Journal

Official Bulletin of Direct Taxes Professionals' Association

Part 3 I June 2016

For Private Circulation only

Theme : UNION BUDGET - 2016

In Pursuit of Knowledge

INDEX

1. Editorial — 01
2. President's Message — 02
3. Proposed Amendments Related to Charitable Institutions - N. M. Ranka, Senior Advocate — 05
4. Levy of Tax if Charitable Institution Ceases to Exist or Converts Into a Non-Charitable Organization - Narayan Jain, Advocate — 08
5. Amendments to Cenvat Credit Rules, 2004 - CA Sushil Kumar Goyal — 11
6. Ratios of recent direct tax judgements - CA P. R. Kothari — 14
7. Union Budget, 2016: Mixed Bag of Contentment and Despair - CA Bimal Jain — 18
8. The Income Declaration Scheme, 2016: Ill - conceived & doomed to fail! - Subash Agarwal, Advocate — 25
9. Penalty provisions under Income Tax Act – Unlearning and relearning consequent to Finance bill 2016 - CA K.K.Chhaparia — 32
10. Rules relating to CENVAT Credit on Input Service and the Statutory Provisions under Negative List regime – No Harmony – controversy continues - CA Rajeev Agarwal — 38
11. Will this Budget Give Start-ups A Start - CA Alok Patnia — 40
12. Amendments to Presumptive Taxation Scheme (44AD/ADA)– Widening of Scope!! - CA Ayush Goel — 42
13. Clarifications on the Income Declaration Scheme, 2016 — 44
14. Circular — 48
14. From the desk of General Secretary — 51
15. New Members List — 53

EDITORIAL BOARD

CA P R. Kothari
Advisor

CA Niraj Harodia
Chairman

CA Mahendra K. Agarwal
Co-Chairman

CA Sunil Surana
(President)
Ex-officio

CA Vikash Parakh
(Secretary)
Ex-officio

CA Rajeev Kumar Agarwal
Nominated Member

CA Roshan Bajaj
Nominated Member

CA Vivek Newatia
Nominated Member

CS Aditi Jhujhunwala
Nominated Member

Editorial

Dear DTPAians,

To begin with, I would like to quote a famous American inventor and system theorist, Mr. Richard Buckminister Fuller, "You never change things by fighting the existing reality. To change something, build a new model that makes the existing model obsolete." With immense delight and happiness, we present you with the issue of DTPA Journal for the month of June, with the subject "Union Budget, 2016".

We hope our last journal of **"Real Estates"**has satisfied you in terms of its design and content. Likely, for this month we have tried to cover "Union Budget, 2016"comprehensively. Our Journal's focus is to give you major insights into **"Union Budget, 2016"**which seems to be broadly focused on the model of sustainable development and presents the most pragmatic view of Govt. priorities and objectives and modus operandi to achieve those.

The nine pillars listed by the Finance Minister that will transform India will be the essence of our discussion. The areas included are tax reforms, ensuring fiscal discipline, infrastructure investment, promoting ease of doing business, agriculture, rural sector, social sector, education and job creation.

I hope this issue on Union Budget, 2016 provides a valuable insight and information. Irequest all the members to share their observations and feedback on this issue which will help us work on the improvement in the construction and contents of the Journal and will also serve as a performance appraisal tool of the Editorial Board. We welcome contributions from all the members who would like to share their knowledge and experience with us for publication in the Journal.

The Annual Conference of DTPA, 2016 will be held on 6th of August, 2016 so we seek your participation in large numbers. We have also requested our IT committee to upload the copy of Journal on our website and share the same through social media as well so as to benefit a larger section of professionals.

We wish to encourage more contributions/ suggestion/feedback from the members to ensure continued success of the journal.

Thank you. We hope you will find this issue informative.

CA. Niraj Harodia

Chairman

DTPA Journal and Other Publication

Email : nharodia@gmail.com

Ph. No. 8017467202

28th June, 2016

FROM THE DESK OF THE President - DTPA

Dear Members,

It gives me immense pleasure to find that the third issue of the Journal of DTPA is in your hand with the arrival of the Monsoon Season. With the Finance Act, 2016 lot of new provisions, compliances and changes have come in specially the **Income Declaration Scheme** which has kicked off from **1st June, 2016**. The Rules have been notified and clarifications have also been issued by CBDT in respect of the Declaration Scheme. I request all the members to request their clients to come forward to avail the Scheme and take maximum benefit out of the same. In this Journal we have tried to cover all the amendments brought in by the Finance Act, 2016 so that we are updated in advising our clients.

From the judicial front, we have received the orders relating to **Section 263** cases pertaining to share capital from the Hon'ble Kolkata High Court. The ITAT Kolkata has also given its verdict in favour of revenue on the applicability of Section 14A to assesses dealing in share and securities. The e-filing of appeals before First Appellate Authority have also become mandatory in respect of all assesses who are required to e-file their return of income.

We are also organizing our **Annual Tax Conference at Taj Bengal, Kolkata on Saturday, the 6th day of August, 2016**. The Theme of the Conference is **"Better Tax Compliance – Role of Professionals"** which is being chaired by our **Past President Sri Narayan Jain** wherein eminent speakers from various parts of our country have been invited to deliberate upon the current issues in taxation. Hon'ble Justice Pinaki Chandra Ghose and Hon'ble Justice R. K. Agrawal, Judges of the Supreme Court, have consented to inaugurate the Conference. **Hon'ble Justice(Retd) Dev Darshan Sud, President, ITAT** and **Mr. Gopal Mukherjee Member (Revenue) CBDT** have also kindly consented to grace the Conference as our dignitaries. The Chairmen for the Technical Sessions are **Shri P. M. Jagtap, Senior Member, ITAT, Kolkata & Shri N. M. Ranka, Sr. Advocate, Jaipur**. Speakers who would be deliberating on the subjects include **Shri R. S. Upadhyay, Pr DIT(Inv), Kolkata, Shri N. K. Poddar, Sr. Advocate, Shri Firoze B Andhyarujina, Sr. Advocate, Shri S. R. Wadhwa, Advocate &CA. Bhupendra Shah.** The detailed programme is also enclosed along with delegate form and advertisement form. I request all the members to avail of the early bird incentives as the seats are limited. The online payment facility is also available for registration.

I am thankful to our **Advisor of Journal Sub-Committee** and our **Past President Sri P. R. Kothariji** and our **Chairman Sri Niraj Harodia** who have meticulously planned the issue of this Journal. Hope this publication will be informative and useful to you.

With Warm Regards.

CA. Sunil Surana,
President

ANNUAL TAX CONFERENCE - 2016

BETTER TAX COMPLIANCE – ROLE OF PROFESSIONALS

On Saturday, the 6th August 2016 at Hotel Taj Bengal, Kolkata

*Every year, the Income Tax Act is undergoing considerable changes and 115 amendments have been made by the Finance Act, 2016. In addition **"The Income Declaration Scheme-2016"** and **"Direct Tax Dispute Resolution Scheme, 2016"** have also been announced. Keeping in view the focus of the Government, theme of this year's conference has been decided as **"Better Tax Compliance- Role of Professionals"**. The stage is also set for introduction of Goods and Service Tax which is expected to be introduced with effect from 1st April, 2017.*

Our Hon'ble Finance Minister, Mr. Arun Jaitley has said "I am trying to break off from the legacy of the past, which provided for unpredictability. I am conscious of the fact that India needs stability and predictability of taxation regime."

The Government is going ahead for a transparent and a futuristic direct tax regime, including reduction in corporate tax over the next four years and also consequent rationalized removal of various exemptions and prospective application of GAAR. Contrary to popular belief, this reduction in the corporate tax rate will, in fact, make India more competitive and enable the companies to create more jobs and invest more.

With huge changes and transformations in the tax regime, our role as professionals has increased manifold and to remain updated with the latest laws and the new tax regime, this conference becomes quite useful. Keeping this in mind, DTPA is organising its Annual Tax Conference on a Theme in tune with the requirement of the current day scenario and strives to contribute towards developing desired Tax Culture culminating to better tax compliance and the economic growth of the country. The delegates will be highly benefitted and will be able to keep in tune with the challenges arising due to fine-tuning of the entire economic system of the country and significant changes in tax laws.

*We are glad that **Hon'ble Mr. Justice Pinaki Chandra Ghose** and **Hon'ble Mr. Justice R.K. Agrawal, Judges, Supreme Court of India** have kindly consented to inaugurate the Conference. We have invited other eminent dignitaries and speakers to deal with the emerging issues.*

SUNIL SURANA	**NARAYAN JAIN**	**VIKASH PARAKH**	**SANJAY BAJORIA**
President	Chairman, Conference Committee	Secretary	Convenor- Study Circle

DELEGATE Fee ☞ DTPA Member ₹ 2,000/- (₹ ,1750/- if registered by 9.7.2016)
Non-Member ₹ 2,200/- • Corporate Delegate ₹ 3,000/-

Online Registration at www.dtpa.org

Cheque in favour of **"DTPA Chartered Accountants' Study Circle-EIRC"**

PROGRAMME

Registration	:	9:00 AM to 9:30 AM
Inaugural Session	:	9.30 AM to 11:00 AM
Inauguration By	:	**Hon'ble Mr. Justice Pinaki Chandra Ghose,** Judge, Supreme Court. **Hon'ble Mr. Justice R. K. Agrawal,** Judge, Supreme Court.
Chief Guest	:	**Hon'ble Mr. Justice (Retd.) Dev Darshan Sud,** President ITAT
Guest of Honour	:	**Mr. Gopal Mukherjee,** Member (Revenue), CBDT

TEA BREAK : 11:00 AM TO 11:15 AM

FIRST TECHNICAL SESSION : 11:15 AM to 1:15 PM

Chairman	:	**Mr. P. M. Jagtap,** Hon'ble Accountant Member, ITAT, Kolkata
Topics		**Speaker**
1. Taxation aspects in case of Joint Development Agreements	:	**Mr. R. S. Upadhyay,** Principal DIT (Inv.), Kolkata **CA. Bhupendra Shah,** Mumbai
2. Issues in Taxation of Charitable Trusts	:	**Mr. Firoze B. Andhyarujina,** Sr. Advocate, Mumbai

LUNCH BREAK : 1:15 PM TO 2:00 PM

SECOND TECHNICAL SESSION : 2:00 PM TO 4:00 PM

Chairman	:	**Mr. N. M. Ranka,** Sr. Advocate, Jaipur
Topics		**Speaker**
3. Expanding scope of deemed Income	:	**Mr. S. R. Wadhwa,** Advocate, New Delhi
4. New Penalty provisions under Income Tax Act	:	**Mr. N. K. Poddar,** Sr. Advocate, Kolkata

PANEL DISCUSSION : 4:00 PM TO 5:00 PM

Topic : Income Declaration Scheme

Panelists	:	**Mr. A. A. Shanker,** Principal CIT-3, Kolkata **Mr. Firoze B. Andhyarujina,** Sr. Advocate, Mumbai **Mr. N. K. Poddar,** Sr. Advocate, Kolkata **Mr. S. R. Wadhwa,** Advocate, New Delhi **CA. Bhupendra Shah,** Mumbai
Moderator	:	**Mr. Narayan P. Jain,** Advocate, Kolkata

PROPOSED AMENDMENTS RELATED TO CHARITABLE INSTITUTIONS

N. M. Ranka, Senior Advocate

1. INTRODUCTION :

It has been noticed that charitable institutions are set up with objects of charitable nature, seeking registration u/s. 12AA of the Income Tax Act (in short the Act); accumulating vast funds after availing of benefit of deduction u/s. 11 – 13 of the Act, are closed or merged or converted and avoid taxation on accretion of income on account of no specific provision in the Act. To prevent abuse of law it has been proposed by the Finance Bill, 2016 to provide that where a trust or institution registered under section 12AA of the Income-tax Act ceases to be charitable organization, the amount of net asset as on date of such conversion which represents the income accreted to the trust over a period of time shall be charged to additional income-tax at the maximum marginal rate. Similarly, if on dissolution a charitable trust or institution does not transfer all its assets within one year of dissolution to another charitable organization, the amount of accreted income to the extent not transferred shall be subject to this levy of additional income-tax. It is an over-riding provision and a self-contained code.

2. THE NEW CHAPTER :

A new chapter XII-EB under the heading ***"Special provisions relating to tax on accreted income of certain trusts and institutions"*** containing Section 115-TD, 115-TE and 115-TF have been proposed to be inserted. This Chapter has been explained in Notes on Clause 60 of the Bill reading as under :-

"Sub-section (1) of the proposed new section 115-TD provides that notwithstanding anything contained in any other provision of the Act, a trust or institution registered under section 12AA in any previous year shall be liable to tax on accreted income in the event of certain eventualities mentioned in the proposed new section, as on the specified date, at the maximum marginal rate, in addition to the income-tax chargeable in respect of the total income.

Sub-section (2) of the proposed section provides that the accreted income for the purposes of sub-section (1) means the amount by which the aggregate fair market value of the total assets of the trust or the institution, as on the specified date, exceeds the total liability of such trust or institution computed in accordance with the method of valuation as may be prescribed. It is further proposed to provide that while computing the accreted income in respect of a case referred to in clause (c) of sub-section (1), assets and liabilities, if any, related to such asset, which have been transferred to the trust, institution or other organization as specified therein within a period of twelve months from the date of dissolution, shall be ignored.

Sub-section (3) of the proposed section provides for specific situations under which a trust or institution can be said to have converted into any form which is not eligible for grant of registration The additional income-tax to be charged shall be in addition to the income-tax chargeable in respect of the total income of such trust or institution whether income-tax is payable by the trust or the institution on its total income or not. It also provides that the amount of tax shall be remitted within fourteen days of the date of occurrence of events specified in various situations.

The proposed section 115-TE provides for the levy of interest, in case of failure to pay tax within the time provided, at the rate of one per cent. for every month and part thereof of such failure. The proposed section 115-TF provides that in case of failure of payment of tax, the principal officer or the trustee and the trust or the institution shall be deemed to be an assessee in default in respect of the amount of tax payable and all provisions of the Income-tax Act relating to recovery and collection of taxes shall apply to them."

Conversion has been defined, if (i) the registration granted to it u/s. 12AA has been cancelled u/s. 12AA(3) or (4) of the Act; or (ii) it has adopted or undertaken modification of its objects which do not conform to the conditions of registration and it has not applied for fresh registration in the said previous year; or has filed application for registration, but application has been rejected. These provisions would be applicable from

1.6.2016 and, therefore, on conversions or merger or dissolution on and after 1.6.2016. It is prospective and applicable from the Assessment Year 2017-18. Date has been stated and explained.

3. **MEMORANDUM EXPLAINING THE CLAUSE :**

It contain the heading ***"Levy of tax where the charitable institution ceases to exist or converts into a non-charitable organization"*** and is extracted hereunder :

"The existing provisions of section 2(24) of the Act define "Income" in an inclusive manner. Any voluntary contribution received by a charitable trust or institution or a fund is included in the definition of income. Sections 11 and 12 of the Act provide for exemption to trusts or institutions in respect of income derived from property held under trust and voluntary contributions, subject to various conditions contained in the said sections. The primary condition for grant of exemption is that the income derived from property held under trust should be applied for the charitable purposes, and where such income cannot be applied during the previous year, it has to be accumulated and invested in the modes prescribed and applied for such purposes in accordance with various conditions provided in the section. If the accumulated income is not applied in accordance with the conditions provided in the said section within a specified time, then such income is deemed to be taxable income of the trust or the institution. Section 12AA provides for registration of the trust or institution which entitles them to be able to get the benefit of sections 11 and 12. It also provides the circumstances under which the registration can be cancelled. Section 13 of the Act provides for the circumstances under which exemption under section 11 or 12 in respect of whole or part of income would not be available to a trust or institution.

The society or a company or a trust or an institution carrying on charitable activity may voluntarily wind up its activities and dissolve or may also merge with any other charitable or non-charitable institution, or it may convert into a non-charitable organization. In such a situation, the existing law does not provide any clarity as to how the assets of such a charitable institution shall be dealt with. Under provisions of section 11 certain amount of income of prior period can be brought to tax on failure of certain conditions. However, there is no provision in the Act which ensure that the corpus and asset base of the trust accreted over period of time, with promise of it being used for charitable purpose, continues to be utilized for charitable purposes and is not used for any other purpose. In the absence of a clear provision, it is always possible for charitable institutions to transfer assets to a non-charitable institution. There is a need to ensure that the benefit conferred over the years by way of exemption is not misused and to plug the gap in law that allows the charitable trusts having built up corpus/wealth through exemptions being converted into non-charitable organization with no tax consequences.

In order to ensure that the intended purpose of exemption availed of by trust or institution is achieved, a specific provision in the Act is required for imposing a levy in the nature of an exit tax which is attracted when the organization is converted into a non-charitable organization or gets merged with a non-charitable organization or does not transfer the assets to another charitable organization.

Accordingly, it is proposed to amend the provisions of the Act and introduce a new Chapter to provide for levy of additional income-tax in case of conversion into, or merger with, any non-charitable form or on transfer of assets of a charitable organization on its dissolution to a non-charitable institution. The elements of the regime are :-

(i) The accretion in income (accreted income) of the trust or institution shall be taxable on conversion of trust or institution into a form not eligible for registration under section 12AA or on merger into an entity not having similar objects and registered under section 12AA or on non-distribution of assets on dissolution to any charitable institution registered under section 12AA or approved under section 10(23C) within a period twelve months from dissolution.

(ii) Accreted income shall be amount of aggregate of total assets as reduced by the liability as on the specified date. The method of valuation is proposed to be prescribed in rules. The asset and the liability of the charitable organization which have been transferred to another charitable organization within specified time will be excluded while calculating accreted income.

(iii) The taxation of accreted income shall be at the maximum marginal rate.

(iv) This levy shall be in addition to any income chargeable to tax in the hands of the entity.

(v) This tax shall be final tax for which no credit can be taken by the trust or institution or any other person, and like any other additional tax, it shall be leviable even if the trust or institution does not have any other income chargeable to tax in the relevant previous year.

(vi) In case of failure of payment of tax within the prescribed time a simple interest at 1% per month or part of it shall be applicable for the period of non-payment

(vii) For the purpose of recovery of tax and interest, the principal officer or the trustee and the trust or the institution shall be deemed to be assessee in default and all provisions related to the recovery of taxes shall apply. Further, the recipient of assets of the trust, which is not a charitable organization, shall also be liable to be held as assessee in default in case of non-payment of tax and interest. However, the recipient's liability shall be limited to the extent of the assets received.

4. ANALYSIS AND OBSERVATIONS :

(i) **Applicability** : Applicability is on a charitable society, or a company or a trust or institution carrying on charitable activity registered u/s. 12AA of the Act, enjoying deduction u/s. 11-13 of the Act, on its voluntary winding up, or dissolution or merger with any other charitable or non-charitable institution or conversion whereby the existing accretion of income, assets and liabilities etc. are transferred to or converted into another non-charitable organization. It is inapplicable on institutions approved u/s. 10(23C) of the Act.

(ii) **Exception** : If the assets and accretion of income is transferred to (i) any charitable institution registered under section 12AA; or (ii) approved under section 10(23C) within a period of 12 months from the date of dissolution; or (iii) merge into an entity having similar objects and registered u/s. 12AA; or (iv) converted into any other organization eligible for registration u/s. 12AA of the Act. Thus when transfer is to any institution registered / registrable u/s. 12AA, the Chapter would be non-applicable.

(iii) **Accreted income** : Accreted income shall be quantified being aggregate of total assets as reduced by the liability on the specified date. Method of valuation of assets and liabilities would be prescribed in rules by the Central Board of Direct Taxes. While working out such amount transfer to above stated excepted institutions would be excluded. Net amount would be accreted income liable to additional tax.

(iv) **Rate of tax** : Accreted income so computed shall be charged to income-tax at the maximum marginal rate as defined u/s. 2(29C) including surcharge; which shall be in addition to any income chargeable to tax in the hands of such transferor institution. No credit for such final tax can be taken by the institution or any other person. It shall be additional tax on such event.

(v) **Liability for payment of the additional tax** : It would commence on expiry of thirteen days from (i) receipt of cancellation of registration order; or (ii) end of the previous year in which objects have been modified; or (iii) the date of receipt when fresh registration application has been rejected; or (iv) the date of merger; (v) the date on which the period of twelve months permitted for transfer to other registered charitable institution or fund or trust or university referred to in Section 10(23C) (iv), (vi), (via) etc. Explanation has been added to explain the date of conversion, specified date of merger, dissolution etc.

(vi) **Consequences on failure to pay** : Interest shall be chargeable at 1% per month or part of it, for the period of non-payment. Tax and interest would be recoverable from the institution transferring the accreted income and joint liability shall be on the recipient institution to the extent of the assets received. Both would be deemed as assessee-in-default and recovery provisions would apply.

5. CONCLUSION :

It is a good provision and would plug loophole of avoidance of tax and stop misuse on account of grey area for liability to tax on accreted income. Genuine charitable institutions should not take shelter by such exigency. It is unethical and disservice to the Nation.

(Article) Proposed amendments relating to charitable institutions (April, 16) (I)

LEVY OF TAX IF CHARITABLE INSTITUTION CEASES TO EXIST OR CONVERTS INTO A NON-CHARITABLE ORGANIZATION

Narayan Jain, Advocate

1. Introduction

Sections 11 and 12 of the Income tax Act provide for exemption to trusts or institutions in respect of income derived from property held under trust and voluntary contributions, subject to certain conditions. The income derived from property held under trust should be applied for the charitable purposes, and where such income cannot be applied during the previous year, it may be accumulated and invested in the modes prescribed and applied for such purposes in subsequent years as prescribed. If the accumulated income is not applied in accordance with the conditions provided in the said section within a specified time, then such income is deemed to be taxable income of the trust or the institution. Section 12AA provides for registration of the trust or institution which entitles them to get the benefit of sections 11 and 12. It also provides the circumstances under which the registration can be cancelled. Section 13 of the Act provides for the circumstances under which exemption under section 11 or 12 in respect of whole or part of income would not be available to a trust or institution.

2. Proposed New section 115TD

2.1 A new section 115TD has been proposed in the Finance Bill, 2016 for imposing a levy in the nature of an **exit tax** called additional income-tax, which will be attracted when any trust, society or the organization is converted into a non-charitable organization or gets merged with a non-charitable organization or on transfer of assets of a charitable organisation on its dissolution to a non-charitable institution.

2.2 Tax at maximum marginal Rate : In case of conversion of trust or institution into a form not eligible for registration u/s 12 AA or on merger into an entity not having similar objects and registered under section 12AA or on non-distribution of assets on dissolution to any charitable institution registered u/s 12AA or approved under section 10(23C) within a period 12 months from dissolution, the accreted amount of income of assets of the trust or institution shall be taxable at maximum marginal rate of 30 per cent.

2.3 What is Accreted income : The accreted income means the amount by which the aggregate fair market value of the total assets of the trust or the institution, as on the specified date, exceeds the total liability of such trust or institution computed in accordance with the prescribed method of valuation. The asset and the liability of the charitable organisation which have been transferred to another charitable organisation within specified time will be excluded while calculating accreted income.

2.4 "**specified date**" means,—

(a) the date of conversion in a case where assets of the trust or institution are converted into any form which is not eligible for grant of registration under section 12AA;

(b) the date of merger in a case such trust or institution is merged with any entity other than an entity which is a trust or institution having objects similar to it and registered under section 12AA; or

(c) the date of dissolution in a case where such trust or institution failed to transfer upon dissolution all its assets to any other trust or institution registered under section 12AA or to 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 section 10(23C), within a period of 12months from the end of the month in which the dissolution takes place.

2.5 Time Limit for payment of tax and Persons responsible for Payment:

Section 115TD provides that the principal officer or the trustee of the trust or the institution, as the case may be, and the trust or the institution shall also be liable to pay the tax on accreted income to the credit of the Central Government within 14 days from,—

(i) the date on which the order cancelling the registration is received by the trust or the institution in a case the registration granted to it under section 12AA has been cancelled;

(ii) the end of the previous year in a case the trust has adopted or undertaken modification of its objects which do not conform to the conditions of registration and it has not applied for fresh registration under section 12AA in the said previous year;

(iii) the date on which the order rejecting the application is received by the trust or the institution in a case the trust has filed application for fresh registration under section 12AA but the said application has been rejected.

(iv) the date of merger in a case such trust or institution is merged with any entity other than an entity which is a trust or institution having objects similar to it and registered under section 12AA; or

(v) the date on which the period of 12 months expires from the date of dissolution in a case where such trust or institution failed to transfer upon dissolution all its assets to any other trust or institution registered under section 12AA or to 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 section 10(23C).

2.6 Persons responsible for Payment or who may be deemed to be assessee in default :

a) Section 115TD(4) provides that notwithstanding that no income-tax is payable by a trust or the institution on its total income computed in accordance with the provisions of this Act, the tax on the accreted income under section 115TD(1) shall be payable by such trust or the institution.

b) Section 115TD(5) provides that the principal officer or the trustee of the trust or the institution, as the case may be, and the trust or the institution shall also be liable to pay the tax on accreted income to the credit of the Central Government

c) Section 115TF(1) provides that if any principal officer or the trustee of the trust or the institution and the trust or the institution does not pay tax on accreted income in accordance with the provisions of section 115TD, then, he or it shall be deemed to be an **assessee in default** in respect of the amount of tax payable by him or it and all the provisions of the Income tax Act for the collection and recovery of income-tax shall apply.

d) Section 115TF(2) provides that notwithstanding anything contained in section 115TF(1), in a case where the tax on accreted income is payable under the circumstances referred to in clause (c) of section 115TD(1), the person to whom any asset forming part of the computation of accreted income under sub-section (2) thereof has been transferred, shall be deemed to be an assessee in default in respect of such tax and interest thereon and all the provisions of the Income tax Act for the collection and recovery of income-tax shall apply, provided that the liability of such person shall be limited to the extent to which the asset received by him is capable of meeting the liability.

2.7 Interest in case of failure of payment of tax :

Section 115TE provides that where the principal officer or the trustee of the trust or the institution and the trust or the institution fails to pay the whole or any part of the tax on the accreted income referred to in section 115TD(1), within the time allowed under section 115TD(5) of that section, he or it shall be liable to pay simple interest at the rate of one per cent for every month or part thereof on the amount of such tax for the period beginning on the date immediately after the last date on which such tax was payable and ending with the date on which the tax is actually paid.

2.8 Effective Date for the new provisions :

These amendments will take effect from 1st June, 2016. But as the accumulated or accreted income of the earlier years is also proposed to be taxed, practically it tantamount to tax retrospectively. It is in a sense also a case of double taxation as the income of the trust might have already suffered tax if the Trust

did not spent 85 per cent or 75 per cent of its income or failed in applying the income within one year in case option was exercised under Explanation (2) below section 11(1) or to the extent accumulated amount was not utilized within the specied period of accumulation u/s 11(2).

The practical difficulty will arise in collection of tax if the assets are transferred from one entity to another and instead of liquid money in Bank account or fixed deposit the assets are in the form of immovable property. It would be better if the rate of tax is lowered and tax is collected in the form of TDS / TCS say @ 10 per cent on transfer of such assets or income. After all the recipient NGO is also engaged in social activities even if not registered under section 12AA. The reality of life is that NGOs play an important role in imparting medical, educational and relief to poor in our country and also carrying objects of general public utility, which supplement the welfare measures undertaken by the Government.

2.9 The action against Trust/ Institution is continuing for many years

It may be noted that for last several years the benefits to the trusts have been curtailed or new restrictions imposed by the Central Government. Some such steps are as under :

a) The period for accumulation under section 11(2) used to be 10 years which was reduced to 5 years by the Finance Act, 2001 in respect of income accumulated or set apart on or after 1st April, 2001.

b) The statutory accumulation under section 11(1)(a) was permitted upto 25 per cent and the asme was reduced to 15 per cent by the Finance Act, 2002 w.e.f. asst year 2003-04

c) The definition of charitable purpose under section 2(15) was tinkered with from time to time to restrict the benefit to the Trusts. For example section 2(15) was substituted by the Finance Act, 2008 with effect from asst year 2009-10. A proviso was added to provide that the advancement of any other object of general public utility shall not be a charitable purpose if it involves the carrying of any activity in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business for a cess or fee or any other consideration irrespective of the nature of use or application or retention of income from such activity.

d) The 2nd proviso was inserted by the Finance Act, 2010 w.r.e.f. asst year 2009-10 to provide the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is Rs. 10 Lakhs (incvresade to Rs.25 Lakhs with effect from asst. year 2012-13) or less in the previous year.

e) The 3rd proviso was inserted by the Finance Act, 2015 w.r.e.f. asst year 2016-17 to provide that the advancement of any other object of general public utility shall not be a charitable purpose if it involves the carrying of any activity in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business for a cess or fee or any other consideration irrespective of the nature of use or application or retention of income from such activity, unless –

- Such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility and
- The aggregate receipt from such activities during the previous year **do not exceed 20 per cent of the total receipts of the trust** or the institution undertaking such activities of that previous year.

2.10 The Government need to review its policy :

The Government need to review its policy in respect of the working of the charitable trusts or Institutions in India. The fact should be kept in mind that the Government effort alone are not enough for meeting the enormous necessities of people in practical life. Therefore the Government should act as felicitator in functioning of the trusts and institutions. Wherever any violation is noticed, the Income tax official should help in amending the function of such trust. If necessary, the officials may visit the trusts and render proper advice for streamlining the compliance ny such trust. If required even the Commissioner of Income tax may nominate its representative as a Trustee in such trust. The whole gamut of trusts need support of Income tax department and the Central Government.

Amendments to Cenvat Credit Rules, 2004

CA Sushil Kumar Goyal

Excise Duty paid on inputs and capital goods and Service Tax paid on input services can be allowed as credit for payment of duty by the manufacturer of final products or a provider of output services. Means same set of rules is applicable for a Manufacturer as well as for a service provider. The eligibility of credit, conditions for utilization of credit and various other procedures relating to credit is being governed by Cenvat Credit Rules, 2004. This set of Rules has been amended so many times that hardly anything left original in the Rules. One should always analyse the period of time with the relevant rules, because it may so happens that the provision might not be the same as it is appearing on the reference date. A date wise amendments made in these rules in the financial year 2016 are being discussed hereunder:

Rule 2(a) : Amendment in definition of Capital Goods

- The definition has been expanded to include wagons under sub-heading 8606 92 for transportation by rail. Hence, credit is now also allowed of railway wagons falling under the above heading.
- Credit is now also allowed on equipment or appliance used in an office within a factory and capital goods used for pumping water installed outside the factory for captive consumption within the factory.
- Capital goods below Rs. 10,000/- will now be considered as "input" which would ensure that 100% credit can be claimed in the same financial year in which the goods are received.

[Notification No. 13/2016 - CE (N.T.) dated 01.03.2016 applicable w.e.f. 01.03.2016.]

Rule 2(e) : Amendment in definition of Exempted Service

- Service by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India is being excluded from the definition of "exempted service". This will allow shipping lines to take credit on inputs and input services used in providing output service. [Notification No. 13/2016 - CE (N.T.) dated 01.03.2016 applicable w.e.f. 01.04.2016.]

Rule 2(k) : Amendment in definition of Input

- Credit is now also allowed on inputs used for pumping water for captive consumption.
- The definition is also amended to include capital goods below Rs. 10,000/-.

[Notification No. 13/2016 - CE (N.T.) dated 01.03.2016 applicable w.e.f. 01.04.2016.]

Rule 2(m) : Amendment in definition of Input Service Distributor

- The concept of Input Service Distributor has been expanded to allow for distribution of credit to 3rd party/ outsourced manufacturing units. [Notification No. 13/2016 - CE (N.T.) dated 01.03.2016 applicable w.e.f. 01.04.2016.]

Rule 3: Amendment in Cenvat credit

- Cenvat credit other than credit of National Calamity Contingent duty cannot be utilized for payment of National Calamity Contingent duty an all goods. Previously, the credit cannot be utilized for payment of National Calamity Contingent duty only on goods falling under tariff items 8517 12 10 and 8517 12 90 i.e. Push Button Types and others. [Notification No. 13/2016 - CE (N.T.) dated 01.03.2016 applicable w.e.f. 01.03.2016.]
- Cenvat credit also shall not be utilized for payment of Infrastructure Cess. [Notification No. 13/2016 - CE (N.T.) dated 01.03.2016 applicable w.e.f. 01.03.2016.]
- A provider of output service is allowed to take credit of Krishi Kalyan Cess. However, restrictions have been imposed in respect of utilization and payment of Krishi Kalyan Cess. The Krishi Kalyan Cess paid can be only utilized against the payment of Krishi Kalyan Cess. Such restriction will impact the manufacturers who are not service providers, as they would not be able to avail the credit. [Notification No. 28/2016-CE (N.T.) dated 26.05.2016 applicable w.e.f. 01.06.2016].

Rule 4: Amendment in conditions for allowing Cenvat credit

- An assessee engaged in the manufacture of articles

of jewellery, other than articles of silver jewellery but inclusive of articles of silver jewellery studded with diamond, ruby, emerald or sapphire, falling under chapter heading 7113 of the First Schedule of the Excise Tariff Act, shall be eligible to take credit of capital goods in the same financial year, if his aggregate value of clearances of all excisable goods for home consumption in the preceding financial year, computed in the manner specified in the said notification, did not exceed twelve crore rupees. For others, the limit is still four hundred lakh rupees. [Notification No. 13/2016 - CE (N.T.) dated 01.03.2016 applicable w.e.f. 01.04.2016.]

- Cenvat credit shall also be allowed to a manufacturer of final products in respect of jigs, fixtures, moulds and dies or tools falling only under Chapter 82 of the First Schedule to the Excise Tariff Act, sent by such manufacturer to, another manufacturer for the production of goods or a job worker for the production of goods on his behalf, according to his specifications. This exemption is also available even if such goods are sent by the manufacturer without bringing these goods to his own premises. Thus, tools used in job worker or 3rd party manufacturers can be sent directly from the supplier of tools to those factories. [Notification No. 13/2016 - CE (N.T.) dated 01.03.2016 applicable w.e.f. 01.04.2016.]
- Manufacturers were enabled to remove the finished goods directly from the premises of the job worker by obtaining permission from the Assistant / Deputy Commissioner for 1 year. This period has been increased to 3 years. [Notification No. 13/2016 - CE (N.T.) dated 01.03.2016 applicable w.e.f. 01.04.2016.]
- Credit of service tax paid in a financial year on the one time charges payable in full upfront or in installments, for the service of assignment of right to use any natural resource by Government, local authority or any other person shall be allowed to be taken evenly over a period of 3 years. However, the Service Tax paid on spectrum user charges, license fee, transfer fee charged by the Government on trading of spectrum would be available in the year in which the same is paid. Likewise, Service Tax paid on royalty in respect of natural resources and any periodic payments shall be available as credit in the year in which the same is paid.

  In case of further assignment of such right, credit of balance credit as does not exceed the service tax payable on the consideration charged for further assignment shall be allowed in the same financial year. [Notification No. 24/2016 - CE (N.T.) dated 13.04.2016 applicable w.e.f. 13.04.2016.]

Rule 6: Amendment in reversal of credit

- Rule 6 of Cenvat credit Rules, provides for reversal of credit in respect of inputs and input services used in manufacture of exempted goods or for provision of exempted services, is being redrafted with the objective of simplifying and rationalizing the same without altering the established principles of reversal of such credit.
- Also, where a manufacturer or a provider of output service has failed to exercise the option under sub-rule (3) and follow the procedure provided under sub-rule (3A), the Central Excise Officer on his discretion may allow such manufacturer or provider of output service to follow the procedure and pay the amount calculated for each of the months, *mutatis mutandis* in terms of clause (c) of sub-rule (3A), with interest at the rate of 15% p.a. from the due date for payment till the date of payment thereof.
- Option for reversal of Cenvat credit under sub-rule (1), (2) and (3) of the Rule 6 is now also available to banking company, a financial institution including non-banking financial company along with rule 6(3B).
- Cenvat credit is not allowed on Capital Goods used exclusively in the manufacture of exempted goods or in providing exempted services for a period of two years from the date of commercial production or date of installation of such goods, whichever is later, other than final products or services exempted under notification where exemption is granted based upon value of clearances or services provided in a financial year. Hence, the credit can be claimed after 2 years. Previously, the assessee was not allowed to claim any credit on Capital Goods used exclusively in the manufacture of exempted goods or in providing exempted services.

  [Notification No. 13/2016 - CE (N.T.) dated 01.03.2016 applicable w.e.f. 01.04.2016.]

Rule 7: Amendment in manner of distribution of credit by Input Service Distributor

- The manner of distribution of credit received by an input service distributor is completely rewritten to

allow distribution of credit to an outsourced manufacturing unit. Such outsourced manufacturing unit shall maintain separate account of credit received from each of the input service distributors and shall use it for payment of duty on goods manufactured for Input Service Distributor concerned. The credit of service tax available with the ISD as on 31st of March, 2016 shall not be distributed to an outsourced manufacturing unit. The reversal of credit in respect of inputs and input services used in manufacture of exempted goods or for provision of exempted services, shall apply to the units availing the credit distributed by Input Service Distributor and not to the Input Service Distributor.

[Notification No. 13/2016 - CE (N.T.) dated 01.03.2016 applicable w.e.f. 01.04.2016.]

Rule 7B: New Provision for distribution of credit on inputs by warehouse of manufacturer

- Rule 7B is being inserted in Cenvat credit Rules, 2004 so as to enable manufacturers with multiple manufacturing units to maintain a common warehouse for inputs and distribute inputs with credits to the individual manufacturing units. It is also being provided that a manufacturer having one or more factories shall be allowed to take credit on inputs received under the cover of an invoice issued by a warehouse of the said manufacturer, which receives inputs under cover of an invoice towards the purchase of such inputs. Procedure applicable to a first stage dealer or a second stage dealer would apply, mutatis mutandis, to such a warehouse of the manufacturer.

[Notification No. 13/2016 - CE (N.T.) dated 01.03.2016 applicable w.e.f. 01.04.2016.]

Rule 9: List Enlarged of Documents allowed for taking credit

- Previously, the invoice issued by a manufacturer for clearance of inputs or capitals goods is a valid document for availing Cenvat credit. But now the invoice issued by a service provider for clearance of inputs or capitals goods shall also be considered as a valid document for availing Cenvat credit. [Notification No. 13/2016 - CE (N.T.) dated 01.03.2016 applicable w.e.f. 01.04.2016.]
- Amendment has also been made in Cenvat credit Rules, 2004 so as to allow Cenvat credit to be taken on the basis of the documents specified in sub-rule (1) of rule 9 of Cenvat credit Rules, 2004 even after the period of 1 year from the date of issue of such a document in case of services provided by the Government or a local authority or any other person by way of assignment of right to use any natural resource. [Notification No. 24/2016 - CE (N.T.) dated 01.03.2016 applicable w.e.f. 01.04.2016.]

Rule 9A: Introduction of Annual Return

- Rule 9A of the Rules is being amended to provide for filing of an annual return by a manufacturer of final products or provider of output services for each financial year, by the 30th day of November of the succeeding year in the form to be specified by a notification by the Board. CBEC will provide for e-filing of annual return also. The Service Tax assessees above a certain threshold will only be required to file the annual return, making total number of returns to three in a year for them. This change shall come into effect from 1st April, 2016. [Notification No. 13/2016 - CE (N.T.) dated 01.03.2016 applicable w.e.f. 01.04.2016.]

Rule 14: Omission of recovery of Cenvat credit based on FIFO basis

- Rule 14(2) prescribes a procedure based on FIFO method for determining whether a particular credit has been utilized. The said sub-rule is now omitted. Now, whether a particular credit has been utilized or not shall be ascertained by examining whether during the period under consideration, the minimum balance of credit in the account of the assessee was equal to or more than the disputed amount of credit. [Notification No. 13/2016 - CE (N.T.) dated 01.03.2016 applicable w.e.f. 01.04.2016.]

Amendment in refund provisions of cenvat credit:

Notification No. 27/2012 – C.E. (N.T.) dated 18.06.2012 is being amended so as to provide that time limit for filing application for refund of Cenvat credit under Rule 5 of the Cenvat credit Rules, 2004, in case of export of services, shall be 1 year from the date of –

- receipt of payment in convertible foreign exchange, where provision of service has been completed prior to receipt of such payment; or
- issue of invoice, where payment for the service has been received in advance prior to the date of issue of the invoice.

[Notification No. 14/2016 - CE (N.T.) dated 01.03.2016 applicable w.e.f. 01.03.2016.]

Ratios of recent direct tax judgements

CA P.R. Kothari

Section 2(15)/Section 11 : Charitable Trust

Society of Indian Automobile Manufactures Vs. ITO

(2016) 47 CCH 0196 Del Trib

Receipts from seminars/ conferences, which were aimed at overall promotion of the automobile sector, can not be said to be from carrying out any trade, commerce or business or by rendering any service in relation to any trade, commerce or business even if there is some surplus from organizing these conferences etc. None of these activities were pursued with the prior objective or earning income. The prior aim was promoting growth of automobile industry in India being a object of general public utility. The surplus generated was a normal incidence of the activity of promotion of automobile industries and cannot be considered as doing any business etc. or rendering any service in connection with business etc.. Applicability of proviso to section 2(15) in these circumstances, held to be unjustified.

Section 4 : Charge of Income tax

Tamilnadu State Transport Corpn. (Salem) Ltd. Vs. Chinnadurai

www. itatonline.org(Madras High Court)

Compensation awarded by Motor Accident Claims Tribunal and interest thereon is to restitute and rehabilitate the victims and it does not have the character of 'income'. If there is conflict between a social welfare legislation and a taxation legislation, the former should prevail as it subserves larger public interest. Hence, the said compensation and interest cannot be subjected to TDS. Quashing, of CBDT circular dated 14.10.2011 asking for t.d.s. on such payments, by Hon'ble Himachal Pradesh High Court noted.

Section 9/S. 40(a)(i)/S. 195 : Non resident

CIT Vs. Farida Leather Company

(2016) 135 DTR (Mad.) 268

Non resident agents, who are only procuring orders abroad, following up payments with buyers, remaining outside, services rendered abroad and are paid their commission abroad, are not liable to tax in India as the said commission cannot be considered to be fees for technical services envisaged in section 9(1)(vii). The services rendered by such non-resident agents does not involve any technical knowledge or assistance in technical matters. It also does not require any contribution of technical knowledge, experience, expertise skill or technical know how and their activities are akin to a real estate broker only. Accordingly, there was no liability on the part of assessee to deduct t.d.s. on commission paid to such non-resident agents as such commission was not chargeable to tax in India and unless primary tax liability of the recipient foreign agent is established, the vicarious tax withholding liability u/s 195 cannot be imposed upon the resident assessee paying commission. Consequently, disallowance u/s 40(a)(i) is also not attracted in this case.

Section 12AA : Cancellation of Registration

Lotus Charitable Trust Vs. DIT

(2016) 47 CCH 0189 Kol Trib

The activities of the trust were accepted by A/O to be covered in advancement of any other object of general public utility. Hence only because in one year the gross receipts from said activities exceeded the threshold limit provided in section 2(15), the cancellation of registration cannot be justified considering CBDT circular no. 21/2016 dated 27.05.2016

Section 12AA: Cancellation of Registration

DIT(Exemption) Vs. Khar Gymphana

www.itatonline.org (Bombay High Court)

Registration of charitable trust granted u/s 12AA can be cancelled by CIT u/s 12AA(3) only if the activities of the trust are not genuine or are not being carried out in accordance with its objects and not only because the trust is indulged in activities of advancement of other general public utility, the gross receipts from which are more than the limits laid

down in section 2(15). This view is supported by CBDT circular no. 21 dated 27.05.2016.

Section 14A : Disallowance of Expenses relating to exempt income

Allahabad Bank Vs. Addl. CIT

(2016) 47 CCH 0171 Kol Trib

i) It is not mandatory for A/O to apply Rule 8(D)(2), the moment he rejects the basis of disallowance made by assessee or nil disallowance is claimed by the assessee. Still A/O is free to make the disallowance on any reasonable basis. If Rule 8D(2) is applied blindly, it may produce absurd results and A/O while examining claim of assessee u/s 14A, is bound to take note of such absurdities and refrain from invoking Rule 8D(2). This Rule is to be applied only when there is no reasonable of proper parameter for making disallowance u/s 14A. Thus Rule 8D(2) is to be applied as a last resort and its application is not automatic.

ii) Restriction of no revised claim without revised return as laid down in Hon'ble Apex Court's decision in Goetze (India) Ltd. is applicable only while making claim before A/O and not before the appellate authorities under the Act.

iii) Corporate membership fees for membership in assessee corporate's name paid to clubs for assessee's executives is revenue expenditure.

Section 37(1): Business Expenditure

K. Suryakumari Venu Vs. ACIT

(2016) 47 CCH 0203 Visakhapatnam Trib

Provision on reasonable estimate for land reclamation and afforestation expenses to be incurred under contractual and statutory obligations is allowable on accrual basis even if not paid during the year when such expenses are continuously incurred in a systematic matter.

Section 37(1) : Business Expenditure

Sarika Ranasaria Vs. ACIT

(2016) 47 CCH 0202 Hyd Trib

Even in absence of any written agreement, where commission recipients have confirmed to have rendered services to the assessee, the commission payment held as allowable but in the cases where commission recipients had denied any business connection with the assessee, commission claimed to have been paid to such denying parties was held to be disallowable.

Section 37(1) : Business Expenditure

First Advantage P. Ltd. & Anr. Vs. DCIT

(2016) 47 CCH 0184 Mum Trib

i) Software licences to carry out routine matters in a more efficient manner e.g.

Antivirus software, payments for support service for maintenance of firewalls or software for filing t.d.s. returns etc. are allowable as revenue expenses as assessee does not have ownership of these softwares and due to obsolescence of these items, no enduring benefit can be said to have arisen to assessee. However, licence fees paid for 36 months held to be capital expenditure resulting in enduring benefit but the same was held to be eligible for depreciation as per law.

ii) Expenditure for purchase of windows XP Professional, an application software for office use which becomes obsolete very fast, held to be allowable as revenue expenditure.

iii) Foreign currency loss, due to revaluation of sundry creditors & debtors at the end of the year held to be an allowable deduction though said loss is notional.

Section 37(1)/ 92C : Business Expenses

DCIT & Anr. Vs. Fab India Overseas (P) Ltd. & Anr.

(2016) 47 CCH 0211 Del Trib

Assessee need not to show the necessity of legitimate expenses incurred by him for its deductibility. He is also not required to show that such expenditure has actually produced any profit or income in the same year or later. The only condition to be satisfied is that such expenses were incurred wholly and exclusively for the purpose of business and nothing more. TPO/A/O cannot question the need for purchase of intangible asset by the assessee as it is assessee's domain and not their. TPO's role is to determine ALP of such purchase and not to question the necessity of the transaction.

Section 68 : Addition on account of capital gain on penny stocks

ITO Vs. Indravadan Jain (HUF)

www. itatonline.org (ITAT Mumbai)

Merely because the investigation was done by SEBI against

broker or his activity, assessee cannot be said to have entered into ingenuine transaction as assessee have no control over the broker. It was found by ITAT that broker had not stated before any authority that transactions in the shares of subject company on the floor of the stock exchange were ingenuine or mere accommodation entries. The detailed findings recorded by CIT(A) were not controverted by the Department by bringing in any positive material on record. CIT(A)'s order treating long term capital gain in subject shares as genuine was upheld.

Section 68: Unexplained cash credit in the form of capital gain

Farrah Marker Vs. ITO

www. itatonline.org (ITAT Mumbai)

Long term capital gain on sale of shares cannot be treated as bogus and unexplained cash credit merely on suspicion and presumptions ignoring the hard documentary evidences in the form of contract notes, demat accounts, receipt through banking channels etc.

Section 68/69 : Undisclosed income in the form of capital gain

CIT Vs. Mukesh Ratilal Marolia

www. itatonline.org(Bombay High Court)

The fact of purchase of subject shares by the assessee out of the funds disclosed by the assessee as found by ITAT, cannot be faulted as subject investment was duly recorded in books maintained by the assessee, as source of such investment was found by ITAT to be agricultural

income already assessed to tax in those years and as the certificates from concerned companies confirming transfer of subject shares in assessee's name were also produced. As the fact of purchase cannot be faulted, similarly the fact of sale of subject shares cannot be disputed as receipt of amount by assessee is not in dispute and it is not the case of revenue that subject shares are still lying with the assessee. It is also not the case of revenue that assessee had received more than what has been declared by the assessee. Hence, there is nothing wrong in ITAT's decision of holding the subject share transactions as genuine and deleting the addition made by A/O as unexplained investment.

Section 71 : Set off of loss

Opus Reality Development Ltd. Vs. ACIT

(2016) 47 CCH 0204 Del Trib

Section 71 does not provide that current year's business loss has first to be adjusted against any particular head of income and thereafter against any other head. Accordingly, set off of business loss first from long term capital gain entailing lower rate of tax instead of income from other source entailing higher rate of tax as done by A/O, was rejected and assessee's claim of set off of current buiness loss against current year's income from other sources first and balance from long term capital gain was upheld.

Section 80-IB(10) : Deduction

ACIT & Anr. Vs. Obenori Reality Ltd. & Anr.

(2016) 47 CCH 0192 Mum Trib

Deduction 80-IB(10) is not to be restricted to the extent of income under the business head only and such deduction is allowable to the extent of gross total income defined in section 80B(5) irrespective of quantum of business head income.

S. 145 : Rejection of book result

Agarwal Metals and Alloys Praful M. Joshi Vs. Addl. CIT

(2016) 47 CCH 0198 Mum Trib

Mere allegation of under invoicing of imports in show cause notice by custom authorities in absence of any enquiry by custom authorities or Assessing Officer is not sufficient to reject book results. Addition for low rate of G.P. on the basis of an earlier year's G.P. rate of assessee, without examination of facts and circumstances of that year was not sustainable.

Section 194C/194H : TDS

DCIT & Anr Vs. Project Director & Anr.

(2016) 47 CCH 0200 Visakhapatnam Trib

Where the assessee availed services of the contractors for collection of toll fees and paid service charges calculated with reference to remuneration to the personnel deployed on works which were over and above that remuneration, the said contract was in the nature of supply of labour on principal to principal basis and not on principal to agent basis. Therefore, deduction of tax u/s 194C instead of section 194H was justified.

Section 234B: Interest for advance tax default.

Addl. DIT & Anr. Vs. Parpool Limited & Anr.

(2016) 147 CCH 0183 Del Trib

Where on the payments received by the assessee, tax was deductible at source u/s 195, there is no failure on the part of the assessee in payment of advance tax even if it filed NIL return at the stage of assessment. Payer may be regarded as

assessee in default for non deduction of tax but payee assessee is not liable for interest u/s 234B.

Section 253 : Cross objection before ITAT

ACIT Vs. Ajay Kalia

(2016) 135 DTR (Del) (Trib) 147

The cross objection, filed by the assessee on issue independent of the revenue's appeal, cannot be dismissed only because revenue's appeal has been dismissed for low tax effect.

Section 263/ 153 A : Revision/Search assmt.

Mahesh Kumar Gupta Vs. CIT

(2016) 47 CCH 0190 Del Trib

When no incriminating material, in respect of loan deemed as dividend u/s 2(22)(e), was unearthed during search, no addition on that account can be made u/s 153A in view of section 153A(1)(vii) in case of already completed assessment. Accordingly, there can be no revision u/s 263 by CIT for lack of this addition in order u/s 153A in such cases.

Section 271(1)(c) : Penalty

Ajit Ramchandra Jadhav Vs. ACIT

(2016) 135 DTR (Pune) Trib 1

In an appeal against order of A/O imposing penalty u/s 271(1)(c), CIT(A) is not competent to initiate and levy penalty u/s 271(1)(c) on an addition in respect of which no penalty proceedings were initiated by A/O or on which penalty proceedings were dropped by A/O. The initiation of penalty proceedings u/s 271(1)(c) by CIT(A) can be in the quantum appeal proceedings only and not in appeal against penalty u/s 271(1)(c) itself.

Satisfaction lies in the effort not the attainment. Full effort is full victory.

– Mahatma Gandhi

UNION BUDGET, 2016: MIXED BAG OF CONTENTMENT AND DESPAIR

CA Bimal Jain

Affirming that the economy is right on track, the Hon'ble Finance Minister Shri. Arun Jaitley presented the Union Budget for 2016-17 on February 29, 2016. On May 5, 2016, the Lok Sabha passed the Finance Bill, 2016 and later on May 11, 2016, the Finance Bill, 2016 was passed by the Rajya Sabha. Thereafter, the Hon'ble President has given assent to the Finance Bill, 2016 on May 14, 2016. Accordingly, the Finance Bill, 2016 has now become the Finance Act, 2016 (28/2016).

The Budget 2016, a big test for Shri. Jaitley, is a tough balancing act between the fiscal consolidation and much-needed spending to revive growth in the economy. Shri. Arun Jaitley in his 'Make in India' Budget speech laid more emphasis on agriculture and farmers welfare with an aim to double the farmers' income in the next five years. Shri. Jaitley laid thrust on the rural sector and social sector, including healthcare, educational skills and job creation, to make India knowledge based productive economy.

He also made announcements on infrastructure investment to enhance quality of life; financial sector reforms; governance reforms and ease of doing business; prudent management of Government finances and tax reforms to reduce compliance burden. Outlining the nine pillars to transform India, Shri. Jaitley catered to farm, rural sector, infra, social sector to have more Government expenditure.

The Union Budget, 2016, also proposing flurry of changes in Indirect Taxes, has been a talk of the town since the day of its presentation. Numbers of measures have been introduced, few of which are welcome changes for the Trade & Economy, but few of them are not in line with 'Make in India' and 'Ease of Doing Business' initiatives.

This Article attempts to outline broader changes in the arena of Indirect Taxes, majorly Service tax coupled with analyses of the two sides of the Union Budget, 2016 along with highlighting some of the key areas requiring immediate attention of the Board.

Many positive amendments - What's in bag for the Trade & Industry to relish

Rationalisation of rate of interest on delayed payments – 15%/24% per annum

Reduction in rate of interest on delayed payment of taxes to 15% as against 18% (for period upto 6 months)/ 24% (for period from 6 months to 1 year) and 30% (for period exceeding 1 year) under Service tax, is surely a step much towards the expectation of the Industry.

Interest rates on delayed payment of duty/tax across all Indirect taxes viz. Service tax, Excise and Customs has been made uniform at 15%, except in case of Service tax collected but not deposited with the Central Government, in which case, the rate of interest will be 24% from the date on which the Service tax payment becomes due. In case of assessees, whose value of taxable services in the preceding year/years covered by the notice is less than Rs. 60 Lakhs, the rate of interest on delayed payment of Service tax will be reduced by 3% i.e. it will be 12% or 21% in case of Service tax collected but not deposited.

Enhanced monetary limits for imprisonment provision & power to arrest

Section 89 of the Finance Act, 1994 (**"the Finance Act"**) has been amended to enhance the monetary limit for punishable offences to Rs. 2 crore from Rs. 50 lakhs.

Further, by way of amendment in Section 90 and Section 91 of the Finance Act, the power to arrest under Service tax law is restricted only to situations where the tax payer has collected the tax but not deposited it with the exchequer within a period of 6 months, and threshold amount of such tax collected but not deposited is of Rs. 2 crore as against Rs. 50 Lakhs.

Retrospective Service tax exemption allowed on certain contracts

The Government has introduced three new Sections under Service tax, namely Sections 101, 102 and 103 in the Finance Bill, 2016, so as to restore certain exemptions which were withdrawn in the previous years, in the following manner:

Section 101 - Retrospective Service tax exemption to canal, dam or other irrigation works:

The definition of "Governmental authority" as contained

under the Mega Exemption Notification No. 25/2012-ST dated June 20, 2012 (**"the Mega Exemption Notification"**) was amended w.e.f January 30, 2014 vide Notification No. 02/2014 – ST dated January 30, 2014. Consequently, services provided by way of construction, erection, maintenance, or alteration etc. of canal, dam or other irrigation works provided to entities set up by Government but not necessarily by an Act of Parliament or a State Legislature were exempted w.e.f. January 30, 2014 [Entry No. 12(d) of the Mega Exemption Notification]. However, services provided prior to January 30, 2014 to such bodies remained taxable.

Section 101 is proposed to bring the aforesaid change in the definition of Government authority with retrospective effect i.e. from July 01, 2012 to January 29, 2014 with regard to the services covered under Entry No. 12(d) of the Mega Exemption Notification i.e. services relating to canals, dams and other irrigational works.

Section 102 - Restoration of certain exemptions withdrawn w.e.f April 1, 2015: Exemption from Service tax on services provided to the Government, a local authority or a Governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of:

(i) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(ii) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;

(iii) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to Section 65B(44) of the Finance Act.

was withdrawn with effect from April 1, 2015 vide Notification No. 6/2015-ST dated March 1, 2015 [Entry No. 12(a), (c) & (f) of the Mega Exemption Notification].

Now, a new Section 102 has been inserted to provide restoration of Service tax exemption for the services provided under a contract which had been entered into prior to March 1, 2015 and on which appropriate stamp duty, as applicable, had been paid prior to that date.

Further, vide corresponding amendment in the Mega Exemption Notification [New Entry 12A], such exemption is being restored till March 31, 2020.

Section 103 - Restoration of certain exemption withdrawn on Airport or port w.e.f April 1, 2015: Exemption from Service tax on services by way of construction, erection, commissioning or installation of original works pertaining to an airport, port was also withdrawn with effect from April 1, 2015 [Entry No. 14 of the Mega Exemption Notification].

Now, a new Section 103 has been inserted to provide restoration of Service tax exemption for the services provided under a contract which had been entered into prior to March 1, 2015 and on which appropriate stamp duty, as applicable, had been paid prior to that date, subject to production of certificate from the Ministry of Civil Aviation or Ministry of Shipping, as the case may be, to that effect.

Further, vide corresponding amendment in the Mega Exemption Notification [New Entry 14A], such exemption is being restored till March 31, 2020.

Refund Mechanism also provided: The new Sections 101, 102 and 103 also provides refund mechanism where the assesse has deposited any Service tax in respect of such contracts/ period, as now has been exempted retrospectively.

The grant of Service tax exemption on some services relating to Government and infrastructure projects with retrospective effect and allowing refund of Service tax, if already paid is unmatched and marks paradigm shift in the history of retrospective amendments.

Taxability of IT Software – clarified to avoid double taxation (Excise Vs. Service tax):

Canned software has been exempted from Service tax and customized software has been exempted from CVD / Excise duty. These changes will provide certainty and avoid double taxation by streamlining the taxation of software. (Notification No. 11/2016-ST, Notification No. 11/2016-CE and Notification No. 11/2016-Customs, all dated March 1, 2016)

Input service credit allowed on certain services with abatement:

As against the condition of no Cenvat credit either on inputs, input services or capital goods, Cenvat credit on input services is being allowed with effect from April 1, 2016 for the following services:

- Cenvat credit of input services on transport of passengers by rail at the existing rate of abatement of 70% being allowed;

- Cenvat credit of input services on transport of goods, other than in containers by rail at the existing rate of abatement of 70% being allowed;
- Cenvat credit of input services on transport of goods in containers by rail at a reduced abatement rate of 60% being allowed;
- Cenvat credit of input services on transport of goods by vessel at the existing rate of abatement of 70% being allowed.

Flip side of the Union Budget, 2016 – Amendments that needs to be addressed

Krishi Kalyan Cess on all taxable services w.e.f. June 1, 2016 – Impact on "Make in India" and "Start-up India" drive

Pursuing with an objective to finance and promote initiatives to improve agriculture and farmer welfare, the Government announced a new cess namely 'Krishi Kalyan Cess' (**"KKC"**), to be levied at 0.5% on the value of any or all the taxable services w.e.f June 1, 2016. In this regard, a new Chapter VI was inserted in the Finance Bill, 2016, containing relevant provisions, which are applicable with enactment of the Finance Act, 2016 on May 14, 2016.

Unlike Swachh Bharat Cess imposed w.e.f. November 15, 2015, which is not Cenvatable neither in the hands of service providers nor manufacturers, in terms of **TRU F. No. 334/8/2016-TRU dated February 29, 2016** [Para 3.1], it is provided that Cenvat credit of KKC paid on input services shall be allowed to be used for payment of the proposed Cess on the service provided by a service provider. Further, Central Government vide **Notification No. 28/2016-CE (N.T.) dated May 28, 2016**, has amended Rule 3 of the Cenvat Credit Rules, 2004 (**"the Credit Rules"**) to provide that:

- A provider of output service shall be allowed to take Cenvat credit of the KKC on taxable services leviable under Section 161 of the Finance Act, 2016 (28 of 2016);
- Cenvat credit of any duty specified in Rule 3(1) of the Credit Rules shall not be utilised for payment of KKC;
- Cenvat credit in respect of KKC shall be utilised only towards payment of KKC.

❖ KKC viz-a-viz Make in India: Though on one hand, KKC has been made Cenvatable, but on perusal of the same, it can be inferred that such entitlement is limited only to the service providers for payment of the proposed Cess on the services provided. Manifestly, the manufacturers paying KKC on their input services would not be in a position to avail Cenvat credit of the same and thus would form part of their cost, leading to increase in prices to that extent.

❖ KKC viz-a-viz Ease of doing business: Whereas these steps are said to be taken for improvement of agriculture and welfare of farmers, it seems to hit 'Start up India' initiative of our Hon'ble Prime Minister, as:

- An entrepreneur craves for simplicity of taxes. However, it is likely that a separate accounting code will be prescribed for KKC and the service providers will be required to display the same separately on invoices and also to deposit separately;
- Paying Service tax at 15% may not be a problem, but maintaining separate accounts for Service tax and various Cesses, their records & computation, followed by corresponding Cenvat provisions, which allows Cenvat credit of KKC to service providers and no Cenvat credit of Swachh Bharat Cess, is somewhat a cumbersome task.

Point of Taxation for New Levy of KKC:

It is pertinent here to note that Explanation 1 & 2 to Rule 5 of Point of Taxation Rules, 2011 (**"the POTR"**) have been inserted w.e.f March 1, 2016. Explanation 1 provides that point of taxation in case of new levy on services shall be governed by Rule 5 of the POTR and as per Explanation 2, new levy or tax shall be payable on all cases other than specified in Rule 5.

Rule 5 of the POTR covers two specific situations where new levy shall **NOT** be payable:

1. Invoice issued and payment received against such invoice before such service becomes taxable;
2. Payment received before the service becomes taxable and invoice has been issued within 14 days of the date when the service is taxed for the first time

Effective June 1, 2016 KKC @ 0.5% on the value of all taxable service is proposed to be levied. Point of taxation in case of new levy on services shall be governed by Rule 5 of POTR. As per the Rule 5 read with explanations, only in two situations (mentioned above), the KKC shall not be payable and in all others, KKC is to be paid.

An illustrative table to above explanations is given as under:

S. No.	Date of applicability of KKC	Date of Invoice	Date of Payment Received	Applicability of KKC
1.	1st June, 2016	14thJune, 2016	30th May, 2016	No
2.	1st June, 2016	18thJune, 2016	30th May, 2016	Yes
3.	1st June, 2016	30th May, 2016	30th May, 2016	No
4.	1st June, 2016	3rdJune, 2016	3rdJune, 2016	Yes
5.	1st June, 2016	30th May, 2016	3rd June, 2016	Yes

Vide this explanation, the Government is seeking to impose KKC in cases, where the invoice and provision of service has taken place prior to June 1, 2016, however payment is not received till June 1, 2016. This would imply that on all debtors as on May 31, 2016, assesses will be liable to pay KKC.

The explanations added to Rule 5 of the POTR raise a fundamental question as to whether a service which has already been provided prior to introduction of levy could be taxed on raising of invoice or receiving payment subsequently. However, the chargeable event (Section 66B of the Finance Act) being rendering of services should always be the prime factor for determining leviability of any tax or cesses. The Hon'ble Supreme Court in the case of ***Association of Leasing & Financial Service Companies Vs. Union of India [2010 (20) STR 417 (SC)]***, has observed that the **taxable event under the Service tax law is the rendition of service.**

Increase in limitation period for issuing SCN – Against "Ease of doing business"

The Union Budget, 2016 has increased limitation of the time period for issuing SCN under the Service tax, Central Excise and the Customs in non-fraud cases (where duty/tax has not been levied or paid or which has been short-levied or short-paid or erroneously refunded for reasons other than fraud, collusion, wilful mis-statement, suppression of facts, contravention of provisions with intent to evade payment of duty/tax) in the following manner:

Limitation period at present			Revised time period
Particulars	**Relevant provision**	**Prescribed time period**	
Under Service Tax	Section 73 of the Finance Act, 1994	18 months (w.e.f May 28, 2012, earlier it was 12 months)	30 months
Under Central Excise	Section 11A of the Central Excise Act, 1944	One Year	Two Years
Under Customs	Section 28 of the Customs Act, 1962	One Year	Two Years

- Era of automation & increased number of Commissionerates – No requirement of extended time period for issuing SCN: In this era of automation and technology, when there is compulsory e-filing of returns& there has been revamp in the Service Tax Commissionerates with more positions and number of Commissioners, Principal Commissioners etc. having been created, extension of time of time period for issuing SCN does not seem to be prudent.
- Time limit needs to be strengthen for adjudication of cases rather than liberty of extended time for issuing SCNs: Considering the high numbers of cases pending

under the Indirect tax since many years, it would have been a laudable initiative, had the Finance Bill, 2016, fixed strict time limits for adjudication of cases.

- Time limit restraining an assessee to avail eligible Cenvat credit on Inputs/Input services should be extended to 2 years at least rather than extension of the time period for issuance of SCN - Non fraud cases

Relaxation in time limit for issuing SCNs in non-fraud cases is likely to go detrimental to ease of doing business initiative giving unwanted contradictory message of lethargic system to the budding start up entrepreneurs and outside World.

Withdrawal of exemption on monorail or metro – a hit on infrastructure development

Effective from March 1, 2016, exemption to construction, erection, commissioning or installation of original works pertaining to monorail or metro is being withdrawn [Entry No. 14 of the Mega Exemption Notification]. However, the said services, where contracts were entered into before March 1, 2016, on which appropriate stamp duty, was paid, shall remain exempt.

Such withdrawal is again a hit to the infrastructural development initiatives of the Government which has in fact been one of the nine pillars of the Union Budget, 2016.

Service tax leviable under Reverse Charge on any services provided by Government or Local Authority to a Business Entity w.e.f April 1, 2016: Alarming Bell

Prior to April 1, 2016, in terms of Section 66D(a)(iv) of the Finance Act read with Rule 2(1)(d) of the Service Tax Rules, 1994 (**"the Service Tax Rules"**), only 'support services' provided by Government or a Local authority to a Business Entity are liable to Service tax under Reverse Charge except (1) renting of immovable property, and (2) services specified in sub-clauses (i), (ii) and (iii) of clause (a) of Section 66D of the Finance Act.

Effective from April 1, 2016, under clause (iv) of Section 66D(a) of the Finance Act, the words 'support services' has been substituted by the words 'any service' thereby, to exclude from the Negative List, any services provided by the Government or Local authority to a Business Entity [Section 109(1) of the Finance Act, 2015 read with Notification No. 06/2016-ST dated February 18, 2016].

However, the services provided by Government or Local authority to a Business Entity having turnover upto Rs. 10 lakh in the preceding Financial Year would remain exempt [New entry inserted vide after Entry No. 47 in the Mega Exemption Notification vide Notification No. 07/2016-ST dated February 18, 2016].

Consequently, the Union Budget, 2016 vide Notification No. 18/2016-ST dated March 1, 2016, has amended Reverse Charge Notification No. 30/2012-ST dated June 20, 2012, to delete the words "by way of support services" appearing at Sl. No. 6 of the Table in the said notification with effect from April 1, 2016. Corresponding changes have also been made in Rule 2(1)(d)(i)(E) of the Service Tax Rules and Section 65B(49) of the Finance Act containing definition of the term 'support services' is also proposed to be deleted. Thus, the liability to pay Service tax on any service provided by Government or a Local Authority to Business Entities shall be on the service recipient w.e.f. April 1, 2016.

Impact of above changes:

Given that the definition of the term 'service' under Section 65B(44) of the Finance Act is wide enough to cover any activity carried out by a person for another for consideration, it appears that effective from April 1, 2016, all Governmental services would be exigible to Service tax.

However, there are certain services rendered as a sovereign right by Government/ various Public Authorities (set up by Government) which cannot be substituted by any private party. For example, there are various types of Statutory charges and fees e.g. ESI inspection, PF inspection, Motor Vehicles Registration charges, Motor Vehicles Inspection charges, fees payable to Registrar of Companies for filing statutory forms, Building inspection etc. A Business Entity is also required to pay fees for getting various authorisations, permissions, licenses etc. for various purposes like import and export etc. Even, the Government collects big chunk of money by allocation of coal blocks/grant of mining license, telecom spectrum etc. which are in the nature of payment of royalty to Government for use of natural resources.

Having said that, 'ANY service' provided by provided by Government or Local Authority to a Business Entity, it appears that all such services which are in the nature of sovereign rights would also come under the purview of Service tax. However, applying the inference of the meaning of the term 'Consideration' which has to be 'at the desire of promisor', it may be contended that only the 'fees' for rendering a service 'at the desire of business entity' should be subject to Service tax. But, in case of regulatory fees, there is no 'service' rendered and thus, no Service tax may be exigible.

It is important to note here that even though certain exemptions have been prescribed under the Mega Exemption Notification vide **Notification No. 22/2016-ST dated April 13, 2016**, but the same is not lucid enough to clear the mist of doubts and the matter is prone to divergent views and interpretation.

It would not be out of place here to mention that vide the Union Budget, 2016, under Section 66E of the Finance Act, after clause (i), clause (j) is inserted to include "assignment by the Government of the right to use the radio-frequency spectrum and subsequent transfers thereof" under the list of Declared services. Meaning thereby, assignment by Government of the right to use the spectrum as well as subsequent transfers of assignment of such right to use is a 'service' leviable to Service tax and not sale of intangible goods and the liability to pay Service tax will on the Business Entity under Reverse Charge.

Indirect Tax Dispute Resolution Scheme, 2016: Clouds of doubt on success quotient

Under the Indirect Taxes, the scheme namely, the Indirect Tax Dispute Resolution Scheme, 2016 (**"the IDT DRS Scheme, 2016"**), introduced in the Union Budget, 2016 as the Government's positive intent to reduce litigation in Indirect Taxation, embraces an important question on its success quotient, considering its not-so-lucrative provisions.

The IDT DRS Scheme, 2016 shall come into force on June 1, 2016 (operative till December 31, 2016) and it will be applicable for all the disputes pertaining to Customs, Central Excise and Service Tax matter, which are pending before the Commissioner (Appeals) as on March 1, 2016. To avail the benefit of the Scheme, the Declarant will have to pay duty/tax liability along with interest and penalty equivalent to 25% as imposed in the Impugned Order i.e. Order-In-Original (**"OIO"**) within 15 days of the receipt of the acknowledgement from the Designated Authority and intimate the Designated Authority within 7 days of such payment.

The drafting of the IDT DRS Scheme, 2016 is not in commensuration with the Hon'ble FM proposal of reducing litigation pending before the Commissioner (Appeals). Still, there are lot of scope in the IDT DRS Scheme, 2016 which may be amended/ removed for the success of this Scheme.

Some of the shortcomings in the IDT DRS Scheme, 2016, which puts a question mark on its success, are discussed as under:

- Restricting the scope of the IDT DRS Scheme, 2016 only for the cases pending at Commissioner (Appeals) level, will minimise its impact: The quantum of the cases pending at the Appellate Level and before Courts are far higher than those pending at Commissioner (Appeals) levels. Further, only for the cases involving the duty/ tax amount upto Rs. 50 Lakhs, an appeal shall lie before the Commissioner (Appeals). In other cases, appeal shall lie directly to the CESTAT.
- Reduced penalty of 25% not likely to attract assesses when similar provisions are already available under Indirect Tax Laws: Benefit of reduced penalty of 15%/ 25% is already available under the Indirect Tax provisions in fraud cases at the level of SCN/ OIO respectively, if duty/ tax liability is paid along with interest and specified reduced penalty within 30 days of the receipt of SCN/ OIO.
- No penalty waiver/interest relaxation: Under the similar Scheme provided in the Income Tax Act, there is a proposal to waive penalty in all cases where disputed tax amount is below Rs. 10 lakhs, which is not available in the IDT DRS Scheme, 2016. Further, under DT DRS Scheme, 2016, interest shall be payable on disputed tax till the date of assessment or re-assessment as the case may be, but, no such benefit is available under the IDT DRS Scheme, 2016.
- The present Scheme is less beneficial as compared to previous 'Service Tax Amnesty Scheme', where there was complete waiver of Interest and penalty also.
- Cum-duty/tax benefit not available

Further there are bouquet of issues which lack clarification with regards to the IDT DRS Scheme, 2016, such as:

- Whether adjustment possible for the amount paid during the course of investigation or as mandatory pre-deposit @ 7.5% at Commissioner (Appeals) level, in terms of Section 35F of the Central Excise Act, 1944 – Applicable to Service tax vide Section 83 of the Finance Act, 1994 and to Customs vide Section 129E of the Customs Act, 1962;
- What will happen to the proceedings initiated simultaneously against Co-Appellants – Whether there would be closure of proceedings against co-Noticees as well once the proceedings against the main Noticee have been closed;
- Whether 25% of the penalty imposed in the Impugned Order would mean sum total of the penalties, which may be imposed under different Sections simultaneously;
- IDT DRS Scheme, 2016 excludes from its purview the cases where the Impugned Order is in respect of search and seizure proceeding. But does that mean a complete bar for those cases also where search and seizure might be a part of the total case along with other matter of disputed tax liability etc.

Therefore, the Government should look into the vital issues on various matter related to the IDT DRS Scheme, 2016 and modify this Scheme accordingly, by incorporating the

provisions, which may invite litigants to come forward to adopt the Scheme and thereby, result in decreasing pending litigation.

In the nutshell:

Undoubtedly, amidst high expectations, our Hon'ble Finance Minister has been able to do a tough balancing job in the Union Budget, 2016. However, the Union Budget, 2016 has not provided any roadmap to introduce Goods and Services Tax (**"GST"**) in the Country, when India Trade Inc was pinning hopes on the then-going Budget Session for the passage of 122nd Constitutional Amendment Bill.

Though, the Union Budget 2016 has endeavoured to give impetus to the "Make in India" and "Start-up India" campaign of the Modi Government along with promoting "Ease of doing business in India", but certain amendments as proposed in the Union Budget, 2016 is likely to act as a major setback and lacking clarification on certain issues, will work as a catalyst in increasing fresh areas of litigation. Thus, immediate attention of the CBEC is very much required to yield positive results.

Disclaimer: *The contents of this document are solely for informational purpose. It does not constitute professional advice or recommendation of firm. Neither the authors nor firm and its affiliates accepts any liabilities for any loss or damage of any kind arising out of any information in this document nor for any actions taken in reliance thereon.*

Readers are advised to consult the professional for understanding applicability of this newsletter in the respective scenarios. While due care has been taken in preparing this document, the existence of mistakes and omissions herein is not ruled out. No part of this document should be distributed or copied (except for personal, non-commercial use) without our written permission.

Entire water of the sea can't sink a ship unless it gets inside the ship. Similarly, negativity of the world can't put you down unless you allow it to get inside you.

The Income Declaration Scheme, 2016: Ill -conceived & doomed to fail!

Subash Agarwal, Advocate

1. Introduction

According to the Swiss Banking Association Report, 2006, India has more black money than the rest of the world taken together. Even the then Union Finance Minister Yashwant Sinha, in his budget speech for 1991-92 stated – "Nobody can deny the existence of large scale tax evasion both in terms of income and in terms of wealth."

While presenting Union Budget of 1997-98 whereby Voluntary Disclosure of Income Scheme, 1997 (VDIS, 1997) was announced, the then Finance Minister in the UPA Government, P Chidambaram remarked that in a country of 90 crore people, it was absurd that only 1.2 crore people are assessed to income tax and that only 12000 of the assesses are in the tax bracket of income of above Rs 10 lakhs.

More recently Herve Falciani, the French-Italian whistleblower, the person behind the "Lagarde List" – so called as it is a list of HSBC Clients who allegedly used the bank to evade taxes which Falciani handled over to ex-French Finance Minister Christine Lagarde – has remarked, "Large sums of money worth lakhs of crore are illegally flowing out of India and stashed abroad. If India does not work hard to stop the flow of unaccounted money, the results would be devastating. Tough measures are needed."

Despite stringent tax laws and tough prosecution provisions provided in the Income-Tax Act, Government of India has not been able to contain the proliferation of black money. So, the government has been adopting soft approach from time to time and opening up small window for the tax evaders to come out clean.

In 2015, the BJP government itself opened a compliance window in the form of the Black Money (Undisclosed Foreign Income and Assets) Act to bring back the black money stashed abroad by the Indians but collected a measly sum of Rs. 4,147 crores from only 638 declarants as against the claims of Rs. 1,00,000 crore stashed in foreign banks made by Prime Minister Sri Narendra Modi in run – up to the Lok Sabha polls. Thus, the foreign black money scheme ended with a whimper despite strong expectations of decent collections by the government.

2. Earlier Tax Amnesty Schemes

Since independence, almost 12 prominent income tax schemes were announced - all ended with a whimper except one i.e., VDIS, 1997 which was billed as the most successful of all tax amnesty schemes in India. The scheme provided for the payment of tax at the rate of 35% for companies and firms and 30% in the case of others (rates nearer the then prevalent tax rates) while exempting those declaring income under the scheme from interest and penal provisions. Under the Scheme, a sum of Rs. 33,339 crore was offered to tax by 4.75 lakh declarants raising a respectable (by those days' standards) Rs. 9584 crore in taxes for the Government of India.

3. The Income Declaration Scheme (IDS), 2016

The scheme has been announced by the Finance Minister, Mr. Arun Jaitley on the floor of the Parliament while delivering the Union Budget, 2016. It was declared through the Fianace Bill, 2016 . It got statutory recognition in the form of the Finance Act,2016, Chapter IX – through Sections 181 to 199.

Salient features of the scheme are –

(a) Purpose:

#Providing opportunity to the persons who have not paid full taxes in the past to come clean.

(b) Period for which in vogue

#From 01.06.2016 to the notified date which is **30th Sept., 2016**

(c) Cost of coming out clean

#Tax and Surcharge

- Tax @ 30% of undisclosed income (UDI) offered
- Surcharge (Krishi Kalyan Cess) @ 25% of tax (i.e., 7.5% of UDI)

#Penalty

- @ 25% of tax (i.e., 7.5% of UDI)

#Total Cost : 30% + 7.5% + 7.5% = 45 %

(d) Scope of the scheme

Under the Scheme, an applicant will be able to offer any UDI to tax –

i. for any assessment year prior to the A.Y : 2017-18.

ii. for which he failed to furnish a return under Section 139 of the Act or

iii. which he has failed to disclose in a return of income furnished under the Act before the date of commencement of the Scheme

iv. which has escaped assessment by reason of the omission or failure on the part of such person to furnish a return under the Income-tax Act or to disclose fully and truly all material facts necessary for the assessment or otherwise.

(e) Negative list –

The Scheme shall not apply in the following cases, where:

- Notices have been issued under Section 142 or S. 143(2) [notices for scrutiny assts.] or Section 148 [notice for re-opening of assts.] or Section 153A or Section 153C [notices for assts. in search cases]

- A search or survey operation has been conducted and the time for issuance of notices under the relevant provisions of the Act has not expired.

- Information is received under an agreement with foreign countries u/s 90 or sec 90A of the Income tax Act regarding such income.

- Cases covered under the Black Money (Undisclosed Foreign Income and Assets) and imposition of tax Act, 2015.

- Any Person notified under Section 3 of the Special Court Act, 1992 (Trial of Offences Relating to Transactions in Securities)

- In relation to a person against whom prosecution for any offence punishable under Chapter IX or Chapter XVII of the Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Unlawful Activities (Prevention) Act, 1967 and the Prevention of Corruption Act, 1988 has been launched.

(f) Immunities

A declarant under the scheme will get immunity from prosecution under Income-tax Act, Wealth-tax Act and the Benami Transaction (Prohibition) Act 1988 (subject to certain conditions in the last case). The declaration made under the Scheme will also be exempt from wealth-tax in respect of assets specified in the declaration (also where there is under-declaration of wealth in the wealth tax return). The declarant will also get immunity from any scrutiny or enquiry of the declaration under the Income-tax Act and Wealth-tax Act

4. Why Finance Minister says IDS, 2016 is not an amnesty scheme?

"Its not a VDIS (Voluntary Disclosure of Income Scheme) and it is not an amnesty," Jaitley said while interacting with the press after presenting the budget in the parliament. He further clarified " You pay 30 per cent tax and 7.5 per cent as surcharge and another 7.5 per cent as penalty...so 45 per cent overall. You end up paying one and a half times more. So you are paying penalties for not paying tax on time. This is intended to bring some money from outside the system into the system."

The reason for this is not far to seek. The Hon'ble Supreme Court just after VDIS, 1997, directed the governments to stop offering amnesty schemes as such schemes are discriminatory against the honest tax payers and demoralises them.

So the Finance Minister is playing safe, lest he gets dressing down by the Supreme Court though the scheme has all the ingredients of amnesty – amnesty from the prosecution, amnesty from full penalty, amnesty from interest, amnesty from Wealth Tax Act and so on.

5. Why VDIS, 1997 was a run away success ?

The Finance Minister seems to be optimistic on the success of IDS, 2016 though the cost of coming out clean is high (the declarant will have to shell out 45% as against much lower maximum marginal rate of tax) and though it is coming out close on the heels of the flopped the Black Money (Undisclosed Foreign Income and Assets) Act 2015. Perhaps he banks on the perceived sweetener given in the IDS, 2016 in the form of lower cost of disclosure @ 45% as against 60% in the Black Money Act. Further, the last income disclosure / "amnesty" scheme for UDI declaration was VDIS, 1997, announced almost two decades back and in between there was no 'amnesty' scheme, was a run away success. But IDS, 2016 is a far cry from the VDIS, 1997.

As per VDIS, 1997, any jewellery, bullion or any other valuable bought before 01.04.1986 was required to be valued at its price on 01.04.1987 and any jewellery etc, brought after 01.04.1986 was to be valued at its cost of acquisition. But there was no requirement to furnish any proof of purchases, except a self serving document in the

form of an affidavit. The result was that if the jewellery, gold etc were bought at the current date, same was declared having been bought prior to 01.04.1986, sometimes as back as in 1961. So, the effective tax rate worked to be as low as 5%.

The CAG found that there were 113 cases in VDIS, 1997 declarations where the gold was declared at 1961 prices and in 21,128 cases, the valuation was made at 1967-68 prices.

6. Clarification on Income Declaration Scheme, 2016 by CBDT

CBDT has issued clarifications on the scheme in the form of FAQs vide Circular No. 17 dated 20.05.2016. The same are reproduced hereunder-

Question No.1: Where an undisclosed income in the form of investment in asset is declared under the Scheme and tax, surcharge and penalty is paid on the fair market value of the asset as on 01.06.2016, then will the declarant be liable for capital gains on sale of such asset in the future? If yes, then how will the capital gains in such case be computed?

Answer: Yes, the declarant will be liable for capital gains under the Income-tax Act on sale of such asset in future. As per the current provisions of the Income-tax Act, the capital gains is computed by deducting cost of acquisition from the sale price. However, since the asset will be taxed at its fair market value the cost of acquisition for the purpose of Capital Gains shall be the fair market value as on 01.06.2016 and the period of holding shall start from the said date (i.e. the date of determination of fair market value for the purposes of the Scheme).

Question No.2: Where a notice under section 142(1)/ 143(2)/ 148/ 153A/ 153C of the Income-tax Act has been issued to a person for an assessment year will he be ineligible from making a declaration under the Scheme?

Answer: The person will only be ineligible from declaration for those assessment years for which a notice under section 142(1)/143(2)/148/153A/153C is issued and the proceeding is pending before the Assessing Officer. He is free to declare undisclosed income for other years for which no notice under above referred sections has been issued.

Question No.3: As per the Scheme, declaration cannot be made where an undisclosed asset has been acquired during any previous year relevant to an assessment year for which a notice under section 142, 143(2), 148, 153A or 153C of the Income-tax Act has been issued. If the notice has been issued but not served on the declarant then how will he come to know whether the notice has been issued?

Answer: The declarant will not be eligible for declaration under the Scheme where the undisclosed income relates to the assessment year where a notice under section 142, 143(2), 148, 153A or 153C of the Income-tax Act has been issued and served on the declarant on or before 31st day of May, 2016. The declarant is required to file a declaration regarding receipt of any such notice in Form-1.

Question No.4: In a case where the undisclosed income is represented in the form of investment in asset and such asset is partly from income that has been assessed to tax earlier, then what shall be the method of computation of undisclosed income represented by such undisclosed asset for the purposes of the Scheme?

Answer: As per sub-rule (2) of rule 3 of the Income Declaration Scheme Rules, 2016, where investment in any asset is partly from an income which has been assessed to tax, the undisclosed income represented in form of such asset will be the fair market value of the asset determined in accordance with sub-rule (1) of rule 3 as reduced by an amount which bears to the value of the asset as on the 1.6.2016, the same proportion as the assessed income bears to the total cost of the asset. This is illustrated by an example as under:

Investment in acquisition of asset in previous year 2013-14 is of Rs.500 out of which Rs.200 relates to income assessed to tax in A.Y. 2012-13 and Rs.300 is from undisclosed income pertaining to previous year 2013-14. The fair market value of the asset as on 01.06.2016 is Rs.1500.

The undisclosed income represented by this asset under the scheme shall be:

$$1500 \text{ minus } \left(1500 \times \frac{200}{500}\right) = \text{Rs.}900$$

Question No.5: Can a declaration be made of undisclosed income which has been assessed to tax and the case is pending before an Appellate Authority?

Answer: As per section 189 of the Finance Act, 2016, the declarant is not entitled to re-open any assessment or reassessment made under the Income-tax Act. Therefore, he is not entitled to avail the tax compliance in respect of such income. However, he can declare other undisclosed income for the said assessment year which has not been assessed under the Income-tax Act.

Question No.6: Can a person against whom a search/ survey operation has been initiated file declaration under the Scheme?

Answer: (a) The person is not eligible to make a declaration under the Scheme if a search has been initiated and the time for issuance of notice under section 153A has not expired, even if such notice for the relevant assessment year has not been issued. In this case, however, the person is eligible to file a declaration in respect of an undisclosed income in relation to an assessment year which is prior to assessment years relevant for the purpose of notice under section 153A.

(b) In case of survey operation the person is barred from making a declaration under the Scheme in respect of an undisclosed income in which the survey was conducted. The person is, however, eligible to make a declaration in respect of an undisclosed income of any other previous year.

Question No. 7: Where a search/ survey operation was conducted and the assessment has been completed but certain income was neither disclosed nor assessed, then whether such unassessed income can be declared under the Scheme?

Answer: Yes, such undisclosed income can be declared under the Scheme.

Question No.8: What are the consequences if no declaration under the Scheme is made in respect of undisclosed income prior to the commencement of the Scheme?

Answer: As per section 197(c) of the Finance Act, 2016, where any income has accrued or arisen or received or any asset has been acquired out of such income prior to the commencement of the Scheme and no declaration is made under the Scheme, then such income shall be deemed to have been accrued, arisen or received or the value of the asset acquired out of such income shall be deemed to have been acquired in the year in which a notice under section 142/143(2)/148/153A/153C is issued by the Assessing Officer and the provisions of the Income-tax Act shall apply accordingly.

Question No.9: If a declaration of undisclosed income is made under the Scheme and the same was found ineligible due to the reasons listed in section 196 of the Finance Act, 2016, then will the person be liable for consequences under section 197(c) of the Finance Act, 2016?

Answer: In respect of such undisclosed income which has been duly declared in good faith but not found eligible, then such income shall not be hit by section 197(c) of the Finance Act, 2016. However, such undisclosed income may be assessed under the normal provisions of the Income-tax Act, 1961.

Question No.10: If a person declares only a part of his undisclosed income under the Scheme, then will he get immunity under the Scheme in respect of the part income declared?

Answer: It is expected that one should declare all his undisclosed income. However, in such a case the person will get immunity as per the provisions of the Scheme in respect of the undisclosed income declared under the Scheme and no immunity will be available in respect of the undisclosed income which is not declared.

Question No.11: Can a person declare under the Scheme his undisclosed income which has been acquired from money earned through corruption?

Answer: No. As per section 196(b) of the Finance Act, 2016, the Scheme shall not apply, *inter-alia,* in relation to prosecution of any offence punishable under the Prevention of Corruption Act, 1988. Therefore, declaration of such undisclosed income cannot be made under the Scheme. However, if such a declaration is made and in an event it is found that the income represented money earned through corruption it would amount to misrepresentation of facts and the declaration shall be void under section 193 of the Finance Act, 2016. If a declaration is held as void, the provisions of the Income-tax Act shall apply in respect of such income as they apply in relation to any other undisclosed income.

Question No.12: Whether at the time of declaration under the Scheme, will the Principal Commissioner/ Commissioner do any enquiry in respect of the declaration made?

Answer: After the declaration is made the Principal Commissioner/ Commissioner will enquire whether any proceeding under section 142(1)/143(2)/148/153A/153C is pending for the assessment year for which declaration has been made. Apart from this no other enquiry will be conducted by him at the time of declaration.

Question No.13: Will the declarations made under the Scheme be kept confidential?

Answer: The Scheme incorporates the provisions of section 138 of the Income-tax Act relating to disclosure of information in respect of assessees. Therefore, the information in respect of declaration made is confidential as in the case of return of income filed by assessees.

Question No.14: Is it necessary to file a valuation report of

an undisclosed income represented in the form of investment in asset along with the declaration under the Scheme?

Answer: It is not mandatory to file the valuation report of the undisclosed income represented in the form of investment in asset along with the declaration. However, the declarant should have the valuation report. While e-filing the declaration on the departmental website a facility for uploading the documents will be available.

7. Further, Circular No. 16 of 2016 dated: 20th May, 2016 issued by CBDT containing EXPLANATORY NOTES ON PROVISIONS OF THE INCOME DECLARATION SCHEME, 2016 is reproduced as under-

Introduction:

The Income Declaration Scheme, 2016 (referred to here as 'the Scheme') is contained in the Finance Act, 2016, which received the assent of the President on the 14th of May 2016.

2. The Scheme provides an opportunity to persons who have paid not full taxes in the past to come forward and declare the undisclosed income and pay tax, surcharge and penalty totalling in all to forty-five per cent of such undisclosed income declared.

Scope of the Scheme

3. A declaration under the aforesaid Scheme may be made in respect of any income or income in the form of investment in any asset located in India and acquired from income chargeable to tax under the Income-tax Act for any assessment year prior to the assessment year 2017-18 for which the declarant had, either failed to furnish a return under section 139 of the Income-tax Act, or failed to disclose such income in a return furnished before the date of commencement of the Scheme, or such income had escaped assessment by reason of the omission or failure on the part of such person to make a return under the Income-tax Act or to disclose fully and truly all material facts necessary for the assessment or otherwise. Where the income chargeable to tax is declared in the form of investment in any asset, the fair market value of such asset as on 1st June, 2016 computed in accordance with Rule 3 of the Income Declaration Scheme Rules, 2016 shall be deemed to be the undisclosed income.

Rate of tax, surcharge and penalty

4. The person making a declaration under the Scheme would be liable to pay tax at the rate of 30 percent of the value of such undisclosed income as increased by surcharge at the rate of 25 percent of such tax. In addition, he would also be liable to pay penalty at the rate of 25 percent of such tax. Therefore, the declarant would be liable to pay a total of 45 percent of the value of the undisclosed income declared by him. This special rate of tax, surcharge and penalty specified in the Scheme will override any rate or rates specified under the provisions of the Income-tax Act or the annual Finance Acts.

Time limits for declaration and making payment

5. A declaration under the Scheme can be made anytime on or after 1st June, 2016 but before a date to be notified by the Central Government. The Central Government has further notified 30th September, 2016 as the last date for making a declaration under the Scheme and 30th November, 2016 as the last date by which the tax, surcharge and penalty mentioned in para 4 above shall be paid. Accordingly, a declaration under the Scheme in **Form 1** as prescribed in the Rules may be made at any time before 30.09.2016. After such declaration has been furnished, the jurisdictional Principal CIT/ CIT will issue an acknowledgment in **Form-2** to the declarant within 15 days from the end of the month in which the declaration under Form-1 is made. The declarant shall not be liable for any adverse consequences under the Scheme in respect of, any income which has been duly declared but has been found ineligible for declaration. However, such information may be used under the provisions of the Income-tax Act. The declarant shall furnish proof of payment made in respect of tax, surcharge and penalty to the jurisdictional Principal CIT/CIT in Form-3 after which the said authority shall issue a certificate in **Form-4** of the accepted declaration within 15 days of submission of proof of payment by the declarant.

Form for declaration

6. As per the Scheme, declaration is to be made in such form and shall be verified in such manner as may be prescribed. The form prescribed for this purpose is Form 1 which has been duly notified. The persons who are authorized to sign the said form are stated below-

a. Individual : Individual; where individual is absent from India, person authorized by him; where the individual is mentally incapacitated, his guardian or other person competent to act on his behalf.

b. HUF: Karta; where the karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of the HUF

c. Company: Managing Director; where for any unavoidable

reason the managing director is not able to sign or there is no managing director, by any director.

d. Firm: Managing partner; where for any unavoidable reason the managing partner is not able to sign the declaration, or where there is no managing partner, by any partner, not being a minor.

e. Any other association: Any member of the association or the principal officer.

f. Any other person: That person or by some other person competent to act on his behalf.

The declaration may be filed online on the e-filing website of the Income-tax Department using the digital signature of the declarant or through electronic verification code or in paper form before the jurisdictional Principal CIT/CIT.

Declaration not eligible in certain cases

7. As per the provisions of the Scheme, no declaration can be made in respect of any undisclosed income chargeable to tax under the Income-tax Act for assessment year 2016-17 or any earlier assessment year in the following cases—

(i) where a notice under section 142 or section 143(2) or section 148 or section 153A or section 153C of the Income-tax Act has been issued in respect of such assessment year and the proceeding is pending before the Assessing Officer. For the purposes of declaration under the Scheme, it is clarified that the person will not be eligible under the Scheme if any notice referred above has been served upon the person on or before 31st May, 2016 i.e. before the date of commencement of this Scheme.

In the form of declaration (Form 1) the declarant will verify that no such notice has been received by him on or before 31st May, 2016.

(ii) where a search has been conducted under section 132 or requisition has been made under section 132A or a survey has been carried out under section 133A of the Income-tax Act in a previous year and the time for issuance of a notice under section 143 (2) or section 153A or section 153C for the relevant assessment year has not expired. In the form of declaration (Form 1) the declarant will also verify that these facts do not prevail in his case.

(iii) cases covered under the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act, 2015.

A person in respect of whom proceedings for prosecution of any offence punishable under Chapter IX (offences relating to public servants) or Chapter XVII (offences against property) of the Indian Penal Code or under the Unlawful Activities (Prevention) Act or the Narcotic Drugs and Psychotropic Substances Act or the Prevention of Corruption Act are pending shall not be eligible to make declaration under the Scheme.

A person notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act or a person in respect of whom an order of detention has been made under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, subject to the conditions specified in the Scheme, shall also not be eligible for making a declaration under the Scheme.

Circumstances where declaration shall be invalid

8. In the following situations, a declaration shall be void and shall be deemed never to have been made:- (a) If the declarant fails to pay the entire amount of tax, surcharge and penalty within the specified date, i.e., 30.11.2016;

(b) Where the declaration has been made by misrepresentation or suppression of facts or information.

Where the declaration is held to be void for any of the above reasons, it shall be deemed never to have been made and all the provisions of the Income-tax Act, including penalties and prosecutions, shall apply accordingly. Any tax, surcharge or penalty paid in pursuance of the declaration shall, however, not be refundable under any circumstances.

Effect of valid declaration

9. Where a valid declaration as detailed above has been made, the following consequences will follow: (a) The amount of undisclosed income declared shall not be included in the total income of the declarant under the Income-tax Act for any assessment year; (b) The contents of the declaration shall not be admissible in evidence against the declarant in any penalty or prosecution proceedings under the Income-tax Act and the Wealth Tax Act; (c) Immunity from the Benami Transactions (Prohibition) Act, 1988 shall be available in respect of the assets disclosed in the declarations subject to the condition that the benamidar shall transfer to the declarant or his legal representative the asset in respect of which the declaration of undisclosed income is made on or before 30th September, 2017; (d) The value of asset declared in the declaration shall not be chargeable to Wealth-tax for any assessment year or years. (e) Declaration of undisclosed income will not affect the finality of completed assessments. The declarant will not be entitled to claim re-assessment of any earlier year or revision of any order or any benefit or set off or relief in any appeal or proceedings

under the Income-tax Act in respect of declared undisclosed income or any tax, surcharge or penalty paid thereon.

8. Conclusion

This benefit of back dating acquisition of valuables as was available in the case of VDIS,1997 is no more available under the IDS, 2016. Section 183(1) of the Finance Act specifically provides that where UDI is declared in the form of investment in any asset, the FMV of such asset as on the date of commencement of the scheme (1.06.2016) shall be deemed to be the UDI for the purposes of the Scheme.

As per Section 115BE of the Income-tax Act, where source of acquisition of cash, gold, bullion, jewellery etc acquired in the relevant year cannot be properly explained, the same will be taxed at the rate of 30%. So any undisclosed income in the form of cash, gold etc which were acquired in the past, can be declared in the current year's income tax return, which will be liable to tax @ 30% as against 45% tax envisaged in IDS, 2016.

So, for a tax evader, it is foolhardy to pay 45% tax when he can get away with 30% unless the evidence of acquisition of asset cannot be obliterated like Fixed Deposits in banks.

Hon'ble Finance Minister seems to have overlooked the reasons for the run away success of the last income disclosure scheme i.e, VDIS, 1997 which was announced almost 2 decades back on a false hope that people will come out in hordes to disclose their unaccounted wealth that they have accumulated in the last twenty years.

I think one small change in the scheme will make it a super duper hit.

Govt needs to change the valuation date from 1.06.2016 to some earlier date say 1.04.91/ 1.04.2001. The same would be quite logical also. Majority of indians have inherited/ received jewellery on marriage for which they don't have evidence. These jewellery will be declared if tax is charged at old valuation of assets. However, to prevent misutilisation of the suggested change in scheme, the concept of lock-in period may be incorporated say, if the declared jewellery is sold within 5-10 yrs of declaration, the assessee will lose the benefit of lower tax paid on lower valuation of jewellery. The suggested changes can be easily incorporated in the scheme. Sec 198(1) of the Finance Act, 2016 permits government to effect necessary changes in the scheme by passing an order not inconsistent with the provisions of the scheme in case any difficulty arises in giving effect to the provisions of the scheme. Sans the suggested change, the scheme is doomed to flop.

Thoughtful consideration, contemplation, and consultation are important before a situation is acted upon.

Penalty provisions under Income Tax Act – Unlearning and relearning consequent to Finance Act 2016

CA K.K.Chhaparia

As we know, penal provisions in any statute are intended to have deterrent effect for non compliances. The penal provisions in the Income-tax Act, 1961('the Act') are no exception to this rule. However, from time to time the perception of the lawmakers undergo change leading to tinkering of penal provisions with the expectation that the change would bring desired results by way of compliance besides minimization of litigation in interpreting those provisions at various judicial forums.

The Budget 2016 has courageously taken the challenge to displace one of the frequently litigated legal provisions viz. section 271(1)(c) dealing with concealment penalty which had plethora of amendments by way of appending Explanations in addition to conflicting interpretations at various points of time. Any assessee who has handled assessment proceedings would confirm that the proposal to levy penalty u/s 271(1)(c) was a regular feature, though in most cases, the appellate forum used to delete the penalty. Now, this good old section is proposed to be given a burial and in its place, a new section 270A/270AA is proposed to be introduced with applicability from assessment year 2017-18 onwards.

In the Budget, 2016 there has been a host of other amendments proposed in the penal provisions under the Act with a desire to rationalize and bring objectivity, certainty and clarity in the penalty provisions. In this article an attempt has been made to analyse the proposed changes to have clarity on the subject, going forward.

Replacement of section 271(1)(c) with proposed section 270A and 270AA of the Act

With the proposed amendment, the good old Section 271(1)(c) of the Act is proposed to be withdrawn from Assessment year 2017-18 and onwards. Thus, penalty under 271(1)(c) could be levied for cases upto Assessment year 2016-17 and penalty be levied under the newly inserted section 270A with effect from Assessment year 2017-18 and onwards. As mentioned in the Budget Speech, *"At present, the Income Tax Officer has discretion to levy penalty at the rate of 100% to 300% of tax sought to be evaded. I propose to modify the entire scheme of penalty by providing different categories of misdemeanour with graded penalty and thereby substantially reducing the discretionary power of tax officers."*

The proposed section has classified the penalty into two types, one being cases of *underreporting of income* and second being cases of *misreporting of income*. Penalty would be leviable @50% of tax in cases involving underreporting of income and in cases involving misreporting of income, penalty is proposed to be levied @200% of tax.

Cases of underreporting of income

It is proposed that a person shall be considered to have *under reported his income* if:

(a) the income assessed is greater than the income determined in the return processed under clause (a) of sub-section (1) of section 143;

(b) the income assessed is greater than the maximum amount not chargeable to tax, where no return of income has been furnished;

(c) the income reassessed is greater than the income assessed or reassessed immediately before such re-assessment;

(d) the amount of deemed total income assessed or reassessed as per the provisions of section 115JB or 115JC, as the case may be, is greater than the deemed total income determined in the return processed under clause (a) of sub-section (1) of section 143;

(e) the amount of deemed total income assessed as per the provisions of section 115JB or 115JC is greater than the maximum amount not chargeable to tax, where no return of income has been filed;

(f) the income assessed or reassessed has the effect of reducing the loss or converting such loss into income.

Thus, on looking at the six instances of under-reporting of income, it is seen that all additions in the assessment/reassessment order shall be treated as under-reporting of income. However, if an addition is specifically covered under misreporting of income, then the tax authority may initiate penalty by treating misreporting of income. To avoid penalty in bonafide cases, some exclusions have been provided from penal provisions in respect of additions mentioned below.

This article has originally published in 'The Chartered Accountant'.

Exclusions from under-reported incomes

The statutory provision proposed to be inserted also lists out instances where under-reporting of income will not apply. They are listed below:

(*i*) Where the assessee offers an explanation and the income-tax authority is satisfied that the explanation is **bona fide and all the material facts have been disclosed**;

(*ii*) The income assessed to tax is determined on the basis of **estimate** though the books of account are correct and complete but the income cannot be properly deduced therefrom due to the method employed by the taxpayer;

(*iii*) Where the assessee himself has **estimated** a lower amount of addition or disallowance in the computation of income and disclosed all facts material to the addition or disallowance;

(*iv*) Where the assessee has maintained documents as prescribed under section 92D and declared the international transactions under Chapter X and disclosed all material facts relating to the transaction;

(*v*) The undisclosed income is detected on account of search operation and penalty is leviable under section 271AAB.

Thus, on looking at the instances mentioned above, it seems that the intention of the legislature is not to levy penalty in bona-fide cases where all material facts have been disclosed or where additions have been made on revision of estimates by a tax authority.

Cases of Misreporting of income

The cases of *misreporting of income* have been specified as under:

(i) misrepresentation or suppression of facts;

(ii) non-recording of investments in books of account;

(iii) claiming of expenditure not substantiated by evidence;

(iv) recording of false entry in books of account;

(v) failure to record any receipt in books of account having a bearing on total income;

(vi) failure to report any international transaction or deemed international transaction under Chapter X.

One of the condition for treating misreporting is 'misrepresentation or suppression of facts', which is not been defined in the Act. To have clarity on the issue, let me take some instances. For instance, if a assessee voluntarily offers disallowance u/s 14A of 500000/-. While doing so, he doesn't consider stock in trade of shares as being subject matter of disallowance. While passing the assessment order, the AO consider the stock in trade too for the purpose of calculating disallowance. In this instance, the assessee has given full particulars of disallowance, and the addition made by the assessing officer is not on account of misrepresentation or suppression. This instance would be treated as under-reporting of income. However, as per existing section 271(1)(c), penalty may not be leviable at all in this circumstance in view of landmark Supreme Court judgment in CIT Vs. Reliance Petroproducts Private Limited case [322 ITR 158 (SC)] case. Taking another instance, if additions have been made on account of deemed dividend u/s 2(22)(e) wherein all details were available with the assessing officer, it shall be a case of underreporting of income.

Regarding non recording of investments, reference is made to section 69 of the Act, which provides that if Investments made by assessee is not recorded in the regular accounts, or if the explanation regarding source of such investments is not satisfactorily explained by an assessee, then the value of such investments shall be treated as income of such financial year. Thus, all additions under section 69 would be hit by penalty provisions as applicable for misreporting of income. However, additions under section 56(2)(vii) or (viia), where an assessee acquires a property at a price which is less than the fair market value of such property, may not be covered by the penalty provisions, unless the assessing officer conclude that the difference represent unexplained investment.

Calculation of underreported income

Proviso to sub-section (3) of Proposed section 270A has prescribed mode of determination of underreported income in different scenarios.

(a) If no return has been furnished, the difference between amount of income assessed and the maximum amount not chargeable to tax.

(b) If return has been furnished and the earlier order was under section 143(1) (a) – in that case, the underreported income shall be the difference between amount of income assessed and the income determined as per section 143(1)(a) .

(c) If return has been furnished, and where assessment has earlier been made say under section 143(3) in that case, the difference between amount of income assessed and the income determined as per section 143(3).

(d) In a case, where under reported income arises out of determination of deemed total income under section 115JB or 115JC in such a case. The method of

computation of under-reported income when the income tax is payable on the deemed total income computed under the provisions of section 115JB or section 115JC has been given as below:

The amount of under-reported income = (A – B) + (C-D)

A = The total income assessed as per the general provisions of the Act.

B = Total income that would have been chargeable as per the general provisions reduced by the amount of under-reported income.

C = The total income assessed as per the provisions of section 115JB or section 115JC.

D = The total income that would have been chargeable had the total income been assessed as per the provisions of section 115JB or section115JC as reduced by the amount of under-reported income.

In the Memorandum explaining the Finance Bill, illustrations have been given to explain the mode of calculation of underreported income. The same are being discussed below with illustrations

Illustration 1: Case is of an individual below 60 years of age and no return of income has been furnished:

Particulars	(Figures in Rs lakh)
Returned total Income	100
Total Income determined under section 143(1)(a)	110
Total Income assessed under section 143(3)	150
Total Income reassessed under section 147	180

Considering that none of the additions or disallowances made in assessment or reassessment as above qualifies under sub-section (6) of section 270A, the penalty would be calculated as under:

Particulars	(Figures in Rs)
Total Income assessed under section 143(3) Under-reported Income	10,00,000 10,00,000-2,50,000* =7,50,000
Tax Payable on under-reported Income	30 % of 7,50,000 = 2,25,000
Penalty Leviable**	50 % of 2,25,000 = 1,12,500

*Being maximum amount not chargeable to tax

**Considering under-reported income is not on account of misreporting

Illustration 2: Case is of a firm liable to tax at the rate of 30 per cent.:

Particulars	(Figures in Rs lakh)
Returned total Income	100
Total Income determined under section 143(1)(a)	110
Total Income assessed under section 143(3)	150
Total Income reassessed under section 147	180

Considering that none of the additions or disallowances made in assessment or reassessment as above qualifies under sub-section (6) of section 270A, the penalty would be calculated as under:

Particular	Assessment under section 143 (3)	Re-assessment under section 147
Under-reported Income	(150-110) = 40	(180-150) = 30
Tax Payable on under-reported Income	30 % of 40 = 12	30 % of 30 = 9
Penalty Leviable*	50 % of 12 = 6	50 % of 9 = 4.5

* Considering under-reported income is not on account of misreporting

Illustration 3:Case is of a company liable to tax at the rate of 30 per cent.:

Particulars	(Figures in Rs lakh)
Returned total Income (loss)	(-)100
Total Income (loss) determined under section 143(1)(a)	(-)90
Total Income (loss) assessed under section 143(3)	(-)40
Total Income reassessed under section 147	20

Considering that none of the additions or disallowances made in assessment or reassessment as above qualifies under sub-section (6) of section 270A, the penalty would be calculated as under:

Particular	Assessment under section 143 (3)	Re-assessment under section 147
Under-reported Income	(-) 40 minus (-)90 = 50	20 minus (-)40 = 60
Tax Payable on under-reported Income	30 % of 50 = 15	30 % of 60 = 18
Penalty Leviable*	50 % of 15 = 7.5	50 % of 18 = 9

* Considering under-reported income is not on account of misreporting

Immunity from penalty in cases of underreporting of income under proposed section 270AA

The Finance Bill 2016 proposes to insert section 270AA empowering the assessing officer to grant immunity from penalty u/s 270A subject to conditions such as

(i) the taxpayer pays the tax and interest payable as per the assessment order

(ii) the taxpayer doesn't prefer an appeal against such assessment order; and

(iii) the taxpayer make an application within one month from the end of the month in which the assessment order is received in such form and manner as may be prescribed.

If the application has been made as aforesaid fulfilling the conditions as specified above, the Assessing Officer **shall** grant immunity from imposition of penalty and consequent prosecution proceedings. However, this immunity will not apply to 'misreporting of income' and could be availed only in respect of 'under-reporting of income.'

Amendment has been proposed in section 249 to provide that where an assessee makes application under section 270AA, the period beginning the date of application to the date on which the order rejecting the application is served on the assessee shall be excluded for calculation of the time limit of filing appeal to CIT(A).

Now, under the proposed penalty regime, it may be advisable to first apply for immunity under this provision (provided of course, he could pay the tax in dispute) and if application is rejected, then he may file appeal. However, one may contemplate not going into appeal and pay reduced rate of penalty in cases involving under-reporting of income. It is relevant to refer the Supreme Court decision in Sir Shadilal sugar mill (168 ITR 7051) holding that there may be a hundred and one reasons for not protesting and agreeing to an addition but that does not follow to the conclusion that the amount agreed to be added was concealed income . Indeed, there may be numerous reasons with the tax payer for not approaching the first appellate authority for justice, for example the following

· To avoid the pains of further litigations, numerous hearings and mental tensions borne in it;

· The risk of enhancement at the first appellate authority on various technical issues;

· Nowadays commonly seen attitude of assessment in appellate proceedings;

· Heavy litigation cost of Representative;

· Withdrawn of appeal at instance of assessee is the discretion of appellate authority

Summing up, it is expected that with the immunity provided in proposed section 270AA, there will be lessor litigations in future.

Old section 271(1)(c) vis-a-vis proposed section 270A

As mentioned by our Hon'ble Finance Minister in his Budget Speech, "Levy of heavy penalty for concealment of income has over the years resulted in large number of disputes despite a number of decisions the Apex Court on interpretation of statutory provisions and principles guiding imposition of penalty." It is admitted fact that presently, assessing officers initiate penalty proceedings in most of the cases, in view of *Hon'ble Supreme Court judgment in case of UOI Vs. Dharmendra Textiles Processors [306 ITR 277 (SC)]*, irrespective of the fact whether or not there has been any actual concealment of income or furnishing of inaccurate particulars of income. However, the assessee generally used to get relief in appellate proceedings on ground of 'reasonable cause' in terms of section 273B which provides that no penalty shall be imposed under various provisions of section 271 and 272, if the assessee proves that there was reasonable cause for the failure. The words 'reasonable cause' has not been defined in the Act, though, it has been interpreted by various courts.

The Delhi High Court has enunciated the meaning of the term reasonable cause in the case of *Azadi Bachao Andolan Vs. Union of India 252 ITR 471*. It was held that reasonable cause can be reasonably said to be a cause which prevents a

man of average intelligence and ordinary prudence, acting under normal circumstances, without negligence or inaction or want of bona fides.

In *Woodward Governors India (P) Ltd. Vs. CIT 118 Taxman 433 (Delhi)*, the Delhi High Court considered the meaning of reasonable cause and held that Reasonable cause as applied to human action is that which would constrain a person of average intelligence and ordinary prudence. It can be described as a probable cause. It means an honest belief founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinary prudent and cautious man, placed in the position of the person concerned, to come to the conclusion that the same was the right thing to do.

The proposed section 270A doesn't feature in Section 273B, implying that the argument of 'reasonable cause' shall not be allowed in the new penalty regime. However, clause (a) of sub-section 6 of proposed section, specifically indicate that where assessee offers an explanation, and a tax authority is satisfied that the explanation is bona-fide, the case will not be treated as under-reporting of income. In the opinion of the author, whether explanation is bona-fide or not may again be prone to number of litigations.

It has been noticed that even in cases of where is difference in interpretation of provisions or wherever, there are two views arising, the penalty proceedings are initiated.

It is important to mention that in cases covered under under-reporting, presently Courts have been taking view that in similar circumstances, penalty is not leviable at all. The major litigations started with *Dilip N.Shroff case [291 ITR 519 (SC)]*, which held that penal provision must be strictly construed and that *mens- rea* is necessary ingradient for imposition of penalty. But, in Dharmendra Textiles (supra), Supreme Court partly overruled Dilip N. Shroff's csse and held that penalty u/s 271 is only a civil liability and *mens rea* is not an essential ingredient for attracting civil liability. However, this position has again been revisited in Reliance Petroproducts case (supra), and it was held a mere making of the claim, which is not sustainable in law, by itself, will not amount to a case as to furnishing inaccurate particulars and the law laid down in Dilip N. Shorff's case as to the meanings of the words 'conceal' or 'inaccurate' continues to be good law. Thus, when the law on the scope of penalty is about to get settled by a number of judgments, quite few of them from the Apex Court, we find that a new law has come. It is to be seen whether the Department takes liberal view on mens rea by following Apex Court judgments in cases discussed above.

As mentioned above, the proposed penalty provisions shall take effect from AY 2017-18 and thus, shall apply to assessments which are being passed perhaps in FY 2019-20. Hence this section may not have immediate impact. It is expected that by the time, this section becomes operative, there will be more clarity on the proposed provisions.

Penalty for search cases [Section 271AAB]

Presently, section 271AAB provides for penalty ranging from 30% to 90% of the undisclosed income in respect of search cases, in case where assessee fails to admit his undisclosed income and also fails to pay tax thereon on or before specified date.

In order to rationalize the rate of penalty and to reduce discretion it is proposed to amend that clause of sub-section (1) of section 271AAB to provide for levy of penalty on such undisclosed income at a flat rate of sixty per cent of such income.

It is mentioned that the proposed amendment shall be applicable from 1st April 2017. Unlike section 270A in which there is a clear mention that the said section shall apply from Assessment year 2017-18, here in this section, there is no such specific mention. As per section 271AAB(1), this section is applicable for assesses covered under search after 1.7.2012. Thus, by necessary implication, it can be reasonably inferred that the amended provisions shall apply for all penalty levied after 1.4.2017.

Amendment in Section 272A to cover omission of section 271(1)(b)

It is proposed to amend sub-section (1) of section 272A to further include levy of penalty of ten thousand rupees for each default or failure to comply with a notice issued under sub-section (1) of section 142 or sub-section (2) of section 143 or failure to comply with a direction issued under sub-section (2A) of section 142.

This amendment will take effect from the 1st day of April, 2017 and will accordingly, apply in relation to the assessment year 2017 -2018 and subsequent years.

This is a consequential amendment. The proposed insertion of clause (d) in Section 272A(1) is similar to section 271(1)(b) which provides for penalty for non- compliance of certain notices as mentioned above. Since section 271 shall not apply from AY 2017-18, amendment has been proposed in section 272A to cover the cases of 271(1)(b).

Time limit to pass order u/s 273A

Presently, section 273A empowers the Principal Commissioner or Commissioner to use discretion for waiver of penalty imposable on the taxpayer in certain cases. However, there is no time limit prescribed for accepting or rejecting the petition for waiver of penalty.

The Finance Bill, 2016 mandates that the order of granting or rejecting immunity from penalty under section 273A must be passed an order within period of 12 months from the end of the month in which the application was received. Further no order shall be passed without giving an opportunity of being heard to the taxpayer.

Time limit to pass order u/s 273AA

Presently, the proceedings before the Settlement Commission could be abated in the circumstances mentioned in section 245HA. The Principal Commissioner or Commissioner may grant immunity from penalty to the taxpayer under section 273AA. However, there is no time limit within which the application for immunity from penalty is to be decided.

The Finance Bill, 2016 proposes to amend to section 273AA by mandating that such order accepting or rejecting the application should be passed within a period of 12 months from the end of the month in which such application was received. No order shall be passed without providing an opportunity of hearing to the assessee.

The proposed amendment shall take effect from 01.06.2016. However, this amendment would also apply in respect of all applications pending as on 01.06.2016 with time limit for disposal of such applications by 31.05.2017.

Penalty not to imposed where there is reasonable cause [Section 273B]

Section 273B contains majority of the penal provisions which the income tax authority may waive based on reasonable cause. Section 273B is proposed to be amended to accommodate the newly inserted section 271GB (meant for imposing penalty on international group for not furnishing the details within the prescribed time).

It may be noted that the newly inserted section 270A does not find place in section 273B which means that the power vested with the Assessing Officer under section 270AA is final though non-discretionary and the taxpayers cannot take recourse to the Commissioner for waiver of such penalty.

To conclude this article, considering the fact that the word 'shall' has been used in proposed section 270A, we may find an era where levying of penalty becomes a rule as against exception under section 271(1)(c). The intention to rationalize rate of penalty and reduce discretionary powers of a tax authority is a welcome step.

Regardless of what you are doing, strive to do the very best you can.
This position dissolves difficulties.

Rules relating to CENVAT Credit on Input Service and the Statutory Provisions under Negative List regime – No Harmony – controversy continues

CA Rajeev Agarwal

To start with, please allow me to mention that the scheme of CENVAT Credit has gradually evolved with the passage of time, for eliminating the cascading effect of tax on taxes, starting from the erstwhile Proforma Credit scheme followed by the MODVAT Credit and the present CENVAT Credit. Effective from **10-9-2004**, the scope of the CENVAT scheme got largely expanded with the introduction of the new CENVAT Credit Rules, 2004, allowing cross-section utilization of credit by Manufacturers and Service Providers on input goods, capital goods and input services on a common platform. It has been the Government's policy, to formulate provisions to nullify the duty impact whenever the goods and service change the hand - starting right from the original raw-materials suppliers to the manufacturer and to the ultimate industrial consumer and service provider falling in the service tax net. In this article, my endeavour is to highlight the controversy that continues with regard to the approach of the revenue authorities consequent to the changes made in the provisions in the credit rules which do not go with the Government's objective of allowing seamless credit for eliminating the tax cascading effect.

We all are aware that the definition of input service has been frequently amended from time to time. The definition of input service, as was introduced in the 2004 Rules, was initially wide enough to include all services (under the Sun) availed by a manufacturer/service provider for manufacture of final product/ provision of output service. The initial controversy arose when the department started disputing the credit on Goods Transport Agency (GTA) services availed by the manufacturer beyond the place of removal of final products. The Larger Bench of Tribunal in the case of ABB Ltd. settled the matter in favour of assessee holding that credit was available on GTA service even after place of removal. The definition was amended in 2008 to restrict the credit only upto the place of removal. In another issue relating to availment of credit on services received for staff welfare (e.g. employees' group medi-claim insurance, transport services for employees, canteen expenses, etc.) credit was sought to be disallowed by the authorities, which later on allowed by the Tribunals on the ground that the definition of 'input service' specifically included all services received for activities relating to the business of assessee.

Thereafter in 2011, the phrase - "activities relating to business" appearing in Rules was omitted to restrict the services received for use in relation to manufacture or for provision of taxable output service and to certain other specified services. In the same year 2011 amendment, another very important amendment was made in the definition of 'input service' which might have got skipped from the eyes of many stake holders. The phrase "services used in relation to setting up of factory" as previously appearing in the definition was silently omitted without any clarification from the Central Board of Excise & Customs (CBEC), to inform the trade of the possible impact of the said amendment. Simultaneously, an exclusion clause was also introduced for the first time in the definition of 'input service' to disallow credit on services availed for construction of a building or a civil stricture or a part thereof. Amendment was further made in 2012 to align with the new provisions in the light of Negative List based Service Taxation regime to the effect that the **service portion in the execution of works contract service or construction services** in so far as they are used for construction or execution of works contract of a **building or a civil structure or a part thereof**.

In a very plain and simple language, in terms of the above amendment, the manufacturer or a service provider will not be able to claim credit on construction services received in the factory (however on exceptionable basis, the credit facility has been extended only to a construction service provider and works contractor). The amendment appears to be very simple in case it is analysed from the manufacturer's perspective having an enclosed factory for undertaking manufacturing operations. What will be the case if the above amendment is analyzed from the perspective of a "mining service provider" or simply a "holder of mine" engaged in the activity of mining and selling of minerals which attract central excise duty (e.g. coal) ? A mine holder, and more specifically who is operating an underground

mines, is required to avail various civil related services like construction of pillars and boulders, walls, etc to prevent collapse of the mine ceiling / floor as and when deep underground operations are taken to excavate the minerals (which essentially is in relation to mining activity). Undoubtedly, there would be use of cement and steel which would help the department's case to substantiate the claim against the assessee that the subject services availed by the mine holder is a civil service and therefore credit cannot be allowed considering the specific exclusion clause inserted in the definition of 'input service' referred above. The above difficulty would equally apply to an integrated steel factory having captive iron ore mines or an integrated cement plant having captive limestone mines or an integrated copper related goods manufacturing factory having captive copper mines both - underground and open cast mines.

Another very peculiar situation that has arisen consequent to the amendments made in 2012 referred above, the definition of 'input service' excludes service portion in the execution of works contract service or construction services in so far as they are used for construction or execution of works contract of a building or a civil structure or a part thereof. A very significant point that needs to be taken note of that the definition of 'input service' in the inclusive phrase just before the exclusion clause still includes *"services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises".* My point is pursuant to the introduction of Negative List w.e.f. July 2012, there is no classification of services as it was before like – Commercial or Industrial Construction Service, Maintenance, Management & Repair Service, etc. As on date, there remains only the definition of 'Works Contract', <u>that again is not a service classification or a category of service as it previously was</u>, but only to facilitate percentage of tax abatement available on goods portion and fastening of service tax liability under Reverse Charge Mechanism. If one strictly goes through the definition of 'works contract' which specifically includes repair, maintenance, renovation, alteration or movable or immovable property. Now consider a situation where the manufacturer or a service provider avails repair or renovation service in his factory / office premises and the service provider undertaking repair service also supplies sand, cement, etc. – whether in that case the service recipient would be eligible to avail CENVAT credit of input service when there is specific restriction on works contract since specifically mentioned in the exclusion part of the definition of 'input service' at the same time when the said definition permits credit availment in the inclusive part (before the exclusion list) which specifically includes "services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service".

This is a high time for the CBEC to clarify the above anomaly which will again give rise to a possible long-drawn litigation when the country is heading towards the implementation of a new indirect taxation regime under the proposed Goods & Service Tax Act.

Things can be viewed many different ways. Choosing to have a positive attitude regardless of circumstances will have the greatest impact on your success.

WILL THIS BUDGET GIVE START-UPS A START

CA Alok Patnia

The entrepreneurial development is demanded with the vent of emerging skilled population. Policy measures on infrastructural development, rural development and promoting early entrepreneurship is set to boost the market and this budget 2016has more to dispense with these objectives.

The 'Make in India' program launched by PM Modiraised expectations to peak for the Start-ups. With expectation to promotion and prosperity of the nation, the union budget 2016-17 did bring about another milestone towards the launch of Startup and Standup India.

With the announcement of setting up of a fund to raise Rs 2,500 crore annually for four years to finance startup, the government has laid another foundation in incentivizing the Start up platform. There are a number of significant changes brought about by the Budget and number of schemes that the Government has launched.

The Finance Bill 2016 has defined "Eligible start-up" to mean a company engaged in 'eligible business' which fulfils the following conditions: "

- It is incorporated on or after 1 April 2016 but before 1 April 2019;
- Total turnover does not exceed INR 25 crore in any of the previous years beginning on or after 1 April 2016 and ending on 31 March 2021;
- It holds a certificate of eligible business from the Inter-Ministerial Board of Certification ("IMBC"), as constituted by the Department of Industrial Policy and Promotion ("DIPP"), eligible business being defined as business which involves innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property

Though restrictive in the circumference, the bill has proposed many benefits for the Start-ups as below:

TAX AND DUTY INCENTIVES:

The **New Manufacturing Companies** incorporated on after 1-3-2016 is proposed to be given an option of being taxed at 25%+ surcharge + cess provided they do not claim any profit linked deduction, Investment linked deduction and do not avail any investment allowance. Custom and Excise duties for various raw materials and goods have been refined to improve competitiveness of domestic manufacturing sectors. Basic custom duty rates have been increased in the range of 2.5% to 10% for imported outputs and reduced from around 10% to a lower rate or zero for inputs. The sectors where this rationalization has happened are either existing sectors which require support to thrive such as metals, chemicals, textiles, capital goods, paper, food processing or new focus sectors such as IT hardware and defence.

Further, it is proposed to lower the corporate tax rate for the next FY of relatively Small Enterprises with turnover not exceeding 5 crores in the FY ending March 2015 to 29%+ surcharge+ cess.

Also to ease the business life of Startups, the government has rolled out 100% tax exemption to first three year performance of the business.

INFRASTRUCTURE:

The industry has always faced challenges with respect to the infrastructure and particularly the manufacturing sector has been encountering financial impacts due to constraints in sourcing raw materials at optimal costs and making products available in the niche markets.

One of the expectations from the budget was to increase the pace of infrastructure creation. The announcement in the budget to add 10,000 KM of national Highways and convert 50,000 KM of State Highways to National Highways will be a significant increase in the pace and will definitely ease out bottlenecks in logistics and help manufacturing companies to reduce their costs and expanding reach.

CAPITAL GAIN EXEMPTION

Capital gains exemption has been proposed to individual promoter (or HUF) on sale of a residential house property, if the sale consideration received is utilized to invest in atleast

50% stake in an "eligible start-up".

Start-up should utilize the above investment for purchase of new assets being plant and machinery and computers or computer software (in case of technology driven start-ups). This is one of the ways to promote investment, Government thinking of all possible routes to encourage funding for Start-Ups.

Further, Capital gains exemption has been proposed to Investors from Long Term Capital Gain, if long term capital gains proceeds are invested in the units of a specified fund as may be notified by the Government of India (Fund of funds as proposed in the Start-up India Action Plan to finance start-ups

EASE OF DOING BUSINESS

There have been numerous initiatives taken by the government to enable businesses to start and function smoothly.

With Budget'2016, Finance Minister brought about one page registration form which will be made available on Smartphone via an app and provide "on-the-go accessibility" for registering startups with relevant agencies of the Government.

The government has also proposed to introduce Centre State Investment Agreement, which would ensure execution of investment treaties signed between India and other countries.

There have also been announcements which incrementally improve accessibility to funds, reduce complexity in disputes as well as taxation.Start-ups would be allowed self-certification of compliances with certain labour laws and environment laws so as to reduce the regulatory burden

All the benefits brought about by Budget' 2016 will not only facilitate ease of setting up business, also it will give an opportunity creative entrepreneurial management.

Other additional plans to boost Start-Ups in India

- Setting up of a Single Point of Contact and hand holding facilitator in the form of Startup Hub
- Relaxed Norms of public procurement of startups
- Organizing of Startup Fests and Grand Innovation Challenge
- Launching of Atal Innovation Mission for promotion of entrepreneurship and innovation
- Setting up of 35 new incubators, wherein upto 10 crores of funding support shall be provided by the CG
- Setting up of 7 new research parks in the IITs modelled on the research park at IIT Madras.
- Promotion of entrepreneurship in biotechnology be setting up of 50 new bio incubators, 150 technology transfer offices, 5 new bio clusters.
- Targeted Innovation focused programs for students for showcasing innovation and providing a collaboration platform
- Setting-up of 1500 multi-skill training institutes across the country - This is a great intervention to help India get the right skills to enable the larger Make in India program.
- A National Board of for Skill Development Certification in partnership with the industry and academia is proposed to be set-up..
- To mentor entrepreneurs, Entrepreneurship Education and Training (EET) will be provided in 2200 colleges, 300 schools, 500 government ITIs and 50 vocational training centres through Massive Open Online Courses (MOOCs).
- The new 'Digital Literacy Mission' for rural India aimed to cover around six crore additional households within the next three years will make it possible for rural India to be get benefits of online learning and support the program

The budget in its wavelength promoted an aspiration to strengthen the foundation of the development. Budget'2016 came up with broader coverage for entrepreneurial development.

Amendments to Presumptive Taxation Scheme (44AD/ADA)– Widening of Scope!!

CA Ayush Goel

"If we never experience the chill of a dark winter, it is very unlikely that we will ever cherish the warmth of a bright summer's day. Nothing stimulates our appetite for the simple joys of life more than the starvation caused by sadness or desperation. In order to complete our amazing life journey successfully, it is vital that we turn each and every dark tear into a pearl of wisdom, and find the blessing in every curse."

Anthon St. Maarten,

Divine Living: The Essential Guide To Your True Destiny

Brief Overview:-

The Finance Budget 2016defines not only a critical analysis of the financial statements of the present government for the Financial Year 2015-16, it also lays down the stepping stone for the procedural reforms for the forthcoming year 2016-17 and the roadmap of the taxation regimes of the country.

Amidst the **Desultory phase of global economic slowdown** and the Indian financial markets taking responsive actions to the global scenario, our Finance Minister , Mr. Jaitley , presented significant reforms in the Direct Tax bucket, which turned out to be far more fundamental and future-oriented.

One such change was the change proposed on the presumptive taxation scheme u/s 44AD of the Act.

This change was many-fold in nature, covering various loose ends and simultaneously inviting scope for future tax planning ambit for us chartered accountants.

Let us analyze the various amendments which have been placed in the Finance Bill 2016, with respect to the Presumptive Taxation Scheme.

1) Proposed Amendments to Section 44AD

- The First and the most important amendment that has been introduced in Section 44AD has been the enhancement of limit from **1 Crore to 2 Crores.**

  This amendment has prima facie extended the benefit of the Presumptive Taxation Scheme to a wide range of assessee under the umbrella of EASE OF DOING BUSINESS. However, with the increasing challenges of the business and the falling profit percentages in this competitive market, it needs to be seen that whether such a huge widening of umbrella will actually be availed or shall be restricted to a limited few.

- However the major surprise has been the **proposed omission of the proviso to clause (2)** which stated that:-

"Provided that where the eligible assessee is a firm, the salary and interest paid to its partners shall be deducted from the income computed under sub-section (1) subject to the conditions and limits specified in clause (*b*) of section 40."

With this proposed amendment, the situation now has arisen that mostly all the assessee eligible to provide for such salary and interest under clause (b) of section 40 have been taken out from the purview of presumptive taxation and being forced to get their accounts audited u/s 44AB of the Act.

- Another big blow to the assessee availing for the Presumptive Scheme u/s 44AD has been the proposed insertion of the following clause (4) and (5) under the said section

"(4) **Where an eligible assessee declares profit for any previous year in accordance with the provisions of this section and he declares profit for any of the five assessment years relevant to the previous year succeeding such previous year not in accordance with the provisions of sub-section (1), he shall not be eligible to claim the benefit of the provisions of this section for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance with the provisions of sub-section (1).**

(5) Notwithstanding anything contained in the foregoing provisions of this section, an eligible assessee to whom the provisions of sub-section (4) are applicable and whose total income exceeds the maximum amount which is not chargeable to income-

tax , shall be required to keep and maintain such books of account and other documents as required under sub-section (2) of section 44AA and get them audited and furnish a report of such audit as required under section 44AB.";

This means that now an assessee willing to declare his income under the presumptive scheme shall continue to do so for a period of 5 Assessment Years starting from the Assessment year where he has first taken such benefit.

If he fails to do the same, he shall be restricted from taking such benefit for a period of 5 Assessment Years from the starting of the Assessment Year after the year in which the assessee has opted out of such scheme.

This concept of cooling period is defying the logic of the benefit proposed of the scheme of Presumptive Taxation and is totally uncalled for.

2) Another major introduction in the scheme of Presumptive Taxation has been the Introduction of Section 44ADA, i.e. the **professionals are now also brought within the ambit of the Presumptive Taxation Scheme.**

The following clauses have been proposed to be introduced

(1) Notwithstanding anything contained in sections 28 to 43C, in the case of an assessee, being a resident in India, who is engaged in a profession referred to in sub-section (1) of section 44AA and whose total gross receipts do not exceed fifty lakh rupees in a previous year, a sum equal to fifty per cent. of the total gross receipts of the assessee in the previous year on account of such profession or, as the case may be, a sum higher than the aforesaid sum claimed to have been earned by the assessee, shall be deemed to be the profits and gains of such profession chargeable to tax under the head "Profits and gains of business or profession".

(2) Any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of sub-section (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed.

(3) The written down value of any asset used for the purposes of profession shall be deemed to have been calculated as if the assessee had claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant assessment years.

(4) Notwithstanding anything contained in the foregoing provisions of this section, an assessee who claims that his profits and gains from the profession are lower than the profits and gains specified in sub-section (1) and whose total income exceeds the maximum amount which is not chargeable to income-tax, shall be required to keep and maintain such books of account and other documents as required under sub-section (1) of section 44AA and get them audited and furnish a report of such audit as required under section 44AB.'.

This amendment is a welcome move as it has given an option to the professionals as well to do away with the tedious task of maintaining books of accounts under section 44AA and declare their income on presumptive basis.

However, the limit of 50% of the profits is on the higher side and not many of the professionals shall be willing to take benefit of the said amendment.

3) Amendments have been made to provisions of Section 44AA and 44AB to supplement the above proposed amendments to Section 44AD and insertion of 44ADA.

However, one critical observation is that though the limit of Section 44AD has been increased to 2 crores, the limit of Audit u/s 44AB clause (a) has been unmoved from 1 Crore. The clause reads as follows:-

"**carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year**"

This thereby creates a scenario of conflict between sections 44AB and 44AD for the requirement of Audit.

However, Section 44AD being an overriding provision to that of Section 44AB, it is deemed that the requirement of Audit u/s 44AB shall arise only when the provisions of section 44AD are not met with or the turnover exceeds 2 Crores.

However, this point needs attention of us, professionals, and sought to be clarified in near future.

Clarifications on the Income Declaration Scheme, 2016

Circular No. 24 of 2016

F.No.142/8/2016-TPL
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
(TPL Division)
***

Dated 27th of June, 2016

Clarifications on the Income Declaration Scheme, 2016

The Income Declaration Scheme, 2016 (hereinafter referred to as 'the Scheme') incorporated as Chapter IX of the Finance Act, 2016 provides an opportunity to persons who have not paid full taxes in the past to come forward and declare the undisclosed income and pay tax, surcharge and penalty totaling in all 45% of such undisclosed income declared. The Income Declaration Scheme Rules, 2016 (hereinafter referred to as 'the Rules') have been notified. In this regard, Circular No. 17 of 2016 dated 20th May, 2016 issued by the Board provided clarifications to 14 queries. Subsequently, further queries have been received from the public about various provisions of the Scheme. The Board has considered the same and the following clarifications are issued.-

Question No.1: ***If only part payment of the tax, surcharge and penalty payable on undisclosed income declared under the Scheme is made before 30.11.2016, then whether the entire declaration fails as per section 187(3) of the Finance Act, 2016 or pro-rata declaration on which tax, surcharge and penalty has been paid remains valid?***

Answer: In case of part payment, the entire declaration made under the Scheme shall be **invalid**. The declaration under the Scheme shall be valid only when the complete payment of tax, surcharge and penalty is made on or before 30.11.2016.

Question No.2: ***In case of amalgamation or in case of conversion of a company into LLP, if the amalgamated entity or LLP, as the case may be, wants to declare for the year prior to amalgamation/conversion, then whether a declaration is to be filed in the name of amalgamated entity/LLP or in the name of the amalgamating company or company existing prior to conversion into LLP?***

Answer: Since the amalgamating company or the company prior to conversion into LLP is no more into existence and the assets/liabilities of such

erstwhile entities have been taken over by the amalgamated company/LLP, the declaration is to be made in the name of the amalgamated company or the LLP, as the case may be, for the year in which the amalgamation/conversion takes place.

Question No.3: ***Whether the Scheme is open only to residents or to non-residents also?***

Answer: The Scheme is available to every person, whether resident or non-resident.

Question No.4: ***If undisclosed income relating to an assessment year prior to A.Y. 2016-17, say A.Y. 2001-02 is detected after the closure of the Scheme, then what shall be the treatment of undisclosed income so detected?***

Answer: As per the provisions of section 197(c) of the Finance Act, 2016, such income of A.Y. 2001-02 shall be assessed in the year in which the notice under section 148 or 153A or 153C, as the case may be, of the Income-tax Act is issued by the Assessing Officer. Further, if such undisclosed income is detected in the form of investment in any asset then value of such asset shall be as if the asset has been acquired or made in the year in which the notice under section 148/153A/153C is issued and the value shall be determined in accordance with rule 3 of the Rules.

Question No.5: ***Whether a person on whom a search has been conducted in April, 2016 but notice under section 153A is not served upto 31.05.2016, is eligible to declare undisclosed income under the Scheme?***

Answer: No, in such a case time for issuance of notice under section 153A has not expired. Hence the person is not eligible to avail the Scheme in respect of assessment years for which notice under section 153A can be issued.

Question No.6: **As per Circular No.17 of 2016, question No.14, it is not mandatory to attach the valuation report. But Form-1 states "attach valuation report". How to interpret?**

Answer: It is necessary for the declarant to obtain the valuation report but it is not mandatory for him to attach the same with the declaration made in Form-1. However, the jurisdictional Pr. Commissioner/ Commissioner in order to ascertain the correctness of the value of the

asset quoted in Form-1 may require the declarant to file the valuation report before issuing the acknowledgment in Form-2. In such a circumstance, it will be necessary for the declarant to make the report available to the Pr. Commissioner/Commissioner.

Question No.7: ***Is it mandatory to furnish PAN in the Form of declaration?***

Answer: Yes, *PAN is the unique identifier for all direct tax purposes. This is also necessary in order to claim the benefits and immunities available under the Scheme.*

Question No.8: ***If any proceeding is pending before the Settlement Commission, can a person be considered eligible for the Scheme?***

Answer: No, a person shall not be eligible for the Scheme **in respect of assessment years** for which proceeding is pending with Settlement Commission.

Question No.9: ***Land is acquired by the assessee in year 2001 from assessed income and is regularly disclosed in return of income. Subsequently in the year 2014, a building is constructed on the said land and the construction cost is not disclosed by the assessee. What shall be the fair market value of such building for the purposes of the Scheme?***

Answer: Fair market value of land and building in such a case shall be computed in accordance with Rule 3(2) by allowing proportionate deduction in respect of asset acquired from assessed income.

Question No.10: ***Whether cases where summons under section 131(1A) have been issued by the Department or letter under the Non-filer Monitoring System (NMS) or under section 133(6) are issued are eligible for the Scheme?***

Answer: Cases where summons under section 131(1A) have been issued by the department or letters for enquiry under NMS or under section 133(6) are issued but no notice under section 142 or 143(2) or 148 or 153A or 153C [as specified in section 196(e)] of the Finance Act, 2016 has been issued **are eligible for the Scheme.**

Question No.11: ***If notices under section 142, 143(2) or 148 have been issued after 31.05.2016 and assessee makes declaration under the Scheme then what shall be the fate of these notices?***

Answer: As clarified vide Explanatory Circular No. 17 dated 20.5.2016 , a person shall not be eligible for the Scheme in respect of the assessment year for which a notice under section 142, 143(2) or 148 has been received by him on or before 31.5.2016. In a case where notice has been received after the said date, the assessee shall be eligible to make a declaration under the Scheme for the said assessment year. Such declaration shall be valid if it has not been made by suppression of facts or misrepresentation and the amount payable under the Scheme has been duly paid within the specified time. On furnishing by the declarant the certificate issued by the Pr. Commissioner/Commissioner in Form-4 to the Assessing Officer, the proceedings initiated vide notice under section 142, 143(2) or 148 shall be deemed to have been closed.

(Dr. T.S. Mapwal)
Under Secretary to the Government of India

Copy to:-

1. PS to FM/ OSD to FM/ OSD to MoS(R).
2. PS to Secretary (Revenue).
3. The Chairperson, Members and all other officers in CBDT of the rank of Under Secretary and above.
4. All Pr. Chief Commissioners/ Pr. Director General of Income-tax – with a request to circulate amongst all officers in their regions/ charges.
5. Pr. DGIT (Systems)/ Pr. DGIT (Vigilance)/ Pr. DGIT (Admn.)/ Pr. DG (NADT)/ Pr. DGIT (L&R).
6. CIT (M&TP), CBDT.
7. Web manager for posting on the departmental website.

F No 370149/89/2016-TPL

Government of India
Ministry of Finance
Department of Revenue
(Central Board of Direct Taxes)

Dated: the 27th May, 2016

PRESS RELEASE

Subject: Implementation of General Anti Avoidance Rule Provisions-Issuance of Guidance Note-Comments of the Stakeholders-reg.

The provisions of General Anti Avoidance Rule (GAAR) are contained in Chapter X-A of the Income-tax Act, 1961 (the Act). The GAAR provisions shall be effective from assessment year 2018-19 onwards, i.e.; financial Year 2017-18 onwards. The necessary procedures for application of GAAR and conditions under which it shall not apply, have been enumerated in Rules 10U to 10UC of the Income-tax Rules, 1962.

Several stakeholders and industry associations have represented that guidelines for implementation of GAAR be issued so that there is adequate clarity in this regard.

The general public and stakeholders are therefore requested to provide their inputs on the provisions of GAAR in respect of which further clarity is required, from its implementation perspective. For the exercise to be meaningful, it is essential that reference to hypothetical situation is avoided. If the input relates to interpretation of a specific real world structure or arrangement, the structure should be such as commonly occurs in the sector and involves clarification of general principles of application. Further, in relation to such structure, the particular provision and apprehensions or doubt alongwith basis thereof may also be provided with all the relevant facts.

The inputs may be provided on or before 30.06.2015 electronically on e-mail ID gaar-dor@gov.in and/ or by post at the following address with "Comments for Guidance Note on GAAR" written on the envelop.

The Director (Tax Policy & Legislation)-I
Room No. 147-D, Central Board of Direct Taxes,
North Block, New Delhi – 110001.

(Meenakshi J Goswami)
Commissioner of Income-tax
(Media & Technical Policy)
Official Spokesperson, CBDT

Circular No.23/2016

F. No.370142/17/2016-TPL
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
(TPL Division)

New Delhi, dated the 24th June, 2016

Subject: **Amendment in Section 206C of the Income-tax Act vide Finance Act 2016 - Clarifications regarding.**

In order to curb the cash economy, Finance Act 2016 has amended section 206C of the Income-tax Act to provide that the seller shall collect tax at the rate of one per cent from the purchaser on sale in cash of certain goods or provision of services exceeding two lakh rupees. Subsequent to the amendment , a number of representations were received from various stakeholders with regard to the scope of the provisions and the procedure to be followed in case of the amended provisions of Section 206C of the Act. The Board, after examining the representations of the stakeholders, issued FAQs vide circular.No.22/2016 dated 8th June, 2016. The Board has further decided to clarify the issue as regards applicability of the provisions relating to levy of TCS where the sale consideration received is partly in cash and partly in cheque by issue of an addendum to the above circular in the form of question and answer as under:

Question 1: Whether tax collection at source under section 206C(1D) at the rate of 1% will apply in cases where the sale consideration received is partly in cash and partly in cheque and the cash receipt is less than two lakh rupees.

Answer : No. Tax collection at source will not be levied if the cash receipt does not exceed two lakh rupees even if the sale consideration exceeds two lakh rupees.

Illustration: Goods worth Rs. 5 lakhs is sold for which the consideration amounting to Rs.4 lakhs has been received in cheque and Rs.1 lakh has been received in cash. As the cash receipt does not exceed Rs.2 lakh, no tax is required to be collected at source as per section 206C (1D).

Question 2: Whether tax collection at source under section 206C (1D) will apply only to cash component or in respect of whole of sales consideration.

Answer: Under section 206C (1D), the tax is required to be collected at source on cash component of the sales consideration and not on the whole of sales consideration.

Illustration: Goods worth Rs. 5 lakhs is sold for which the consideration amounting to Rs.2 lakhs has been received in cheque and Rs.3 lakh has been received in cash. Tax is required to be collected under section 206C (1D) only on cash receipt of Rs.3 lakhs and not on the whole of sales consideration of Rs.5 lakh.

(Pitambar Das)
Director (TPL-III)

Copy to:-

1. The Chairman, Members and officers of the CBDT of the rank of Under Secretary and above.
2. OSD to Revenue Secretary.
3. All Principal Commissioners of Income-tax & all Director General of Income-tax with the request to bring to notice of all officers.
4. The Pr. Director General of NADT, Nagpur.
5. The Pr. Director General of Systems, ARA, Jhandewalan Extension, New Delhi.
6. The Pr. Director General of Vigilance.
7. The ADG (PR, PP & OL), Mayur Bhawan, New Delhi for printing in the quarterly tax bulletin and for circulation as per mailing list.
8. Comptroller and Auditor General of India.
9. ADG (Systems) for uploading on ITD website.
10. The Guard File.

(Pitambar Das)
Director (TPL-III)

From the desk of General Secretary
- Activities since 01.03.2016

STUDY CIRCLE MEETING & GROUP DISCUSSION

SL. No.	Date	Name of Programme	Speaker
1.	01.03.2016	"Budget Conference" jointly With ACAE Chartered Accountants' Study Circle-EIRC at Kalamandir	Sr. Adv. N. K.Poddar CA. Pulak Kr. Saha
2.	10.03.2016	DTPA S. C. Meeting on "Interactive Session on Service Tax Issues & Budget' 16 Amendments under Service Tax" at DTPA Conference Hall	Shri S. K. Panda CA. Arun Kr. Agarwal
3.	15.03.2016	DTPA S. C. Meeting on Critical Aspects & Latest Developments on Audit of Advances & LFAR along With Tax Audit Report with respect to Bank Audit	CA. Niraj Harodia CA. Sonu Jain
4.	18.03.2016	DTPA Group Discussion meeting on Recent Notification on Mandatory Quoting of PAN & Furnishing of Related Statement at DTPA Conference Hall	CA. P. R. Kothari
5.	18.04.2016	DTPA S. C. Meeting on "50:50 Fifty Key Areas to Learn in Computers & Technology" at DTPA Conference Hall	CA. Sanjib Sanghi
6.	22.04.2016	DTPA S. C. Meeting on "Recent Amendments in Taxation of Charitable Trusts, Income Disclosure & Dispute Resolution scheme" & "Income Tax Amendments proposed in Finance Bill 2016" at DTPA Conference Room	Adv. N. P. Jain & CA. S. S. Gupta
7.	28.04.2016	DTPA S. C. Meeting on "10 Steps in Professional Transformation" at DTPA Conference Room	CA. Naresh Agarwal
8.	29.04.2016	S. C. Meeting on "E-Filing of Form 35(Appeals) & other Income Tax Forms" at DTPA Conference Room	CA. Akkal Dudhwewala CA. D. S. Damle
9.	14.05.2016	DTPA Conference on "Corporate Conclave 2016" at Hotel Hindusthan International	CA. P. R. Ramesh, CA. Vivek Newatia, CA. Amarjit Chopra & CA. (Dr.)Debashis Mitra
10.	24.05.2016	S. C. Meeting on " Critical Income Tax issues in Taxation of Immmovable Properties" at DTPA Conference Room	CA. Naveen Khariwal
11.	26.05.2016	Group Discussion on "Service Tax on Construction Industry" at DTPA Conference Room	CA. Shivani Shah
12.	31.05.2016	S. C. Meeting on "Taxation Issues of HUFs" at DTPA Conference Room	Adv. S. M. Surana

Other Events

1.	05.03.2016	Feliciatation Programme at The Royal Calcutta Golf Club(RCGC)
2.	18.04.2016	Felicitation Programme at Bengal Club
3	20.05.2016	24th Library Anniversary & 34th Foundation day at DTPA Conference Room.

Direct Taxes Professionals' Association

Members are informed that as per the decision taken in the Executive Committee Meeting held on 15/02/2016, sending hard copies of Circulars will be discontinued w.e.f. 01/04/2016.

Henceforth all the circulars/information related to Study Circle Meetings & other events will be sent through e-mail/sms on the email address/mobile number of the members available on record of the association.

Members will also be kept updated about the study circle meetings and other events through other social media apart from hosting of the events on our website www.dtpa.org

Members who are not receiving emails or sms regarding event information, are requested to mail their updated email id and/or mobile number to dtpakolkata@gmail.com

Members are also informed that DTPA Members Directory 2016 is ready. A copy of the same can be collected either personally or through authorised representative by paying a nominal charge of ₹ 100/- during Monday to Friday between 11.30 a.m. to 6.30 p.m.

CA Sunil Surana
President

CA Vikash Parakh
General Secretary

Publicity Avenues in the DTPA Journal

Advertisement Tariff (Single Issue)

Full Page Cover (Back)	₹ 20,000/-
Full Page Inside Cover (Front/Back)	₹ 15,000/-
Special Colour Full Page	₹ 10,000/-
Full Page B/W	₹ 7,000/-
Half Page B/W	₹ 5,000/-

NEW MEMBERS ADMITTED ON 15.04.2016

Sl. No.	NAME	PROPOSED BY	QUALIFICATION	I.M.NO.	MOBILE NO.	E. MAIL ID.
1	Mr. Harsh Poddar	Mr. Vikash Parakh	CA, CS			
2	Ms. Shaily Agarwal	Mr. Ishu Dudhwewala	CA			
3	Mr. Praveen Kumar	Mr. Rajesh Kr. Agarwal	B. Com(H), CA			
4	Mrs. Neha Khemka	Mr. Rajesh Kr. Agarwal	B. Com, ACA, CS			
5	Mr. Navin Agarwal	Mr. Sandeep Sureka	FCA, AICWAI			

NEW MEMBERS ADMITTED ON 15.06.2016

Sl. No.	NAME	PROPOSED BY	QUALIFICATION	I.M.NO.	MOBILE NO.	E. MAIL ID.
1	Mr. Anupam Lahiri	Mr. Vikash Parakh	B.SC(H), LL.B, ACMA, Passrd Final ICAI	A-27502	9434075723	lahirianupam.adv@gmail.com
2	Mr. Govind Agarwal	Mr. Subhash Chandra Saraf	B. Com(H), ACA	309862	9163905857	gsagarwals123@gmail.com
3	Mr. Nishant Pandit	Mr. Subhash Chandra Saraf	B. Com(H), CA	305211	9163125956	nishantpandit04@gmail.com
4	Mr. Rishabh Kr. Barmecha	Mr. Sunil Surana	CA. CS. B. Com(H)	68772	9007909221	rishabhkumarbarmecha@gmail.com
5	Mr. Manoj Kr. Dokania	Mr. Neeraj Kr. Sureka	FCA	76765	9830665607	mkdokania@gmail.com
6	Mr. Pradeep Modi	Mr. Kamal Bagrodia	CA	400611	9433033882	modigadiaco@gmail.com
7	Mr. Anand Kr. Singh	Mr. Kamal Bagrodia	LL.B, MBA, PGDHRM, CCL, CA(ATC), CIPR		9331003898	anandofcal@gmail.com
8	Mr. Harsh Vardhan Bhardwaj	Mr. Sunil Surana	B.Com(H), CA	67993	9748125555	harsh@vnpaudit.com

No one can make you feel inferior without your consent.

NOTES

Direct Taxes Professionals' Association

(Registered under Societies Registration Act, 1961. Registration No. S/60583 of 1988-89)

3, Govt. Place (W), Income Tax Building, Kolkata-700001

Ph. 2242-0638, 3262-8487 • E-mail : dtpakolkata@gmail.com • Website: www.dtpa.org

APPLICATION FOR MEMBERSHIP

2 Pcs. Pass Port Colour Photographs

To
The Hony' Secretary,
DIRECT TAXES PROFESSIONALS' ASSOCIATION
3, Govt. Place (W), Income Tax Building, Kolkata-700001

Dear Sir,

I hereby apply for **LIFE MEMBER** of the Association. I agree to abide by the Memorandum and Rules & Regulations of the Association as may be in force from time to time.

1. Name in Full (Mr. / Mrs. / Miss) (BLOCK LETTERS) ____________________ :
2. Father's Name : ____________________
3. Date of Birth : ____________________
4. Academic and/or Professional Qualifications ____________________ :
5. Professional Status : ❒ In Practice ❒ In Service ❒ In Business ❒ Others (Pls. specify)
6. Organisation : ____________________
8. Mem. No. of CA/CS/ICWAI/Bar Council : ____________________
9. Blood Group : ____________ (Self) ____________ (Spouse)
10. Name of Spouse : ____________________
11. Office Address ____________________ :
____
12. Residence Address ____________________ :
____
13. Telephone (Nos.) : (Off.) : ____________ (Resi.) : ____________ Fax : ____________
Mobile : ____________ E-mail : ____________
14. Address where Circular etc. should be sent : ❒ Office ❒ Residence

Enclosed herewith Rs. ____________ (Rupees ____________________)
by Cash/Cheque No. ____________ Dated ____________ Drawn on ____________
towards ❒ Life Membership ❒ General Membership.

Place : ____________
Date : ____________

____
Signature of the Applicant

Would you like to contribute to the following activities of DTPA ?

❒ Contributing articles for Journal ❒ Being part of the Core group which runs the functioning of DTPA
❒ Being faculty / Speaker at Conferences / Seminars / Workshops ❒ Others (Please specify)

Area of Professional Interest, ❒ Indian Income Tax ❒ International Tax

❒ FEMA ❒ Company Law ❒ Auditing ❒ Corporate Finance ❒ Indirect Tax ❒ General Management
❒ Information Technology ❒ Human Resource ❒ Banking & Financial Services ❒ Investment Consultancy
❒ Others (Pls. Specify)

I would like to receive News Letter / Notices / Circulars by ❒ E-mail ❒ Courier ❒ Both

Proposed By : Name : ____________________
DTPA Membership No. : ____________ Signature : ____________

Seconded By : Name : ____________________
DTPA Membership No. : ____________ Signature : ____________

FOR OFFICE USE ONLY

Date of Receipt ____________ Membership Approved on ____________ Membership No. Allotted ____________

Chairman, Membership Sub-Committee *President* *General Secretary*

NOTES : *1. Fee for Life Membership (a) Individual Rs. 7,500/- (b) If application is made within a period of 5 years of attaining first professional qualificatiuon Rs. 5,000/- (c) Corporate Bodies Rs. 7,500/-*

*2) Cheques should be drawn in favour of **"Direct Taxes Professionals' Association"***

STUDY CIRCLE MEETINGS

Fraud Reporting, Corporate Social Responsibility & Related Party Transactions under Companies Act, 2013 on 17th February 2016

Hony Speakers

CA (Dr.) Debashish Mitra

CA Sumit Binani

Taxation Aspects of Charitable Trusts & Private Discretionary Trusts on 23rd February 2016

Hony Speakers

CA K. K. Chhaparia

Adv. Manoj Kataruka

Interactive Session on Service Tax Issues & Budget' 16 Amendments under Service Tax on 10th March 2016

Speakers

Shri S. K. Panda
Chief Commissioner, Service Tax

CA Arun Agarwal

Critical Aspects & Latest Developments on Audit of Advances & LFAR along with Tax Audit Report with respect to Bank Audit on 15 March, 2016

Hony Speakers

CA Niraj Harodia

CA Sonu Jain

STUDY CIRCLE MEETINGS

50:50 Fifty Key Areas to Learn in Computers & Technology on 18th April 2016

Hony Speakers

CA Sanjib Sanghi

Recent Amendments in Taxation of Charitable Trusts, Income Disclosure & Dispute Resolution Scheme & Income Tax Amendments proposed in Finance Bill 2016 on 22nd April 2016

Speakers

Advocate N.P. JAIN

CA S.S. Gupta

10 Steps in Professional Transformation on 28th April 2016

Hony Speakers

CA. Naresh Agarwal

E-Filing of Form 35 (Appeals) & Other Income Tax forms on 29th April 2016

Hony Speakers

CA. Akkal Dudhwewala

STUDY CIRCLE MEETINGS

Critical Income Tax Issues in Taxation of Immovable Properties on 24th May 2016

Hony Speakers

CA. Naveen Khariwal

TAXATION ISSUES OF HUFs on 31st May 2016

Speakers

ADV. S. M. SURANA

FURTHER AMENDMENTS IN FINANCE BILL on 10th June 2016

Hony Speakers

CA. P. K. Agarwalla

Budget Conference at Kala Mandir on 1st March 2016

Hony. Speakers

Mr. N. K. Poddar
Sr. Advocate

CA. Pulak Kr Saha

GROUP DISCUSSION

Remittance Certificate (Form 15CB) & Related Matters u/s 195 on 10th February 2016

Initiator

CA Sushil Kr. Pransukha

Recent Notification on Mandatory Quoting of PAN & Furnishing of Related Statement on 18th March 2016

Initiator

CA P.R. KOTHARI

Service Tax on Construction Industry on 26th May 2016

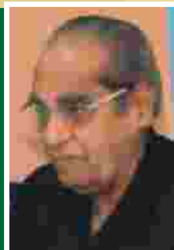
Initiator

CA Shivani Shah

OTHER EVENTS

Live Telecast and Discussion on Union Budget/ Finance Bill - 2016 on 29th February 2016

Instant Reaction

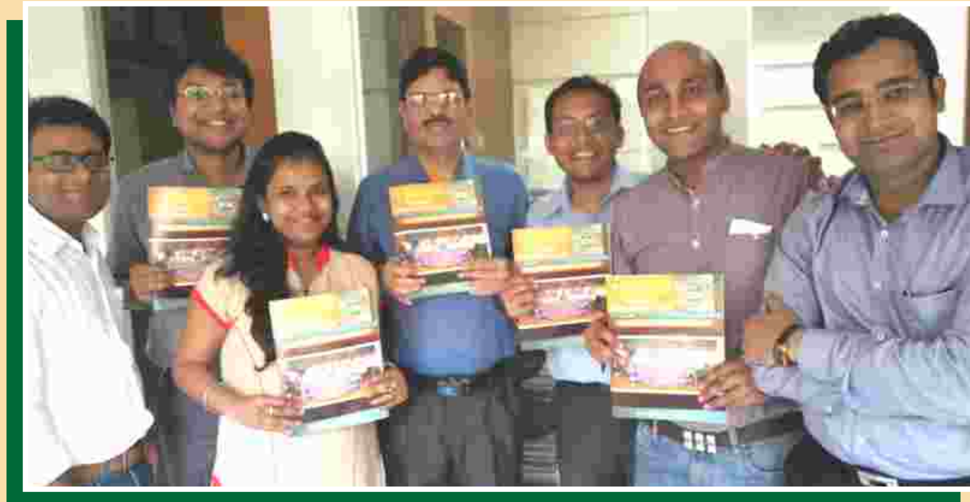


Adv. S. D. VERMA

CA ANKIT KANODIA

"CORPORATE CONCLAVE 2016" on 14th May, 2016

EDITORIAL BOARD MEETING



Direct Taxes Professionals' Association

(Registered under Societies Registration Act, 1961. Registration No. S/60583 of 1988-89)

Secretariat :

3, GOVT. PLACE WEST, INCOME TAX BUILDING, KOLKATA - 700 001

Phone : 2242-0638, 3262-8487 • E-mail : dtpakolkata@gmail.com • Website : www.dtpa.org

DISCLAIMER

Views expressed in the articles of this journal are contributor's personal views and DTPA and its Journal Sub-Committee do not accept any responsibility in this regard. Although every effort has been made to avoid any error or omission in the Journal, the DTPA and its journal Sub-Committee shall not be responsible for any kind of loss or damage caused to any one on account of any error or omission which might have occurred