claimed by the assessee and donation received by the Charitable Organizations.

What is FORM 10BD

- Form 10BD is a statement of donations containing the details of donations received by the Charitable Organizations during the financial year.

Procedure and Time Limit for filing FORM 10BD

- The form is required to be filed electronically by donation receiving organizations. The form shall be signed through a digital signature of a person authorized to sign the return of the income. Alternatively, it can be filed through Electronic Verification Code (EVC). The form is required to be filed once in a financial year. The last date for filing the form for financial year 2021-22 is 31st May, 2022.
- Details of filing Form 10BD : Every Charitable Organization is required to collect requisite details/ information from donors while receiving the donations and maintain the list of the same.

The details/ information required for filing the form are as follows:

- Name of the Donor
- PAN/ Aadhaar number/ Tax Identification Number of the Donor
- Address of the donor

- Nature of donation
- Mode of receipt
- Amount of donation
- Section code under which the donation is received

Issuance of Certificate of Donation

- Post filing of statement of donations in Form 10BD, the Charitable Organization is required to download and issue Certificate of Donation in Form 10BE. The certificate shall contain details of Charitable Organization like Name of the organization, PAN, Address, approval number u/s 80G & 35(1) along with details of donations and donor. For the financial year, 2021-22 Form 10BE is to be issued by 31st May 2022.

Procedure for correction of error in Certificate of Donation

- In case of any inadvertent errors or mistakes in Form 10BE, there are provisions to rectify the errors or mistakes by filing a correction form (filing form 10BD again with corrections).

Consequences of Non-Filing of FORM 10BD

- The reporting entity id mandated to comply with the filing of Form 10BD and failure to comply will attract a fee of Rs. 200/- per day of delay as per new inserted section 234G. Apart from the fee for delay in furnishing statement of donation in Form 10BD, failure to file such statement will also attract penalty u/s 271K, which shall not be less than Rs. 10,000/- but may extend up to Rs. 1,00,000/-. With the introduction of Form 10BD, it is now crucial for the donor to not only obtain a donation receipt but also Certificate of Donation in Form 10BE in order to claim deduction.

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AMENDMENTS IN FACELESS ASSESSMENT PROCEDURE BY FINANCE BILL, 2022

R.D. Kakra, Advocate

Our Hon'ble Prime Minister Sh. Narendra Modi had launched the Faceless Scheme, on August 13th, 2020 for transparent taxation for 'Honoring the Honest' Tax Payer's coining three new terms viz. Seamless, Painless & Faceless. Thus the e-Assessment Scheme, 2019 notified on September, 2019 was suitably modified and announced. All the Tax Payers and Professionals welcome the announcement as first time in the history of Taxation in India, officially the Tax Charter was announced incorporating the accountability of tax administration. All this vision of welfare scheme short lived as the Finance Bill 2022 proposed the various amendments in Faceless Assessment Procedure. The Central Government has undertaken a number of measures to make the procedures under the Income Tax Act electronic, by eliminating person to person interface between the taxpayer and the Department to the extent technologically feasible, and provide for optimal utilisation of resources and a team-based assessment with dynamic jurisdiction. As part of this policy, vide Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, section 144B was inserted in the Income Tax Act to provide the procedure for faceless assessment with effect from 01.04.2021. However, various difficulties are being faced by the administration and the taxpayers in the operation of the faceless assessment procedure.

Therefore, the Finance Minister has proposed to substitute section 144B to provide that –

(a) the provisions of proposed section shall apply for faceless assessment, reassessment or recomputation under section 143(3) or section 144 or section 147, as the case may be.

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

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

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

other technical matter by referring to the technical unit and the request shall be assigned by the NaFAC to a Technical Unit (TU) through an automated allocation system.

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

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

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

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

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

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

(k) **Reference to Dispute Resolution Panel**: The NaFAC shall, upon receiving draft order in a case of eligible assessee, where there is a proposal to make any variation which is prejudicial to the interest of such assessee under section 144C(1) for reference to Dispute Resolution Panel, serve such draft order on the assessee. In any case, other than that of eligible assessee under section 144C, the NaFAC shall convey to the AU to complete the assessment in accordance with such draft order, which shall thereafter pass the final assessment order and

initiate penalty proceedings, if any, and send it to the NaFAC. The NaFAC shall serve a copy of such final assessment order, Notice for initiating penalty proceedings, if any and the demand notice, specifying the sum payable by, or refund of any amount due to the assessee on the basis of such assessment, to the assessee.

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

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

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

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

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

(q) The proposed substituted section 144B also provides that CBDT may, for the purposes of faceless assessment, set up the following Centre and units and specify their functions and jurisdiction, namely:

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

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

(iii) **Verification units** (referred to as VU), as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of

verification, which includes enquiry, cross verification, examination of books of account, examination of witnesses and recording of statements, and such other functions as may be required for the purposes of verification and the term, "verification unit", wherever used in this section, shall refer to an Assessing Officer having powers so assigned by CBDT.

Further, the function of verification unit may also be performed by a verification unit located in any other faceless centre set up by CBDT or under any scheme notified under the Act and the request for verification may also be assigned through the NaFAC to such verification unit.;

(iv) **Technical units** (referred to as TU), as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of providing technical assistance which includes any assistance or advice on legal, accounting, forensic, information technology, valuation, transfer pricing, data analytics, management or any other technical matter or an agreement entered into under sections 90 or 90A, which may be required in a particular case or a class of cases and the term "technical unit", wherever used in section 144B, shall refer to an A.O. (Assessing Officer) having powers so assigned by CBDT;

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

(r) That the AU, VU, TU and the RU shall have the following authorities, namely:—

(vi) Addl. CIT (Additional Commissioner) or Addl. Director (Additional Director) or JCIT (Joint Commissioner) or Joint Director, as the case may be;

(vii) DCIT (Deputy Commissioner) or Deputy Director or ACIT (Assistant Commissioner) or Assistant Director, or ITO (Income-tax Officer), as the case may be;

(viii) such other Income-tax authority, ministerial staff, executive or consultant, as considered necessary by CBDT.

(s) The proposed section also provides that all communication, among the AU, RU, VU or TU or with the assessee or any other person with respect to the information or documents or evidence or any other details, as may be necessary for the purposes of making a faceless assessment shall be through the NaFAC, between the NaFAC and the assessee, or his authorised representative, or any other person and all internal communications between the NaFAC and various units shall be exchanged exclusively by electronic mode. However, this provision shall not apply to the enquiry or verification conducted by the verification unit in the circumstances as may be specified by CBDT in this regard.

(t) That for the purposes of faceless assessment, an electronic record shall be authenticated by the NaFAC by way of an electronic communication, by the AU or VU or TU or RU, as the case may be, by affixing digital signature and by the assessee or any other person, by affixing his digital signature or under electronic verification code, or by logging into his registered account in the designated portal. It is also proposed that every notice or order or any other electronic communication shall be

delivered to addressee/assessee, by way of placing an authenticated copy thereof in the registered account of assessee or by sending an authenticated copy thereof to registered email address of the assessee or his authorised representative or by uploading an authenticated copy on assessee's Mobile App, and followed by a real time alert.

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

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

(w) Further, in a case where a variation is proposed in the income or loss determination proposal or the draft order, and an opportunity is provided to the assessee by serving a notice calling upon him to show cause as to why assessment should not be completed as per such income or loss determination proposal, assessee or his authorised representative, as the case may be, may request for personal hearing so as to make his oral submissions or present his case before income-tax authority of relevant unit. Where the request for personal hearing has been received, income-tax authority of relevant unit shall allow such hearing, through NaFAC, which shall be conducted exclusively through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony, to the extent technologically feasible, in accordance with procedure laid down by the Board. Any examination or recording of the statement of the assessee or any other person (other than the statement recorded in course of survey u/s 133A) shall be conducted by an income-tax authority in relevant unit, exclusively through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony, to the extent technologically feasible, in accordance with procedure laid down by CBDT.

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

(y) The proposed section also provides that if at any stage of the proceedings before it, AU having regard to nature and complexity of accounts, volume of accounts, doubts about the correctness of accounts, multiplicity of transactions in accounts or specialized nature of business activity of assessee, and interests of the revenue, is of the opinion that it is necessary to do so, it may, upon recording its reasons in

writing, refer the case to NaFAC stating that the provisions of section 142(2A) may be invoked in the case. The Principal CCIT or Principal DGIT, as the case may be, in charge of the NaFAC shall, in accordance with the procedure laid down by the Board in this regard, if he considers appropriate that the provisions of for Special Audit under section 142(2A) may be invoked in the case, forward the reference received from the AU to the Principal CCIT or CCIT or Principal CIT or CIT having jurisdiction over such case, and inform AU accordingly. Such case shall also be taken up for transfer to jurisdictional Assessing Officer with the approval of CBDT. Where a reference has been received by the Principal CCIT or CCIT or Principal CIT or CIT, having jurisdiction over such case, he shall direct A.O. having jurisdiction over such case to invoke the provisions of section 142(2A). However, where a reference has not been forwarded to the Principal CCIT or CCIT or Principal CIT or CIT, having jurisdiction over such case, AU shall proceed to complete the assessment in accordance with procedure laid down.

(z) That Principal CCIT or Principal DG, as the case may be, in charge of NaFAC may, at any stage of the assessment, if considered necessary, transfer the case, in addition to a case referred to in (y) to A.O. having jurisdiction over such case, with the prior approval of CBDT. It is also proposed to define the terms such as electronic verification code, assessment unit, technical unit, verification unit, review unit etc used in the proposed section. This amendment will take effect from 1st April, 2022.

Omission of Section 144B(9): Section 144B(9) provides that the assessment proceedings shall be void if the procedure mentioned in the section was not followed. The said sub-section refers to violation of the procedure laid down by the law whereas a large number of disputes have been raised under this subsection involving technical issues arising due to use of information technology, leading to litigation. It has been proposed to omit section 144B(9) from its date of inception. However the said sub-section should be retained in the interest of safeguarding the interest of taxpayers and to ensure proper justice. (This amendment will take effect retrospectively from 1st April, 2021).

KEY CONCEPTS & PROPOSED AMENDMENTS FINANCE BILL, 2022

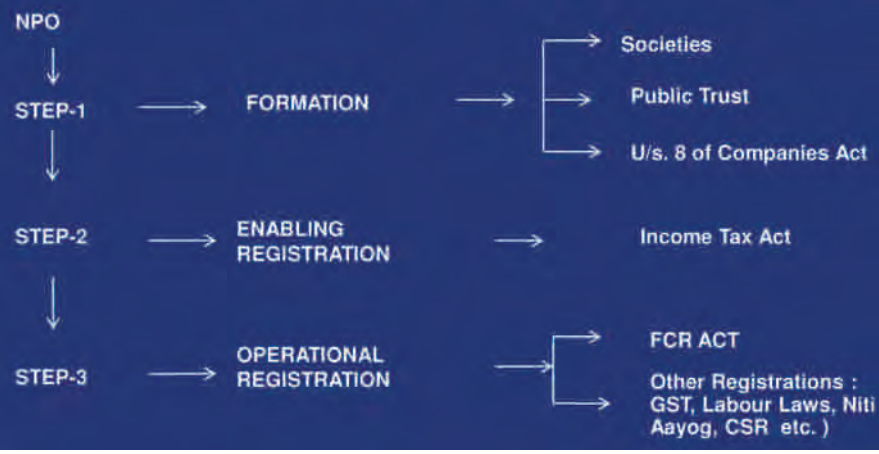
Charitable & Religious Trust

S K Kejriwal

28th February, 2022

INCORPORATION & REGISTRATION

PROCESS OF FORMATION & REGISTRATION



1. INTRODUCTION OF NGOs

CHARACTERSITICS OF NGOS

- Charitable institution have not been defined under any of the present Acts applicable to NGOs. Though, the charitable purpose is defined under Section 2(15) of the Income-tax Act, 1961
- Restriction is on profit distribution & not on the earning of surplus
- NPOs are voluntary in nature – Members and Governing body members participate without any personal interest
- Self Governing: No direct control of Government, Donors & Beneficiaries
- Bottom line approach not possible : No Indicators

2. MEANING OF CHARITABLE PURPOSE

CHARITABLE PURPOSE – MEANING

Under Income Tax Act	*Under FCRA*	*Under GST Act*
Relief to the Poor;	*Economic*	
Education;	*Education;*	*educational program or skill development [again limited to for a specified person];*
Yoga (w.e.f. 01/04/2016);	*Social; & Cultural;*	
Medical Relief;		*Public health (towards specified purpose & person);*
Preservation of environment (including watersheds, forests & wild life);		*preservation of environment*
Preservation of monuments or places or objects of artistic / historic interest;		
The advancement of any other object of general public utility		
	Religious;	*Advancement of religious & spirituality;*

- ❑ Again Schedule VII For CSR
- ❑ No definition under any of the act
- ❑ Linkages have to be maintained
- ❑ Has implication depending upon the limb under which the activity falls

TRUST FOR THE PURPOSE OF SECTION 11

Trusts have not been defined under the Income-tax Act, 1961

The "trust" is "an arrangement" by which property is handed over to or vested in a person, to use and dispose it off for the benefit of another person"

Trusts can be broadly classified into two categories, viz.:-

- **Public trust:** A public trust is one which benefits the public at large or some considerable portion of it. A public trust can be of two types, viz., (a) Public charitable trust, (b) Public religious trust

- **Private trust:** In case of private trust, the beneficiaries are individuals or families. A Private trust can be of two types, viz.,
  - Private Specific Trust
  - Private Discretionary Trust

What are Legal Obligation?

Explanation 1 of Section 13 provides "For the purposes of sections 11, 12, 12A, 12AA, 12AB and Section 13, "trust" includes any other legal obligation"

Trust itself is a legal obligation, as the trustees are legally bound to apply the income of the trust in the manner and for the purposes specified by the author of the trust and it includes the following :

- **Section 8 "companies" or "Guarantee Companies". Such companies are also holding the properties under legal obligation**

- **Institutions registered under the Societies Registration Act, 1860 as the properties of the society are held under a legal obligation**

Charitable Trust: Trust/Society/Section 8 Company

Sec 80G(5)(v) provides as one of the condition of approval *i.e.* the institution or fund is either constituted as:

1. Public charitable trust.
2. Registered under the Societies Registration Act, 1860 or under any law corresponding to that Act in force in any part of India
3. Section 8 of the Companies Act, 2013
4. A University established by law, or is any other educational institution recognized by the Government or by a University established by law, or affiliated to any University established by law
5. An institution financed wholly or in part by the Government or a local authority

Since the term trust includes legal obligation for the purpose of section 11 and because of section 80G (5)(v) Charitable trusts are normally formed either as trust, society or a Section 8 company.

As far as taxation is concerned, it makes no difference whether charitable organization is formed as trust or society or a Section 8 company.

3. SCHEME OF TAXATION

Taxation of Charitable Organizations

INCOME TAX

- **SECTION 10(23C)**
  - **Non-Approval**
    - Sec. 10(23) (iiiab) — Educational Institution substantially financed by Govt.
    - Sec. 10(23) (iiiac) — Medical Institution substantially financed by Govt.
    - Sec. 10(23) (iiiad) — Educational Institution upto 5.00 Crore annual receipts
    - Sec. 10(23) (iiiae) — Medical Institution upto5.00 Crore annual receipts
  - **Approval**
    - Sec. 10(23C)(iv) — Charitable Institution of national importance
    - Sec. 10(23C)(v) — Religious institution For Public Religious Purposes or Religious cum charitable Inst.
    - Sec. 10(23C)(vi) — Educational Inst. receipt >other than iiiab &iiiad
    - Sec. 10(23C)(via) — Medical Institution receipt > other than iiiac & iiiae
- **SECTION 12AA/AB**
- **SEC. 10(46)** Specified income of a body constituted by central/state Act / govt.
- **SEC. 80G**

COMPUTATION OF TOTAL INCOME

Computation of income subject to application

- Income from trust property to be computed in commercial sense and not as per normal computation of income [Cir No. 5-P(LXX-6) dated 19th June, 1968]
- Exempt income [other than section 10(1), 10(23C and 10(46))] shall form part of Income subject to Application.
- Fund raising expenses or expenses incurred to earn income should be deducted while computing the income [charge against income]
- Depreciation will not be considered as charge against income w.e.f. 01/04/2015 if the asset has been claimed as application.
- Exempt portion of Anonymous donation shall form part of income subject to application.
- Corpus donation not invested in 11(5) mode
- Capital Gain
- Income from incidental Business Activities

Application of Income

- Both revenue & capital in nature are considered as application
- If the expenses are incurred out of loan, then there is no application in the year of expenses being incurred but in such cases repayment of loan shall be considered as application in the year in which loan is repaid.
- Inter-charity donation (other than towards corpus) shall be considered as application subject to restriction u/s 11(2).
- Disallowances/ Deferment
  - The amount of application shall be reduced by 30% of the corresponding amount applied for non-compliance of TDS provisions or by the full amount if the corresponding payment in excess of Rs.10,000 is made in cash.
  - Inter Charity Donations towards corpus fund.
  - Application out of corpus (subject to sec 11(1)(d)

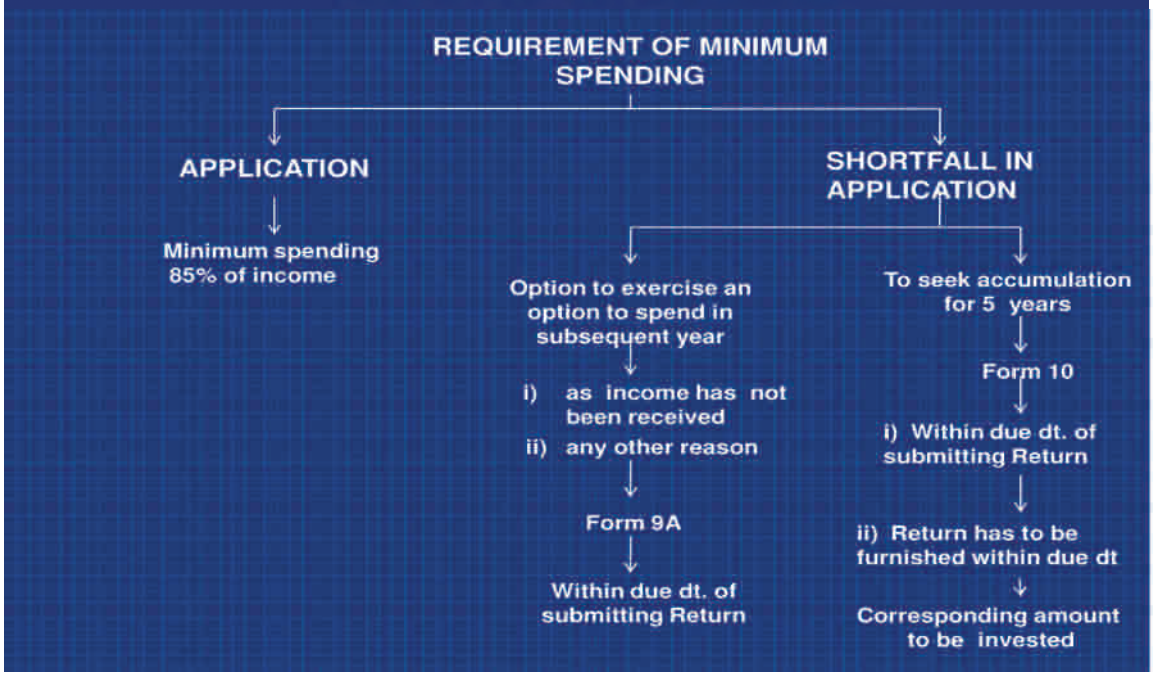
Accumulation

- Statutory accumulation 15%
- If total application falls short of 85%, -
  - i. option to spend in subsequent year or in the year of receipt
  - ii. accumulation for five years

Other Issues

- Computation of income due to violation and not subject to application
- The condition to be complied with for applicability of Provision of Sec. 11 & 12
- Investment: - Investment has to be in a specified mode as per Section 11(5)
- Section 13 of the Act specifies the circumstances under which the benefits of exemption under section 11 and 12 would not be available.
- Anonymous Donation (Sec. 115BBC)
- Tax on Accreted Income (Sec. 115TD to 115TF)

REQUIREMENT OF MINIMUM SPENDING



4. CONDITIONS FOR APPLICABILITY OF Section 11 AND Section 12

CONDITIONS

Condition 1 – Registration

- Re-validation of existing registration
- New case: Provisional Registration
- Converting provisional registration into normal registration
- Renewal of registration after every 5 years
- Re-registration on modification of objects
- To make registration operative under section 12AB

Condition 2 – Audit of Accounts

Audit report has to be furnished in Form 10B at least one month prior to the due date of submission of return of income

Condition 3 – Filing of Return of Income

Return of income shall be furnished within the time specified under Section 139.

CONDITION 2 – Audit of Accounts

- Mandatory for a trust to get its books of accounts audited to avail the exemption under Section 11 and Section 12
- Books of accounts are required to be audited where the total income of the trust before exemption under section 11 and 12 exceeds the maximum amount not chargeable to tax
- Accounts of the trust for can be audited by a Chartered Accountant. Audit report has to be furnished in Form 10B.
- It has to be furnished at least one month prior to the due date of submission of return of income. Prior to the amendment made by Finance Act, 2017, there was no requirement as to when the audit report has to be obtained & the requirement was only submission of audit report along with the return.
- Return of income can be submitted belatedly but the audit report needs to be furnished one month before the due date.
- If the audit report is not submitted as prescribed, then benefit of Section 11 & 12 shall be withdrawn for that year.

CONDITION 3 – Return of Income

- Required to be filed if the total income without giving effect to the provisions of Sections 11 and 12 exceeds the maximum amount which is not chargeable to Income-tax
- Finance Act, 2017 has inserted clause (ba) to Section 12A(1) of the Income Tax Act,1961 making furnishing of return of income as a condition to claim benefit of section 11 & 12 of the Income Tax Act,1961. Prior to that, the requirement of furnishing return was not a condition to claim benefit of Section 11 & 12.
- CBDT has clarified that the return can be submitted within the time limit under section 139, which shall include the due date for furnishing of the return of income under Section 139(1) or Section 139(4). Thus, the Income-tax returns can be filed belatedly
- If ITR not submitted by 31st March **(now 31st December)**, then no benefit of section 11 and 12 shall be allowed while computing the total income for the corresponding financial year.
- Hence, if now any notice under section 148 issued after the expiry of time limit to submit belated return, the concerned NGO cannot get the benefit of Section 11. It shall be assessed as a normal assessee.

TIME FOR DISCUSSION

KEY PROPOSED AMENDENTS

KEY PROPOSED AMENDMENTS BY FINANCE BILL, 2022

- **Cancellation power may lead to disruption**
  - Wide power of cancellation (12AB(4) & (5))
- **Bringing consistency in two regime [10(23C) & 12AB]**
  - Amendments proposed in 10(23C) in line with the provisions u/s. 12AB
  - All new amendments are proposed for both the regime
- **Modification in applicable regulation**
  - Requirement of Books of Accounts (12A(1)(b))
  - Cash Basis of accounting Expl. to sec 11
  - Accumulation of Income (11(2) & (3))
- **Modification in the provisions relating to Non-Compliance**
  - Benefit to specified person (13(1)(c) & 271 AAF
  - Investment other than specified mode (13(1)(d))
  - Special Provision for computing income on specified non-compliances. (presently resulting into withdrawal of benefit u/s. 11 & 12 (13(10) & (11))
  - Special tax rate for income which are not available for application 115BBI
- **Other proposed Amendments**
  - Treatment of voluntary contribution for renovation and repairs of religious places (notified under section 80G(2)(b)) Expl. 3A & 3B of 11(1)
  - Increase in penalties for late submission of return Sec 272A.

1. Provisions for Cancellation of Registration or Approval

WHAT WILL BE CONSIDERED AS SPECIFIED VIOLATIONS?

As per proposed amendment	*Reasons as per the existing law*
Income from trust property has been applied other than for the objects of the trust or institution.	Activities are not carried out in accordance with the object
Income from property held under trust applied for private religious purpose	violation of Sec. 13(1)(a) : Applied for Private religious purpose :
Income for benefit of any particular religious community or caste : By a charitable trust	violation of Sec. 13(1)(b) : Applied for particular religious community or caste
Activities carried are not genuine	Activities carried are not genuine
Non-compliance with other laws	Non-compliance with other laws
	Activities are carried out which results into violation of applicability of Sec. 13(1)(c) & 13(1)(d)
Income from profits and gains of business : Non-Incidental to the attainment of its objectives	
No separate books of account for business incidental to the attainment of its objectives	
Activities are not carried out in accordance with all or any of the conditions subject to which it was registered.	

Activities are not carried out in accordance with all or any of the conditions subject to which it was registered

The registration granted u/s. 12AB in Form 10AC contains a number of conditions which are not in accordance with the conditions as specified u/s. 11 to 13 & such conditions include : -

- As and when there is a move to amend or alter the objects/Rules and Regulations of the applicant, prior approval of the Commissioner of Income Tax shall be sought along with the draft of the amended deed and no such amendment shall be affected until and unless the approval is accorded.
- A public notice of the activities carried on/ to be carried on and the target group(s) (intended beneficiaries) shall be duly displayed at the Registered/ Designated Office of the Organisation.
- The registered office or the principal place of activity of the applicant should not be transferred outside the jurisdiction of Jurisdictional Commissioner of Income Tax except with the prior approval.

Activities are not carried out in accordance with all or any of the conditions subject to which it was registered

- No asset shall be transferred without the knowledge of Jurisdictional Commissioner of Income Tax to anyone, including to any Trust/ Society/ Non Profit Company etc.
- All the Public Money so received including for Corpus or any contribution shall be routed through a Bank Account whose number shall be communicated to Office of the Jurisdictional Commissioner of Income Tax

LEAD FOR SPECIFIED VIOLATION RESULTING IN CANCELLATION

- PCIT/PC received Reference from the Assessing Officer under the second proviso to Section 143(3) .
- PCIT or PC noticed Occurrence of one or more 'Specified Violations' during any previous year.
- Case has been selected in accordance with the risk management strategy of CBDT.

PROPOSED AMENDMENT IN ASSESSMENT PROCEEDINGS U/S. 143(3) READ WITH SEC. 153 OF THE INCOME TAX ACT, 1961

1. In section 143(3) the 2nd Proviso : it is proposed -

a. Where the A.O. is satisfied that any of the specified violation has been committed by the trust/institution, he shall -

i. Send a reference to the PCIT or Commissioner to withdraw the approval/registration

ii. No order making assessment shall be made without giving effect of the order passed by PCIT or Commissioner

2. Timeline to complete the assessment u/s. 153

Clause (xiii) has been inserted under Exp 1 of sec 153 providing that for the purpose of computing the period of limitation following time shall be excluded

a. The period commencing from the date on which the Assessing Officer makes a reference, and,

b. Ending on date on which the copy of the order is received by the Assessing Officer

PROCEDURE TO BE FOLLOWED BY PCIT/CIT

- Call for information or to make inquiry to satisfy occurrence of specified violation.
- Pass an order in writing, **cancelling the registration** after affording a reasonable opportunity (for such previous year and all subsequent previous year.)
- Pass an order in writing, **refusing to cancel** the registration
- Forward a copy of the cancellation order or order refusing to cancel the registration to the AO

Timeline

- The order shall be passed before expiry of 6 months, calculated from the end of the quarter in which the first notice is issued by the PCIT or CIT

Others

- Shall be effective from 01st April, 2022
- The cancellation power shall also include cancellation of provisional registration

Similar amendment proposed u/s. 10(23C)

ISSUES & CONTROVERSIES

AO can make reference for cancellation to PCIT/CIT before the completion of Assessment. Is it legally sustainable?

ISSUES & CONTROVERSIES:

Can CIT impose additional conditions at the time of registration (condition not provided in law) and can they become reason for cancellation?

ISSUES & CONTROVERSIES

Whether the provisional registration can also be cancelled under the proposed amendment u/s.12AB (4) of the Income Tax Act, 1961.

2. Bringing Consistency in Two Exemption Regimes

TO BRING CONSISTENCY IN TWO REGIMES

- Requirement of furnishing to Income Tax Return as a condition
- Requirement of uploading of Audit Report
- Restrictions on payment to specified person
- Accumulation provisions in line with Section 11(2)
- Accreted income under Section 115TD to 115TF

All the new proposed amendments for Section 12AB are also proposed to be made applicable for Section 10(23C).

DIFFERENCES IN TWO REGIMES STILL REMAIN

- Provisions for application of income outside India
- Option to spend in subsequent year or in the year of receipt
- Retrospective exemption in line with proviso to Section 12AB

We understand this a move towards one regime from the existing two regimes otherwise there is no point having two window with the similar provisions

ISSUES & CONTROVERSIES

Post amendment, which registration would be preferred option: 12AB or 10(23C)?

3. Benefit to Specified persons

BENEFIT TO SPECIFIED PERSONS

- Amount subject to tax :
  - Sec. 13(1)(c) deals with the implication on providing un-reasonable benefit to specified person
  - Presently providing un-reasonable benefit shall result into withdrawal of applicability of sec. 11 & 12 but there was no clarity on amount of income which shall be subject to for penal taxation for such violation
  - The proposed amendment has brought certainty by providing –The amount applied as un-reasonable benefit shall be the deemed income for the purpose of this section
- Tax Rate
  - Such income shall be charged to tax @ 30% as per the newly inserted Sec. 115BBI

BENEFIT TO SPECIFIED PERSONS

- Penalty

  Such un-reasonable benefit shall also be subjected to penalty under the newly inserted Sec. 271AAE :100% of the amount in the first previous year and 200% of the amount if the default is noticed again in subsequent previous year.

- Possibility of Cancellation

  The proposed amended provision of 12AB(4) one of the conditions for cancellation of registration includes :

  Where income derived for property has been applied other than for the object of the trust / institution

Similar amendment proposed u/s. 10(23C)

4. Amendment in section 13(1)(d) Investment otherwise than in specified mode

AMENDMENT For violation in term of SECTION 13(1)(d) :

- It is proposed that for violation of Sec. 13(1)(d), the income subject to tax shall be the amount deposited/invested in violation of Sec. 11(5)

- Interestingly this violation has been escaped to be included directly as one of the specified violation for the purpose of cancellation (12AB(4))

ISSUES & CONTROVERSIES:

1. What shall be the implication if the violation of investment is noticed in subsequent year much after the year in which investment was made .
2. What shall be applicability of case laws where it was held that in case of violation of 13(1)(d) only the income from investment shall be subject to Tax and not the amount invested.

5. New provision for Computation of Income in certain Situations

NEW PROVISION FOR COMPUTING INCOME SUBJECT TO TAX ON SPECIFIED NON -COMPLIANCES: INSERTION OF NEW SECTION 13(10) & (11):

1. Separate computation provision on specified non-compliances.
2. Specified non compliances for the application of Section 13(10)
   a. Application of section 13(8) – Having commercial receipts in excess of 20% of the annual receipts in violation of the provisions of proviso to section 2(15).
   b. Non maintenance of books of accounts
   c. Non submission of Audit Report
   d. Non submission of Income Tax Return
3. Present Provision
   a. Benefit of section 11 & 12 is withdrawn
   b. Income is subject to tax without the deduction of application of income, statutory accumulation etc..

COMPUTATION OF INCOME : NEWLY INSERTED SECTION 13 (10) & 13(11)

- The income chargeable to tax shall be computed after allowing the deduction for the expenditure (other than capital expenditure) incurred in India for the objects. Subject to fulfilment of the following conditions:
  1. Expenditure is not from the corpus
  2. Expenditure is not from any loan or borrowing
  3. Claim of depreciation is not in respect of an asset which has been claimed as an application of income
  4. Expenditure is not in the form of any contribution or donation to any person.
  5. Disallowance of expense to be made due to violation of cash payment and TDS Provision
  6. No set off of earlier year loss (sec 13(11))

Similar amendment are proposed u/s. 10(23C)

6. Special Rate for Taxation of Certain Incomes

SPECIFIED INCOME FROM NON COMPLIANCES (SECTION 115BBI)

- Income u/s. 11(1)(c) : amount applied outside india
- Income u/s. 11(1B) & 11(3): option & accumulation
- Income u/s.13(1)(c): benefit to specified person
- Income u/s. 13(1)(d) : investment other than as per 11(5)
- Income accumulated or set apart in excess of fifteen per cent of the income where such accumulation is not allowed under any specific provision of this Act

SECTION 115BBI

The income-tax on specified income shall be as under:

- the at he amount of income-tax calculated at the rate of 30% on the aggregate of specified income; and
- amount of income-tax the assessee would have been chargeable had the total income of the assessee been reduced by the aggregate of specified income referred to above.

No deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any provision of the Act in computing specified income.

ISSUES & CONTROVERSIES

The relevance of section 164 (2) after the insertion of section 115BBI and how to deal with inconsistency in between these two provisions

ISSUES & CONTROVERSIES

Whether income computed under the proposed section 13(10) and (11) shall be subject to Tax rate as specified under newly inserted 115BBI i.e 30% or shall be taxed at rate applicable to AOP.

7. Requirement to maintain Books of Accounts

MAINTENANCE OF BOOKS OF ACCOUNTS

- One additional condition : The books of accounts & other documents are kept and maintained in such Form, manner and at such place as may be prescribed
- Though maintenance of books of accounts was an implicit condition because of the audit requirements but the proposed amendment has made it explicit
- We need to wait for the Rules providing for form, manner & the place
- section 13(10) has been inserted for computing income chargeable to tax if books of accounts as provided are not maintained

Similar amendment are proposed u/s. 10(23C)

ISSUES & CONTROVERSIES

Cash basis of accounting for application but still option can be exercised in Form 9A for income not received. Hence whether NGO need to follow Mixed system of accounting?

8. Application of Income on Payment Basis

CASH BASIS OF ACCOUNTING

It is proposed that the amount of application shall be considered only it is actually paid –

i) Irrespective of the year in which liability arises

ii) Irrespective of the method of accounting regularly employed

Our Understanding :

The proposed change has settled the controversy as it how the amount applied for shall be determined but -

- There will be a accounting challenge to determine the application amount on cash basis where accounts are maintained on accrual basis (Sec 8 company)
- in certain cases it will go against the TDS provisions which are also applicable to NGO

Similar amendment are proposed u/s. 10(23C)

9. Accumulation of Income 11(2) and (3)

AMENDMENT IN SECTION 11(3) EFFECTIVE FROM AY 2023-24 :

- Accumulated income u/s 11(2) has to be applied within 5 years instead of 6 years
- Certainty has been brought by providing that year of taxation shall be the previous year in which the condition of Sec. 11(2) are violated

Similar amendment are proposed u/s. 10(23C)

ISSUES & CONTROVERSIES

Whether the provision to apply in the sixth year of the accumulation u/s.11(2) shall not apply on the accumulation expiring on 31/03/2022

10. Voluntary Contributions to Religious Institutions

OPTION TO TREAT AS CORPUS DONATION

Voluntary Contributions for the renovation and repair of Religious places notified under clause (b) of sub-section (2) of section 80G

- Normally the benefit of Sec. 80G are not available to religious trust
- In case of Religious cum charitable trust 80G approvals are given only if the expenditure on religious purpose does not exceed 5% of income
- Sec. 80G(2)(b) is a separate section enabling religious trust being a place of public worship throughout any State or States" and notified as such by the Central Govt. can also apply & avail 80G benefit
- The proposed amendment is to bring certainty on the treatment of the voluntary received under this approval of 80G & it provides – that the amount of voluntary contribution received can be treated as received towards corpus at the option of recipient NGO

CONDITIONS TO BE FULFILLED

- Corpus to be applied only for the purpose for which the voluntary contribution was made;
- Corpus shall not be applied for making a contribution or donation to any person
- Corpus to be maintained as separately identifiable;
- Corpus to be invested in Section 11(5) modes

CONSEQUENCES ON VIOLATION

If any trust or institution has treated any sum received by it as forming part of the corpus, and subsequently, any of the specified conditions is violated. In that case, such sum shall be deemed to be the income of such trust or institution of the previous year during which the violation takes place.

ISSUES & CONTROVERSIES

Whether this amendment is for religious organization per se or only that part of donation which are subject to 80G approval ?

Errors and inconsistencies

Errors and Inconsistencies

1. Differential tax rate for violation u/s. 13(1)(c) & 13(1)(d)

a. Section 164(2) provide for tax at maximum marginal rate on the portion of the income in relation to the violation u/s. 13(1)(c) & 13(1)(d)

b. Whereas newly inserted section 115BBI provides for levy of tax @ 30%

c. Moreover, there is no amendment proposed in section 164(2)

2. Deemed to have been converted into other form [115TD (3)]

a. The chapter on accreted income [115TD to 115TF] propose also to apply to institution /trust u/s. 10(23C)

b. As per the proposed amendment the association shall be deemed to has been converted into other form if the trust/institution u/s.10(23C) has adopted the change in object but has not applied for fresh approval or application for fresh approval has been rejected.

c. However, there is no such corresponding requirement to apply for fresh registration u/s. 10(23C) in line with Sec. 12A(1)(ac)(v)

Errors and Inconsistencies

3. Wrong mentioning of Sec. 12AA instead of Sec. 12AB

a. New proposed amended Sec. 12AB (4) provides -
"Where registration or provisional registration of a trust or an institution has been granted under clause (a) or clause (b) or clause (c) of sub-sec. (1) or clause (b) of sub-sec. (1) of sec. 12AA as the case may be ....."

b. Whereas Sec. 12AA should be Sec. 12AB as 12AA shall no application on & after 01/04/2021 and all the reference of clauses or sub-sections are of sec 12AB

THANKS

TIME FOR DISCUSSION

LATEST INCOME TAX JUDGEMENTS

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TAX EVASION PETITION

PRINCIPAL DIRECTOR OF INCOME TAX (INVESTGATION) VS RAJIV YADUVANSHI & ORS. : (2020) 109 CCH 0052 DelHC

The Income Tax Department has a specific framework of investigations dealing with the TEPs and information in respect of the investigation carried out by the office of Directorate General of Income Tax (Investigation) is not required to be intimated to the complainant as the said office is even outside the purview of the RTI Act, 2005.

BUSINESS EXPENDITURE

HAVELS INDIA LTD. VS ASSISTANT COMMISSIONER OF INCOME TAX : (2020) 60 CCH 0232 DelTrib

The payment made by the assessee to a foreign entity for the purpose of certification of electrical products manufactured by the assessee cannot be brought to tax in India as "Fees for Technical Services" in accordance with India Netherland DTAA.

GCO TECHNOLOGIES CENTRE PRIVATE LIMITED VS INCOME TAX OFFICER : (2020) 60 CCH 0276 MumTrib

Expenses incurred by an assessee after 'setting up' of its business and prior to the commencement of the same would be allowable as deduction for the purpose of computing its taxable income

INDIA FURNITURE PRODUCTS LIMITED VS COMMISSIONER OF INCOME TAX : (2020) 109 CCH 0065 MumHC

Since, Usance charges are covered in the definition of interest under Section 2(28A), the assesses were obliged to deduct tax at source in terms of Section 195(1).

SECTION 9 OF THE INCOME-TAX ACT, 1961 - INCOME – DEEMED TO ACCRUE OR ARISE IN INDIA

Tata Consultancy Services Ltd. v. Additional Commissioner of Income Tax, LTU-1 - [2020] 121 taxmann.com 190 (Mumbai - Trib.)

Where assessee an Indian company engaged in business of computer software and management consultancy claimed deduction of State taxes paid in overseas countries, Assessing Officer was to be directed to verify whether State taxes paid by assessee overseas were eligible for any relief under section 90 and if it was not found to be so, assessee's claim of deduction was to be allowed .

Bengal Tiger Line (P.) Ltd. v. Deputy Commissioner of Income Tax (International Taxation) 1(1), Chennai - [2020] 121 taxmann.com 165 (Chennai - Trib.)

In terms of Article 8 of India Singapore DTAA, global income of a tax resident of Singapore from shipping operations, even though which is earned outside Singapore is taxable only in Singapore on accrual basis and consequently article 24 of India Singapore DTAA cannot be invoked to deny benefit of exemption merely for simple reason that said income was not taxed in Singapore by virtue of separate exemptions provided under Singapore Income-tax Act.

Fox Network Group Singapore (P.) Ltd. v. Assistant

Commissioner of Income Tax (International Taxation) Circle 1(3)(1), New Delhi - [2020] 121 taxmann.com 330 (Delhi - Trib.)

Where assessee, a Singaporean company, sub-licensed sports broadcasting rights in relation to live feeds to a company, since a live feed cannot constitute a 'work' in which copyright can subsist and broadcast or live coverage does not have a copyright payment for live telecast is neither payment for transfer of any copyright nor any scientific work so as to fall under ambit of royalty under Explanation 2 to section 9(1)(vi) .

SECTION 188A OF THE INCOME-TAX ACT, 1961 - FIRM - JOINT AND SEVERAL LIABILITY OF PARTNERS FOR TAX PAYABLE

Popular Dealers v. Income-tax Officer (TDS) - [2020] 121 taxmann.com 76 (Karnataka)

General : A demand raised on managing partner of a firm on non deduction of TDS could only be seen as demand made on a person managing affairs of firm on behalf of all its partners.

SECTION 191 OF THE INCOME-TAX ACT, 1961 - DEDUCTION OF TAX AT SOURCE - DIRECT PAYMENT

Popular Dealers v. Income-tax Officer (TDS) - [2020] 121 taxmann.com 76 (Karnataka)

Burden of proof : Burden to prove that payee had paid tax directly under section 191 which assessee failed to deduct as TDS is placed on assessee, and not on Department; on failure to do so assessee is to be considered as assessee in default .

SECTION 195 OF THE INCOME-TAX ACT, 1961 - DEDUCTION OF TAX AT SOURCE - PAYMENT TO NON-RESIDENT

Director of Income Tax, International Taxation, Bangalore v. Texas Instruments Incorporated - [2020] 121 taxmann.com 75 (Karnataka)

Advance tax : If payer, who was required to make payments to non-resident, had deducted tax at source from such payments, question of payment of advance tax by payee would not arise and, therefore, it would not be permissible for revenue to charge any interest under section 234B .

SECTION 251 OF THE INCOME-TAX ACT, 1961 - COMMISSIONER (APPEALS) - POWERS OF

Karnataka State Beverages Corporation Ltd. v. Assistant Commissioner of Income Tax, Circle-11(5), Bangalore - [2020] 121 taxmann.com 89 (Karnataka)

Doctrine of merger : Appeal filed by assessee before Commissioner (Appeals) would be maintainable in respect of subject matter which do not pertain to grounds under section 263 .

SECTION 68 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - SEARCH, SEIZURE ETC.

Krishnakumar v. Assistant State Tax Officer, Thiruvananthapuram - [2020] 121 taxmann.com 142 (Kerala)

Goods in movement, inspection of : Consignment of goods could not be detained for non-mention of IGST payable in e-way bill that accompanied transportation of goods when details of tax paid were shown in invoice.

SECTION 80-IB OF THE INCOME-TAX ACT, 1961 - DEDUCTIONS - PROFITS AND GAINS FROM INDUSTRIAL UNDERTAKINGS OTHER THAN INFRASTRUCTURE DEVELOPMENT UNDERTAKINGS

Principal Commissioner of Income Tax, Central-1, Kolkata v. Sona Vets P. Ltd. - [2020] 121 taxmann.com 33 (Calcutta)

Manufacture : Production of poultry feeds by assessee by way of receiving raw materials and other inputs and processing them by grinding, mixing, roasting and blending to produce large quantity of poultry feeds would amount to 'manufacture' and assessee would be entitled to claim deduction under section 80-IB .

Commissioner of Income-tax, Mangalure v. Mandavi Builders, Mangalore - [2020] 121 taxmann.com 36 (Karnataka)

Housing project : Amendment brought on 1-4-2010 vide clauses (e) and (f) to section 80-IB(10) is prospective in nature .

Commissioner of Income-tax, Mangalure v. Mandavi Builders, Mangalore - [2020] 121 taxmann.com 36 (Karnataka)

Housing project : Where unaccounted money found during search proceedings at premises of assessee-company, engaged in business of building and developing housing project, was treated as business income of assessee by Assessing Officer, assessee could not be denied deduction under section 80-IB(10) in respect of such amount .

Commissioner of Income Tax, Goa v. Borkar Packaging (P.) Ltd. - [2020] 121 taxmann.com 167 (Bombay)

Number of workmen : Where even prior to assessment, assessee produced material before Assessing Officer which evidenced that each of Units of assessee employed more than 10 workers, assessee fulfilled conditions required for claiming deduction under section 80-IB even though it failed to mention same in Form No. 10CCB .

SECTION 80-IC OF THE INCOME-TAX ACT, 1961 - DEDUCTIONS - SPECIAL PROVISIONS IN RESPECT OF CERTAIN UNDERTAKINGS OR ENTERPRISES IN CERTAIN SPECIAL CATEGORY STATES

Computation of deduction : Where assessee set up a unit with latest technology, singular aspect of alleged disparity in electricity consumption and production figures as compared to other units could not be ground to doubt higher profit in new unit to deny deduction under section 80-IC - Commissioner of Income Tax, Goa v. Borkar Packaging (P.) Ltd. - [2020] 121 taxmann.com 167 (Bombay)

SECTION 241A OF THE INCOME-TAX ACT, 1961 - REFUND - POWER TO WITHHOLD, IN CERTAIN CASES

Vodafone Idea Ltd. v. Assistant Commissioner of Income-tax, Circle 26(2) - [2020] 121 taxmann.com 101 (SC)

Scope of : Review petition dismissed against finding that section 241A requires a separate recording of satisfaction on part of Assessing Officer that having regard to fact that a notice has been issued under section 143(2), grant of refund is likely to adversely affect revenue whereafter, with previous approval of Principal Commissioner or Commissioner and for reasons to be recorded in writing, refund can be withheld .

INCOME FROM UNDISCLOSED SOURCES

VIKASH VS INCOME TAX OFFICER : (2020) 60 CCH 0278 DelTrib

Addition made u/s 69A is not sustainable where the assessee has discharged his onus of explaining the deposit satisfactorily.

INCOME FROM HOUSE PROPERTY

OSHO DEVELOPERS VS ASSISTANT COMMISSIONER OF INCOME TAX : (2020) 60 CCH 0277 MumTrib

ALV of flats held by the assessee as part of the stock-in-trade of its business as that of a builder and developer could not have been determined and therein have to be brought to tax under the head 'house property'.

NON-RESIDENT

DIRECTOR OF INCOME TAX (INTERNATIONAL TAXATION) VS AUTODESK ASIA PVT. LTD. : (2020) 109 CCH 0057 KarHC

Substitution of a provision results in repeal of earlier provision and its replacement by new provision.

INCOME

ASSISTANT COMMISSIONER OF INCOME TAX VS EI DORADO BIOTECH PVT. LTD. : (2020) 60 CCH 0233 AhdTrib

Initial onus is upon the assessee to establish three things necessary to obviate the mischief of Section 68.

SNEHLATHA AGARWAL & ANR. VS INCOME TAX OFFICER & ANR. : (2020) 60 CCH 0290 BangTrib

Assessment is bad in law where the Assessee has been denied an opportunity of fair hearing.

COMMISSIONER OF INCOME TAX VS SOCIEDADE DE FOMENTO INDUSTRIAL PVT. LTD. : (2020) 109 CCH 0064 MumHC

While invoking the provisions of Section 14A, Assessing Officer must give a clear finding with reference to the Assessee's accounts as to how the other expenditure claimed by the Assessee out of the non-exempt income is related to the exempt income.

CAPITAL GAIN

WEISS ROHING (INDIA) PVT. LTD. VS ASSISTANT COMMISSIONER OF INCOME TAX : (2020) 60 CCH 0229 ChenTrib

Assessee cannot blow hot and cold or approbate and reprobate that what is not paid on due date cannot be assessed at all.

ASSISTANT COMMISSIONER OF INCOME TAX VS SABIR MAZHAR ALI : (2020) 60 CCH 0283 MumTrib

Section 54 nowhere restricts the claim of the assessee that he should have sold only one property and claimed exemption u/s.54 for one property.

K. BABU (HUF) VS INCOME TAX OFFICER : (2020) 60 CCH 0292 BangTrib

Post amendment, viz., from 01.04.2015, benefit of s 54F will be applicable to one residential house in India.

SECTION 5 OF THE INCOME-TAX ACT, 1961 - INCOME - ACCRUAL OF

Commissioner of Income-tax, Tiruchirapalli v. Tiruchirapalli District Central Cooperative Bank Ltd. - [2020] 121 taxmann.com 140 (Madras)

Time of accrual - Interest : Overdue interest on investment, which had been classified as non-performing assets, is not taxable on accrual basis in hands of assessee-cooperative bank .

SECTION 49 OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - COST WITH REFERENCE TO CERTAIN MODES OF ACQUISITION

V. Dwarakanathan v. Assistant Commissioner of Income Tax - [2020] 121 taxmann.com 138 (SC)

Indexed cost of acquisition : SLP dismissed against impugned order of High Court holding that where assessee claimed loss on sale of shares acquired by him through gift from his daughter for Nil consideration, however, he had not been able to show that he held gift by way of registered document, thus, capital asset not having become property of assessee, section 49 would not be applicable to assessee.

SECTION 153A OF THE INCOME-TAX ACT, 1961 - SEARCH AND SEIZURE - ASSESSMENT IN CASE OF

Deputy Commissioner of Income Tax, Central Circle-2(1), Kolkata v. Bhavya Merchandise (P.) Ltd. - [2020] 121 taxmann.com 112 (Kolkata - Trib.)

Scope of provision : Where original assessment was completed as on date of search and additions made by Assessing office in search assessment under Section 153A was without any reference to incriminating documents/papers seized during search, addition made was to be deleted .

SECTION 2(14) OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - CAPITAL ASSET

Commissioner of Income-tax, Chennai v. P. Mahalakshmi - [2020] 121 taxmann.com 77 (Madras)

Agricultural land : Where assessees and their family members were using land for cultivation of coconut,

banana etc. and moreover land was also situated 40 k.m. away from municipal limit, such land should be treated as agricultural land as defined under section 2(14)(iii) .

SECTION 28(i) OF THE INCOME-TAX ACT, 1961 - BUSINESS LOSS/DEDUCTIONS - ALLOWABLE AS

Principal Commissioner of Income-tax. v. Suzlon Energy Ltd. - [2020] 121 taxmann.com 137 (SC)

Foreign exchange fluctuation loss : Where High Court upheld Tribunal's order allowing assessee's claim of foreign exchange fluctuation loss on Mark to Market basis, SLP filed against order of High Court was to be dismissed .

SECTION 271(1)(C) OF THE INCOME-TAX ACT, 1961 - PENALTY - FOR CONCEALMENT OF INCOME

Vikas Bhatnagar v. Income Tax Officer - [2020] 121 taxmann.com 141 (SC)

Writ remedy : SLP dismissed against impugned order of High Court holding that assessee having resorted to remedy of appeal against section 144 assessment order and section 271(1)(c) proceedings, Writ Petition against same cause of action and same orders would not be maintainable .

ACCOUNTS

KIRPALU STRIPS & ANR. VS INCOME TAX OFFICER & ANR. : (2020) 60 CCH 0289 ChdTrib

15% variation in the number of electricity units consumed per metric ton of finished goods as compared to the average consumption of electricity units per metric ton of finished goods is the industrial norm warranting no adverse cognizance. Hence, because of that reason alone, books of account cannot be rejected.

REASSESSMENT

ARSHIA GLOBAL TRADCOM PVT. LTD. VS ASSISTANT COMMISSIONER OF INCOME TAX : (2020) 60 CCH 0282 KolTrib

Reopening is bad in law, arbitrary, erroneous where there is no allegation of failure on the part of the assessee to fully and truly disclose material facts as stipulated by the first provision of section 147.

INCOME FROM UNDISCLOSED SOURCES

NISH GEMS VS INCOME TAX OFFICER : (2020) 60 CCH 0284 MumTrib

In the absence of delivery challans, proper stock records and based on the depositions of the suppliers that they have provided only accommodation bills, the Assessing Officer would be justified in concluding that the assessee has obtained only bogus bills and assessee might have purchased goods in grey market.

EXEMPTIONS

JAPAN INTERNATIONAL CO-OPERATION AGENCY (JICA) VS ASSISTANT COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION) : (2020) 60 CCH 0281 DelTrib

Conditions laid down u/s 115-0 to avail the exemption u/s 10(34), is to be complied with at the level of venture capital undertaking and not at the stage when the investor, the assessee in this case, received the dividend income from VCF, so, the assessee is entitled for exemption u/s 10(34)

EYGBS (INDIA) LLP (EARLIER KNOWN AS EYGBS (INDIA) PVT. LTD.) VS DEPUTY COMMISSIONER OF INCOME TAX : (2020) 60 CCH 0296 BangTrib

Once additional income on the basis of artificial/notional income is computed in the hands of assessee under the provisions of section 92(1) and offered for tax, it forms part of profits of business and while computing the deduction under section 10A(4) the said profits have to be taken into consideration and the deduction so computed.

BIHAR STATE TEXT BOOK PUBLISHING VS COMMISSIONER OF INCOME TAX & ANR. : (2020) 109 CCH 0061 PatHC

Assessee, a public sector undertaking of a State

Government, engaged in the business of printing and sale of text books at low rates to the students of the deprived sections of society against receipt of subsidy from the State Government was exempt under section 10(23C)(iiiab) and, therefore, subsidy receivable by the assessee on the sale of text books is not taxable

SECTION 32 OF THE INCOME-TAX ACT, 1961 - DEPRECIATION - ALLOWABILITY OF

Commissioner of Income Tax, Bangalore v. Cyber Park Development & Construction Ltd. - [2020] 121 taxmann.com 172 (Karnataka)

Intangible asset : Where Assessing Officer on meticulous appreciation of evidence on record allowed claim of assessee of depreciation on leasehold right held by it in a land by treating it as intangible asset, impugned invocation of revision under section 263 against said order on ground of inadequacy of enquiry by Assessing Officer was unjustified .

Padmini Products (P.) Ltd. v. Deputy Commissioner of Income Tax, Circle 12(2), Bengaluru - [2020] 121 taxmann.com 237 (Karnataka)

Intangible assets : Where under a scheme of succession intangible assets of a partnership firm were transferred to assessee-company in lieu of shares issued to partners of erstwhile firm, successor assessee-company was entitled to claim depreciation on such intangible assets on cost incurred by it with reference to such intangible assets .

SECTION 143 OF THE INCOME-TAX ACT, 1961 - ASSESSMENT - ADDITIONS TO INCOME

Pradeep Dayanand Kothari v. Commissioner of Income Tax, Chennai - [2020] 121 taxmann.com 166 (Madras)

Notice u/s 143(2) : Where reopening notice was issued against assessee on basis of information obtained from Investigation Wing that assessee had operated undeclared account with a bank located outside India and carried out unaccounted transactions and made deposits in it, impugned reopening notice was justified .

SECTION 54F OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - EXEMPTION OF, IN CASE OF INVESTMENT IN RESIDENTIAL HOUSE

Smt. Savita Bhasin v. Income Tax Officer, Ward-53(5) Civic Center, New Delhi - [2020] 121 taxmann.com 207 (Delhi - Trib.)

One residential house : Where assessee was having only 50 per cent share in second residential house which was sold to assessee's son, Assessing Officer could not deny exemption under section 54F to assessee on ground that assessee had more than one residential house .

Commissioner of Income Tax v. Vinay Mishra - [2020] 121 taxmann.com 243 (Karnataka)

Residential house : Requirement of investment in a residential house in India in order to claim exemption under section 54F(1) is applicable from assessment year 2015-16 only .

SECTION 92C OF THE INCOME-TAX ACT, 1961 - TRANSFER PRICING - COMPUTATION OF ARM'S LENGTH PRICE

Deputy Commissioner of Income-Tax - 1(1), Mumbai v. Alstom India Ltd. - [2020] 121 taxmann.com 221 (Mumbai - Trib.)

Adjustments - Royalty : Where DRP accepted rate of royalty for trademark at rate of 1 per cent simply on ground that assessee had already paid royalty rate of 1 per cent with regard to trademark, since action taken by DRP was not at all based upon cogent reasoning and due analysis, same was not sustainable.

SECTION 254 OF THE INCOME-TAX ACT, 1961 - APPELLATE TRIBUNAL - POWERS OF

Commissioner of Income Tax, Bangalore v. Mukhtar Minerals (P.) Ltd. - [2020] 121 taxmann.com 176 (Bombay)

Others : Where assessee pursuant to survey conducted upon it filed its revised return and an assessment order was passed making certain disallowances/ additions, however, Tribunal held revised return as barred by

limitation and also deleted such disallowances/ additions, Tribunal was justified in holding revised return as barred by limitation but it was not justified in going into issue of disallowances before Assessing Officer had an opportunity of assessing original return and determining taxable amount; therefore, matter was to be remanded .

SECTION 40(a)(iib) OF THE INCOME-TAX ACT, 1961 - BUSINESS DISALLOWANCE - ROYALTY, LICENCE, FEE, ETC.

Tamil Nadu State Marketing Corporation Ltd. v. Union of India - [2020] 121 taxmann.com 325 (SC)

High Court to decide writ petition on merits with respect to challenge to vires of section 40(a)(iib), irrespective of fact whether matter was sub-judice before Income Tax Authority .

SECTION 56 OF THE INCOME-TAX ACT, 1961 - INCOME FROM OTHER SOURCES - CHARGEABLE AS

Express Infrastructures (P.) Ltd. v. Deputy Commissioner of Income Tax, Co. Circle-II(1), Chennai 34 - [2020] 121 taxmann.com 234 (Madras)

Interest : Interest earned by assessee-company on short-term deposits made by it with bank out of loans borrowed for setting-up of commercial complex in pre-operative period before commencement of business was to be considered as income of assessee from other sources .

SECTION 70 OF THE INCOME-TAX ACT, 1961 - LOSSES - SET OFF OF, FROM ONE SOURCE AGAINST INCOME FROM ANOTHER SOURCE UNDER SAME HEAD OF INCOME

TVS Motor Company Ltd. v. Assistant Commissioner of Income Tax, Company Circle III(2), Chennai - [2020] 121 taxmann.com 242 (Madras)

Loss incurred by assessee in respect of its unit eligible for deduction under section 80-IC could be set off against income of assessee from other unit not eligible for deduction under said section .

Circular No. 2 of 2022

F. No.370142 /61/2021-TPL
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Direct Taxes)
****

Dated: 19 th January, 2022

Sub: Guidelines under clause (10D) section 10 of the Income-tax Act, 1961 - reg.

Clause (10D) of section 10 of the Income-tax Act, 1961 (the Act) provides for income-tax exemption on the sum received under a life insurance policy, including any sum allocated by way of bonus on such policy subject to certain exclusions.

2. The Finance Act, 2021 amended clause (10D) of section 10 of the Act by inserting fourth to seventh provisos. Fourth proviso provides that, with effect from 01.02.2021, the sum received under a Unit Linked Insurance Policy (ULIP), issued on or after 01.02.2021, shall not be exempt under the said clause if the amount of premium payable for any of the previous years during the term of such policy exceeds Rs 2,50,000. Further, fifth proviso provides that if premium is payable for more than one ULIP, issued on or after 01.02.2021, the exemption under the said clause shall be available only with respect to such policies where the aggregate premium does not exceed Rs 2,50,000 for any of the previous years during the term of any of those policies. Sixth proviso provides that the fourth and fifth provisos shall not apply in case of sum received on death of the person.

3. Seventh proviso to the said clause (10D) also empowers the Central Board of Direct Taxes (Board) to issue guidelines, with the previous approval of the Central Government, in order to remove any difficulty which arises while giving effect to the provisions of the said clause. In exercise of the powers under this proviso, Board, with the previous approval of the Central Government, hereby issues the following guidelines.

4. Sum received including any sum allocated by way of bonus (hereinafter referred as "consideration") during the previous year (hereinafter referred as "current previous year") under any one or more ULIPs issued on or after 01.02.2021 (hereinafter referred as "eligible ULIP") shall be exempt under clause (10D) of section 10 of the Act, subject to the

satisfaction of other provisions of said clause. The same are explained by way of examples of different situations:-

4.1 Situation1: No consideration is received by the assessee on any eligible ULIPs during any previous year preceding the current previous year or consideration has been received on such eligible ULIPs but has not been claimed exempt. The exemption under clause (10D) of section 10 of the Act shall be determined as under:

i. If the assessee has received consideration, during the current previous year, under one eligible ULIP only and the amount of premium payable on such eligible ULIP does not exceed Rs 2,50,000 for any of the previous years during the term of such eligible ULIP, such consideration shall be eligible for exemption under the said clause (10D);

ii. If the assessee has received consideration, during the current previous year, under one eligible ULIP only and the amount of premium payable on such eligible ULIP exceeds Rs 2,50,000 for any of the previous years during the term of such eligible ULIP, such consideration shall not be eligible for exemption under the said clause (10D);

iii. If the assessee has received consideration, during the current previous year, under more than one eligible ULIPs and the aggregate of the amount of premium payable on such eligible ULIPs does not exceed Rs 2,50,000 for any of the previous years during the term of such eligible ULIPs, such consideration shall be eligible for exemption under the said clause (10D);

iv. If the assessee has received consideration, during the current previous year, under more than one eligible ULIPs and the aggregate of the amount of premium payable on such eligible ULIPs exceeds Rs 2,50,000 for any of the previous years during the term of such eligible ULIPs, the consideration under only such eligible ULIPs shall be eligible for exemption under the said clause (10D) where aggregate of the amount of the premium payable does not exceed Rs 2,50,000 for any of the previous years during their term (Refer Examples).

4. 2 Situation 2: Consideration has been received by the assessee under any one or more eligible ULIPs during any previous year preceding the current previous year and it has been claimed to be exempt under clause (10D) of section 10 of the Act. Such eligible ULIPs are referred as "Old ULIPs" in this paragraph and corresponding examples and reference to

eligible ULIPs shall not include old ULIPs. The exemption under clause (10D) of section 10 of the Act shall be determined as under:

i. If the assessee has received consideration, during the current previous year, under one eligible ULIP only and aggregate amount of premium payable on such eligible ULIP and old ULIPs does not exceed Rs 2,50,000 for any of the previous year during the term of such eligible ULIP, the consideration under such eligible ULIP shall be eligible for exemption under the said clause (10D);

ii. If the assessee has received consideration, during the current previous year, under one eligible ULIP only and aggregate amount of premium payable on such eligible ULIP and old ULIPs exceeds Rs 2,50,000 for any of the previous year during the term of such eligible ULIP, the consideration under such eligible ULIP shall not be eligible for exemption under the said clause (10D);

iii. If the assessee has received consideration, during the current previous year, under more than one eligible ULIPs and aggregate of the amount of premium payable on such eligible ULIPs and old ULIPs does not exceeds Rs 2,50,000 for any of the previous year during the term of such eligible ULIPs, such consideration shall be eligible for exemption under the said clause (10D);

iv. If the assessee has received consideration, during the current previous year, under more than one eligible ULIPs and aggregate of the amount of premium payable on such eligible ULIPs and old ULIPs exceeds Rs 2,50,000 for any of the previous year during the term of such eligible ULIPs, consideration under only such eligible ULIPs shall be eligible for exemption under the said clause (10D) where aggregate amount of premium along with the aggregate amount of premium of old ULIPs does not exceed Rs 2,50,000 for any of the previous year during the term of any of such eligible ULIPs (refer examples).

4.3 The above guidelines are explained with the help of the follow ing examples:

Example 1:

The assessee has the following policy which satisfies all the conditions laid down in clause (10D) of section 10 of the Act (other than the conditions provided under the fourth and fifth proviso of the said clause, applicability whereof is being explained in the example).

ULIP	A
Date of issue	01.04.2011
Annual premium (Rs)	5,00,000
Sum assured (Rs)	50,00,000
Consideration received as on 01.11.2021 on maturity	60,00,000

Taxability as per fourth proviso to clause (10D) of section 10 of the Act:

The sum received on maturity will be exempt under clause (10D) of section 10 of the Act as the policy has been issued before 01.02.2021 and accordingly not covered by the 4th to 7th provisos to the said clause (10) of section 10, inserted by Finance Act, 2021.

Example 2:

The assessee has the following policy which satisfies all the conditions laid down in clause (10D) of section 10 of the Act (other than the conditions provided under the fourth and fifth proviso of the said clause, applicability whereof is being explained in the example). The assesse did not receive any consideration under any other eligible ULIPs in earlier previous years preceding the previous year 2031-32.

ULIP	A
Date of issue	01.04.2021
Annual premium (Rs)	5,00,000
Sum assured (Rs)	50,00,000
Consideration received as on 01.11.2031 on maturity	60,00,000

Taxability as per fourth proviso to clause (10D) of section 10 of the Act:

- The consideration received will not be exempt under clause (10D) as per the provisions of fourth proviso since the annual premium payable on the policy exceeded Rs 2,50,000.

Example 3:

The assessee has the following policy which satisfies all the conditions laid down in clause (10D) of section 10 of the Act (other than the conditions provided under the fourth and fifth

proviso of the said clause, applicability whereof is being explained in the example). The assessee did not receive any consideration under any other eligible ULIPs in earlier previous years preceding the previous year 2031-32.

ULIP	A
Date of issue	01.04.2021
Annual premium (Rs)	2,50,000
Sum assured (Rs)	25,00,000
Consideration received as on 01.11.2031 on maturity	32,00,000

Taxability as per fourth proviso to clause (10D) of section 10 of the Act:

The consideration received will be exempt under clause (10D) as the provisions of fourth proviso will not apply since the annual premium payable on the policy does not exceed Rs 2,50,000.

Example 4:

The assessee has the following policies all of which satisfy all the conditions laid down in clause (10D) of section 10 of the Act (other than the conditions provided under the fourth and fifth proviso of the said clause, applicability whereof is being explained in the example). The assessee did not receive any consideration under any other eligible ULIPs in earlier previous years preceding the previous year 2031-32.

ULIP	A	B
Date of issue	01.04.2021	01.04.2021
Annual premium (Rs)	2,00,000	3,00,000
Sum assured (Rs)	20,00,000	30,00,000
Consideration received as on 01.11.2031 on maturity	22,00,000	3 5,00,000

Taxability as per fifth proviso to clause (10D) of section 10 o f the Act:

- The consideration received under ULIP "B" will not be exempt under clause (10D) as per the provisions of fifth proviso, since aggregate of the annual premium payable for ULIP "A" and ULIP "B" exceeds Rs 2,50,000 during the term of these policies. However, the consideration received under ULIP "A" shall be exempt under clause

(10D) since its annual premium does not exceed Rs 2,50,000 in any of the previous years during the term of the policy.

Example 5:

The assessee has the following policies all of which satisfy all the conditions laid down in clause (10D) of section 10 of the Act (other than the conditions provided under the fourth and fifth proviso of the said clause, applicability whereof is being explained in the example). The assessee did not receive any consideration under any other eligible ULIPs in earlier previous years preceding the previous year 2031-32.

ULIP	A	B	C
Date of issue	01.04.2021	01.04.2021	01.04.2021
Annual premium (Rs)	1,00,000	1,50,000	3,00,000
Sum assured (Rs)	10,00,000	15,00,000	30,00,000
Consideration received as on 01.11.2031 on maturity	12,00,000	1 8,00,000	34,00,000

Taxability as per fifth proviso to clause (10D) of section 10 o f the Act:

- The consideration received under ULIP "C" will not be exempt under clause (10D) as per the provisions of fifth proviso since aggregate of the annual premium payable for ULIP "A", ULIP "B" and ULIP "C' exceeds Rs 2,50,000 during the term of these policies.
- However, the consideration received under ULIPs "A" and "B" shall be exempt under clause (10D), since aggregate of annual premium payable for these two policies does not exceed Rs 2,50,000 for any previous year during the term of these two policies.

Example 6:

The assessee has the following policies all of which satisfy all the conditions laid down in clause (10D) of section 10 of the Act (other than the conditions provided under the fourth and fifth proviso of the said clause, applicability whereof is being explained in the example). The assessee did not receive any consideration under any other eligible ULIPs in earlier previous years preceding the previous year 2030-31.

ULIP	X	A	B	C
Date of issue	01.04.2020	01.04.2021	01.04.2021	01.04.2021
Annual premium (Rs)	2,50,000	1,00,000	1,50,000	3,00,000
Sum assured (Rs)	25,00,000	10,00,000	15,00,000	30,00,000
Consideration received as on 01.11.2030 on maturity	30,00,000			
Consideration received as on 01.11.2031 on maturity		12,00,000	18,00,000	34,00,000

Taxability as per fifth proviso to clause (10D) of section 10 o f the Act:

- The consideration under ULIP "X" will be exempt under clause (10D) as the policy has been issued before 01.02.2021 and it is not covered by recently introduced provisions.
- The consideration received under ULIP "C" will not be exempt under clause (10D) as per the provisions of fifth proviso since aggregate of the annual premium payable for ULIP "A", ULIP "B' and ULIP "C" exceeds Rs 2,50,000 during the term of these policies.
- However, the consideration received under ULIPs "A" and "B" shall be exempt under clause (10D), since aggregate of annual premium payable for these two policies does not exceed Rs 2,50,000 for any previous year during the term of these two policies.

Example 7:

The assessee has the following policies all of which satisfy all the conditions laid down in clause (10D) of section 10 of the Act (other than the conditions provided under the fourth and fifth proviso of the said clause, applicability whereof is being explained in the example). The assessee did not receive any consideration under any other eligible ULIPs in earlier previous years preceding the previous year 2031-32.

ULIP	X	A	B	C
Date of issue	01.04.2021	01.04.2022	01.04.2022	01.04.2022
Annual premium (Rs)	2,00,000	1,00,000	1,50,000	3,00,000
Sum assured (Rs)	20,00,000	10,00,000	15,00,000	30,00,000

Consideration received as on 01.11.2031 on maturity	25,00,000			
Consideration received as on 01.11.2032 on maturity		12,00,000	18,00,000	34,00,000

Taxability as per fifth proviso to clause (10D) of section 10 o f the Act:

- The consideration under ULIP "X" will be exempt for the previous year 2031-32 under clause (10D) since the annual premium does not exceed Rs 2,50,000.
- The consideration received under ULIPs "A", "B" and "C" will not be exempt under clause (10D) as per the provisions of fifth proviso since aggregate of the annual premium payable for these three ULIPs and ULIP "X" exceeds Rs 2,50,000 for the previous years 2022-23 to 2031-32 which fall under the tenure of these policies. The consideration under ULIP "A" will also not be eligible for exemption under the said clause as the aggregate of annual premium of ULIPs "X" and "A" exceeds Rs 2,50,000.

Example 8:

The assessee has the following policies all of which satisfy all the conditions laid down in clause (10D) of section 10 of the Act (other than the conditions provided under the fourth and fifth proviso of the said clause, applicability whereof is being explained in the example). The assessee did not receive any consideration under any other eligible ULIPs in earlier previous years preceding the previous year 2031-32.

ULIP	X	A	B	C
Date of issue	01.04.2021	01.04.2022	01.04.2022	01.04.2022
Annual premium (Rs)	1,00,000	1,00,000	1,50,000	3,00,000
Sum assured (Rs)	10,00,000	10,00,000	15,00,000	30,00,000
Consideration received on maturity as on 01.11.2031	12,00,000			
Consideration received as on 01.11.2032 on maturity		12,00,000	18,00,000	34,00,000

Taxability as per fifth proviso to clause (10D) of section 10 o f the Act:

- The consideration under ULIP "X" will be exempt under clause (10D) for the previous year 2031-32 since the annual premium does not exceed Rs 2,50,000.
- The consideration received under ULIP "B" only will be exempt under clause (10D) during the previous year 2032-33 while consideration received under ULIPs "A" and "C" will be taxable as per the provisions of fifth proviso.
- The exemption is restricted to consideration under ULIP "B" since aggregate of the annual premium payable for the ULIPs "X" and "B" together did not exceed Rs 2,50,000 for any of the previous years during the term of ULIP "B".
- Here instead of ULIP "B", we could have taken ULIP "A" as the aggregate of annual premium payable for ULIPs "X" and "A" is also less than Rs 2,50,000 during the term of these ULIPs. However, since including ULIP "B" instead of ULIP "A" is more beneficial to the assessee, ULIP "B" has been considered for exemption.

Example 9:

The assessee has the following policies all of which satisfy all the conditions laid down in clause (10D) of section 10 of the Act (other than the conditions provided under the fourth and fifth proviso of the said clause, applicability whereof is being explained in the example). The assessee did not receive any consideration under any other eligible ULIPs in earlier previous years preceding the previous year 2031-32. (It needs to be specified that consideration under ULIP "X" has not been claimed exempt)

ULIP	X	A	B	C
Date of issue	01.04.2021	01.04.2022	01.04.2022	01.04.2022
Annual premium (Rs)	1,00,000	1,00,000	1,50,000	3,00,000
Sum assured (Rs)	10,00,000	10,00,000	15,00,000	30,00,000
Consideration received on maturity as on 01.05.2031	12,00,000			
Consideration received as on 01.05.2032 on maturity		12,00,000	18,00,000	34,00,000

Taxability as per fifth proviso to clause (10D) of section 10 o f the Act:

- The consideration under ULIP "X" was not claimed to be exempt under clause (10D) by the assessee therefore it is not covered within the definition of old ULIP.
- The consideration received under ULIPs "A" and "B" will be exempt under clause (10D). However, since aggregate of the annual premium payable for the ULIPs "A" and "B" together did not exceed Rs 2,50,000 for any of the previous years during the term of any of these ULIPs "A" or "B" and ULIP "X" was not claimed to be exempt under clause (10D)the consideration received under ULIP "C" will be taxable as per the provisions of fifth proviso to the said clause (10D) of section 10 of the Act.

Example 10:

The assessee has the following policies all of which satisfy all the conditions laid down in clause (10D) of section 10 of the Act (other than the conditions provided under the fourth and fifth proviso of the said clause, applicability whereof is being explained in the example). The assessee did not receive any consideration under any other eligible ULIPs in earlier previous years preceding the previous year 2032-33 other than under ULIPs "X" and "Y".

ULIP	X	Y	A	B	C
Date of issue	01.04.2021	01.04.2021	01.04.2022	01.04.2022	01.04.2022
Annual premium (Rs)	1 ,00,000	1,00,000	1,00,000	1,50,000	3,00,000
Sum assured (Rs)	10,00,000	10,00,000	10,00,000	15,00,000	30,00, 000
Consideration received on surrender as on 01.07.2025	6,00,000				
Consideration received on maturity as on 01.11.2031		12,00,000			
Consideration received as on 01.11.2032 on maturity			12,00,000	18,00,000	34,00,000

Taxability as per fifth proviso to clause (10D) of section 10 o f the Act:

ñ The surrender value of ULIP "X" and consideration received under ULIP "Y" on maturity will be exempt under clause (10D) since the annual premium does not exceed Rs 2,50,000 during the term of these policies.

- The consideration received under ULIPs "A", "B" and "C" will be taxable under clause (10D) as per the provisions of fifth proviso to the said clause (10D) since aggregate of the annual premium payable for the ULIPs "X" and "Y" for the previous years 2021-22 to 2025-26 was Rs 2,00,000. If the annual premium of ULIP "A" or "B" or "C" is added then the aggregate of the premium will exceed Rs 2,50,000 for the previous years 2022-23 to 2025-26.
- As per the provisions of fifth proviso, in case of multiple ULIPs, the aggregate of the premium payable for all the policies which are claimed to be exempt under clause (10D) shall not exceed Rs 2,50,000 for any previous year during the term of any of the policies.

Example 11: If in Example 10, the assessee does not claim exemption with respect to the surrender value of ULIP "X", then the consideration received under ULIP "Y" will be exempt for the previous year 2031-32 and the consideration received under ULIP "B" will be exempt for the previous year 2032-33 under clause (10D). The exemption is restricted to ULIP "B" since the aggregate of the annual premium payable for the ULIPs "Y" and "B" together did not exceed Rs 2,50,000 for any of the previous years during the term of ULIP "Y" or "B" and the assessee did not claim ULIP "X" as exempt. ULIP "B" is preferred in place of ULIP "A" as it is more beneficial to the assessee.

Neha Sahay Digitally signed by Neha Sahay Date: 2022.01.19 12:57:19 +05'30'

(Neha Sahay)
Under Secretary to the Government of India

Copy to:

1. PS to FM/ OSD to FM/ PS to MoS(F)/ OSD to MoS(F)
2. PPS to Secretary (Revenue)
3. Chairman, CBDT & All Members, CBDT
4. All Pr. DGsIT/ Pr. CCsIT
5. All Joint Secretaries/ CsIT/ Directors/ Deputy Secretaries/ Under Secretaries of CBDT
6. The C&AG of India
7. The JS & Legal Adviser, Ministry of Law & Justice, New Delhi
8. CIT (M&TP), Official Spokesperson of CBDT
9. O/o Pr. DGIT (Systems) for uploading on official website.
10. JCIT (Database Cell) for uploading on www.irsofficersonline.gov.in

Neha Sahay Digitally signed by Neha Sahay Date: 2022.01.19 12:57:36 +05'30'

(Neha Sahay)
Under Secretary to the Government of India

MINISTRY OF FINANCE

(Department of Revenue)

(CENTRAL BOARD OF DIRECT TAXES)

NOTIFICATION

New Delhi, the 14th January, 2022

G.S.R. 15(E).—In exercise of the powers conferred by clause (4D) of section 10 and sub-section (1B) of section 115AD, read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct taxes hereby makes the following rules further to amend the Income-tax Rules,1962, namely:—

1. Short title and commencement.- (1) These rules may be called the Income tax (1st Amendment) , Rules, 2022.

(2) They shall come into force from the 1st day of April, 2022.

2. In the Income-tax Rules, 1962 (hereinafter referred to as the principal rules), after rule 21AJ, the following rules shall be inserted, namely:—

'21AJA. **Computation of exempt income of specified fund, attributable to the investment division of an offshore banking unit, for the purposes of clause (4D) of section 10 of the Act-** (1) For the purposes of clause (4D) of section 10 of the Act, income of specified fund attributable to the investment division of an offshore banking unit shall be computed in accordance with the following formula, namely:-

A+B+C+D

where ,–

A = any income accrued or arisen to, or received by the eligible investment division as a result of transfer of a capital asset referred to in clause (viiab) of section 47 of the Act held by it, on a recognised stock exchange located in any International Financial Services Centre and where the consideration for such transaction is paid or payable in convertible foreign exchange;

B= any income accrued or arisen to, or received by the eligible investment division as a result of transfer of securities held by it (other than shares in a company resident in India);

C= any income accrued or arisen to, or received by the eligible investment division from securities held by it and issued by a non-resident (not being a permanent establishment of a non-resident in India) and where such income otherwise does not accrue or arise in India;

D = any income accrued or arisen to, or received by the eligible investment division from a securitisation trust which is chargeable under the head "profits and gains of business or profession".

Explanation: Any expenditure incurred for the purposes of making or earning income referred to in items A or B or C or D shall not be allowed as deduction from income from any other activity or source under any provision of the Act, irrespective of the fact that such expenditure has not been allowed as deduction against income referred to in items A or B or C or D, as the case may be.

(2) The eligible investment division shall furnish an annual statement of exempt income in Form No. 10-IK electronically under digital signature on or before the due date, which is duly verified in the manner indicated therein.

(3) For the purposes of item (II) of sub-clause (ii) of clause (c) of the Explanation to clause (4D) of section 10 of the Act, an investment division of an offshore banking unit shall fulfill the following conditions, namely:-

(a) it shall maintain separate accounts for the registered investment division reflecting the true and fair accounts of all transactions relating to the investment division and which shall ensure that direct and indirect expenses relating to the incomes referred to in sub-rule (1) and other incomes are properly recorded, accounted for, and apportioned to these activities;

(b) it shall get the accounts, referred to in clause (a), audited by an accountant before the specified date and such accountant shall furnish by that date the report of such audit in Form No. 10-IL electronically under digital signature, which is duly verified in the manner indicated therein;

(c) it shall maintain proper documentation in respect of,-

(i) inbound remittance for buying and selling the investments; and

(ii) the use of inward remittance made to India;

(d) it shall maintain bank statement of all accounts of the registered investment division,;

(e) it shall maintain contract notes relating to purchase and sale of securities by the registered investment division; and

(f) it shall maintain a statement of securities issued by the custodian.

(4) The Principal Director-General of Income-tax (Systems) or Director-General of Income-tax (Systems), as the case may be, shall,-

(i) specify the procedures, formats and standards for ensuring secure capture and transmission of data; and

(ii) be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to Form No 10-IK and Form No 10-IL.

Explanation. - For the purpose of this rule, the expressions,-

(a) "accountant" shall have the same meaning as assigned to it in the Explanation below sub-section (2) of section 288 of the Act;

(b) "due date" shall have the same meaning as assigned to it in the Explanation 2 to sub-section (1) of section 139 of the Act;

(c) "eligible investment division" shall mean a registered investment division which fulfills the conditions as prescribed under item II of sub-clause (ii) of clause (c) of the Explanation to clause (4D) of section 10 of the Act;

(d) "investment division of an offshore banking unit" shall have the same meaning as assigned to it in clause (aa) of the Explanation to clause (4D) of section 10 of the Act;

(e) "registered investment division" shall mean an investment division of an offshore banking unit which fulfills the condition specified under item (I) of sub-clause (ii) of clause (c) of the Explanation to clause (4D) of section 10 of the Act;

(f) "securities" shall have the same meaning as assigned to it in clause (bb) of the Explanation to clause (4D) of section 10 of the Act;

(g) "specified date", in relation to the accounts of the registered investment division of the previous year relevant to an assessment year, means a date one month prior to the due date.

(h) "specified fund" shall have the same meaning as assigned to it in clause (c) of the Explanation to clause (4D) of section 10 of the Act.

21AJAA. **Determination of income of a specified fund attributable to the investment division of an offshore banking unit under sub-section (1B) of section 115AD of the Act** - (1) For the purposes of sub-section (1B) of section 115AD of the Act, income of a specified fund, being the investment division of an offshore banking unit shall be computed in accordance with the following formula, namely:-

A+B+C+D+E+F

where,–

A = income by way of long term capital gain referred to in clause (b) of sub-section (1) of section 115AD, accrued or arisen to, or received by the eligible investment division , as a result of transfer of a security referred to in section 112A of the Act and held by such investment division;

B = income by way of long term capital gain referred to in clause (b) of sub-section (1) of section 115AD, accrued or arisen to, or received by the eligible investment division as a result of transfer of a security, other than that referred to in section 112A of the Act, and held by such investment division;

C= income by way of short term capital gain referred to in clause (b) of sub-section (1) of section 115AD, accrued or arisen to, or received by the eligible investment division as a result of transfer of security referred to in section 111A of the Act and held by such investment division;

D= income by way of short term capital gain referred to in clause (b) of sub-section (1) of section 115AD, accrued or arisen to, or received by the eligible investment division as a result of transfer of a security, other than that referred to in section 111A of the Act, and held by such investment division;

E= income from securities referred to in clause (a) of sub-section (1) of section 115AD of the Act, being in the nature of interest referred to in section 194LD of the Act, held by the eligible investment division;

F= income from securities, held by the eligible investment division, as referred to in clause (a) of sub-section (1) of section 115AD of the Act and not included in item E above.

Explanation: Any expenditure incurred for the purposes of making or earning an income referred to in items A or B or C or D or E or F shall not be allowed as a deduction from income from any other activity or source, irrespective of the fact that such expenditure has been not allowed as a deduction against income referred to in items A or B or C or D or E or F, as the case may be.

(2) The eligible investment division shall furnish an annual statement of income, eligible for taxation under sub-section (1B) of section 115AD of the Act, in Form No. 10-IK electronically under digital signature on or before the due date, which is duly verified in the manner indicated therein.

Explanation.- For the purpose of this rule, the expressions,-

(a) "due date" shall have the same meaning as assigned to it in the Explanation 2 to sub-section (1) of section 139 of the Act;

(b) "eligible investment division" shall mean a registered investment division which fulfills the conditions as prescribed under item II of sub-clause (ii) of clause (c) of the Explanation to clause (4D) of section 10 of the Act;

(c) "investment division of an offshore banking unit" shall have the same meaning as assigned to it in clause (aa) of the Explanation to clause (4D) of section 10 of the Act;

(d) "registered investment division" shall mean an investment division of an offshore banking unit which fulfills the condition specified under item (I) of sub-clause (ii) of clause (c) of the Explanation to clause (4D) of section 10 of the Act;

(e) "securities" shall have the same meaning as assigned to it in clause (c) of the Explanation to section 115AD of the Act;

(f) "specified fund" shall have the same meaning as assigned to it in sub-clause (i) of clause (c) of the Explanation to clause (4D) of section 10 of the Act.'.

3. In the principal rules, in the APPENDIX after Form No. 10-IJ, the following Forms shall be substituted, namely: —

"FORM NO. 10-IK

[see rule 21AJA and rule 21AJAA]

Annual Statement of Exempt Income under sub-rule (2) of rule 21AJA and taxable income under sub-rule (2) of rule 21AJAA

Sl. No.			
1.	Name of the Specified Fund (Declarant)		
2.	Address of the registered office of the specified fund:		
3.	Legal status[company/trust/limited liability partnership/body corporate]:		
4.	Permanent Account Number:		
5.	Previous year ending:		
6.	Date of establishment / incorporation		d d m m y y y y
7.	Date of commencement of operations		d d m m y y y y
8.	1.	Registration number as per the certificate of registration as a Category-I foreign portfolio investor under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019	
	2.	Date of registration	d d m m y y y y
9.	Whether conditions as mandated by sub-rule (3) of Rule 21AJA are fulfilled		Yes/No
10.	Calculation of income exempt under clause (4D) of section 10 of the Act		
	Income accrued or arisen or received by the eligible investment division from transfer of capital asset referred to in clause (viiab) of section 47 of the Act held by it, on a recognised stock exchange located in any International Financial Services Centre and where the consideration for such transaction is paid or payable in convertible foreign exchange; [A]		(In Rs)
	Income accrued or arisen or received by the eligible investment division as a result of transfer of securities held by it (other than shares in a company resident in India);[B]		(In Rs)
	Income accrued or arisen to, or received by the eligible investment division from securities held by it and issued by a non-resident (not being a permanent establishment of a non-resident in India) and where such income otherwise does not accrue or arise in India;)[C]		(In Rs)

	Income accrued or arisen to, or received by the eligible investment division from a securitisation trust which is chargeable under the head "profits and gains of business or profession D]	(In Rs)
	Income of the eligible investment division **[A + B + C + D]**	(In Rs)
11.	Calculation of income taxable under sub-section (1B) of section	(In Rs)

is exempt under clause (4D) of section 10 and/or is eligible for concessional rates under sub-section (1B) of section 115AD of the Income-tax Act, 1961.

2. Further, I/ We do hereby affirm that the eligible investment division of .....(name of offshore banking unit) has fulfilled the following conditions:

S.no.	Condition	Whether fulfilled or not fulfilled
(i)	It has maintained separate accounts for the registered investment division;	Yes/No
(ii)	It has got the accounts, referred to in clause (i), audited by an accountant referred to in the Explanation below sub-section (2) of section 288;	Yes/No
(iii)	It has maintained proper documentation relating to inbound remittance for buying and selling the investments;	Yes/No
(iv)	It has maintained proper documentation in respect of the use of inward remittance made to India;	Yes/No
(v)	It has maintained bank statement of all accounts for the registered investment division;	Yes/No
(vi)	It has maintained contract notes relating to purchase and sale of securities by the registered investment division; and	Yes/No
(vii)	It has maintained a statement of securities issued by the custodian.	Yes/No

3. I/We declare that the above particulars are true and correct to the best of my/our knowledge and belief.

Place

(Signature with name of the accountant)

Date _____.".

[Notification No. 6/2022 F. No. 370142/60/2021-TPL]

NEHA SAHAY, Under Secy.

Note. - The principal rules were published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (ii) vide notification number S.O. 969(E), dated the 26th March, 1962 and was last amended vide notification number G.S.R 903(E), dated the 29th December, 2021.

UNION BUDGET 2022
Important Indirect Tax Proposals
Goods and Service Tax

CA Ankit Kanodia

Introduction:-

Budget 2022 has been announced by the Hon'ble FM Smt. Nirmala Sitharaman inspired by the "Azadi ka Amrit Mahotsav" and having entered the Amrit Kaal, the 25-year-long leadup to India@100. of the Modi Govt. This Budget seeks to lay the foundation and give a blueprint to steer the economy over the Amrit Kaal of the next 25 years – from India at 75 to India at 100. It continues to build on the vision drawn in the Budget of 2021-22.

On the Indirect front, various legislative changes has been proposed under the CGST Act, 2017 wherein further restrictions is availment of input Tax credit by introducing section 16(2)(ba) and section 38(2)(b) to the CGST Act, 2017 has been proposed and measures to curb fake invoicing has been issued. Further the period of availment of ITC for a FY has been increased by addl. 40 days as also issuance of Credit Notes by Addl. 60 days from the present time limits under the Act. Changes has been proposed in the time period for cancellation or suspension of GST registration by proper officer and also retrospective amendment in section 50(3) of the CGST Act, 2017 providing for levy of interest only in case of ITC availed and utilized.

Further, changes in the refund mechanism have been proposed wherein the **time period for filing of refund application in cases of supply to SEZ which has been missing in the statute has been introduced.**

On the **Customs front**, definition of "proper officer" is being modified to specifically state that assignment of functions to an officer of Customs by the Board or the Principal Commissioner of Customs or the Commissioner of Customs shall be done under the newly inserted sub-sections (1A) and (1B) of Section 5 in the Customs Act, 1962 (52 of 1962). This is being done to overcome the recent decision of the Apex Court in the case of Canon India which held that DRI officers are not the proper officers for the purposes of section 28 of the Act. **Section 3** is being amended to specifically include the officers of DRI, Audit and Preventive formation in the class of Officers. This amendment has been made to remove any ambiguity as regards the class of officers of Customs

Sub-section (2) under Section 28J is being substituted so that advance ruling under sub-section (1) of Section 28J is now valid for a period of three years or till there is a change in law or facts on the basis of which the advance ruling has been pronounced, whichever is earlier. Section 135AA is being inserted to protect the import and export data submitted to Customs by importers or exporters in their declarations by making the publishing of such information unless provided by the law, as an offence under Customs Act.

Tabular presentation for clarification of old and proposed provision has been given below

Section No	*Old Provision*	*Proposed Provision*	*Remarks*
Section 16- Eligibility and conditions for taking input tax credit	Not applicable	A new clause (ba) is being introduced after clause (b) in subsection (2) of section 16- "(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;"	*The above amendment draws it's connections with the amendments made in Finance Bill 2021 by introducing section 16(2)(aa) to the Act which provides for availment of ITC only on filing of GSTR 1 by supplier and its communication to the recipient u/s 37. However, the communication cannot be done u/s 37 and had to be made as per section 38 of the Act. Now, Fin Bill 2022 proposes substitution of the entire section 38 for communication of details of inward supplies and ITC and the new sub clause (ba) provides that even if it is communicated in GSTR 2B, then also ITC may not be allowed if it is restricted u/s 38(2)(b) as introduced by the Fin Bill 2022. Thus the list for ITC restrictions goes even further down the lane and it would be nightmare for the RTP to follow the provisions in this respect in our view.*
Section 16- Eligibility and conditions for taking input tax credit	(c) subject to the provisions of section 41 or section 43A, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply	In clause (c), the words, figures and letter "or section 43A" shall be omitted	*Since section 43A has been omitted, the co-relation in section 16(2)(c) has been also omitted.*

Section 16- Eligibility and conditions for taking input tax credit	(4)A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.	In sub-section (4), for the words and figures "due date of furnishing of the return under section 39 for the month of September", the words "thirtieth day of November" shall be substituted.	*The timeperiod to avail ITC for any FY has been increased from due date of GSTR 3B for Sep following the FY to 30th November following the FY. Thus effectively additional time limit of 40 days has been provided for availment of ITC which is a welcome step for tax payer friendly measure in our view.*
Section 29 - Cancellation or suspension of registration	Presently, RC of a composite and regular dealer could be retrospectively cancelled where they fail to furnish returns for 3 and 6 consecutive tax periods respectively.	In clause (b), for the words "returns for three consecutive tax periods", the words "the return for a financial year beyond three months from the due date of furnishing the said return" shall be substituted; In clause (c), for the words "a continuous period of six months", the words "such continuous tax period as may be prescribed" shall be substituted.	*With this amendment, power to suspend or cancel GST registration by the proper officer has been extended by way of time limits to be prescribed by Rules from the existing default of continuous period of six months for other than composition scheme tax payers. The same can be correlated with the Rule 21(2A) of the CGST Rules w.e.f. 22/12/2020, which provides for suspension of registration for contravention of provisions of the Act and difference in returns furnished.*
Section 34 - Credit and debit notes	(2) Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later	For the word "September", the words "the thirtieth day of November" shall be substituted.	*This amendment again being a taxpayer friendly amendment has extended the period of issuance of credit notes by suppliers from Sep of the next FY to 30th November of the next FY. Thus, a period of add. 60 days has been given to issue GST Credit notes and adjustments thereof.*

	than September following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed: Provided that no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.		
Section 37 - Furnishing details of outward supplies	(1) Presently, law gave power to make rules – •providing form and manner of filing GSTR-1 •Providing time and way such details shall be communicated to recipient. 2) Section provided for communication and acceptance of details so communicated in proposed GSTR-1, GSTR 2 and GSTR-3 FORMS. 3) Section provided that taxpayers can rectify unmatched details under section 42/43 in GSTR-1. Provided, no such rectification was allowed after due date of filing GSTR-3B for	1It has been proposed that – In sub-section (1), •after the words "shall furnish, electronically,", the words "subject to such conditions and restrictions and" shall be inserted •for the words "shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed", the words "shall, subject to such conditions and restrictions, within such time and in such manner as may be prescribed, be communicated to the recipient of the said supplies" shall be substituted; • 1st proviso Omitted 2. Sub Section (2), -- It has been omitted Reference to section 42/43 has been removed. For the words and figures "furnishing of the return under section 39 for the month of September", the	*Procedural changes has been effected in Section 37 to provide for further restrictions in case of furnishing of GSTR 1 returns. Such restrictions are to be introduced by way of rules.* *Also amendment in GSTR 1 for a FY has been allowed to be made by 30th November of the next FY instead of Sep of the next FY.*

	September of subsequent FY or filing of annual return which ever is earlier.	words "the thirtieth day of November" shall be substituted. 4. New sub section: - It has been proposed that – "A registered person shall not be allowed to furnish the details of outward supplies under sub-section (1) for a tax period, if the details of outward supplies for any of the previous tax periods has not been furnished by him:"	
Section 38. Communication of details of inward supplies and input tax credit	Old Section is being substituted with a new section: "38. (1) The details of outward supplies furnished by the registered persons under sub-section (1) of section 37 and of such other supplies as may be prescribed, and an auto- generated statement containing the details of input tax credit shall be made available electronically to the recipients of such supplies in such form and manner, within such time, and subject to such conditions and restrictions as may be prescribed. (2) The auto-generated statement under sub-section (1) shall consist of— (a) details of inward supplies in respect of which credit of input tax may be available to the recipient; and (b) details of supplies in respect of which such credit cannot be availed, whether wholly or partly, by the recipient, on account of the details of the said supplies being furnished under sub-section (1) of section 37,— (i) by any registered person within such period of taking registration as may be prescribed; or (ii) by any registered person, who has defaulted in payment of tax and where such default has continued for such period as may be prescribed; or (iii) by any registered person, the output tax payable by whom in accordance with the statement of outward supplies furnished by him under the said sub- section during such period, as may be prescribed, exceeds the output tax paid by him during the said period by such limit as may be prescribed; or (iv) by any registered person who, during such period as may be prescribed, has availed credit of input tax of an amount that exceeds the	*The amendment in section 38 is being introduced for the purposes of restricting the ITC to the recipient even though the GSTR 1 is being filed by the taxpayers timely. Section 38(2) has listed conditions wherein though the invoice is being auto populated in GSTR 2B, the ITC may be marked as ineligible if the supplier has not paid taxes in proceedings period,or has defaulted in payment of taxes for such periods as may be prescribed by Rules to be notified in this regard.* *The above amendments goes to show that the Govt. is ready to go to any extent to curb the menace of fake invoicing which is hitting the revenue of the Govt. though GST collections are at an all time high.*

	credit that can be availed by him in accordance with clause (a), by such limit as may be prescribed; or (v) by any registered person, who has defaulted in discharging his tax liability in accordance with the provisions of sub-section (12) of section 49 subject to such conditions and restrictions as may be prescribed; or (vi) by such other class of persons as may be prescribed.".		
Section 39 - Furnishing of returns	• Due date to file return by NRTP was 20th of next month. • Rectification of mistakes in GSTR-3B could be done till due date of filing GSTR-3B for September of next FY. • GSTR-3B for subsequent period could be filed even if GSTR-1 was not filed	It has been proposed that – • the non-resident taxable person shall furnish the return for a month by thirteenth day of the following month; • option to the persons furnishing return under QRMP scheme, to pay either the self-assessed tax or an amount that may be prescribed • Extended time upto 30th November of the following financial year, for rectification of errors in GSTR-3B. • Provides that both GSTR-1 and GSTR-3B for previous tax period should be filed for filing GSTR-3B of subsequent tax period.	*1.The due date of furnishing of returns by NRTP persons is being amended to be as 13th of the next month.* *2.The amendments are seems to introduce the possibility of filing GSTR 3B without full payment of taxes as may be determined subject to such restrictions as may be notified in this regard. We would need to wait and watch for the rules to be framed in respect of the amendment introduced.* *3.Consequential amendment in time limit of Sep of the next FY to 30th Nov of the next FY has been made in line of changes effected above.* *4.With these amendment restriction in filing of GSTR 3B has been linked with GSTR 1 also.*
Section 41. Availment of input tax credit.	*New section is being substituted as :* *41. (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger.* *(2) The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed:* *Provided that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in such manner as may be prescribed.".*		*Another welcome amendment wherein provisions has been inserted in the Act to recover ITC in case of bonafide cases from the supplier of goods/services who has defaulted in making payment to the Govt. and return the same to the recipient form whom such recovery has been made under section 16(2)(c) of the Act.*

Sections 42, 43 and 43A of the Central Goods and Services Tax Act	The said sections shall be omitted.		*Since these sections dealt with process of GSTR 1A/2 and matching of ITC, the same has been now omitted from the Act as the said provisions couldn't see the light of the day under the GST regime.*
Section 50 - Interest on delayed payment of tax	(3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent., as may be notified by the Government on the recommendations of the Council.	The following sub-section shall be substituted and shall be deemed to have been substituted with effect from the 1st day of July, 2017, namely:— "(3) Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding twenty-four per cent. as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed."	*The above amendment in in line with the GST Councils recommendations for levy of interest only in cases of ITC availed and utilized retrospectively w.e.f. 01.07.2017.*
Section 54 - Refund of tax	(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed: Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in the return furnished under section 39 in such manner as may be prescribed.	(a) in sub-section (1), in the proviso, for the words and figures "the return furnished under section 39 in such", the words "such form and" shall be substituted	*This is being done to provide that even transfer of cash ledger balance between same PAN GSTINs would be treated as refund application of balance in cash ledger.*

CUSTOMS

1. Clause (34) of section 2 contains definition of "proper officer". This section isbeing modified to specifically state that assignment of functions to an officer of Customs by the Board or the Principal Commissioner of Customs or the Commissioner of Customs shall be done under the newly inserted sub-sections (1A) and (1B) of Section 5 in the Customs Act, 1962 (52 of 1962)
2. Section 3 is being amended to specifically include the officers of DRI, Audit and Preventive formation in the class of Officers. This amendment has been made to remove any ambiguity as regards the class of officers of Customs.
3. Sub-Section (1A) and 1(B) to Section 5: Sub-section (1A) and (1B) have been inserted in section 5 of the Act to explicitly provide power of assignment of function to officers of customs by the Board or as the case may be by the Principal Commissioner of Customs or Commissioner of Customs. This amendment has been necessitated to correct the infirmity observed by the Courts in recent judgements that the Act required explicit provision conferring powers for assignment of function to officers of Customs as "proper officers" for the purposes of the Act, besides the definition clause (34) in section 2 of the Customs Act.
4. Sub-section (5) to Section 5 is being inserted to ensure that wherever necessary, for the proper management of work, two or more officers of customs, can concurrently exercise powers and functions (for example in the case of faceless assessment)
5. Section 14 is being amended to include provisions for rules enabling the Board to specify the additional obligations of the importer in respect of a class of imported goods whose value is not being declared correctly, the criteria of selection of such goods, and the checks in respect of such goods. This amendment is a measure to address the issue of undervaluation in imports.
6. Section 110AA is being inserted with a view to affirm the principle that, wherever, an original function duly exercised by an officer of competent jurisdiction, is the subject matter of a subsequent inquiry, investigation , audit or any other specified purpose by any other officer of customs, then, notwithstanding, such inquiry, investigation, audit or any other purpose, the officer, who originally exercised such jurisdiction shall have the sole authority to exercise jurisdiction for further action like re-assessment, adjudications, etc. consequent to the completion of such inquiry, investigation, audit or any other purpose.

CASE LAWS

CA Ankit Kanodia & CA Nishi Jain

1. BASIC INFORMATION:

IN THE MATTER OF	TRISHUL METAL INDUSTRIES LTD. AND ORS.
NAME OF Authority	CESTAT, NEW DELHI
Petition/Appeal No	52313, 52314, 52315 and 52316/2019
Date of Order	27-12-2021
Relevant Section/Rule	Third party evidence-Not a valid ground for recovery of CENVAT Credit

FACTS IN BRIEF:

The Appellant, Trishul Metal Industries Ltd. is engaged in the manufacture of copper ingots. M/s. Sypher Impex Alloys Pvt Ltd. raised 3 invoices to the Appellant for the purchase of 10.133 MT of copper ingots. CENVAT Credit amounting to Rs. 5,82,384 was taken against such materials received. On 09.04.2013, there was a scout in the premises of Sypher Impex and a show cause notice dated 25.07.2017 was issued on account of fraudulent generation and passing of CENVAT Credit. Eventually, a show cause notice dated 28.6.2017 was served upon the Appellant proposing the recovery of the above-mentioned amount of CENVAT Credit along with interest, owing to reliance on third party evidence and based on the fact that Sypher Impex was in the convention of generating fake invoices.

JUDGEMENT/ORDER OF THE AUTHORITY:

The Tribunal while allowing the appeal held as:-

-The Appellant has been wrongly involved in the ongoing case. It is perceived that the inputs have been received against valid and prescribed invoices, which produces adequate reason to believe that Sypher Impex has manufactured the said inputs. In addition to this, the Appellant has made all the payments and transactions duly recorded. Therefore, the Department's unearthing that inputs have not been received and used in manufacturing final products are baseless.

-There is no positive evidence collected from the Appellant's premises to manifest the above allegations. The entire case is on the basis of revelations of third-party witnesses who were never allowed to be cross examined by the Appellant, which violates the principles of natural justice.

-The Tribunal placed reliance on similar cases which held that, clandestine removals need to be established with authenticated evidence, and not based on third party documents. The Department did not conduct any investigation and failed to counter the documents produced by the Appellant to evince their transactions, which nullifies the order confirmed in demand. As a consequence, appeal was allowed.

COMMENTS:

The solitary challenge to the order was its credence on third party evidence. It is impetuous on behalf of the Department to act on account of such evidence, without conducting further investigation to uphold its evidentiary value. Reference has been taken by the Tribunal from the case of Bajrangbali Ingots & Steel Pvt. Ltd. & Suresh Agarwal vs. CCE, Raipur in this facet. The fact that fake invoices were generated formerly, is not adequate to establish that invoices issued in the name of the present Appellant is also forged. Ascribed to these unsubstantiated acts of the Department, it is perplexing for the taxpayers regarding availment of CENVAT Credit. Henceforth, the Department should be prudent and the averments must be meticulously verified and oppurtunity of cross examination must be provided as per section 9D and section 33 of the Central Excise Act, 1944.

2. BASIC INFORMATION:

IN THE MATTER OF	AMBIKA CREATION
NAME OF Authority	IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
Petition/Appeal No	R/SPECIAL CIVIL APPLICATION NO. 17564 of 2021
Date of Order	12-01-2022
Relevant Section/Rule	Rule 86A of the CGST Rules, 2017

FACTS IN BRIEF:

A writ-application was filed by the petitioner, Ambika Creation, praying to unblock the Electronic Credit Ledger, more particularly, when the period of one year as prescribed under sub-rule 3 of Rule 86A of the CGST Rules, 2017 has elapsed from the date of order of blocking of the Electronic Credit Ledger by the department and no adjudication thereof has been done.

JUDGEMENT/ORDER OF THE AUTHORITY:

The Hon'ble High Court while allowing the petition remarked as follows-

- As the period of one year as prescribed in sub-rule 3 of Rule 86A of the CGST Rules, has elapsed from the date of order of blocking the Electronic Credit Ledger, there is no ground for the department to not to unblock the said credit ledger.
- The rule itself has provided that the Ledger can be blocked for a period of one year. On expiry of a period of one year, it would automatically get unblocked. In fact, it was the duty of the authority concerned to permit the assessee to avail the input tax credit available in his ledger.
- Furthermore, the Court made it clear that if such a case is noticed in future, then the concerned authority would be held personally liable for the loss which the assessee might have suffered during the interregnum period.

COMMENTS:

Rule 86A was introduced by the government vide Notification no. 75/2019 dated 26/12/2019 w.e.f. 26/12/2019 to block the ITC available in Electronic Credit Ledger of an assessee, by Commissioner or any officer authorized by him, if he has "reason to believe" that the assessee has fraudulently availed ITC. As it is also clearly stated in the rule that the ITC available in the Electronic Credit Ledger can't be blocked after the expiry of period of one year from the date of imposing such restriction, it is imperative that the unblocking must be done automatically. However, it has been seen over a span of 2 years that assessees need to approach the writ court to get the unblocking done. Thus, the Gujarat HC has taken a stern view and stated that if such cases re occur than the officer would be personally held liable to compensate the loss of the petitioners. Infact the unblocking in our view should be done by GSTN itself on expiry of one year without any human interface. If the same can happen then the unnecessary litigation can be avoided as High Courts across the nation are already overburdened by various tax matters already.

3. BASIC INFORMATION:

IN THE MATTER OF	M/s RATAN BLACK STONE, SAHIBGANJ
NAME OF Authority	IN THE HIGH COURT OF JHARKHAND AT RANCHI
Petition/Appeal No	W.P (T) No. 4609 of 2021
Date of Order	06-01-2022
Relevant Section/Rule	Section 9 of CGST Act, 2017

FACTS IN BRIEF:

The petitioner M/s Ratan black stone, is a lessee of minor mineral stone boulder executed in his favour by the State of Jharkhand to whom a notice dated 09.10.2020 was served by the GST department for payment of GST under RCM on the amount of royalty and district mineral fund contribution paid by them to the state of Jharkhand being services provided by Government which is taxable under RCM as per section 9(3) of the CGST Act, 2017. The petitioner is seeking declaration that no GST is leviable on the amount of Royalty paid by them to the Govt and they also prayed for quashing of the notice served by the Officers for liability towards payment of GST under Reverse Charge Mechanism for the period July 2017 to March 2020 on the amount of Royalty and District Mineral Fund Contribution paid by the petitioner.

JUDGEMENT/ORDER OF THE AUTHORITY:

The Hon'ble High Court admitted the writ petition held as:-

1) Petitioner has referred to the order WPT No.3878/2020 dated 02.03.2021 where payment has stayed the recovery of service tax for grant of mining lease/royalty from the petitioners.

But court had however refused to grant interim protection for levy of GST on the same transactions post July 2017 and the petitioner had approached the Hon'ble Supreme Court of India against refusal of interim protection. They also referred to the WPT No.1076/2021 in the case of M/s Lakhwinder Singh Vs Union of India & others where the Hon'ble Apex court has given stay on the payment of GST for grant of mining lease/royalty by the petitioner till further orders. So, Petetioner also submitted that in such circumstances, this court may allow interim protection from recovery of GST.

2) On of the the above case of Lakhwinder Singh, the High Court also has given a similar interim relief(s) to the petitioner herein. Accordingly, until further orders, payment of GST for grant of mining lease/royalty by the petitioners, shall remain stayed.

Comments:

The above judgement by the HC will provides great relief to various bonafide taxpayers from sudden RCM liability emante on mining royalty paid to Govt. Àt present GST payable on mining royalties is in question and still it is a very debatable topic in GST under Section 9 and royalty paid in respect of mining lease can be classified under "Licensing for the right to use minerals including its exploration and evaluation". However, Hon'ble Supreme Court has imposed a stay on GST on royalty paid to the States for mining rights in the matter of Lakhwinder Singh. As per the applicants the payment of royalty is not a supply and is not liable to GST. Until any further order or notice for payment of GST on royalty comes into force, stay on recovery as well as interim relief will prove to be a great shield for the taxpayers. It is also to be noted that the issue whether royalty itself is a tax or not is pendingbefore the bench of the Hon'ble Supreme Court in Mineral Area Development Authority Vs. Steel Authority of India and Ors., (2011) 4 SCC 450. Hence the outcome of the above judgment will also be relevant to determine the taxability of the royalty paid under the GST regime.

4. BASIC INFORMATION:

IN THE MATTER OF	SATYAM SHIVAM PAPERS PVT. LIMITED & ANR.
NAME OF Authority	SUPREME COURT OF INDIA
Petition/Appeal No	Special Leave to Appeal (C) No(S) 21132/2021
Date of Order	12-01-2022
Relevant Section/Rule	Section 129 of CGST Act, 2017

FACTS IN BRIEF:

M/S Satyam Shivam Papers Pvt Ltd (the respondent), engaged in trading business of paper had generated the eway bill for transportation of goods (by auto trolley) for intra-state supply on 04/01/2020. But the goods couldn't reach the recipient before the expiry of the EWB as

the road was blocked on account of procession. On the next day when goods started the journey, Deputy state tax officer detained the goods as e-way bill had expired. Goods were stored at private premises of officer. Against demand order passed by the officer, M/s. Satyam Shivam Papers had filed a writ petition before the High Court of Telangana wherein the Hon'ble HC imposed a cost of Rs. 10000/ against the officer for passing arbitrary order on 06/10/21 and ordered for refund of penalty imposed. In due course, department had filed the appeal to the Supreme Court in defiance of this order issued by High Court ofTelangana.

JUDGEMENT/ORDER OF THE AUTHORITY:

The Hon'ble Supreme Court (SC) held as –

- The contention on the part of petitioner department that the writ petitioner was evading tax because the e-way bill had expired, had not only been baseless but even the intent behind the proceedings against the writ petitioner was also questionable. The Court noted that the act of storing the goods strangely, in the house of a relative of the petitioner department for 16 days and not at any other designated place for their safe custody was itself questionable. It has precisely been found that there was no intent on the part of the writ petitioner to evade tax and rather, the goods in question could not be taken to the destination within time for the reasons beyond the control of the writ petitioner.The State alone remains responsible for not providing smooth passage of traffic.

- The Apex Court stated that submission made in appeal do not give rise to even a question of fact then what to say regarding question of law. Having found no question of law being involved, the Hon'ble SC imposed a further sum of Rs. 59000/- on petitioner No. 2. towards cost, to be payable to writ petitioner within four weeks which would be over and above the sum of Rs. 10000/- already awarded by the High Court and thus the petition of the department was dismissed with additional costs.

Comments:

Section 129 of CGST Act, 2017 gives vide powers to the proper officer (PO) to detain the goods, if transported in contravention of provision of the act or rules made thereunder. But, some officers are misusing their powers and responsibility leading to harassment of genuine tax payers. This judgement will be helpful in upcoming litigations of Section 129 where tax evasion has been presumed on mere non-extension of validity of e-way bill. In this judgement, SC also praised the HC of Telangana, as Hon'ble HC has conscientiously examined whether intent to evade tax has been involved or not on the part of writ petitioner. For detailed order of HC of Telangana, one may refer our summary of important judicial pronouncement (Reference No. SKKA/21-22/31). Also, new provisions of amended Section 129 w.e.f. 01/01/2022 seems to be very harsh to the bonafide taxpayers as quantum of penalty has been doubled to 200 percent of tax involved. Therefore, department should use this power as given under section129 in reasonable manner and curable defects should be let off with small penalty as proposed by Board Circular No. 64/38/2018-GST Dated 14th September 2018.

COMPANY LAW UPDATES

CA Mayur Agrawal

Reference	Date	Topic	Description
General Circular No.21/2021-	14/12/2021	Clarification of holding of Annual General Meeting (AGM) through Video Conference (VC) or Other Audio Visual Means (OAVM)-reg.	To allow the companies who are proposing to organize AGMs in 2022 for Financial Year ended/ ending any time before/ on 31.03.2022 through VC or OAVM as per respective due dates by 30th June, 2022 in accordance with the requirements laid down in Para 3 and Para 4 of the General Circular No. 20/2020 dated 05.05.2020 https://www.mca.gov.in/bin/dms/getdocument?mds=%252FsmI3Qxz3XlO4y8gLsakgg%253D%253D&type=open
General Circular No.22/2021-	29/12/2021	Relaxation on levy of additional fees in filing of e-forms AOC-4, AOC-4 CFS, AOC-4 XBRL, AOC-4 Non XBRL and MGT-7/ MGT-7A for the financial year ended on 31.03.2021 under Companies Act, 2013 reg-	No additional fees shall be levied upto 15.02.2022 for filing of e-forms AOC-4, AOC-4 CFS, AOC-4 XBRL, AOC-4 Non XBRL and MGT-7/ MGT-7A for the financial year ended on 31.03.2021 https://www.mca.gov.in/bin/dms/getdocument?mds=y7MsuJR2BoOvDvpg8FREsg%253D%253D&type=open
General Circular No.01/2022-	14/02/2022	Relaxation on levy of additional fees in filing of e-forms AOC-4, AOC-4 CFS, AOC-4 XBRL, AOC-4 Non XBRL and MGT-7/ MGT-7A for the financial year ended on 31.03.2021 under Companies Act, 2013 reg-	No additional fees shall be levied upto 15.03.2022 for filing of e-forms AOC-4, AOC-4 CFS, AOC-4 XBRL, AOC-4 Non XBRL and MGT-7/ MGT-7A for the financial year ended on 31.03.2021 https://www.mca.gov.in/bin/dms/getdocument?mds=dJwPZuhvXhaSatUCw9YnZA%253D%253D&type=open

- Notification under section 67 of LLP Act 2008- Notification dated 11/02/2022In exercise of the powers conferred by sub-section (1) of section 67 of the Limited Liability Partnership Act, 2008 (6 of 2009), the Central Government hereby directs that the provision of sections 90, 164, 165, 167, sub-section (5) of section 206, sub-section (3) of section 207, 252 and section 439 of the Companies Act, 2013 (18 of 2013), shall apply to LLP.

  https://www.mca.gov.in/bin/dms/getdocument?mds=s3NAd1DMJP%252Bb4D3KxSkX1Q%253D%253D&type=open

- Notification under section 67 of LLP Act 2008- Notification dated 11/02/2022In exercise of the powers conferred by section 76A of the Limited Liability Partnership Act, 2008 (6 of 2009), the central Government appoints following ROC as adjudicating officers for the purpose of the said Act in respect of jurisdiction indicated against each Registrar

  https://www.mca.gov.in/bin/dms/getdocument?mds=KQD48QkGMOYDLF8qSKIbIA%253D%253D&type=open

- Companies (Accounts) Amendment Rules, 2022- reg- Notification dated 11/02/2022In exercise of the powers conferred by sub-section (1) and (3) of section 128, sub section 129, section 133, section 134, sub section (4) of section 135, sub section (1) of section 136, section 137 and section 138 read with section 469 of the Companies Act, 2013 The Central Government hereby makes the following rules to further amend the Companies (Accounts) Rules, 2014

  https://www.mca.gov.in/bin/dms/getdocument?mds=adQPpN3U8Y7Llcmy0C8FvA%253D%253D&type=open

- Commencement notification for section 1 to 29 of LLP (Amendment) Act 2021- Notification dated 11/02/2022 In exercise of the powers conferred by sub-section (2) of section 1 of the Limited Liability Partnership (Amendment) Act, 2021 (31 of 2021), the Central Government hereby appoints the 01st day of April, 2022 as the date on which the provisions of sections 1 to 29 of the said Act shall come into force.

  https://www.mca.gov.in/bin/dms/getdocument?mds=vkSqd8xttaHgc57aBt3FcQ%253D%253D&type=open

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