

Ref. No. DTPA/Rep/22-23/001

26<sup>th</sup> November, 2022

Smt. Nirmala Sitharaman  
Hon'ble Minister of Finance and Corporate Affairs  
Government of India  
Department of Revenue  
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New Delhi - 110001  
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Respected Madam,

**Sub: Pre-Budget Memorandum for 2023-24**

Direct Taxes Professionals' Association, popularly known as 'DTPA', established in the year 1982 is a Kolkata based Association consisting of Chartered Accountants, Advocates, Company Secretaries, Cost Accountants and Tax Practitioners.

We would like to make following suggestions on Direct Taxes and GST as our Pre-Budget Memorandum for 2023-24:

A. Direct Taxes

1. Transfer of Rural Agricultural land

[Relevant Provisions: Section 2(14), 115JB of Income Tax Act, 1961]

**Issue:** Transfer of Rural Agricultural land is chargeable to tax for calculation of MAT u/s 115JB.

**Existing Provision:** Income on transfer of Rural agricultural land is not excluded from the calculation of book profit.

**Recommendation:** As agricultural land is not covered under the definition of Capital asset, capital gains on transfer of the same is not taxed. Suitable provisions may be introduced to exclude this Capital gain while calculating Book Profit for the purpose of MAT.

## 2. Filing of Revised Return

[Relevant Provisions: Section 139(5) of Income Tax Act, 1961]

**Issue:** Extension of due date for filing revised return.

**Existing Provision:** As per the current provisions, due date is 31st December of the respective assessment year.

**Recommendation:** It is suggested that the time for filing revised return be extended till the end of the relevant assessment year for the benefit of taxpayers.

## 3. Disposal of Rectification Petition

[Relevant Provisions: Section 154(8), 246A of Income Tax Act, 1961]

**Issue:** Delay in disposing of Rectification petition and filing of appeal for such non- action.

**Existing Provision:** As per Section 154(8), an order of rectification in respect of an application filed for rectification shall be passed within a period of six months from the end of the month in which the concerned



application has been received by the concerned Income tax authority. If the AO fails to pass an order of rectification within the period mentioned aforesaid, there is no provision for filing of an appeal and for such non-action of the authorities, the assessee suffers.

**Recommendation:** It is suggested that in section 246A, an appropriate provision may be introduced to allow an assessee to file an appeal against the non-action of the concerned Income tax authority in disposing of a rectification petition within the time limit specified in section 154(8) within the said time limit.

4. **Tax payment at higher rates by eligible taxpayers**

[Relevant Provisions: Section 44AD (1) of Income Tax Act, 1961]

**Issue:** Amendment in 44AD of the Income Tax Act, 1961.

**Existing Provision:** As per the existing provisions, eligible taxpayers have to pay taxes at higher rates even after audit in the first year of operation of the section.

**Recommendation:** Suitable amendments may be made to allow small taxpayers eligible u/s 44AD to pay lower taxes as prescribed in the provisions in the initial year of operation of the section also.

5. **Information required under Clause 44 of Form 3CD**

[Relevant Provisions: Clause 44 of Form 3CD]

**Issue:** Difficulty in maintenance of detailed information required under Clause 44 of Form 3CD.

**Existing Provision:** As per the existing provisions, the taxpayers have to provide breakup of the total expenditure incurred and paid to registered dealers, unregistered dealers, composition dealers and expenditure exempt from GST.

**Recommendation:** It is suggested to exclude the clause from Form 3CD as the required information is not required to be maintained under either the Income Tax or GST laws.

6. **Penalty under section 270A**

[Relevant Provisions: Section 270A, 273B of Income Tax Act, 1961]

**Issue:** Insertion of Section 270A in section 273B.

**Existing Provision:** As per existing provisions, penalty imposed under Section 270A cannot be dropped even if there is a reasonable cause for the default.

**Recommendation:** It is suggested that penalty should not be imposed under section 270A if there is a reasonable cause. Suitable amendment may be made in section 273B.

7. **Amendment in ITR Forms**

[Relevant Provisions: Section 50C of Income Tax Act, 1961]

**Issue:** Changes in ITR form that allows capital gains to be modified.

**Existing Provision:** As per existing provisions, if the assessee is not satisfied with the Stamp duty valuation and finds it to be unreasonably high,



he can ask the AO to refer the valuation to the DVO. As of now, ITR does not provide any facility to the assessee to opt for valuation by the DVO and the Stamp duty valuation is taken as final.

**Recommendation:** It is suggested to amend ITR Forms to allow taxpayers to opt for valuation by DVO in suitable cases.

8. **Revision in limits for conversion of LLP into company**

[Relevant Provisions: Section 47(xiiiib) of Income Tax Act, 1961]

**Issue:** Revision in limits for conversion of LLPs into Companies.

**Existing Provision:** As per the existing provisions, conversion of LLPs to companies does not constitute a transfer if:

- total sales, turnover or gross receipt of the business of the company in the preceding previous years in which conversion takes place does not exceed Rs. 60 lakhs.
- total value of assets in 3 preceding previous years in which conversion takes place does not exceed Rs. 5 crores.

**Recommendation:** It is suggested these limits be revised in line with the threshold prescribed for small companies as per MCA guidelines (presently paid-up capital of Rs 4 crores and turnover of Rs 40 crores). This would enable smooth conversion for small companies.

9. **Capital gain exemption to LLPs in case of merger/demerger**

[Relevant Provisions: Section 47(vi) & (vib) of Income Tax Act, 1961]

**Issue:** Capital gains exemption in case of merger/demerger of LLPs.

**Existing Provision:** As per existing provisions, the exemption from capital gains is restricted to companies and does not apply to LLPs.

**Recommendation:** It is suggested that exemption of Capital gains provided to companies in case of merger/demerger, should be provided to LLPs as well.

10. **No time limit for disposal of appeal by CIT(Appeals)**

[Relevant Provisions: Section 246A of Income Tax Act, 1961]

**Issue:** Implementation of time limits and speedy process for the disposal of appeals.

**Existing Provision:** As per existing provisions, there is no time limit for the disposal of appeals by the CIT(Appeals).

**Recommendation:** It is suggested a reasonable time limit for disposal of appeals by the CIT(Appeals) should be fixed wherein delays attributable to the appellant may be excluded. Also, copies of submissions and documents filed by the appellant should be mandatorily provided to the AO to afford him an opportunity to present his views before the CIT(Appeals).

11. **Alternate Minimum Tax (AMT) for firms/ LLPs**

[Relevant Provisions: New regime- Section 115BAC of Income Tax Act, 1961]



**Issue:** Removal of Alternate Minimum Tax (AMT) for firms/ LLPs.

**Existing Provision:** As per existing provisions, firms/ LLPs have to pay tax at higher of AMT or normal tax rates.

**Recommendation:** Companies under the new tax regime do not have to pay MAT. It is suggested to remove AMT for firms/LLPs on similar lines.

12. **No option for new regime in belated returns**

[Relevant Provisions: New regime- Section 139(5) of Income Tax Act, 1961]

**Issue:** Benefit of opting for new regime not provided in belated returns.

**Existing Provision:** As per existing provisions, assessee is not allowed to opt for new regime even though it is beneficial if the return is belated. This puts the assessee at an additional disadvantage.

**Recommendation:** It is suggested that belated return filers should also be allowed to opt for the new tax regime.

13. **Fair Market Value of property, other than immovable property including Shares and Securities or capital asset being land or building**

[Relevant Provisions: New regime- section 56(2)(viib), 56(2)(x)(a) and 50CA of Income Tax Act, 1961]

**Issue:** No Safe Harbor limit in case of section 56(2)(viib), 56(2)(x)(a) and 50CA similarly as available in case of immovable property /capital asset being land or building under section 50C, 43CA and 56(2)(x)(b).

**Existing Provision:** As per existing provisions, in order to avoid deeming application, assessee is required to make such transactions based on Fair Market Value (FMV). However, sometimes practically it is not possible for the assessee to execute such transactions exactly at FMV and there may be a little deviation. It is seen that in such cases even little deviation from the FMV causes unnecessary litigation which in most of the cases are decided in favour of the assessee at appellate forum.

**Recommendation:** It is suggested that a safe harbor limit of 10% be allowed with respect to FMV as arrived following rule 11UA for section 56(2) (viib), 56(2)(x)(a) and 50CA from the date of insertion of rule 11UA in Income Tax Rules in order to avoid unnecessary litigation in such matters.

**B. GST**

**14. ITC reversal for failure to pay to suppliers within 180 days**

[Relevant Provisions: Second Proviso to section 16(2) of CGST Act, 2017]

**Issue:** ITC reversal for failure to pay to suppliers within 180 days.

**Existing Provisions:** Second proviso to section 16(2) provides that if recipient fail to pay to the supplier amount towards the value of supply along with tax payable thereon within 180 days from the date of issue of invoice, ITC availed on such supplies shall be added to the output tax liability along with interest thereon.



Payment terms depends upon the mutual agreement between the parties. Credit from Suppliers is an important source of short-term credit facility specially in the case of small businesses where they may find it difficult to get working capital loan from the banks. These small entities play an important role in supply chain and employment generation. This proviso adversely affects such suppliers.

**Recommendation:** This provision should either be omitted or registered person upto to a certain threshold limit of aggregate turnover should be excluded. Our suggestion for aggregate turnover is 20 crores.

15. **ITC blockage on standard/normal loss arising out of manufacturing process**

[**Relevant Provisions: Section 17(5)(h) of the CGST Act 2017**]

**Issue:** Denial of Input tax credit on standard/normal loss

**Existing Provisions:** Section 17(5)(h) of the CGST Act 2017 provides that a registered person is not eligible to avail ITC on goods lost. Ambiguity lies as to whether ITC on normal loss arising out of manufacturing process is covered under this clause or not. It has been seen in many cases that department is raising demand for reversal of ITC on standard/normal loss arising during manufacturing process therefore increasing the cost of manufacture of products.

**Recommendation:** It is suggested that suitable amendments should be brought in to clarify that normal/standard loss shall be outside the ambit of section 17(5)(h).

16. Interest on delayed set-off of cash liability

[Relevant Provisions: Proviso to Section 50(1) of CGST Act, 2017]

**Issue:** Interest on delayed set-off of liability where cash ledger has been already credited with the requisite payment.

**Existing Provisions:** Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall, for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent, as may be notified by the Government, on the recommendation of the Council.

Proviso to Sub Section (1) of Sec. 50 was amended to substitute retrospectively with effect from 1st July 2017, vide section 112 of the Finance Act 2021, to charge interest on net cash liability w.e.f. 1st July 2017.

Interest is computed on the net tax liability and debited from Electronic Cash Ledger after Input Tax Credit is utilised. In many cases, it has been noticed that though the amount has been paid in CASH ledger by the registered person, however, due to delay in reflection in cash ledger, delay in set-off of the amount in GSTR 3B, interest liability is being charged by the department.

**Recommendation:** It is suggested that in cases where the cash ledger has already been credited within the due date with the net cash liability to be paid and which has only been set-off after the due date, no interest should be charged in such cases as the registered person has already made the payment



of his cash liability and setting off of such liability subsequently is only a procedural matter for which he should not be penalised as he does not gain anything in the process as the amount paid by him has already been debited from his bank account. Similar provisions exist in case of advance tax payment under Income Tax Act, 1961.

17. **Interest on annual reversal of Input tax credit under Rule 42/43 of CGST Rules, 2017**

[Relevant Provisions: Rule 42/43 of CGST Rules, 2017]

**Issue:** Interest on annual reversal of ITC linked to section 50(1) instead of section 50(3) of CGST Act, 2017

**Existing Provisions:** Rule 42 and 43 of CGST Rules, 2017 provide that reversals should be computed annually and done vide FORM DRC-03 or in FORM GSTR-3B filed for the month of September of succeeding financial year. It has been stated that interest for the said reversal shall be done at the rate specified in section 50(1) of CGST Act 2017.

**Recommendation:** It is suggested that Interest on Input tax credit reversal should be linked to section 50(3) of the CGST Act 2017 instead of section 50(1).

18. **Refund on account of inverted duty structure**

[Relevant Provisions: Section 54(3) of CGST Act, 2017 read with Rule 89(5) of CGST Rules, 2017]

**Issue:** Revision in formula for calculating refund

**Existing Provisions:** As per the statutory provisions stated above, in the case of refund on account of inverted duty structure, refund of input tax credit is be granted as per the following formula: -

*Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC + Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services.*

Above formula for claiming Refund was revised in line with the Directives from Supreme Court. to establish rationality/ balance.

**Recommendation:** It is suggested that the amendment in above formula should be given retrospective effect to establish the same rationale, even for the earlier periods.

19. **Issue of order in direction of the appellate authority, Tribunal or court**

[Relevant Provisions: Section 75(3) of CGST Act, 2017]

**Issue:** Two years' time to issue order

**Existing Provisions:** Sub-section (3) of section 75 provides that where any order is required to be issued in direction of the appellate authority, Tribunal or court, such order shall be issue within two years from the date of communication of such direction.

**Recommendation:** Time limit of two year is very unreasonable and irrational considering the facts that the litigation takes several years at different appellate level. It is suggested that this time limit should be reduced to 6 months.



**20. Full payment of Govt. dues as a result of an appellate order**

**[Relevant Provisions: Section 119 of CGST Act, 2017]**

**Issue:** Full payment of sums due to the government as a result of an order passed by the Appellate tribunal.

**Existing Provisions:** Section 119 provides that notwithstanding that an appeal is preferred to High Court or Supreme Court, sums due to government as a result of an order passed by the Appellate tribunal shall be payable in accordance with the order so passed.

**Recommendation:** Such provision adversely affects the businesses till the issue is reached to a logical conclusion. It is suggested that instead of full payment, there should be provision for a pre-deposit of certain percentage of sums due.

**21. Place of Supply on Ocean Freight services for goods exported from India to a place outside India**

**[Relevant Provisions: Proviso to section 12(8) of IGST Act 2017]**

**Issue:** Denial of Input tax credit to the recipient and Indian shipping line being put in a disadvantageous position as compared to the foreign shipping line.

**Estd. 1982**

**Existing Provisions:**

Exemption on transportation of goods through vessels to a place outside

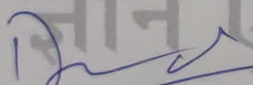
India has been withdrawn with effect from 01.10.2022, thus, bringing such supply within the ambit of taxable supplies.

As per proviso to section 12(8) of IGST Act 2017, where an Indian Shipping Line provides such transportation services to a person registered in India, the place of supply shall be the destination of goods i.e., "96-Other Country" and IGST shall be charged on it.

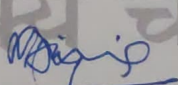
Since the Place of supply in such cases shall not be state of recipient, the availability of input tax credit charged on such supplies are being disputed by the department. Further, blocking of such credits would adversely affect domestic shipping lines as exporters will avail services of foreign shipping line to avoid tax burden.

**Recommendation:** It is suggested that this proviso should be removed. Location of the registered recipient should continue to be the place of supply to avoid disputes. Further, exemption of such services should also continue to put the Indian shipping lines at par with the foreign shipping line.

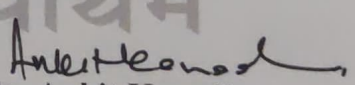
Kindly consider the above suggestions. We assure your honour of our full co-operation in encouraging taxpayers to make proper tax compliance.

  
CA D.S. Agarwala

President-DTPA

  
CA Sanjay Bajoria

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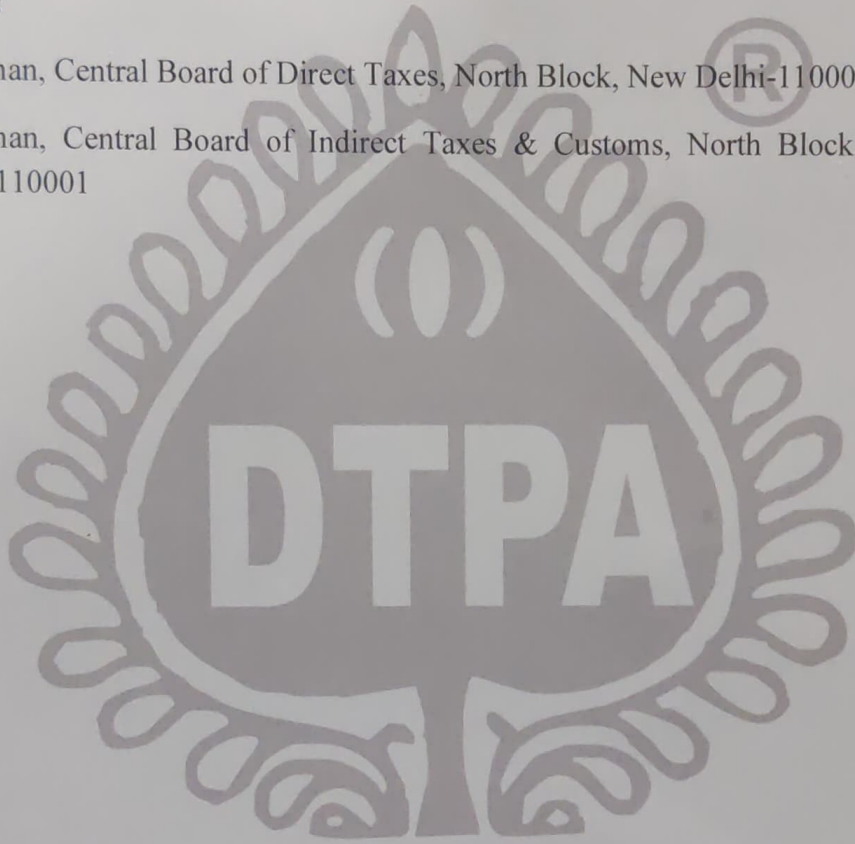
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