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The Chamber's Journal

YOUR MONTHLY COMPANION ON TAX & ALLIED SUBJECTS

March - 2015 Vol . III | No. 6

FINANCE BILL, 2015

Direct Taxes
Other Laws
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INTERNATIONAL TAXATION COMMITTEE

6th International Tax Conference held on 14th February, 2015
at Palladium Hotel, Lower Parel, Mumbai.

CA Paras K. Savla, President inaugurating conference by lighting the lamp. Seen from L to R : CA Naresh Ajwani, Chairman, CA Pinakin Desai, Faculty and CA Hinesh Doshi, Hon. Jt. Secretary.

CA Naresh Ajwani, Chairman welcoming the delegates. Seen from L to R : CA Pinakin Desai, Faculty, CA Paras K. Savla, President and CA Ramesh Iyer, Vice Chairman.

CA Pinakin Desai delivering keynote address.
Seen from L to R : CA Naresh Ajwani, Chairman, CA Paras Savla, President and CA Ramesh Iyer, Vice Chairman.

CA Vispi T. Patel addressing the delegates on the subject "Recent Developments in Transfer Pricing". Seen from L to R: CA Ramesh Iyer, Vice Chairman, CA Avinash Lalwani, Vice President and CA Rutvik Sanghvi, Member.

CA Rashmin Sanghvi addressing the delegates on the subject "Taxation in Digital Economy in the light of BEPS report and Implications in Indian situation". Seen from L to R : CA Shreyas Shah, Conference Co-ordinator, CA Avinash Lalwani, Vice President and CA D. S. Sharma, Member.

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Editorial

At last on 28th February, 2015 the wait of many came to an end when the Hon'ble Finance Minister Mr. Jaitley rose to deliver the Budget Speech for the year 2015-16. The Railway Budget, as well as the Finance Budget for 2015-16 has sent one clear message to the citizens that now things are done differently by the 'Modi Sarkar'. I sincerely hope that the vision outlined by the Finance Minister in the Budget proposals does not get diluted over period of time when the crucial phase of execution starts, for political considerations. I am refraining from making any comments on the Finance Bill, 2015 as eminent professionals have analysed the proposed provisions of the Finance Bill in this edition's Special Story of the Chamber's Journal.

The recent goings-on in the Parliament is a lesson that Democracy is not merely a numerical superiority of one group over the rest. It is the building up or developing consensus across the political spectrum, in favour of an issue or idea which is beneficial to the society and the country that makes Democracy. Building up consensus is as much the business of the Ruling side as it is, of the Opposition for both are equal partners in holding up the democratic traditions of a country.

I thank all the authors for contributing and sparing their valuable time to this issue of the Chamber's Journal.

K. Gopal
Editor

From the President

Dear Members,

In the midst of expectation of Big Bang reforms, Hon'ble Finance Minister Shri Arun Jaitley presented first full-fledged Budget 2015 of Modi Government. Prior to introduction of the budget, everyone was gushing with huge expectation. The euphoria around the budget has fizzled out very quickly. Finance Minister's speech quintessentially dealt with Black Money. New law with stringent penalties has been proposed to tackle the menace of Black Money. Further, new and more comprehensive Benami Transactions (Prohibition) Bill also has been proposed. One may wonder why existing law on Benami transactions has not been implemented? Various measures had been introduced to restrict cash transactions. Government wants to increase use of debit & credit cards. Unless transaction cost for payment through cards is reduced, use of plastic money may not really pick-up. Finance Minister's speech highlighted points pertaining to taxation. But various points are missing in the Finance Bill or are proposed to be implemented in future e.g. reduction in corporate tax. At this juncture it is worthwhile to note that with the reduction in corporate tax rate, peak rate of tax as applicable for the individuals would be more than of corporates. Abolition of wealth tax is an bold initiative.

Finance Minister in order to have ease of doing business attempted to cut rigmarole. Choice granted to salaried employees for choosing between Employees Provident Fund or National Pension Scheme would make big difference in long run. Pension schemes are more efficient and also have flexibility to deploy funds more advantageously. In the budget it has also been proposed to mint gold coins with the Ashoka Chakra, which will help to recycle gold internally in India. Minting of Indian Gold Coins would be providing brand value to India and would also help in reducing Current Account Deficit. In the railway budget too, instead of announcing new trains, Hon'ble Minister has proposed to improve efficiency of the existing assets and infrastructure. Large section of stakeholders have sounded that budget has good intentions and is a good vision document. But, key lies in providing flesh and blood to the vision for implementation. Time would only tell us whether the budget is game changer or not?

Various measures have been introduced relating to capital markets and foreign investors. The Finance Bill imports term 'Place Of Effective Management' (POEM) from the dismantled Direct Tax Code. OECD in Public Discussion draft on BEPS Action 6: Preventing the Granting of Treaty Benefits in Inappropriate Circumstances, has proposed to remove the place of effective management as a tiebreaker clause for determining treaty residence in case where different domestic rules would treat an entity as resident in two countries. It is proposed to replace it by a requirement that the competent authorities of the two countries endeavour to determine residence, by reference to place of effective management, place of incorporation/constitution and any other relevant factors. OECD seems to reducing importance attached to place of effective management.

Post introduction of Finance Bill, 2015, various programmes were organised by the Chamber. At the program organised by CTC Delhi Branch, CBDT member has addressed the members and provided key clarification on POEM to the participants. It was stated that objective of this provision was to focus on companies in India who hold meeting/AGMs abroad to circumvent residency in India. It was also stated that terms like 'anytime during India' should not be given narrow interpretation. Further CBDT would be coming out with clarification/guidelines on POEM and also u/s 195(6) pertaining to reporting payments to non-resident.

One of the flagship programme i.e. 38th RRC recently concluded at Puri, Odisha. The participants have enjoyed RRC which had perfect blend of education and entertainment. Puri is known for Jagannath Temple. Participants had the occasion to visit Jagannath Temple. The Chamber felicitated past president Shri V. H. Patil on his completing journey of 50 years in the profession. Felicitation event was attended by galaxy of Past Presidents and others. I recognise the efforts put by Shri Kishor Vanjara for planning this event.

The Corporate Members Committee has organised unique programme on Family Managed Business. Direct Taxes Committee along with the Allied Laws Committee has organised programme on NBFC. Besides this various other programmes have been planned. Members may take advantage of these programmes.

We are about to draw curtains on the financial year 2014-15. This also brings us to start visualising for the next financial year.

Paras Savla
President

Chairman's Communication

Dear Esteemed Readers,

The end of February each year is a month where businessmen, media, professionals, economists are all in the grip of Budget Fever. This year was no exception and in fact this being the first full budget of the Government that has taken over in May, 2014 last year, everyone expected a big bang budget. While I would not venture into giving an expert opinion, whether the budget livens to the economic needs of the nation – as we have experts dealing on this aspect in this issue, it would suffice to say that numerous amendments are proposed in the Finance Bill which we as professionals will have to grapple with as and when they become law.

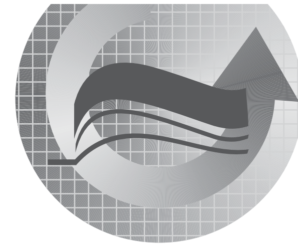
While there are many proposed amendments in the Finance Bill that the taxpayers may find irksome, but one important aspect is that there are very few ambiguities in the provisions. Some of the provisions settle the position either way without leaving much scope for debate. One very important promise kept by the Finance Minister is that of not introducing any retrospective amendments. The Charitable Institutions though continue to be whipping boy even this time around. Whether the amendments in the realm of international taxation promote "make-in-India" only time will tell, but amendments relating to place of effective management can be a major irritant.

In the Special Story this month the learned authors have dealt with various aspects of the proposals made in the Finance Bill for Direct and Indirect Taxes in detail and I am sure their analysis of the same shall be of immense benefit to all sections of the readers. I am thankful to all the authors for their valuable contribution, on the respective topics allotted to them and providing the analysis of the same in very short time available after the presentation of Union Budget. I am also thankful to Mr. Vijai Mantri and Mr. Ninad Karpe on their articles on economic aspects of the Budget. Editor of Journal Mr. K. Gopal and the President Mr. Paras K. Savla took personal interest in designing the Special Story for this issue and I am grateful to them for their valuable inputs.

The much expected announcement on the roll-out of Ind-AS, the Indian version of International Financial Reporting Standards, is finally a reality with notification of 39 Ind-AS through Companies (Indian Accounting Standards) Rules, 2015 by the MCA. This will have major impact on the manner of Financial Reporting by corporates over next couple of years. In the Hot-Spot section we have an article dealing with some of the important aspects of the Ind-AS by Past President of ICAI Mr. Amarjit Chopra and Mr. Sanjeev Singhal. It would be of interest for readers to know that major work on convergence began from 2010 when Mr. Chopra was the President of ICAI.

The new fiscal year shall begin from 1st of April, 2015. I take this opportunity to wish all the readers a very happy and prosperous new Financial Year 2015-16 in advance.

CA. Sanjeev Lalan
Chairman – Journal Committee



CA. Jayant Gokhale

Finance Bill, 2015 – An Overview

Expectations and Outcome

The first full budget being presented by this BJP Government, coming soon after the AAP victory in Delhi, was expected to give reliefs to keep the "AAM AADMI" happy. The rosy picture presented by the Economic Survey also indicated the possibility of a liberal budget. Media hype and stock market speculation added to the expectation that this would be a "pro-business" budget, favouring the large corporate houses. It is heartening to note that the Finance Minister (FM) has presented instead presented a budget which is pragmatic and cautious rather than one that doles out benefits to voters at a long-term cost to the nation. In fact, the 2015 budget reflects the quiet confidence of a Government that takes a long term view, showing that it is laying down policies for at least a five-year period.

The merit of the budget is that it gives benefits to various sections including the States (allocation of funds), businessman (ease of doing business), the salaried class (nominal enhancement of deductions) and the very rich (removal of wealth tax). In doing so, there is a clear attempt to focus on certain fundamentals while staying within the rigid discipline of limiting fiscal deficit, curbing inflation and yet promoting rapid and sustainable growth.

Impact on the Middle Class Taxpayer

The middle class taxpayers were expecting a tax relief by raising the threshold of taxable income from ` 2.5 lakhs ` 3 lakhs. This has not been done. Doing so would have given a tax relief of approximately ` 5000 to ` 7000 . Instead what the FM has done, is to promote a social safety net by allowing other deductions which add up to the same or even larger amount of relief, but with a positive social outcome. Thus for individuals, the deduction available for health insurance premium has been enhanced from ` 15,000 to ` 25,000. Further, expenditure of up to ` 30,000/- incurred for medical care of parents (who are senior citizens) will also be deductible[1]. Enhancements have also been effected in the deduction allowable for medical expenses incurred for treating the disabled and those suffering from certain diseases. Other positive steps toward providing an enhanced social security net have been taken by increasing the deduction available for contribution towards NPS (80 CCD), specified annuity plans (80 CCC) by ` 50,000 in each case and by providing reliefs in the Sukanya Samriddhi Scheme u/s 80C. A reasonable application of some of these enhancements would give greater tax relief than enhancement of the threshold of taxable income referred to earlier and is therefore definitely a positive step.

1 A closer reading of the finance bill indicates some mismatch between what is stated in the memorandum and the actual text of the proposed amendment.

As against these limited benefits to the middle class, the more wealthy citizen (having taxable income of more than ` 1 crore) is required to pay an additional surcharge of 2%. In real terms, this results in an increased tax outflow of only 0.6 % [i.e. a person earning ` 8.75 lakhs per month (Net Taxable) would have to pay only ` 5000 per month more than before]. As against this, the FM has abolished wealth tax, which for the rich individual was an additional compliance, separate assessment involving cost and botheration. Considering the cost of collection that the government itself had to incur for delivery and collection of wealth tax, this is indeed economically praiseworthy. The astuteness of the FM is seen from the fact that in this whole transition, he has provided for an incremental tax collection (through the 2% surcharge) of ` 8000 crore. While this financial jugglery, which also counters political criticism about being 'pro-rich', may be appreciated, the negative outcome of this is that while wealth tax dis-incentivised investment in non-productive assets, the surcharge as introduced makes no distinction of this nature.

Difficulty due to TDS rationalisation

The FM has also sought to rationalise certain TDS provisions. This could cause difficulties for the co-operative banking sector which is already facing huge challenges. A large section of middle class bank depositors who were taking benefit of this ambiguity would also have to do some quick restructuring. A view had been taken that recurring deposits (with any bank) and fixed deposits with co-operative banks held by members of the co-operative bank were not subject to TDS u/s. 194A. The FM has clarified this was never the intention. Accordingly all such interest would now be subject to TDS effective June 2015. Similarly, restricting benefit of non-deduction of TDS to truck owners having 10 or less goods vehicles only, is absolutely correct on principle. However, the way the transport trade works; this will certainly lead to huge implementation issues at ground level as trucks are often hired out to third-party agents where the name of the principal is undisclosed. The issuance of appropriate TDS certificate and credit for the same would thus become major points of contention. While these rationalisations in TDS may adversely affect many, there can be no doubt that the corrections sought to be made are in consonance with the intended objective of the provisions. Unfortunately, the same cannot be said about the amendments in areas dealing with trusts and assessments. The hidden hand of the bureaucracy (on which I had extensively commented last year) is discernible in these amendments in Sec. 2(15) and S. 263. Two very exhaustive articles in this issue deal with the matters specifically and therefore I will only make a broad comment on these issues.

The change in definition of 'charitable purpose' by substituting the two provisos betrays a lack of understanding of the scheme on the part of those who initiate the changes. In the first instance, what the draftsman fails to comprehend is that benefit of exemption is sought to be denied to certain entities (which is undoubtedly the prerogative of the legislature). But to do so one does not have to tinker with the concept of what constitutes 'charitable purpose'. To achieve this end, it is not the definition clause that requires amendment (if at all) but the eligibility to deduction in S.11 where such intent can be expressed. The concept toward charity cannot be made so subjective as to undergo fundamental changes thrice in the space of 5 years. Well drafted legislation must be given some time to be applied before one tests whether the intended purpose has been served. Frequent changes in this clause constitute an admission of inept drafting in the first place or in the very least indicate a lack of clarity of thinking. Sadly I am reaching the conclusion that it is a combination of both in fair measure.

While the introduction of the second proviso last year gave at least some relief to smaller charitable institutions, the proposed substitution by the 20% rule in the second proviso would prove significantly harmful to hundreds of small charitable trusts who are doing genuinely good work. More importantly, whoever has thought of this criteria has failed to appreciate that when

earning money is not the objective of the trust, it can scarcely be used as a criteria to determine whether or not an activity is charitable. It is like seeking to compare apples with oranges. The fundamental premise which one has to consider is that the charitable activity is not intended to earn money. For this basic reason, the amount of money received by the trust cannot become the criteria for determining the extent of its activity in its respective area of operation. To illustrate this basic fallacy, I have given the example of an association set up to promote the use of IT awareness amongst senior citizens, poorer sections of society etc[2]. For this the Association has set up (out of corpus donations received earlier) a computer room with 50 computers to impart such training. Occasionally, when the room is not in use by students and senior citizens etc. (as in summer holidays); it lets out the facilities to commercial entities at rates comparable with normal commercial rates. The table of its income is given hereunder :

Nature of Activity	Hours per year	% of Activity	Charges per Hour	Revenue `	% of Revenue
Training given to senior citizens by the association itself	1000	32%	0	-	0%
Computer room let out to local schools for training poor school children	2000	65%	200	4,00,000	40%
Computer room let out to company for conducting recruitment tests	100	3%	5000	5,00,000	50%
Other Donations received by the Association	0	NA	NA	1,00,000	10%
Total	**3100**	**100%**		**10,00,000**	**100%**

It will be apparent that although 97% of the time available is clearly put to use for imparting training in a charitable manner, if one goes by the monetary measure as required by the amended proviso; the trust would fail to qualify as a charitable institution. The absurdity of the situation is enhanced by the fact that if the said institution were to 'suitably plan its affairs' – it could very well notionally increase the charges for the poor schoolchildren. Correspondingly, they could give monetary support by way of scholarships for IT education to each of the children who undergoes training. If it does so, the gross revenue from its training to schoolchildren would be artificially increased (with the corresponding outflow of scholarships), resulting in no financial change but would enable the institution to get benefit as a charitable activity. It is mindless amendments of this nature that compel honest and well meaning institutions to resort to financial jugglery in order to derive the benefits which are otherwise rightfully due to them. It is obvious, that such matters cannot be within the radar of an FM, who despite being an eminent lawyer, would not have exposure to the intricacies of administration of exemptions for charitable institutions. Such amendments can therefore be only attributed to bureaucrats who are guided by considerations of revenue maximisation, oblivious to the enormous collateral damage that they cause in the wake of such amendments.

Another such retrograde amendment is seen in the expansion in the powers of revision u/s. 263. The basic premise based on equity, that there must be some finality to be proceedings has been thrown out of the window by taking resort to the vastly expanded scope provided in this section. Such a provision would enable the Commissioner to reopen assessment orders on a highly subjective basis, merely because he feels that certain claims, enquiries or verification has not been properly done by the assessing officer. Undoubtedly, such errors on part of the assessing officer can happen occasionally. But the remedy is not to cast a burden on the assessee but to

2 It is assumed that this is not covered under Education but comes under the concept of Other objects of general public utility

hold the responsible officer accountable. But then 'accountability' on part of the bureaucracy is only a mirage at least till date.

Another area in which the provisions have sought to be tightened is in regard to S. 269 SS & S. 269 T. Clearly the mischief caused by the narrower (but correct) interpretation prompted the change. One can have no quarrel with this aspect. However, considering the manner in which the amendment has been drafted, it is open to question whether the loophole has been entirely plugged.

Clearly an effort has been made to improve the administration and tighten the controls. These changes, such as those requiring filing of Form 10B and tax return of charitable entities in time, will impose greater restraints on the taxpayers. However one can have no quarrel with these provisions as they seek to bring in the necessary discipline on part of the persons seeking to claim benefits. An attempt has also been made to be more realistic in regard to provisions such as royalty and tests of residence, revision of limits for SDT, pass through status for REIT. The deferment of GAAR and putting to rest the ghost of DTC also indicate a genuine desire to facilitate "Make in India" and build in 'ease of doing business'. The FM will need to ensure that the few negative provisions referred to above do not overshadow the directional corrections initiated by him. Thus although no big bang changes have been brought about, numerous baby steps in the right direction have undoubtedly been initiated.

Other Schemes & Announcements

The FM has announced numerous initiatives to deal with the menace of black money. These include encouraging credit and debit card transactions through use of the RUPAY card, introducing a law to provide for strict punishment for those having undeclared wealth abroad etc. However, these positive intentions need to be converted into more detailed schemes, capable of easy implementation. Certain threshold levels may also be necessary to ensure that in carrying out the rigourous application which includes non-compoundability and imprisonment, it is not only the small fish which are caught in the web of bureaucracy. The initiative in regard to monetisation of gold, and using the enormous untapped privately held reserves for national benefit is indeed laudable. The simultaneous introduction of the "Ashok Chakra" gold coins does however raise the question; that these could very well be used as a convenient means of hoarding black money. The initiative therefore could backfire by providing a means of storage of black money. It is also worth appreciating that instead of launching more new schemes, emphasis has been given to continue whenever possible the existing schemes; making improvements were felt necessary. Rather than scrapping the existing schemes like MGNREGA, schemes promoting education, development of Northeast regions, housing, electrification etc. are continuing. What matters to the intended beneficiary is the quantum of benefit that trickles down to him rather than the name of the scheme under which he gets it. The concept of using the Jan Dhan and Aadhar network coupled with the range of mobile technology to improve delivery of support and subsidy also reflects innovative and focused thinking on the real problem – namely not merely of allocation of funds but to ensure that the funds reach the intended beneficiary in a timely and efficient manner. The intention is undoubtedly good and well thought out, how it is implemented will be the real test of the Modi Government.

Conclusion

The Finance Minister obviously cannot please everyone in equal measure at the same time. In sum, I would echo the consensus amongst a large number of experts, that through this budget the FM has addressed concerns of investors and reassured them of the ease of doing business in India, asserted that retrospective legislation will be avoided, corporate tax rates shall be reduced to 25% and thus provided a platform for the 'Make in India' programme to become the engine of rapid economic growth in the future. The emphasis on infrastructure, housing and improvements in the financial system would also facilitate this process. The foundation has thus been laid by the FM. Although the FM observes that it is time for India to fly, it is clear that he has presently focused his energies on building a good runway. The next four years will show how the Government will perform and deliver and whether the economy can really take off from the runway provided by this budget; which is presently a work in progress.

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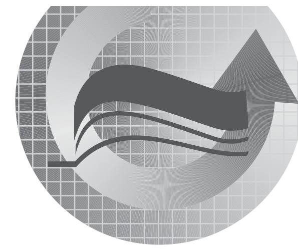


CA. Usha Kadam

Rates of Taxes

A. Rates of Income-tax in respect of income liable to tax for the Assessment Year 2016-17

In respect of income of all categories of assessees liable to tax for the assessment year 2015-16, the rates of income tax have been specified in Part I of the First Schedule to the Bill. These are the same as those laid down in Part III of the First Schedule to the Finance (No. 2) Act, 2014 for the purposes of computation of "Advance tax", deduction of tax at source from "Salaries and charging of tax payable in certain cases".

There has been no change in the rates of taxes in case of individual, HUF, AOP/BOI, firms, Companies etc.

1. The Tax Rate Chart for Individual, HUF, AOP/BOI is as under:

For individual, other than resident individuals mentioned below, HUF, AOP/BOI:

Sr. No.	Net Income Range	Income tax Rate
1	Up to ` 2,50,000	Nil
2	` 2,50,001 to ` 5,00,000	10%
3	` 5,00,001 to ` 10,00,000	20%
4	Above ` 10,00,000	30%

For resident individual who is of the age 60 years or more but less than age of 80 years at any time during the year:

Sr. No.	Net Income Range	Income tax Rate
1	Up to ` 3,00,000	Nil
2	` 3,00,001 to ` 5,00,000	10%
3	` 5,00,001 to ` 10,00,000	20%
4	Above ` 10,00,000	30%

For resident individual who is of the age 80 years or more at any time during the year

Sr No.	Net Income Range	Income tax Rate
1	Up to ` 5,00,000	Nil
2	` 5,00,001 to ` 10,00,000	20%
3	Above ` 10,00,000	30%

2. The rates of taxes in all other cases is as under:

Sr No.	Types of assessee	Income tax Rate
1.	Co-operative societies Net Income Range i Up to ` 10,000 ii ` 10,001 to ` 20,000 iii Above ` 20,000	 10% 20% 30%
2.	Firms	30%
3.	Domestic Company	30%
4.	Companies other than Domestic Company	
	i On the income consisting of	
	A Royalties received in pursuance of an Agreement entered after 31-3-1961 but before 1-4-1976	50%
	B Fees for Technical Services received in pursuance of an agreement entered after 29-2-1964 but before 1-4-1976	50%
	ii On the balance income	40%

3. Surcharge

Surcharge has been levied/increased as mentioned below:

Total Income	Individuals, HUFs, AOP, BOI, Co-op. Societies, Firms		Domestic Companies		Foreign Companies	
	A.Y. 2015-16	A.Y. 2016-17	A.Y. 2015-16	A.Y. 2016-17	A.Y. 2015-16	A.Y. 2016-17
Up to ` 1 crore	NIL	NIL	NIL	NIL	NIL	NIL
Above ` 1 crore and up to ` 10 crores	10%	12%	5%	7%	2%	2%
Above ` 10 crores	10%	12%	10%	12%	5%	5%

The marginal relief is continued to be granted in appropriate cases where the total income exceeds ` 1 crore or ` 10 crore as the case may be.

4. Surcharge for sections 115JB, 115JC, 115-O, 115QA, 115R or 115TA

In all above cases surcharge shall be increased to the rate of 12% from existing 10%.

As noted in the Memorandum to the Finance Bill, the levy of wealth-tax required the assessee to get their assets valued. The assets being unproductive are difficult to track and there has also been under reporting/under valuation of the assets. The collection of wealth tax has not shown much increase in the recent years. In view of the problems of compliance and costs of administration, it is proposed to abolish the levy of wealth-tax with effect from April 1, 2016. The abolishment is, however, proposed to be compensated from enhanced surcharge on the high net worth persons. Thus, a higher surcharge of 12% has been proposed as noted above.

Hence, the abolition has turned to be a bitter sweet pill for assessees. Bitter because of higher surcharge and sweet since they would no longer be worried about the valuation of assets and meeting the deadline to file the wealth-tax returns.

5. Education Cess

The additional surcharge called education cess and secondary & higher education cess remains unaltered.

6. There has been no change in the Rates for deduction of tax at source u/ss. 193, 194, 194A, 194B, 194BB, 194C, 194D, 194EE, 194F, 194G, 194H, 194I, 194IA, 194J, 194LA, 195 and are to be deducted as per the rates in force but subject to rates provided in Part II of the First Schedule which ***inter alia*** provides the rates of deduction of tax at source for the non-resident assessee governed by sections 115A to 115F, which have also remained unchanged except rate u/s 115A of the Income-tax Act (Refer para B).

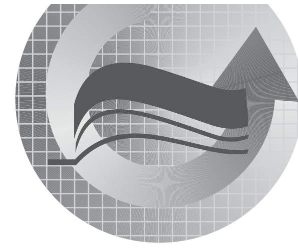
B. Tax on Royalty and Fees for Technical Services in case of foreign company – Section 115A – Clause 27

In case of non-resident taxpayer, where the total income includes any income by way of Royalty and Fees for Technical Services received under an agreement entered after 31st March, 1976, and which are not effectively connected with permanent establishment, if any, of the non-resident in India, the rate of tax on the gross amount of such income shall be 10% as against existing 25%.

The rate of 10% is lower than the rates under most of the Treaties and would certainly be beneficial to Indian payers particularly in cases wherein such tax is borne by the Indian party.

C. Income by way of interest on certain bonds and Government Securities – Section 194LD – Clause 47

Interest income in respect of investments in Government Securities and rupee denominated bonds of an Indian company was subject to withholding tax of 5%. This lower rate was applicable for the interest payable on or after 1st day of June, 2013 but before 1st day of June, 2015. The lower rate of TDS will now be applicable for interest payable before the 1st day of July, 2017.



CA. R. S. Kadakia & Aditya Bhatt, *Advocate*

Proposals Relating to Charitable Institutions

1. Yoga – A charitable purpose

1.1 Current provision

The definition of "charitable purpose" includes relief of the poor, education, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest as well as advancement of any other object of general public utility [section 2(15)].

1.2 Proposed amendment in section 2(15)

The activity of 'Yoga' is to be specifically added to the list of charitable purposes. [with effect from assessment year 2016-17]

1.3 Rationale behind proposed amendment

The activity of Yoga has been one of the focus areas in the present times and international recognition has also been granted to it by the United Nations. In light of this, it is proposed to include 'Yoga' as a specific category in the definition of charitable purpose on the lines of education [Memorandum explaining the direct tax provisions of Finance Bill, 2015 (hereinafter referred to as 'Memorandum')].

1.4 Analysis of proposed amendment

(a) In ***Divya Yug Mandir Trust vs. JCIT, (2013) 37 taxmann.com 227 (Del.)***, it was held that yoga may constitute 'education' or 'medical relief' in the definition of charitable purpose. In ***CIT vs. Vihangam Yoga Prachar and Social Welfare Trust, TS-11-HC-2014 (All.)***, the Court observed that conducting yoga camps is a charitable activity. The proposed amendment now inserts yoga in the definition but as a separate category.

(b) The amendment provides for a separate category for yoga and does not merely include it in another category such as education, medical relief etc. Hence, so far as the assessment years up to assessment year 2015-16 are concerned, one will have to independently establish that pursuit of yoga was covered by the definition of unamended charitable purpose.

(c) The activity of Yoga will not be treated as advancement of any object of general public utility – hence, if a charitable institution carrying on Yoga undertakes any business activity in pursuit of yoga, proviso to section 2(15) will not apply.

The profits of any such business will be exempt under section 11(4A) if the following conditions are fulfilled-

(i) The business is incidental to the attainment of the objectives of the charitable institution; and

(ii) Separate books of account are maintained by such charitable institutions in respect of such business.

(d) It is well-settled that public benefit and exclusion of private gain are prerequisites for satisfaction of definition of charitable purpose. These prerequisites will continue to apply to yoga.

(e) The term 'yoga' has not been defined in the Act. It may need to be construed in the context in which it appears.

What is Yoga?

"Yoga is one of the six systems of Indian philosophy.

The word yoga means "unity" or "oneness" and is derived from the Sanskrit word yuj which means "to join" or "union". This unity or joining is described in spiritual terms as the union of the individual self / consciousness with the universal self / consciousness. On a more practical level, yoga is a means of balancing and harmonising the body, mind, emotions and intellect. This is done through the practice of asana, pranayama, mudra, bandha, shatkarma and meditation, and must be achieved before union can take place with the higher reality.

Maharishi Patanjali, rightly called "The Father** of Yoga" compiled and refined various aspects **of Yoga systematically in his "Ypoga Sutras" (aphorisms). He advocated the eight fold path of Yoga, popularly known as "Ashtanga Yoga" for all-round development of human beings. They are: Yama, Niyama, Asana, Pranayama, Pratyahara, Dharana, Dhyana and Samadhi. These components advocate certain restraints and observances, physical discipline, breath regulations, restraining the sense organs, contemplations, meditation and Samadhi."

[Sources:

(i) Swami Satyananda Saraswati (founder of Bihar School of Yoga)

(ii) http://www.bksiyengar.com/modules/FAQ/faq.htm

(iii) www.Indiamedicine.nic.in cited in *Divya Yug Mandir Trust vs. JCIT, (2013) 37 taxmann.com 227 (Del.)]*

Having regard to the above and the statement in Memorandum, it appears that the definition could

(i) Cover the physical, intellectual and even spiritual aspects of Yoga which should not be treated as "religious purpose"

(ii) Teaching of Yoga

(iii) Books on Yoga

(iv) Propagation of Yoga

(v) Programs on Yoga, including heath camps

2. Relief to genuine charitable institutions carrying on business in the course of actual carrying out of charitable objects

2.1 Current provision

The advancement of any object of general public utility will not be a charitable purpose, if:

(a) It involves the carrying on 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 the income from such activity [first proviso to section 2(15)]; and

(b) If the aggregate value of the receipts is equal to ` 25 lakhs or more in a previous year [second proviso to section 2(15)].

2.2 Proposed amendment in section 2(15)

Advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying out of any trade, commerce or business or any activity of rendering of 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 the income from such activity, unless:

(a) Such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and

(b) The aggregate receipts from such activity or activities do not exceed 20% of the total receipts of the institution in the previous year.

[with effect from assessment year 2016-17].

2.3 Rationale behind proposed amendment

The institutions which, as part of genuine charitable activities, undertake activities like publishing books or holding … other programmes as part of actual carrying out of the objects which are of charitable nature are being put to hardship due to first and second proviso to section 2(15).

… there is a need to ensure appropriate balance being drawn between the object of preventing business activity in the garb of charity and at the same time protecting the activities undertaken by the genuine organisation as part of actual carrying out of the primary purpose of the trust or institution.

[Memorandum]

2.4 Analysis of proposed amendment

(a) The amendment applies to the charitable purpose of "advancement of any other object of general public utility". Hence, it will not apply to other purposes such as, education, relief of poor, yoga, etc.

(b) The proviso in the proposed amendment has two limbs:

- The first limb covers exceptions to the definition of charitable purpose (that is situations in which the definition is not satisfied);
- The second limb starting after "unless" is an "exception" to the first limb, that is if the conditions in the said exceptions are satisfied then the first limb will not be applicable and the definition of charitable purpose will remain satisfied.

(c) First limb of the amendment

(i) So far as the first limb is concerned, it is almost identical as the existing first proviso.

(ii) The expression "carrying on of any activity in the nature of trade, commerce and business" used in the first limb is identical as the expression in existing first proviso. Hence, the interpretation of the expression (and specifically the term business) for the purposes of first proviso will continue to apply. In other words, if the charitable institution is not carrying on business, etc., the amendment may not apply, unless the activity is services in relation to business, etc. The decisions under the existing first proviso would be very helpful in this connection.

(d) Second limb of the amendment

The second limb refers to two matters:

(i) First is relating to the activity referred to in the first limb being "undertaken in the course of actual carrying out of such advancement of any other object of general public utility".

The word "actual" has been interpreted as real, genuine and not fictional, collusive or illusory [See ***ITO vs. M.M. Aqua Technologies Ltd., (2005) 143 Taxman 43 (Del.), CIT vs. Poulose & Mathen (P.) Ltd., (1998) 101 Taxman 97 (Ker.), (1999) 236 ITR 416 (Ker), (1998) 148 CTR 247 (Ker.); CIT vs. Dalmia Dadi Cement Ltd., (1980) 4 Taxman 523 (Del.), (1980) 125 ITR 510 (Del.)].*** Hence, the activity should really and genuinely be carried out and not in an illusory manner.

(ii) The second matter is relating to the aggregate receipts from the specified activities not exceeding 20% of the total receipts. On a plain reading, the term receipts will include capital receipts, corpus donations, etc.

The language in a way results in comparing two dissimilar sums: In case of an institution carrying on sale of goods, the receipt from the activity would mean sale proceeds. Now, sale proceeds result in a much lower net profit which would require exemption. However, it has to be compared with other receipts which may not have any significant expense in earning them. Hence, in reality, when compared in terms of net profit from business and other net income, the threshold could be much lower than the prescribed 20%. An illustration is given below to explain the issue:

a.	Net sales	:	` 20 lakhs
b.	Net profit margin say,	:	10%
c.	Net profit from sales activity (a*b)	:	` 2 lakhs
d.	Other receipts	:	` 79 lakhs
e.	Expenses for earning other receipts (say)	:	` 4 lakhs
f.	Net income from other receipts (d – e)	:	` 75 lakhs
g.	Aggregate receipts (a+d)	:	` 99 lakhs
h.	% of business receipts (net sales) to total receipts (a*100/g)	:	20.2%
i.	Aggregate net income (c+f)	:	` 77 lakhs
j.	Percentage of net profit from business activity to total income (c*100/i)	:	2.60%

Thus, in the above illustration, a charitable institution will not satisfy the 20% ceiling, although its net income from business forms only 2.67% of its aggregate income!

(e) There could be two views on interpretation of the expression "and" as used in the proviso:

According to the one view, on a literal reading, the word 'and' is a conjunction and hence, the exception to the main body of the proviso (first limb) will not apply unless both the following conditions are cumulatively fulfilled.

(i) The activity of business, etc., is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and

(ii) The aggregate receipts from such activity or activities do not exceed 20% of the total receipts of the institution in the previous year.

To illustrate, as mentioned in para 2.4(d)(ii) above, the aggregate receipts from the business activity is 20.2% of the total receipts. In such a case, the definition of charitable purpose will not be regarded as satisfied.

According to the other view, the term "and" in the second limb of the proviso should be construed as "or". This is supported by the following arguments:

(i) As mentioned above, the Memorandum states as follows:

"The institutions which, as part of genuine charitable activities, undertake activities like publishing books or holding programme on yoga or other programmes as part of actual carrying out of the objects which are of charitable nature are being put to hardship due to first and second proviso to section 2(15).

...In so far as the advancement of any other object of general public utility is concerned, there is a need to ensure appropriate balance being drawn between the object of preventing business activity in the garb of charity and at the same time protecting the activities undertaken

by the genuine organisation as part of actual carrying out of the primary purpose of the trust or institution."

Thus, the intention is to

(a) Give relief to genuine charitable institution undertaking activities as part of actual carrying out of the objects which are of charitable nature and protect them;

(b) Give relief from hardship under first and second proviso to section 2(15).

If the expression "and" is construed as imposing cumulative conditions, then, the intent will not be fulfilled: the activities mentioned in the Memorandum such as publishing books or other programmes as part of actual carrying out of the objects which are charitable nature will continue to be put to hardship. This is evident from the illustration given above: Suppose the institution publishing books as referred to in the Memorandum is the one referred to in the illustration above. If the first interpretation is accepted then, it will not be covered by the definition although its book selling activity forms as low as 20.2% of the total receipts. Take another example: suppose the same charitable institution is able to sell books to the extent of ` 50 crores. Now, the fact that the institution has been able to sell books to the extent of ` 50 crores would, of course, be very commendable activity by any standards. However, in spite of this, in the first view, it will not be covered by the definition unless it has got other receipts of ` 200 crores!!! It is obvious that such receipts are very unlikely. What it means under view 1 is that

(a) **The higher the receipts of an institution in the actual course of carrying on the activity, four times higher is the requirement of other receipts!**

(b) **Even if an institution is solely engaged in a business in the course of actual carrying out of the object, then inspite of the intent expressed in the Memorandum, it will not be satisfying the definition of charitable purpose!!**

In the context of charity and section 2(15) itself, the Supreme Court has categorically observed in *ACIT vs. Surat Art Silk Cloth Manufacturers Association, (1980) 121 ITR 1 (SC),* that in case of ambiguity the consequences of a suggested construction should be examined to decide whether that interpretation should be adopted or not. It is submitted that Parliament could not have intended such consequences and hence applying the observations of the Supreme Court the other interpretation should be adopted.

Further, the intention behind the amendment is to protect activities undertaken by a genuine organisation as part of actual carrying out of the primary purpose of the institution. If the term "and" is construed as imposing cumulative conditions then, the intention of protecting such activities is not fulfilled.

(ii) Courts have time and again reiterated that in certain situations "and" could be construed as "or" to carry out the intention of the legislature or to avoid absurd consequences.

Thus,

- *"And" has generally a cumulative, sense, requiring, the fulfilment of all the conditions that it joins together, and herein it is the antithesis of "or". Sometimes, however, even in such a connection, it is, by force of a contents, read as "or". Sometimes to carry out the intention of the legislature it is found necessary to read the conjunctions 'or' and 'and' one for the other". [Ishwar Singh Bindra vs. State of U.P., AIR 1968 SC 1450 cited in P. V. Devassy vs. CIT, (1972) 84 ITR 502 (Ker)]*
- *… in Maxwell on Interpretation of Statutes, 11th Edn., pp. 229-30, it has been accepted that 'to carry out the intention of the legislature, it is occasionally found necessary to read the conjunctions 'or' and 'and' one for the other' ... As Lord Halsbury L.V. observed in Mersey Docks & Harbour Board vs. Handerson, (1888) 13 AC 595 (603) the reading of 'or' as 'and' is not to be resorted to "unless some other part of the same statute or the clear intention of it requires that to be done". [Municipal Corporation of Delhi vs. Tek Chand Chatia, AIR 1980 SC 360 cited in GCUL Ltd., Re 2003 taxmann.com 337 (Settlement Commission), (2003) 161 ELT 1063 (Settlement Commission)]*
- *In ordinary usage "and" in conjunctive and "or" is disjunctive, but to carry out the intention of the legislature it is sometimes possible to take "and" for "or" and vice versa. But such occasions should be rare and should only be to avoid absurd consequences that would follow if the words are taken in their literal meaning. [CIT vs. Puthuthotam Estates (1943) Ltd., (1981) 6 Taxman 65 (Mad.), (1981) 127 ITR 481 (Mad.)]*

Now, as explained above, it is very evident that the intention behind the amendment is not at all fulfilled if the expression "and" construed in a cumulative sense. On the other hand, if it is interpreted as "or" then, it will give exemption in two situations:

- When the activity is carried out in the course of actual carrying out of advancement of any other object of general public utility; or
- Such activities form a very small proportion of the total receipts of the charitable institutions

With this interpretation, the activities like publishing books or programmes as part of carrying out of objects will continue to be covered by the definition of charitable purpose as intended by the Memorandum.

It would also protect the activities undertaken by a genuine organization as mentioned by the Memorandum.

(iii) It is obvious that the purpose of the amendment is to relax the rigours of the existing provision and not to restrict it further. This is clear from the Memorandum when it states that the existing institutions "are being put to hardship due to the first and second proviso to section 2(15)". Now, the second proviso imposes a limit of ` 25 lakhs as gross receipts. It is obvious that the

amendment should cover at least the charitable institutions whose gross receipts are less than ` 25 lakhs which get exemption under the existing law. However, this may not happen if the amendment is construed under view 1. Thus, suppose a small charitable institution whose only activity is to undertake a business in the course of actual carrying out of an advancement of object of general public utility. If its revenues are less than ` 25 lakhs and suppose it does not receive donation of ` 1 crore (which is very likely) the receipts from the specified activity will exceed the 20% limit and hence the institution will not be regarded as satisfying the definition of charitable purpose!!. In many institutions the work for the business activity is carried out by the beneficiaries, thus, an institution promoting arts and crafts of rural artisans would attempt to give the maximum possible amount out of its sale proceeds to such artisans retaining very little money for the institution. In such cases, the profit from the actual carrying out from the activity would be very low, but because it does not satisfy the 20% limit its entire donation and interest income will become taxable!

(iv) It is now a well-settled rule of construction that where plain literal interpretation of statutory provision produces a manifestly absurd and unjust result which could never have been intended by the Legislature, the Court may modify the language used by the Legislature or even 'do some violence' to it, so as to achieve the obvious intention of the Legislature and produce a rational construction *[K. P. Varghese vs. ITO, (1981) 131 ITR 597 (SC); CIT vs. J. H. Gotla, (1985) 156 ITR 323 (SC)].* Applying this rule of interpretation, in view of the harsh, unjust and absurd results under view 1, it is submitted that 'and' should be read as 'or'.

Conclusion: While view 2 is certainly a more rationale and equitable view, it is evident that the matter will be highly litigative. In the circumstances, the authors strongly recommend a change in language in the Finance Act, 2015, to reflect the intended relief.

3. Exercising of option for deemed application of income in prescribed form

3.1 Current provision

In case the income applied in a previous year to charitable or religious purposes in India falls short of 85% of the income of the trust, the trustees may exercise an option to regard the amount of income applied in a subsequent year as application in the previous year by intimating the AO in writing before expiry of the time allowed under section 139(1) for furnishing the return of income [Explanation (2) to section 11(1)].

3.2 Proposed amendment in Explanation to section 11(1)

It is proposed to prescribe a form and manner for exercising such option [with effect from assessment year 2016-17].

3.3 Rationale behind proposed amendment

The Memorandum is silent on this amendment. It appears that the purpose of this amendment is to prescribe a uniform form to avoid varied intimations by assessees in different forms and litigation caused as a consequence.

3.4 Analysis of proposed amendment

(a) This amendment negates the effect of judgments of various High Courts where it has been held that:

(i) Exercising of option is not required to be made in any prescribed form *[CIT vs. Industrial Extension Bureau, (2014) 43 taxmann.com 392 (Guj.)]*

(ii) The option may be exercised by merely mentioning in a statement attached to the return of income that the amount has been set apart for utilising the charitable purposes in the subsequent year *[CIT vs. G.R. Govindarajulu & Sons Charities, (2005) 144 Taxman 300 (Mad.), (2004) 271 ITR 145 (Ma.), (2005) 193 CTR 323 (Mad)].*

(b) Default in exercising the option in the prescribed manner could result in disallowance of the amount applied in subsequent year, and consequential tax plus interest under section 234B and section 234C.

(c) Section 13(9) is proposed to be introduced to provide that the benefit of secondary accumulation under section 11(2) will not be available if return of income/Form 10 is not submitted within due date of filing of return (see para 5 below). No similar amendment is proposed for Explanation (2).

(d) As mentioned above, Explanation (2) already contains a stipulation that the option has to be exercised on or before the due date for filing of return under section 139(1). There is no change to this stipulation. In the preamendment scenario, it was held that exercising the option within the specified time was directory and the assessing authority had a discretion to condone the delay in exercising the same *[CIT vs. Ziarat Mir Syed Ali Hamdani, (2001) 248 ITR 769 (J&K), (2001) 114 Taxman 642 (J&K), (2001) 168 CTR 548 (J&K); ACIT vs. Industrial Extension Bureau, (2013) 36 taxmann.com 316 (Ahd)]*. It appears that this ratio may still be applicable even after the amendment. In any case the charitable institution will be at a liberty to approach the CBDT to condone delay in filing the prescribed form, and if the CBDT considers it desirable or expedient to do so for avoiding genuine hardship, it may condone the delay [section 119(2)(b)].

4. Period within which Form 10 relating to secondary accumulation is required to be filed

4.1 Current provision

A charitable institution can accumulate income not applied during the previous year for a period not exceeding 5 years provided it gives notice to the AO in prescribed form (Form 10) and the money so accumulated is invested or deposited in forms specified in section 11(5) [section 11(2)]. While Rule 17 provides that the Form 10 has to be filed before the expiry of time allowed under section 139(1) for furnishing the return of income, section 11(2) is silent on the time limit.

4.2 Proposed amendment in section 11(2)

The prescribed form (Form 10) should be filed by the charitable institution on or before the due date of filing return of income under section 139(1) [with effect from assessment year 2016-17].

4.3 Rationale behind proposed amendment

The time limit has been prescribed to remove the ambiguity regarding the period within which the assessee is required to file Form 10, and to ensure due compliance of the conditions of accumulation within time [Memorandum].

4.4 Analysis of proposed amendment

(a) In spite of existing rule 17, Courts have held in a series of decisions that a charitable institution may be allowed to file Form 10 during:

- Assessment proceedings *[ACIT vs. Stock Exchange Ahmedabad, (2012) 210 Taxman 28 (Guj.), (2012) 25 taxmann.com 469 (Guj); also see CIT vs. Nagpur Hotel Owners' Association, (2001) 114 Taxman 255 (SC), (2001) 247 ITR 201 (SC), (2001) 165 CTR 1 (SC), para 5 overruling CIT vs. Nagpur Hotel Owners Association, (1994) 209 ITR*

441 (Bom), (1994) 122 CTR 387 (Bom.) (The Supreme Court judgment was rendered in the context of rule 17 when it did not provide any time limit)] or

- even reassessment proceedings *[Association of Corporation & Apex Societies of Handlooms vs. ADIT, (2013) 30 taxmann.com 22 (Del.), (2013) 213 Taxman 15 (Del.)]*.

The amendment brings to rest this controversy by requiring a charitable institution to furnish Form 10 before due date of filing of return of income under section 139(1).

(b) The charitable institution will be at a liberty to approach the CBDT to condone delay in filing the prescribed form, and if CBDT considers it desirable or expedient so to do for avoiding genuine hardship, it may condone the delay [section 119(2)(b)]. CBDT order F. No. 180/57/80-IT(AI) dated 3-6-1980 stipulates certain conditions that are required to be fulfilled by a charitable institution for CIT to entertain its application for condonation of delay in filing of Form 10.

5. No benefit of secondary accumulation if return of income / Form 10 is not submitted within due date of filing of return

5.1 Current provision

None.

5.2 Proposed amendment in section 13

Exemption under section 11(2) will not be available to a charitable institution if:

(a) It does not file Form 10 before the due date of filing of return of income under section 139(1); or

(b) It does not file the return of income before the due date of filing of return of income under section 139(1).

[with effect from assessment year 2016-17]

5.3 Rationale behind proposed amendment

The Memorandum is silent on this amendment. The purpose of this amendment is to deny benefit of accumulation under section 11(2) to charitable institutions which fail to file both Form 10 and return of income before the due date of filing of return of income.

5.4 Analysis of proposed amendment

(a) Default in filing of Form 10 / return of income by due date will result in disallowance of the sum sought to be accumulated and consequential tax plus interest under section 234A, section 234B and section 234C.

(b) The charitable institution will be at a liberty to approach CBDT to condone delay in filing the prescribed form, and if CBDT considers it desirable or expedient so to do for avoiding genuine hardship may condone the delay [section 119(2)(b)].

6. Requirement of filing of return of income by educational/medical institutions substantially financed by Government

6.1 Current provision

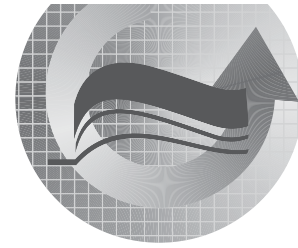
None.

6.2 Proposed amendment in section 139

Section 139(4C) is proposed to be amended to provide for mandatory filing of return of income by:

(a) Educational institutions exempt under section 10(23C)(iiiab)

(b) Medical institutions exempt under section 10(23C)(iiiac).



CA. Anish Thakkar & CA Subramaniam Krishnan

Proposals relating to Business Trusts

Introduction

The Government's agenda and dream of 'Make in India' would necessitate increased investment into manufacturing and the Hon'ble Prime Minister's vision of every Indian becoming an entrepreneur would particularly require investment in start-up ventures. Additionally, in order to increase investment in infrastructure, real estate investments need to be given a leg up. Towards this, the Government had in the past year or so moved forward by easing regulations for Alternative Investment Funds and Real Estate and Infrastructure Investment Trusts. Certain measures for providing tax pass through were introduced in the Finance (No. 2) Act, 2014. Some ironing out however remained which has been attempted to be addressed in the Finance Bill, 2015. This article looks at these proposals.

REITs and IITs

The Securities and Exchange Board of India (SEBI) notified the SEBI (Real Estate Investment Trusts) Regulations, 2014 (REIT Regulations) and SEBI (Infrastructure Investment Trusts) Regulations, 2014 (IIT Regulations) on 26th September, 2014 providing a framework for registration and regulation of REITs and IITs, respectively. The Income-tax Act, 1961 (Act) was amended by the Finance (No. 2) Act, 2014 to provide a regime for taxation of REITs and IITs, including their sponsors and investors. Various amendments have been proposed to the regime in the Finance Bill, 2015 (Bill) as discussed below.

- The Bill has substituted the definition of 'business trust' in section 2(13A) of the Act to mean a trust registered as:
  - IIT under the IIT Regulations; or
  - REIT under the REIT Regulations; and
  - The units of which (i.e. IIT or REIT) are required to be listed on a recognised stock exchange in accordance with the aforesaid regulations.
- As discussed, the IIT Regulations and the REIT Regulations were notified by SEBI on 26th September, 2014, subsequent to the enactment of the Finance (No. 2) Act, 2014, which introduced the definition of 'business trust' in section 2(13A) of the Act. The proposed amendment merely seeks to incorporate the references to the notified regulations in the Act.

Income from renting or leasing or letting out real estate owned directly by a REIT

- The REIT Regulations permit a REIT to invest in properties directly or through special purpose vehicles (SPVs) subject to certain conditions. Currently, as per

the provisions of the Act, rental income derived by a REIT from directly held properties is taxable at the REIT level at maximum marginal rate (MMR). In contrast, any interest income derived by a REIT from a SPV that owns the properties is exempt in the hands of the REIT and taxable in the hands of the REIT's unit holders.

- The Bill proposes to extend the pass-through treatment to rental income arising to a REIT from properties directly held by it and in this regard proposes the following amendments:

  a. The Bill proposes to insert section 10(23FCA) in the Act to provide an exemption for any income of a REIT by way of renting or leasing or letting out any real estate asset owned directly by such trust.

  b. Further, income, which is not of the nature referred to in para 4.1 above, except income in the nature of 'capital gains' chargeable to tax at special rates of tax (under sections 111A and 112 of the Act), shall be taxable as income of the REIT at MMR and shall be exempt in the hands of the unit holders.

  c. The Bill proposes to amend section 115UA of the Act to provide that any distributed income received by a unit holder from the REIT of the nature referred to in para 4.1 above, shall be deemed to be income of the unit holder of the same nature and shall be charged to tax.

  d. The Bill proposes to amend section 194LBA of the Act to extend the requirement of tax withholding at the rate of 10% to distribution of rental income to a resident unit holder of a REIT. Further, the Bill also proposes that for distribution of such income to a non-resident unit holder, tax should be deducted at the rates in force (i.e. rate as per the applicable Finance Act or Double Taxation Avoidance Agreement).

  e. The Bill proposes to amend section 194-I of the Act to provide that no deduction of tax shall be made where income by way of rent is credited or paid to a REIT in respect of any real estate asset owned directly by such trust.

- Under the Act, an owner of property, while computing the income under the head "Income from house property" is eligible to claim several deductions under section 24 of the Act (for example, deduction of 30% of the annual value of the property). Section 115UA states that income distributed by a REIT to its unit holders shall be deemed to be of the same nature and in the same proportion as received by such trust. It should ordinarily follow that the unit holders should be able to claim all the deductions otherwise available to the owner of the property while determining the taxable income in the hands of the unit holder. The drafting of the provision in this regard does not make this explicit; therefore, the Bill should clarify this aspect before its enactment.

Capital gains of the sponsor of the REIT/ IIT

- Currently, as per the provisions of section 47(xvii) Act, any transfer of a capital asset, being shares of a SPV to a REIT/IIT in exchange of units allotted by such trust to the transferor is exempt from tax and the taxation of gains is deferred and levied at the time of disposal of units of the REIT/ IIT. Investors in a REIT/ IIT, however, are eligible for concessional rates of tax on short-term capital gains (i.e. 15%) and exempt on long-term capital gains, subject to the transaction being chargeable to securities transaction tax.

- The existing taxation scheme places the sponsor at a disadvantageous tax position vis-a vis direct listing of the shares of the SPV. In order to provide parity to the sponsor of a REIT/IIT, the Bill extends the concessional tax treatment (i.e. short term capital gains taxable at 15% and long-term capital gains exempt), available to the investors in REIT/IITs, to transfer of units of the REIT/IIT by the sponsor, subject to the transaction being chargeable to securities transaction tax.
- In the context of REIT/IITs, the following are some of the key tax aspects that are yet to be addressed in the Act:
  - The application of Minimum Alternate Tax to the sponsors on swap of shares in the SPV for units in the REIT/IIT.
  - The exemption for swap of sponsor's interest in a SPV for units in the REIT/IIT, where the SPV is not an Indian company (for instance, where the SPV is an Indian Limited Liability Partnership).
  - The exemption for the SPV from the provisions of dividend distribution tax on any dividend distributions to the REIT/IIT and a pass-through treatment for such income similar to that applicable to interest paid by the SPV to the REIT/IIT.

Alternative Investment Funds

- The SEBI notified the SEBI (Alternative Investment Funds) Regulations, 2012 (AIF Regulations) on 21st May, 2012 providing a framework for registration and regulation of AIFs. AIF is a privately pooled investment vehicle which collects funds from investors for investing it in accordance with a defined investment policy for the benefit of its investors. Consequent to the notification of the AIF Regulations, the SEBI (Venture Capital Funds) Regulations, 1996 (VCF Regulations) were repealed and the then existing schemes of Venture Capital Funds were grandfathered.
- The AIF Regulations classify AIFs under three categories i.e. Category I AIF (this in turn has some sub-categories including venture capital funds, infrastructure funds, social venture funds), Category II AIF (private equity and debt funds) and Category III AIF (hedge funds).
- Currently, section 10(23FB) of the Act read with section 115U of the Act provides for a pass-through treatment for income of a Venture Capital Fund (VCF) or Venture Capital Company (VCC) from investment in a Venture Capital Undertaking (VCU), subject to conditions. Accordingly, any income of an investor out of investments made in a VCF or VCC shall be chargeable to income-tax in the same manner as if it were the income of the investor had he made investments directly in the VCU. The aforesaid tax treatment applies to VCF / VCCs registered under the VCF Regulations and also to Category I AIF – VCF sub-category set up as a trust or company.
- In order to address the taxation aspects of other AIFs (i.e. AIFs other the VCF sub-category of Category I AIF) set up as trusts, the Central Board of Direct Taxes (CBDT) issued Circular No. 13 dated 28th Jul, 2014. In the said circular, the CBDT clarified that, where the name of the investors or their beneficial interest is not specified in the trust deed (on the date of its creation), the income earned by the AIF would be taxable in the hands of the trustees (as a representative assessee) at the MMR. Further, the CBDT clarified that where the AIFs income consists of or includes profits and gains of business, the income earned by the AIF would be taxable in the hands of the trustees (as a representative assessee) at the MMR.

- The aforesaid Circular did not endorse the position consistently adopted by the industry which has been upheld by the Authority for Advance Rulings in AIG (In Re: Advance Ruling P. No. 10 of 1996) and other court precedents that explain the scheme for taxation of trusts in the Act.
- In order to rationalise the taxation of Category I and Category II AIFs (together referred to as 'investment fund') in line with international best practices, the Bill proposes to provide a special tax regime introduced as Chapter XII-FB of the Act. The proposed amendments are summarised below:
  - Income of a unit holder out of investments made in an investment fund shall be chargeable to tax in the same manner as if it were income of the unit holder from investments made directly.
  - Income in the hands of the unit holder shall be deemed to be of the same nature and in the same proportion as it has been received or accrued to the investment fund.
  - Income taxable under the head "Profits and gains of business or profession" shall be taxable in the hands of the investment fund at the applicable tax rates where such fund is a company or firm and at the MMR in other case (for example where the fund is a trust).
  - Income (other than business income taxable at the investment fund level) shall be exempt from tax in the hands of the investment fund and taxable in the hands of the unit holder in the manner described above.
  - Income of the investment fund in the nature of business income which is taxable at the investment fund level shall be exempt from tax in the hands of the unit holder.
  - Undistributed income of the investment fund shall be deemed to have been credited to the unit holder on the last day of the financial year (i.e. 31st March).
  - Net loss, computed in accordance with the provisions of the Act, incurred by the investment fund shall be carried forward to be set-off by the investment fund in accordance with the Act.
  - The provisions of dividend distribution tax (115-O) and tax on distributed income (115R) shall not apply to the income paid by an investment fund to its unit holders.
  - Taxes shall be withheld at the rate of 10% (with effect from 1st June, 2015) on income payable by an investment fund to a unit holder (other than on business income taxable at the fund level).
  - The memorandum to the Bill provides that the income received by the investment fund would not be subject to tax withholding requirements.
  - The investment fund shall be mandatorily required to file a return of income [section 139(4F)]. Further, the investment fund shall provide to the Indian Revenue authorities and the unit holders, a statement giving details of various components of income and such other particulars as may be prescribed.
- The aforesaid tax regime shall apply to all investment funds effective from the financial year 2015-16. VCF/VCCs registered under the VCF Regulations shall continue to be governed by the existing

provisions of the Act (discussed in para 11 above).

- The foundation of the special tax regime for investment funds revolves around the characterisation of gains from their investment activity. Where the gains derived by an investment fund are characterised as 'profits and gains or business', the tax liability on such income is on the investment fund and where it qualifies as 'capital gains', the tax liability on such income is on the unit holder. The controversy of characterisation of gains from investment activity as 'capital gains' or 'business profits' is as old as the income-tax law and there are a plethora of court cases, administrative instructions/ circulars that provide very subjective principles. It is critical that the Act clarify this aspect, perhaps by deeming fiction [similar to that provided to Foreign Institutional Investors in section 2(14) of the Act by the Finance (No. 2) Act, 2014] or alternatively accord pass-through tax treatment to any income of the investment to provide certainty and avoidable double taxation.

- The provisions for tax withholding at the rate of 10% by the investment fund on income credited or paid does not specifically provide an exclusion for items of income that are exempt from tax under the Act [for example, dividend exempt under section 10(34), specified long-term capital gains exempt under section 10(38) of the Act]. While there is an argument that the meaning ascribed to the term "person responsible for paying" used in section 194LBB and defined in section 204 of the Act does not cover payment of sums which are not chargeable to tax under the Act, a specific provision to exempt such payments is desirable. A similar issue also applies to income credited or paid to non resident taxpayers who may be eligible for reduced rate of tax or exemption on income earned from an investment fund's investments (for example, investors from Singapore are, subject to conditions, exempt from Indian tax on capital gains) where the proposed tax withholding will result in a cash trap.

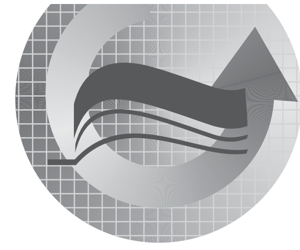
- Investment funds are closed-ended funds for a limited time frame. The specific carve out from tax-pass through regime for net losses incurred by the investment fund in a financial year could result in such losses not being available to either the investment fund or the investor. Take an example of an investment fund that incurs losses in the latter years of its existence without sufficient gains for utilising such losses.

Core Settlement Guarantee Fund (SGF) of the Clearing Corporation

- Under the provisions of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012 notified by SEBI, the clearing corporations are mandated to establish a SGF for each segment of each recognised stock exchange to guarantee the settlement of trades executed in respective segments of the exchange.

- The Bill proposes to exempt the income of the SGF arising from contributions received, investment made and from the penalties imposed by the clearing corporation which are credited to the SGF.

- However, where any amount standing to the credit of the SGF not charged to income-tax during any financial year is shared with any clearing corporation/ its stock exchange shareholder, the amount shared shall be deemed to be the income of the year in which such amount is shared.



CA. Ketan Vajani

Taxation of Individuals – Amendments proposed by Finance Bill 2015

The Finance Bill, 2015 presented in Parliament on 28th February, 2015 has proposed several amendments to the Income-tax Act, 1961. Though there are no retrospective amendments following the broad policy of this Government, some of the amendments have unsettled the settled position of law in a drastic way. Fortunately though such amendments are not proposed as far as taxation of individuals are concerned.

This article proposes to deal with some of the amendments that the Finance Bill has proposed to the taxation of individuals. One needs to bear in mind that the individuals are normally the most tax obedient citizens and probably therefore suffer the most when it comes to levy of tax. Amidst this general belief, this Finance Bill has brought some reliefs to the individuals by providing for larger tax reliefs. Let us look at what lies in for a "common man" in this Finance Bill as far as Direct Tax provisions are concerned.

Sukanya Samriddhi Account Scheme

A girl child needs to be supported for the better social balance of our country. The Finance Bill takes one step in the direction to achieve this object. The Finance Bill proposes amendments to section 80C and section 10 of the Income-tax Act relating to the investment in "Sukanya Samriddhi Account Scheme".

Section 80C

Existing Provision

Section 80C of the Act provides for deduction under Chapter VIA from the gross total income in the case of an Individual or HUF. Maximum deduction permissible under this section is ` 1,50,000/-. Various investments which are eligible for deduction under this section are listed in sub-section (2) of the section. Sub-section (4) of the section lists down persons, in whose name the investment is permissible.

Amendment

Clause–15 of the Finance Bill seeks to make amendment in clause (viii) of sub-section (2) and also sub-section (4) of section 80C. Effectively the amendments seek to provide that in the case of an individual, the sums deposited as subscription, in the name of that individual or any girl child of that individual or any girl child for whom such person is the legal guardian, to any security of the Central Government or any such deposit scheme as that Government may by notification in the Official Gazette specify, will qualify for the deduction u/s. 80C of the Act.

The Government has already introduced a savings scheme called "Sukanya Samriddhi Account Scheme" and the said scheme has been notified under clause (viii) of sub-section (2) of section 80C *vide* Notification No. 9/2015 S.O. 210 (E) F. No. 178/3/2015-ITA-I dated 21-1-2015. The amendment now proposed will allow the investment made by a parent in the name of the girl child also in the said scheme for the purpose of deduction u/s. 80C.

Section 10

Section 10 of the Income-tax Act provides for various incomes which do not form part of total income i.e., exempt incomes in common parlance.

Proposed Amendment

Clause 7(I) of the Finance Bill seeks to insert clause (11A) in section 10 so as to provide that any payment from an account opened in accordance with the Sukanya Samriddhi Account Rules, 2014, made under the Government Savings Bank Act, 1873 shall be exempt while computing the total income.

As such, the interest earned by an assessee on the above account will be an exempt interest. Even the withdrawal from the said scheme will also be exempt from tax.

Effective Date

These amendments are proposed with effect from 1-4-2015 and will accordingly apply retrospectively from A.Y. 2015-16 onwards.

A miss out

While the purpose of the amendment is laudable and must be appreciated, the benefit of the deduction u/s. 80C for this particular clause is restricted to individuals only. It would have been desired if the amendment has also been made so as to cover the HUFs depositing the amount in the name of a girl child who is the member of the HUF.

Amendment to Section 80CCC

Existing Provision

Section 80CCC of the Act allows deduction in respect of contribution to certain pension funds. The maximum deduction permissible under this section at present is ` 1 lakh in a year.

Proposed Amendment

Clause 16 of the Finance Bill seeks to amend the provisions of sub-section (1) of section 80CCC so as to increase the above limit of ` 1 lakh to ` 1,50,000/-.

Effective Date

The amendment is proposed to be made with effect from 1-4-2016 and will accordingly apply for A.Y. 2016-17 and subsequent years.

Comment

As per the existing provision of section 80CCE there is an overall limit of ` 1,50,000/- in respect of deductions under sections 80C, 80CCC and 80CCD. Due to the provisions of section 80CCC, maximum deduction under the said section was ` 1,00,000/- and the assessee could avail of total ` 1,50,000/- if he invests balance ` 50,000/- in some other investments eligible either under section 80C or section 80CCD. By virtue of the amendment, the assessee will now be able to invest entire amount of ` 1,50,000/- in the pension fund and claim the deduction accordingly.

Amendment to Section 80CCD

Existing Provision

Section 80CCD of the Act provides for deduction in respect of contribution to pension scheme of Central Government. Sub-section (1) of the section provides for deduction in the case of (a) an individual, employed by the Central Government on or after 1-1-2004 or (b) an individual employed by any other employer or (c) any other individual. The deduction is allowed for the amount deposited in his account

under a notified pension scheme. There is a limit for the deduction to the extent of 10% of salary in the case of an employee and 10% of Gross Total Income in the case of other assessees.

Sub-section (2) of the section provides for deduction of the contribution made by the Central Government or any other employer to the said account of the individual under the pension scheme to the extent it does not exceed 10% of the salary.

Sub-section (1A) of the section provides that the amount of deduction in respect of the employees own contribution to the scheme shall not exceed ₹ 1,00,000/-.

Proposed Amendment

With a view to encourage contribution towards NPS, clause 17 of the Finance Bill seeks to amend section 80CCD of the Act in the following manner :

(a) Sub-section (1A), which provides for limit of ₹ 1,00,000/- is proposed to be omitted.

(b) A new sub-section (1B) is proposed to be inserted so as to provide for additional deduction of up to ₹ 50,000/- in the case where the assessee deposits amount in his account under the pension scheme notified or to be notified by the Central Government.

(c) A proviso is also inserted to the proposed sub-section (1B) so as to provide that no deduction under this sub-section shall be allowed in respect of the amount on which a deduction has been claimed and allowed under sub-section (1).

(d) Consequential amendments are also proposed in sub-sections (3) and (4) of section 80CCD.

Note : ***On a combined reading of sub-section (1B) and the proviso thereto, it appears that the Central Government will notify separate pension schemes*** *for sub-section (1B). Once such scheme is notified,* ***the amount deposited in the pension account under such scheme will qualify for additional deduction of up to ₹ 50,000/- over and above the deduction available under the present NPS which is notified under sub-section (1) of section 80CCD. However, if the individual deposits the amount in the present*** *NPS, as notified under sub-section (1), he will not be* ***in a position to claim double deduction in respect of the same investment once under sub-section (1) and once under sub-section (1B).***

Effective Date

The amendment is proposed to be made with effect from 1-4-2016 and will accordingly apply for A.Y. 2016-17 and subsequent years.

Amendment to Section 80D

Existing Provision

Section 80D of the Act provides for deduction in respect of health insurance premium. The section provides for deduction of up to ₹ 15,000/- paid by an individual towards the health insurance premium for himself and his family members. An additional deduction of up to ₹ 15,000/- is also allowed to the individual if the payment is made in respect of health insurance premiums for the parents of such individual. Similar deduction is also allowed in the case of HUF if the payment is made towards health insurance premium of any of the members of the HUF. The section also presently provides for a deduction of twenty thousand rupees in both the cases if the person insured is a senior citizen of sixty years of age or above.

Proposed Amendment

Clause 18 of the Finance Bill seeks to amend section 80D of the Act. The amendments proposed to the section 80D are as discussed hereunder :

1) Increase in limits

As per the memorandum explaining the provisions, the limits of ₹ 15,000/- and ₹ 20,000/- in the case of senior citizens are

proposed to be enhanced to ` 25,000/- and ` 30,000/- respectively. However, when one looks at the Finance Bill provisions, it is seen that clause (a) of sub-section (2) of section 80D, which provides for maximum deduction of ` 15,000/- in the case of an individual has not been amended.

It seems that non amendment of clause (a) of sub-section (2) is through oversight and the same will get amended while passing the Finance Bill.

2) Medical expenditure in respect of a very senior citizen

Two new sub-clauses (c) and (d) are proposed to be inserted in sub section (2) so as to provide that any payment made on account of medical expenditure for assessee for himself or for a family member or any of his parents will be allowed as a deduction subject to limit of ` 30,000/-.

First proviso to sub-section (2) provides that the above deduction in respect of medical expenditure will be allowed only if the expenditure is in respect of a very senior citizen and also if no amount has been paid to effect or keep in force an insurance on the health of such person.

Second proviso to sub-section (2) provides that the aggregate of the sum specified under clauses (a) and (c) or under clauses (b) and (d) shall not exceed ` 30,000/-

Example

The memorandum has given an example which is helpful in understanding the exact provisions. The said example is reproduced hereunder:

Particulars	**Amount (`)**
Health Insurance Premium paid for Individual and his family	21,000
Health Insurance Premium paid for Mother	18,000
Medical Expenditure incurred on Father, who is a very senior citizen and no Insurance Premium is paid on his health	15,000
Eligible Deduction is as under	
Health Insurance Premium for self and family members	21,000
Health Insurance Premium for mother – ` 18,000/- and Medical Expenditure on father (very senior citizen) – ` 15,000/- - Total ` 33,000/- but restricted to …	30,000
Total Deduction permissible	51,000

3) Increase in limits and also Medical expenditure in the case of HUF

Sub-section (3) of the section, which deals with deduction in the case of HUF, is proposed to be replaced by a new sub-section so as to provide that the HUF will be eligible to the following deductions:

(a) Amount paid to effect or keep in force an insurance on the health of any member of the HUF subject to maximum ` 20,000/- as against current ` 15,000/- .

(b) Amount paid on account of medical expenditure incurred on the health of any member of the HUF subject to maximum ` 30,000/- provided that the same is paid for a very senior citizen and no amount has been paid to effect or to keep in force an insurance on the health of such person.

The total deduction to HUF under both clauses (a) and (b) shall not exceed ` 30,000/-.

4) Senior citizen and very senior citizen defined

An Explanation is proposed to be inserted in sub-section (5). The proposed Explanation defines the terms "senior citizen" and "very senior citizen" for the purpose of the section as under :

(i) "Senior citizen" means an individual resident in India who is of the age of sixty years or more at any time during the relevant previous year;

(ii) "Very senior citizen" means an individual resident in India who is of the age of eighty years or more at any time during the relevant previous year.'.

Effective Date
The amendment is proposed to be made with effect from 1-4-2016 and will accordingly apply for A.Y. 2016-17 and subsequent years.

Amendment to Section 80DD and also Section 80U

Existing Provisions
Section 80DD of the Act, *inter alia*, provides for a deduction to an individual or HUF, who is a resident in India, who has incurred (a) Expenditure for the medical treatment (including nursing), training and rehabilitation of a dependent, being a person with disability as defined under the said section; or (b) paid any amount to LIC or any other insurer in respect of a scheme for the maintenance of a disabled dependent.

The deduction permissible is of maximum ` 50,000/- if the dependent is suffering from the disability. If, however, the dependent is suffering from severe disability, the deduction is permissible for maximum ` 1,00,000/-.

Similarly section 80U of the Act provides for a deduction to an individual, being a resident, who, at any time during the previous year, is certified by the medical authority to be a person with disability as defined under the said section. The deduction available in section 80U is of ` 50,000/- if the person is suffering from disability and ` 1,00,000/- if the person is suffering from severe disability as defined under the said section.

Proposed Amendments
Clause – 19 of the Finance Bill seeks to amend section 80DD and Clause 23 of the Finance Bill seeks to amend section 80U of the Income-tax Act so as to increase the above limits in both the sections as under :

Section	Particulars	In the case of person with disability	In the case of person with severe disability
80DD	Maximum deduction permissible (subject to actual expenditure)	75,000	1,25,000
80U	Deduction amount	75,000	1,25,000

Reason
The limits under section 80DD and section 80U in respect of a person with disability were fixed by Finance Act, 2003. Further, the limit under section 80DD and section 80U in respect of a person with severe disability was last enhanced by Finance (No. 2) Act, 2009. The amendments are now made with a view to address the rising cost of medical care and special needs of a disabled person.

Effective Date
The amendment is proposed to be made with effect from 1-4-2016 and will accordingly apply for A.Y. 2016-17 and subsequent years.

Amendment to Section 80DDB

Existing Provision
Section 80DDB of the Act provides for deduction in the case of a resident individual or HUF. The

deduction is available in respect of the amount actually paid for the medical treatment of certain chronic and protracted diseases such as Cancer, full blown AIDS, Thalassaemia, Haemophilia etc. The maximum deduction permissible is ` 40,000/-. The limit of deduction is ` 60,000/- if the payment is made in respect of a person who is senior citizen. The deduction is available to an individual for medical expenditure incurred on himself or a dependent relative. It is also available to a Hindu undivided family (HUF) for such expenditure incurred on its members. Dependent in case of an individual means the spouse, children, parents, brother or sister of an individual and in case of an HUF means a member of the HUF, wholly or mainly dependent on such individual or HUF for his support and maintenance.

The section also provides that the assessee has to furnish a certificate in the prescribed form, from a neurologist, an oncologist, a urologist, a haematologist, an immunologist or such other specialist working in a Government hospital for the purpose of claiming the deduction.

Proposed Amendments

Clause 20 of the Finance Bill seeks to amend the provisions of section 80DDB in the following manner :

(a) Relaxation in condition of obtaining certificate

The requirement of obtaining a certificate from a specialist working in a Government hospital is being done away with and instead the assessee will be required to obtain a prescription from a specialist doctor for the purpose of availing the deduction.

Reason

It has been represented that the requirement of a certificate from a doctor working in a Government hospital causes undue hardship to the persons intending to claim the aforesaid deduction. Government hospitals at many places do not have doctors specialising in the above branches of medicine. Accordingly it may be difficult for the taxpayer to obtain a certificate from a Government hospital.

(b) Providing for higher limit for very senior Citizens

A higher limit of ` 80,000/- is being proposed for the expenditure incurred in respect of medical treatment of a very senior citizen. A "very senior citizen" is proposed to be defined as an individual resident in India who is of the age of eighty years or more at any time during the relevant previous year.

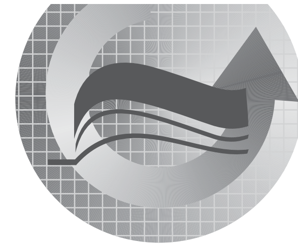
Effective Date

The amendment is proposed to be made with effect from 1-4-2016 and will accordingly apply for A.Y. 2016-17 and subsequent years.

Conclusion

The above amendments are as such benevolent amendments and therefore they are welcome. The only doubt remains about the sufficiency of the benevolent amendments. Probably one will have to wait for some more time to see the real "acche din" for the common man. It is said that "Ummid pe Duniya Kayam Hai". I would like to end this article on a positive note therefore, praying for better days to come.

I am extremely thankful to the Chamber of Tax Consultants for enabling me this opportunity to be part of this prestigious project year after year. This opportunity really allows me to study the provisions of Finance Bill in greater detail, which but for this, I might not.



CA. Kishore Phadke

Proposals Relating to Business Deductions

Clauses 10 and 11: Amendment to Section 32(1)(iia)

Amendment No. 1

- Present provision: Additional depreciation at 20% of cost of new plant or machinery acquired and installed by certain assessee is allowed u/s. 32(1)(iia) of the Income-tax Act, 1961.
- Amendment: Additional depreciation at 35% (instead of 20%) of the actual cost of new machinery or plant (other than a ship and aircraft), acquired and installed by a manufacturing undertaking or enterprise, which is set up in the notified backward area of the State of Andhra Pradesh or the State of Telangana on or after the 1st day of April, 2016 (i.e. A.Y. 2016-17). Considering the promises given to people in A. P. & Telangana, some relief was certainly expected.

Amendment No. 2

- Present provision: Additional depreciation is restricted to 50% when new plant or machinery is put to use for a period less than 180 days in previous year (i.e. 2nd half).
- Amendment: Balance 50% of additional depreciation (when plant or machinery is put to use for less than 180 days) shall be allowed in immediately succeeding financial year. Due to the said amendment, following Court decisions stand legislated:

  a) *DCIT vs. Cosmo Films Ltd. [139 ITD 628 (Delhi)]*

  b) *ACIT vs. Sil Investments Ltd. [54 SOT 54 (Delhi)]*

  c) *MITC Rolling Mills Pvt. Ltd. [ITA No. 2789/Mum/2012]*

Clause 12: Prescribed conditions relating to maintenance of accounts and audit to be fulfilled by approved in-house R&D facility u/s. 35(2AB)

Amendment No. 1

- Present provision: Weighted deduction of 200% of eligible expenditure on Research and Development is allowed

to a company engaged in the business of bio-technology or manufacturing of goods, provided, agreement is entered into between the prescribed authority and the assessee as regards co-operation and audit.

- Amendment: Scope of agreement as regards co-operation & audit extended. Various further compliances/reports, etc. (to be prescribed in this behalf) are to be submitted by the assessee. Further, the compliances/reports are to be submitted also to the Principal CIT/ Chief CIT.

Clause 22: Deduction u/s. 80JJAA for employment of new workmen

Amendment No. 1

- Present provision: Deduction is available to Indian Company deriving profits from manufacture of goods in factory. Deduction was equal to 30% of additional wages paid to new regular workmen employed by the Indian Company in a previous year. Deduction is allowed for those assessment year in which such employment is provided.

- Amendment: Now, the benefit of deduction u/s. 80JJAA is extended to all assessees having manufacturing units. As such, the said deduction is no more prerogative of only Indian companies. Even foreign companies also are eligible now. In other words, no discrimination remains anymore. Corresponding amendment is also made in the condition in clause (a) of sub-section (2) of section 80JJAA

Amendment No. 2

- Present provision: "Additional wages" shall be wages paid to new regular workmen in excess of 100 workmen employed during the previous year.

- Amendment: "Additional wages" shall be wages paid to the new regular workmen in excess of 50 workmen employed during the previous year. Limit of 100 regular workmen is brought down to 50 regular workmen with a view to encourage generation of employment.

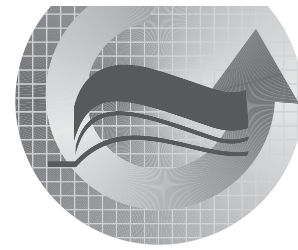
Clause 24: Increase in threshold limit u/s. 92BA for Specified Domestic Transactions

Amendment No. 1

- Present provision: The assessee was liable to furnish audit report in Form 3CEB if aggregate of specified domestic transactions exceeds ` 5 Cr during the previous year

- Amendment: In order to address the issue of compliance cost in case of small businesses on account of low threshold of ` 5 cr., Section 92BA is now amended to provide that the aggregate of specified transactions entered into by the assessee in the previous year should exceed a sum of ` 20 cr. for such transaction to be treated as 'Specified Domestic Transaction'. The amendment shall take effect for A. Y. 2016-17 and subsequent assessment years.

Problems are not stop signs, they are guidelines.



CA. Ajay S. Agashe

Proposals Relating to MAT

On February 28, 2015, the Finance Minister, Mr Arun Jaitley presented the first full budget for the newly elected Government. As is the case every year, industry bodies and stakeholders including Chamber of Income-tax Consultants have submitted memorandum about expectations from the budget.

1. Budget 2015 – Expectations from perspective of MAT

The recommendations amongst others included multiple suggestions surrounding tax on book profits. Some of the suggestions in context of book profit taxation included the following:

1.1. Exemption from Book Profit taxation ("MAT") for special cases

1.1.1. Sale of shares of listed company

Sale of listed securities where securities transaction tax is paid is exempt from capital gains taxation if the gains are long term capital gains and are subjected to tax at concessional rate of 15% in case of short term capital gains. However, by way of specific provision such exempt income/income taxed at concessional rate of 15% for corporate tax-payers is included for the purpose of computation of tax on book profits. Such book profit tax is as high as 20%. Considering the high rate of tax on book profits and such specific inclusion of subject capital gains in book profit defeats the very exemption from levy of capital gains tax. It was therefore expected that profits which are exempt from levy of capital gains tax be also not taken as part of book profits for the purposes of MAT.

1.1.2. Restoration of MAT exemption to SEZ

Considering the overall mission of "Make in India" and in order to restore the original policy, it was expected that MAT exemption provided earlier to units situated in Special Economic Zone be restored.

1.1.3. Rationalisation of book loss set-off

Considering the broad nature of MAT it was expected that while computing the MAT, benefit be provided for entire book losses without any comparison with regard to book loss and unabsorbed depreciation. In fact in certain corporate taxpayers, mainly from service sector, having book losses are losing on account of asset light model i.e., absence of any depreciation expenses.

1.2. Exclusion of Foreign Companies including Foreign Portfolio Investment registered with SEBI from gamut of MAT

1.2.1. Typically the Foreign Companies including the Foreign Portfolio Investors investing in

shares of Indian companies are either exempted from capital gains tax in view of favourable tax treaty provision or claim concessional rate of taxation applicable under the domestic tax laws i.e., 10% in case of divestment of unlisted securities in case of long term capital gains or 15% in case of divestment of listed securities in case of short term capital gains.

1.2.2. This issue has been a subject matter of litigation in the past, with judicial pronouncements being made on both sides. The basic tenet for arguing non-applicability of MAT for foreign companies is that such companies are not required to maintain books of account as per Indian accounting standards & consequently no MAT can be computed on book profits.

1.2.3. Further, as far as Foreign Portfolio Investors being foreign companies are concerned, the matter was considered more prominent considering the amendment in the Income-tax Act, 1961 ("the Act") done by Finance Act (No. 2), 2014. Finance Act (No. 2), 2014 specifically amended the definition of capital asset and clarified that any securities held by the FPI which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992 would be "capital asset". This amendment put to rest the controversy with regard to characterisation of income of FPI. As a logical extension, it was expected that specific carve out should be made for FPI's for the purpose of application of MAT.

Apart from the above, there were several other issues which global investors were looking forward to for getting some clarity on tax laws – the prominent ones include taxation of indirect transfers, rationalising taxation of REIT, etc. This budget clearly seemed to be listening to the stakeholders concern as it addressed several expectations of the taxpayers.

2. Budget 2015 Proposals

The Finance Bill, 2015 provides for clarity on some of the aspects on indirect transfers, REIT taxation, PoEM based residential status for corporate entity, etc. While some aspects still remain uncertain the objective seems to be towards providing good tax administration to the taxpayers and much needed confidence to the investors. Let us analyse the proposals in context of MAT.

2.1. Proposed removal of MAT for FPIs

2.1.1. One such proposal is to provide relief from MAT to FPI's investing in India in the securities market. In the budget speech, FM mentioned the intention behind the proposal. It is stated that "in order to rationalize the MAT provisions for FIIs, profit corresponding to their income from capital gains on transaction on securities which are liable to tax at a lower rate, shall not be subject to MAT".

2.1.2. The Budget proposals provide that both income and expenditure on transaction in securities (other than short term capital gains arising on transactions on which securities transaction tax is not chargeable) accruing or arising to an FPI which is credited / debited as the case may be to the profit and loss account, the book profit shall be reduced / increased by such amounts.

2.1.3. It is a welcome proposal since the same provides requisite comfort to foreign investors being FPI on taxation of their income in India and is not burdened with tax liability on the basis of book profit. But what is interesting is the manner of providing subject relief.

2.1.4. Instead of carving out exception to income earned by FPI from MAT taxation, the budget proposals choose to exclude income and expenditure in relation to capital gains transaction in relation to securities. Such proposals create following s questions:

- The proposed clauses seem to suggest that FPI would need to maintain books of account for the purpose of Indian tax purposes, which does not seem to be the intention. While there should not be much consequence even if FPI's have

not maintained the books of account considering the overall objective of non-applicability of MAT it is helpful that while passing the provision, appropriate changes be made in the proposals.

- The proposal intends to cover only income/expenditure related to capital gains income earned by the FPI's although practically FPI's could earn other incomes as well such as interest income, dividend income, etc. The same is not included in the exception. While dividend income should not pose any practical challenge in view of specific exclusion from book profit computation for any income in the nature of income covered under section 10 of the Act, computational issues may arise in relation to other income.
- The provisions make an exception for short term capital gains arising on transactions on which no securities transaction tax is paid. Such exception effectively nullifies the benefit to some extent where FPI earns short term capital gain which it claims as non-taxable either in view of tax treaty benefit or on account of carry forward of tax losses.
- The most important aspect with regard to the provision is – it is intended to be applied prospectively i.e. for F.Y. 2015-16. Based on the news report it is understood that practically there are more than 300 cases wherein the tax authorities have issued notices to FPI's in relation to the subject issue seeking balance sheet and profit and loss account maintained, if any. While the law is proposed to be made prospective in effect, one can only hope that tax authorities while finalising the assessment orders consider the intention of the law and FPIs are not subjected to unnecessary litigation on the matter.
- Whether intentional or not, but the manner of providing relief to FPI's from MAT does create further challenges with regard to the argument of non-applicability of MAT provisions to all the foreign companies. This is on account of the manner in which the exclusion is proposed for FPI's. In this regard let us understand the past judicial pronouncements and the reasoning arising in the judgments both for and against the taxpayer.

– ***Niko Resources Ltd vs. CIT (234 ITR 828)(AAR)***

  The Applicant was engaged in oil exploration activities in India through project/branch office situated in India. The contention made on behalf of the applicant is that Section 42 of the Act contains special provisions for deduction from total income in the cases where the taxpayer business is of prospecting of mineral oil. The section itself defines mineral oil to include petroleum and natural gas. Therefore, these special provisions for deduction cannot be denied to the taxpayer under any circumstances including for the purpose of computing the MAT.

  AAR held that section 42 cannot override section 115JA and MAT shall be applicable for the applicant.

– ***Timken Co., USA [2010] 193 Taxman 20 (AAR - New Delhi)***

The applicant was a company based out of USA holding listed shares of its subsidiary in India. The transaction involved sale of the listed shares of its subsidiary to another Mauritius company within the group. Considering the transaction was proposed to be carried out on market by payment of securities transaction tax, the applicant case was that in view of provisions of section 10(38) of the Act entire income in the nature of capital gains is exempt from tax. In that backdrop, applicant raised question with regard

to applicability of MAT for foreign companies which do not have any office/ fixed place of business in India. While deciding the issue in favour of taxpayer the AAR considered that the definition of "company" in section 2(17) of the Act has to be referred contextually as specified. Since the definition starts with the caveat "unless the context otherwise requires", AAR held that for the purpose of section 115JB "company" has to be interpreted to mean only domestic companies as requirement of maintaining books of account as per Companies Act as envisaged under section can be said to be applicable for domestic companies. Considering the fact that in Timken's case, there was no permanent establishment or fixed place of business in India, AAR held that MAT provisions shall not apply to applicant with regard to subject transaction of sale of shares of Indian company.

– *Praxair Pacific Ltd. [2010] 193 Taxman 1 (AAR - New Delhi)*

The applicants case involved transfer of shares of subsidiary in India by company based out of USA to another entity in Group Company and one of the questions raised was relating to applicability of MAT for such transfer of shares of Indian company. The AAR relied upon the earlier ruling in case of Timken Co., USA, In re [AAR No. 836 of 2009] and held that under section 591 of the Companies Act, 1956, only such foreign companies who have established a place of business within India are required to make out a balance sheet and profit and loss account as required under section 594 of the Companies Act. The annual accounts cannot be prepared as per the first proviso to section 115JB(2) in respect of the world income and laid before the company at its AGM in accordance with the provision of section 210 of the Companies Act. It was held that section 115JB is not designed to be applicable to a foreign company who has no presence or PE in India. Moreover, in the instant case, where there would be a solitary transaction, the purpose of maintenance of accounts does not appeal to any logic. Therefore, the provision of section 115JB is not attracted in the case of the applicant.

– *Bank of Tokyo & Mitsubishi UFJ Ltd. [2014] 49 taxmann.com 441 (Delhi - Trib.)*

In this case, the taxpayer was a foreign bank operating in India through a branch office and had prepared its accounts as per the requirements of Banking Regulation Act. It was also not disputed that profit and loss account of taxpayer had not been prepared as per Parts II & III of Schedule VI to the Companies Act. While deciding the matter in favour of taxpayer the Tribunal relied on the notes to clauses in various Finance Bill amending the MAT provisions originally introduced in 1996. It relied on the fact that in Finance Bill, 2000, the Finance Minister, ***inter alia***, proposed that the MAT be levied at the revised rate of 7.5 per cent of book profits as determined under the Companies Act instead of the existing effective rate of 10.5 per cent (being 35% [corporate tax rate applicable for domestic company] * 30%). Also it relied on notes to clauses in Finance Bill, 2002 wherein it was referred that MAT provisions are applicable to domestic companies. Further the Tribunal also relied on the fact that the taxpayer being eligible for tax treaty benefits and held that provisions of section 115JB are subordinate to section 90(2) and had no overriding effect on section 90.

– *A.A.R. No. 1098 of 2011 [2013] 29 taxmann.com 147 (AAR - New Delhi) and Castleton Investments [2012] 24 taxmann.com 150 (AAR - New Delhi)*

Castleton ruling is very unique in view of the fact that the tax department representative had not objected to the argument of the taxpayer that MAT should apply only to domestic companies but the Authority have choosen to provide a detailed reasoning and held that MAT is applicable. While deciding this, the authority chose to rely on the ruling in case of ***Niko Resources Ltd vs. CIT (234 ITR 828) (AAR)*** and ***AAR No 14 of 1997 (234 ITR 235) (AAR)*** instead of following the subsequent ruling in case of Timken and others.

The main reasoning given for relying on earlier judgments appears to be the fact that though the facts in case of ***Niko Resources Ltd. vs. CIT (234 ITR 828)(AAR)*** and ***AAR No. 14 of 1997 (234 ITR 235)(AAR)*** though different than the case on hand, as per the Authority the main plaint of deciding the matter against was the fact that the provisions of law are unambiguous and nowhere it indicates that the same are applicable only for domestic companies. Consequently, question of relying on other supplementary material like intention, notes to clause, etc. is uncalled for.

2.1.5. On an overall analysis of various rulings/ judgments on the matter, the view that that MAT ought to apply even to foreign companies includes:

- Section 115JB applies to 'company' which under section 2(17) of the Act has been defined to include body corporate incorporated outside India.
- Section 115JB(2) of the Act mandatorily requires each company (including foreign company) to prepare Profit & Loss account as per Companies Act specifically for the purpose of section 115JB. Therefore, argument that foreign companies may not be otherwise required to prepare accounts as per Companies Act cannot be justified.
- Mere facts that there is some difficulty in applying certain provision of section 115JB, should not make the section itself inapplicable to foreign companies.
- Considering the fact that provisions of section are unambiguous there is no requirement of placing reliance on the materials like notes to clause, intention, etc.

2.1.6. The arguments which supports the other view includes:

- Section 2(17) of the Act, which defines 'company', starts with the expression 'unless the context otherwise requires'. As a result, for the purpose of section 115JB, while interpreting the word 'company' it is inappropriate to include foreign companies taking into consideration the appropriateness of the context. Mainly on account of the fact that subsequent clauses refers to preparation of accounts as per provisions of Companies Act, 1956 which a foreign company is not required to comply with unless there is a permanent establishment situated in India (section 594 of Companies Act, 1956)
- Provisions of MAT are applicable on 'book profit' which is based on Profit & Loss account as per Companies Act. Therefore, only companies which need to prepare accounts as per Companies Act are liable to MAT.
- Notes to clauses of the Finance Bill has clarified/accepted the law that section 115JB is a levy of minimum tax on domestic companies (and thus not to foreign companies).
- If the adjustments (as stated in section 115JB of the IT Act) which are to be made to 'book profits' were to be made applicable to word Profit & Loss account, the foreign company will end up paying income tax on its world income, which cannot be the legislative intent.

- As per the Indian double taxation avoidance treaties, as a general rule, if foreign company earns business profits (which is not taxable under other Articles of the tax treaty), the business profits can be taxed only if the foreign company has permanent establishment in India and to the extent of profits attributable to same. Therefore, in any case the MAT liability should not exceed the tax attributable to permanent establishment and without existence of permanent establishment, there is no liability that should arise in India.

To summarise, while the proposed relaxation to FPI from MAT does appear to provide some relief but at the same time it opens up Pandora's Box and litigation on the matter is likely to be continued as far as foreign companies other than FPIs are concerned. One would get clarity on this once the Hon'ble Supreme Court decides the appeal in case of Castleton Investments. Till then the dispute between foreign companies and revenue authorities is likely to continue.

2.2. Proposed removal of MAT for share of profit of AOP

2.2.1. The other proposal exclusion from MAT liability relates to share of profit by a member of Associate of Persons. As per the existing provisions dealing with MAT, any income which is exempt under section 10 (excluding section 10(38) of the Act is to be excluded while computing the MAT liability. Accordingly share of profit by a partner in Partnership Firm or Limited Liability Partnership which is exempt under section 10(2A) of the Act is to be excluded.

2.2.2. As per scheme of taxation for firms, a firm which is treated as such for tax purposes (subject to satisfaction of certain conditions) is taxable as person and share of profit for partner of such firm is considered as exempt under section 10(2A). Similarly in case of member of Association Person, as per provisions of 86 share of income of members is not taxable for the member, since such income is taxed for AOP separately.

2.2.3. Effectively, the share of income received by a partner from the firm and by a member from the AOP is given a similar tax treatment. In both the cases, the recipients are not taxed on its share of income. However, when it comes to MAT computation, differential treatment is applicable as on date. In certain cases, the tax authorities have taken adverse view putting the taxpayers in a situation of double taxation of same income. Hyderabad ITAT in case of ***B. Seenaiah & Co Projects Ltd [(2009) 315 ITR 1*** have chosen to follow a strict interpretation of section 115JB of the Act. The ITAT held that unless any particular income is specifically excluded under Explanation to section 115JB, all amounts credited to the P&L, whether or not taxable under the normal provisions of the Act, would have to be included in computing the book profits. Thus, ITAT held that the share of income from AOP, which has been credited to the P&L account of the taxpayer, cannot be excluded from book profits.

With the proposed amendment from MAT perspective now share of member from AOP and share of partner from firm are being bought on parity.

2.3. Penalty on MAT profit adjustment

2.3.1. Another proposal relating to MAT provisions deals with penalty for concealment of income or furnishing inaccurate particulars of income dealt with under section 271(1)(c) of the Act. Tax sought to be evaded has been defined as difference between the tax due on the income assessed and returned income with a specific provisions for ascertaining the tax sought to be evaded in situation where tax loss is being reduced on account of disallowance. Such provision addressing the loss reduction situation was inserted ***vide*** Finance Act, 2002.

2.3.2. The current proposal is intended to address the mischief with regard to interplay between normal tax and MAT in context of concealment of income.

2.3.3. The proposal now provides for penalty as tabulated below:

	Particulars	?
A.	Tax on assessed income under the general provisions	
B.	Tax on amount of tax that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of income in respect of which particulars have been concealed or inaccurate particulars have been furnished	A-B
C.	Tax on assessed income under sections 115JB and 115JC (MAT provisions)	
D.	Amount of tax that would have chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC been reduced by the amount of income in respect of which particulars have been concealed or inaccurate particulars have been furnished in context of section 115JB or section 115JC of the Act	C-D
	Total penalty	**(A-B) + (C-D)**

2.3.4. The proposal also provides that in case an adjustment has been made both under the general provisions as well as under MAT provisions for same issue/matter, it will be considered only once for the purpose of levy of penalty. Further, the provisions of penalty with respect to MAT provisions will apply only in the event the provisions of MAT are applicable.

2.3.5. Effectively the proposal addresses the mischief created by the Honorable Supreme Court judgment in case of Nalwa Sons Investments Ltd [2012] 21 taxmann.com 184 (SC), wherein SC held that where tax is computed under MAT, penalty under section 271(1)(c) cannot be applied on additions made in context of normal tax computations.

2.3.6. The provision could be better explained by way of an example.

Illustration 1 (where tax is payable under normal provisions)

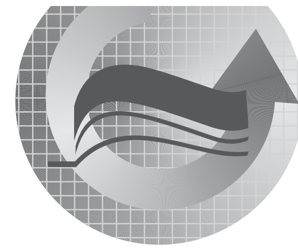
Particulars	As per Income Tax return	Assessed
Total income	100	150
Tax @ 34.61% (considering proposed tax rates)	34.61 (B)	51.92 (A)
Penalty @ 100% (A – B) = 17.31		

Illustration 2 (where tax is payable on book profits)

Particulars	Under normal provisions	Under section 115JB or 115JC
Total income	10	180
Tax	3.46 (34.61%) – (B)	38.41 (21.34%)
Addition 1	20	20
Addition 2	25	-
Addition 3	-	15
Assessed income	55	215
Tax on assessed income	19.04 – (A)	45.88 – (C)
Assumed that penalty is levied on all additions D = (215 – 15)*21.34% = 42.68 [Addition 1, being a common addition will not be reduced] Penalty = (19.04 – 3.46) + (45.88 – 42.68) = 18.78		

3. Concluding thoughts

In summary the budget proposals in relation to MAT seems to be in line with the overall thought process of simplifying the tax administration. While some of the expectations of taxpayers in context of MAT provisions remains to be addressed i.e. No MAT relief for SEZ units, No MAT relief for infra/real estate SPVs held by REIT, the changes proposed are pragmatic and would help in reducing tax litigation at least for financial year 2016-17 onwards.



CA. N. C. Hegde

Proposals Relating to Indirect Transfers

Foreign investors often structure investments in a manner by which an investor creates a holding company in a favourable (no or low tax) jurisdiction with the holding company having a subsidiary or joint venture company in India. Based on subsequent opportunities/developments there may arise a situation when the investor wants to exit from a particular investment in India. In such a situation the foreign investor has two options i.e. either to sell his stake in the Indian company to another investor, or to sell his stake in a holding company to the new investor. In the first case, the transaction involves transfer of shares of the Indian company or a direct transfer. In the second case, the transaction occurs outside India among foreign entities. It is this latter case that is referred to as indirect transfer.

Taxation of indirect transfers

The Supreme Court had held in the case of Vodafone (341 ITR 1) that indirect transfers could not be taxed in India as under the Indian Companies Act, 1956, the situs of the shares would be where the company is incorporated and where its shares can be transferred.. The contention that situs of the shares of an overseas company was situated in the place (India) where the underlying assets stood situated, could not be accepted

To get over the above observation and to shift the situs in case of an indirect transfer, the meaning of the expression "asset or capital asset situated in India" in clause (i) of sub-section (1) of section 9 was amended by inserting an Explanation as under:

'Explanation 5.— For the removal of doubts, it is hereby clarified that an asset or a capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India, if the share or interest derives, directly or indirectly, its value substantially from the assets located in India.' (emphasis added)

Thus, shares of a foreign company (holding company), which holds substantial assets in India, shall be deemed to be situated in India and consequently, any transfer of such shares, even outside India, shall be taxable in India under the domestic law.

However, the terms "share or interest in a company or entity", "directly or indirectly", "value" and "substantially" were not been defined and therefore this had led to ambiguity.

Shome Committee recommendations partly accepted

As a result of the amendments made by the Finance Act, 2012 as discussed earlier, there was a huge concern raised by taxpayers and foreign investors. With a view to allay the concerns of all stakeholders, the Government appointed a committee headed by Dr. Shome to look into the entire taxation of indirect transfers. Some of the key recommendations of the Committee have now been accepted and Explanations 6 and 7 to section 9(1)(i) are sought to be inserted by the Finance Bill, 2015 to provide the necessary relief/ clarification.

Term "substantially" explained

Explanation 6 provides that the term "substantially" will mean situations where the value of assets located in India on a specified date exceeds INR 10 crore and represents at least 50% of the value (i.e. fair market value) of assets owned by the foreign entity. It also goes on to define the value of an asset as being the fair market value of such asset without reduction of liabilities, if any, in respect of the asset. Further the specified date of valuation of the assets shall be the date on which the accounting period of the company or entity, as the case may be, ends preceding the date of transfer. However, if the book value of the assets of the company on the date of transfer exceeds the book value of the assets by 15% as on the last balance sheet date preceding the date of transfer, then instead of the date of the ending of the last balance sheet date, the date of transfer shall be the specified date of valuation.

The new limit specified is in line with the view of the Delhi High Court in the case of Copal Research (226 Taxmann 226) where the Court held that the term "substantially" occurring in Explanation 5 would necessarily have to be read as synonymous to "principally", "mainly" or at least "majority". The Delhi High Court observed that Explanation 5 having been stated to be clarificatory must be read restrictively and at best to cover situations where in substance the assets in India are transacted by transacting in shares of overseas holding companies and not to transactions where assets situated overseas are transacted which also derive some value on account of assets situated in India.

Relief for specified transfers, business restructuring and some clarifications

With a view to provide exemption to small share holders, exemption is sought to be provided to the transferor of a share of, or interest in, a foreign entity if he along with its associated enterprises, neither holds the right of control or management, nor holds voting power or share capital or interest exceeding five per cent of the total voting power or total share capital, in the foreign company or entity directly holding the Indian assets (direct holding company). Even in case the transfer is of shares or interest in a foreign entity which is an indirect holding company, a similar exemption is provided.

The manner of determination of fair market value of the Indian assets vis-a-vis global assets of the foreign company shall be prescribed in the rules. It is further provided that the taxation of gains arising on transfer of a share or interest deriving, directly or indirectly, its value substantially from assets located in India will be on proportional basis. The method for determination of

proportionality are proposed to be provided in the rules.

An exemption is now provided for any transfer, subject to certain conditions, in a scheme of amalgamation, of a capital asset, being a share of a foreign company which derives, directly or indirectly, its value substantially from the share or shares of an Indian company, held by the amalgamating foreign company to the amalgamated foreign company. Similarly exemption is also provided in respect of any transfer, subject to certain conditions, in a demerger, of a capital asset, being a share of a foreign company which derives, directly or indirectly, its value substantially from the share or shares of an Indian company, held by the demerged foreign company to the resulting foreign company.

Reporting obligation

With a view to track indirect transfers, a reporting obligation has been imposed on Indian concern through or in which the Indian assets are held by the foreign company or the entity. The Indian entity shall be obligated to furnish information relating to the off shore transaction having the effect of directly or indirectly modifying the ownership structure or control of the Indian company or entity. In case of any failure on the part of Indian concern in this regard a penalty shall be levied.. The proposed penalty shall be- a sum equal to two per cent of the value of the transaction in respect of which such failure has taken place in case where such transaction had the effect of directly or indirectly transferring the right of management or control in relation to the Indian concern; and a sum of five hundred thousand rupees in any other case.

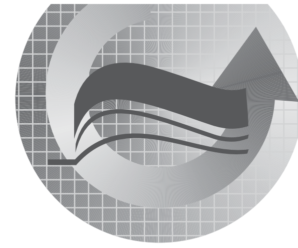
CBDT Circular on some aspects of indirect transfers causing difficulty expected.

Additionally, the Finance Minister has also clarified in his speech that the CBDT would issue a necessary circular to ensure that the provisions relating to indirect transfers do not lead to dividends being paid by foreign companies taxed in India.

To summarise, while some of the recommendations of the Shome Committee have been accepted and the rigour of the indirect transfer provisions a little diluted, exemptions for intra group structuring and making the provisions prospective which were key recommendations have not yet found their way in the statute book. That is probably a battle that the taxpayer will have to fight out in the Courts by challenging the vires of the retrospective amendment.

“The will is not free - it is a phenomenon bound by cause and effect – but there is something behind the will which is free.”

The whole universe is one. There is only one Self in the universe, only One Existence.



CA. Manoj Shah

Proposals relating to International Taxation

Riding on the wave of 'Make in India' movement, intention to make India as home for Investment Advisory activity, and to bring clarity on taxation of Indirect Transfers, the Finance Bill, 2015 carries quite many proposals dealing with cross border taxation.

These proposals are analysed hereunder:

Amendment to section 6 of the Act:

1. Power of the Central Board of Direct Taxes to prescribe the manner and procedure for computing period of stay in India:

The provisions of sub-section (1) of section 6 which provide for the conditions under which an individual is held to be resident in India have been altered by the Finance Bill (Bill). Such determination is based, ***inter alia***, on the number of days during which such individual has been in India during a previous year.

In the case of foreign bound ships where the destination of the voyage is outside India, there is uncertainty with regard to the manner and basis of determination of the period of stay in India for crew members of such ships who are Indian citizens.

In view of the above, Explanation 2 has been inserted after the existing Explanation to sub-section (1) to provide that "in the case of an Individual, being a citizen of India and a member of the crew of a foreign bound ship leaving India, the period or periods of stay in India shall, in respect of such voyage, be determined in the manner and subject to such conditions as may be prescribed".

This amendment will take effect retrospectively from 1st April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent assessment years.

2. Amendment to the conditions for determining residency status in respect of Companies

In respect of a person being a company the conditions of residency are contained in clause (3) of section 6 of the Act. Under the said clause, a company is said to be resident in India in any previous year, if –

(i) It is an Indian company; or

(ii) During that year, the **control and management** of its affairs is situated **wholly** in India.

The concept of 'control and management' is proposed to be replaced with the concept of 'Place of Effective Management (POEM)' which is an internationally accepted concept (OECD and tax treaties use POEM) for determining tax residency of a corporate entity. Further,

since the term 'control and management' was not defined, the control was equated with ownership control. Therefore in many cases where hundred per cent ownership of a foreign company was held by Resident Indian/s (say Wholly Owned Subsidiary or Resident Indian Individuals holding entire equity of overseas company) there was challenge to prove that 'management of its affairs' is situated outside India. At times, Resident Indians resorted to parking small fraction of shareholding with overseas entities/individuals to demonstrate that 'control and management' is not 'wholly' situated in I*ndia Radha Rani Holdings (P.) Ltd. vs. Asstt. DIT (Delhi) (2007) 16 SOT 495* and therefore such overseas company cannot be treated as Resident of India. However, there was a need to clarify that intention of using the words 'control and management' is not to equate it with ownership control but intention is to link it with 'managerial/management control'. The purpose of linking the residency of a company with 'management control' ***de hors*** of ownership is now very well achieved with the use of the concept of POEM. Accordingly, now the location of the residency of the company would be decided where the 'head and brain' of the company is situated. Such 'head and brain' in case of company is obviously its Board and not Share holders. Therefore if the board meetings of the overseas company are held outside India, CEO is not resident of India and key decisions are taken overseas, then its POEM would get located outside India and accordingly such overseas company despite having hundred per cent ownership in India would not be regarded as resident of India.

POEM thus is a better way to deal with residency provisions of overseas companies which are otherwise managed from India. POEM, if in India, will make such overseas companies as resident of India.

The concept of 'Place of Effective Management' has been introduced by the Bill and accordingly, sub-section 3 of section 6 is proposed to be amended as follows –

A company is said to be resident in India in any previous year, if,—

(i) It is an Indian company; or

(ii) Its **place of effective management, at any time** in that year, is in India.

Explanation.—For the purposes of this clause "place of effective management" means a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance made.'

Further, POEM is to be considered 'at any time in that year' and not throughout or substantial part of the year. Therefore, even if for smallest period if POEM is in India, it would pose challenge to overseas company of determining its residential status in India.

However, it has been clarified by CBDT Officials that the amendments to residency rules wrt POEM have been primarily made with an intention to focus only on those companies in India who hold meetings/AGMs abroad to evade India tax residency rules. The term 'any time during the year' should not be interpreted in a narrow sense. 'Effective management' shall mean key management and commercial decisions being taken in India and. CBDT shall soon come out with guidelines to clarify the same.

Amendment to Section 9 of the Act

1. Clarity relating to Indirect transfer provisions

The existing provisions of section 9 of the Act deal with cases of income which are deemed to accrue or arise in India. Clause (i) of sub-section (1) provides a set of circumstances in which income accruing or arising, directly or indirectly, is taxable in India. The said clause provides that all income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India, or through the transfer

of a capital asset situate in India shall be deemed to accrue or arise in India.

The Finance Act, 2012 had inserted certain clarificatory amendments in the provisions of section 9. The amendments, ***inter alia***, included insertion of Explanation 5 in section 9(1)(i) w.r.e.f. 1-4-1962 . The Explanation 5 clarified that 'an asset or capital asset, being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be situated in India if the share or interest derives, directly or indirectly, its value ***substantially*** from the assets located in India.

Till now, there was an ambiguity as to whether substantial value should be construed as substantial shareholding and if yes then up to what extent.

There has been a recent pronouncement on this very issue by the Delhi High Court that gains arising from sale of a share of a company incorporated overseas, which derives less than 50% of its value from assets situated in India would certainly not be taxable under section 9(1)(i) of the IT Act. in the case of ***[DIT (International Tax) vs. Copal Research Limited, [TS-509-HC-2014(Del.)]]***

To bring clarity to this issue, an Expert Committee under the Chairmanship of Dr. Parthasarathi Shome was constituted by the Government and based on their recommendations, the following amendments in line with the Committee report have been made in the provisions of section 9 relating to indirect transfer:-

Explanation 6 has been inserted which reads as follows:

(a) The share or interest, referred to in Explanation 5, shall be deemed to derive its value substantially from the assets (whether tangible or intangible) located in India, if, on *the specified date, the value of such assets—*

(i) Exceeds the amount of 10 crore rupees; and

(ii) Represents at least 50% of the value of all the assets owned by the company or entity, as the case may be.

(b) The value of an asset shall be the value as on the specified date, of such asset without reduction of liabilities, if any, in respect of the asset, determined in such manner as may be prescribed;

Thus, section 9 shall get attracted only if the value of the assets in India exceeds an amount of ` 10 crore and such value constitutes at least 50% of the total asset value of the foreign entity. Further no liability attached to such assets is allowed to be deducted from their gross value. Such provision is proposed to be inserted so as to avoid tax planning by highly leveraged and/or thinly capitalised overseas companies to escape the condition of 50% value by way of reduction of debts incurred by mortgaging such assets.

Also the Memorandum to Finance Bill, 2015 while referring to 'value' clarifies that it should be 'fair market value (FMV)'. It further clarifies that Rules shall be prescribed for determining FMV vis-à-vis global assets of the foreign company.

Clause 'c' of the said Explanation defines the term "specified date" as the last date of the previous accounting period of the company/ entity or, in cases where the total book value of the assets on date of transfer exceeds the book value on the last day of previous financial year by 15%, then the specified date shall be the date of transfer.

It is worth noting here that 'book value' of the assets is to be considered as against 'FMV' in case where the date of transfer is taken to be the 'specified date' as above.

Further, the Dr. Shome Committee had recommended both increase as well as decrease in the book value of assets by 15% for the purpose of considering specified date as the date of transfer. However, the bill only proposes to consider **increase** in the book value of assets by

15% on the date of transfer and not reduction in the value.

Clause 'd' defines the term "accounting period" as a period of 12 months ending on 31st March or any other year ending which the company/ entity adopts for the purpose of complying to the tax laws of its country or for the purpose of reporting to persons holding the share or interest in that company/entity. Proviso to this clause states that the first accounting period of the company/entity shall begin from the date of its registration or incorporation and end with the 31st day of March or such other day, as the case may be, following the date of such registration or incorporation. Further, if the company/entity ceases to exist before the end of accounting period, then, the accounting period shall end immediately before the company/ entity ceases to exist.

However, Explanation 7 has also been proposed to be inserted which carves out two exceptions to the above provision. Accordingly, no income shall be deemed to accrue or arise to a non-resident from transfer, outside India, of any share of, or interest in, a company or an entity, registered or incorporated outside India, referred to in the Explanation 5 if–

1. The transferor of the share of, or interest in, a foreign entity along with its associated enterprises
   - (a) Neither holds the right of control or management ,
   - (b) Nor holds voting power or share capital or interest exceeding 5% of the total voting power or total share capital, in the foreign company or entity directly holding the Indian assets
2. The transfer is of shares or interest in a foreign entity which does not hold the Indian assets directly (i.e indirect holding of Indian assets), and the transferor along with its associated enterprises:
   - (a) Neither hold the right of management or control in relation to such company or the entity,
   - (b) Nor hold any rights in such company which would entitle it to either exercise control or management of the direct holding company or entity or entitle it to voting power exceeding five per cent in the direct holding company or entity.

Clause (b) of the said Explanation states that the taxation of gains arising on transfer of a share or interest deriving, directly or indirectly, its value substantially from assets located in India will be on proportional basis. While the memorandum stipulates that the method for determination of proportionality are proposed to be provided in the rules.

Exemption u/s 47 on such indirect transfer in case of amalgamation/ demerger subject to conditions:

Exemption is proposed to be made available in respect of any transfer, subject to the below mentioned conditions, **in a scheme of amalgamation,** of a capital asset, being a share of a foreign company which derives, directly or indirectly, its value substantially from the share or shares of an Indian company, held by the amalgamating foreign company to the amalgamated foreign company. The two conditions to be satisfied for this exemption are –

(a) At least 25% of the share holders of the amalgamating foreign company continue to remain shareholders of the amalgamated foreign company; and

(b) Such transfer does not attract tax on capital gains in the country in which the amalgamating company is incorporated;";

Such exemption is also proposed to be made available in respect of any transfer, subject to the below mentioned conditions, in a demerger, of a capital asset, being a share of a foreign company which derives, directly or indirectly, its value

substantially from the share or shares of an Indian company, held by the demerged foreign company to the resulting foreign company. The two conditions to be satisfied for this exemption are –

(a) The share holders, holding not less than 3/4th in value of the shares of the demerged foreign company, continue to remain share holders of the resulting foreign company; and

(b) Such transfer does not attract tax on capital gains in the country in which the demerged foreign company is incorporated.

Reporting u/s 285A and penalty u/s 271GA

There is a reporting obligation on Indian concern through or in which the Indian assets are held by the foreign company/entity. The Indian entity is obligated to furnish information relating to the offshore transaction having the effect of directly or indirectly modifying the ownership structure or control of the Indian company or entity. In case of any failure on the part of Indian concern in this regard a penalty shall be leviable. The proposed penalty is –

(a) A sum equal to 2% of the value of the transaction in respect of which such failure has taken place in case where such transaction had the effect of directly or indirectly transferring the right of management or control in relation to the Indian concern; and,

(b) A sum of 5 lakh rupees in any other case.

2. Clarity regarding source rule in respect of interest received by the non-resident in certain case

For interest payments made by an Indian branch to its head office abroad, the CBDT, in its Circular No. 740 dated 17-4-1996 had clarified that branch of a foreign company in India is a separate entity for the purpose of taxation under the Act and accordingly TDS provisions would apply along with separate taxation of interest paid to head office or other branches of the non-resident, which would be chargeable to tax in India.

Some of the judicial rulings in this case have held that although under the provisions of the Income-tax law the payment of interest by the branch to head office is non-deductible under domestic law being payment to the self, however, such interest is deductible due to computation mechanism provided under the DTAA but it is not taxable in the hands of the bank being income generated from self. In the case of ***Deutsche Bank AG vs. Assistant Director of Income-tax (International Taxation)-1(2), Mumbai [2014, 47 taxmann.com 105 (Mumbai-Tribunal]***, it was held that in case of an assessee, being a non-resident bank, interest paid by Indian branch to head office and overseas branches were not taxable in India on principles of mutuality and, therefore, tax was also not required to be deducted at source while making said payments. Also, the Special Bench of the ITAT in the case of ***Sumitomo Mitsui Banking Corporation [136 ITD-66 TBOM]*** had held that Interest payable to head office is to be factored while computing the profits attributable to PE in India as PE is to be treated as a distinct and separate entity. The deduction thereof has, thus, to be allowed for to the PE and had also mentioned that there are instances of other countries providing for specific provisions in their domestic law which allows for the taxability of interest paid by a PE to its head office and other branches and had pointed out absence of such a specific provision in the Income-tax Act.

At the same time, however, treaties such as India-U.S. has different approach and it gives right to source country to tax interest paid to head office. The Indo-USA DTAA in Article 14 (3) reads as under:–

"In the case of a banking company which is resident of the United States, the interest paid by the permanent establishment of such a company in India to the head

office may be subject in India to tax in addition to the tax imposable under the other provisions of this Convention at a rate which shall not exceed the rate *specified in paragraph 2(a) of Article 11 (Interest)"*

Considering that there are several disputes and different views on the issue which are pending and likely to arise in future, it was essential that necessary clarity and certainty be provided for in the Act. Accordingly, in clause (v) of section 9, after sub clause (c), Explanation has been inserted. Accordingly, it is proposed that – any interest payable by the branch offices of Non-resident foreign banks to either the head office or any other branch offices outside India, etc. of the non-resident, shall be deemed to accrue or arise in India. Thus, the branch office in India shall be obligated to deduct tax at source on such interest payable. Interest so remitted shall be attributable to Indian PE as a separate and distinct person of NR of which it is a PE, in addition to its other income arising and accruing in India.

The aforesaid amendment will be effective from April 1, 2016 (A.Y. 2016-17) and subsequent assessment years.

3. Fund Managers in India not to constitute business connection of offshore funds

At present, fund managers of foreign investors have been conducting their operations from outside India (including NRI fund managers) due to the apprehension that their presence in India may constitute a business connection in India for the offshore fund investors even though the fund manager may be an independent person. With a view to encourage such fund managers to conduct their operations in India, the Finance Minister had in his previous budget speech proposed to provide that income arising to foreign portfolio investors from transaction in securities will be treated as capital gains. In continuation of such intent, the Finance Bill, 2015 proposes to insert section 9A w.e.f. April 1, 2016 which states that-

(a) In the case of an eligible investment fund, the fund management activity carried out through an eligible fund manager acting on behalf of such fund shall not constitute business connection in India of the said fund and

(b) An eligible investment fund shall not be said to be resident in India for the purpose of section 6 merely because the eligible fund manager, undertaking fund management activities on its behalf, is situated in India.

The eligible investment fund means a fund established or incorporated or registered outside India, which collects funds from its members for investing it for their benefit and fulfils the following conditions as stipulated in sub-section 3 of section 9A:

The conditions to be fulfilled by the fund are as under:

(a) The fund is not a person resident in India;

(b) The fund is a resident of a country / specified territory with which India has entered into an agreement referred to under Section 90(1) or 90A(1) of the IT Act;

(c) The aggregate participation or investment in the fund, directly or indirectly, by persons resident in India does not exceed 5% of the corpus of the fund;

(d) The fund and its activities are subject to applicable investor protection regulations in the country or specified territory where it is established or incorporated or is a resident;

(e) The fund has a minimum of 25 members who are, directly or indirectly, not connected persons;

(f) Any member of the fund along with connected persons shall not have any participation interest, directly or indirectly, in the fund exceeding 10%;

(g) The aggregate participation interest, directly or indirectly, of ten or less

members along with their connected persons in the fund, shall be less than 50%;

(h) The fund shall not invest more than 20% of its corpus in any entity;

(i) The fund shall not make any investment in its associate entity;

(j) The monthly average of the corpus of the fund shall not be less than INR 100 Crores;

(k) The fund shall not carry on or control and manage, directly or indirectly, any business in India or from India;

(l) The fund is neither engaged in any activity which constitutes a business connection in India nor has any person acting on its behalf whose activities constitute a business connection in India other than the activities undertaken by the eligible fund manager on its behalf;

(m) The remuneration paid by the fund to an eligible fund manager in respect of fund management activity undertaken by him on its behalf is not less than the arm's length price of the said activity.

The conditions to be fulfilled by the fund manager are as under:

(a) The person is not an employee of the eligible investment fund or a connected person of the fund;

(b) The person is registered as a fund manager or an investment advisor in accordance with the specified regulations;

(c) The person is acting in the ordinary course of his business as a fund manager;

(d) The person along with his connected persons shall not be entitled, directly or indirectly, to more than 20% of the profits accruing or arising to the eligible investment fund from the transactions carried out by the fund through the fund manager.

Taxation regime for Real Estate Investment Trusts (REIT)

Section 10(23FCA) is proposed to be inserted to provide that any income of a business trust, being a REIT, by way of renting or leasing or letting out any real estate asset owned directly by such business trust shall be exempt.

Thus, the rental income arising from real estate **assets directly held** by the REIT is proposed to be allowed to pass through and to be taxed in the hands of the unit holders of the REIT. This is a welcome move, as pass through status has been provided through Finance Act, 2014 for assets held through SPV but not for assets held directly, and it is achieved through proposed insertion of 10(23FCA).

In relation to withholding, in case of a resident unit holder, tax shall be deducted @ 10%, and in case of distribution to a non-resident unit holder, the tax shall be deducted at the rate in force as applicable for deduction of tax on payment to the non-resident of any sum chargeable to tax.

Further, the term "real estate asset" shall have the same meaning as assigned to it in clause (zj) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014 made under the Securities and Exchange Board of India Act, 1992.

Reduction in rate of tax on income by way of Royalty and Fees for Technical Services in case of non-residents

The existing provisions of section 115A of the Act provide that in case of a non-resident taxpayer, where the total income includes any income by way of Royalty and Fees for technical services (FTS) received by such non-resident from Government or an Indian concern, tax is to be levied at the rate of 25% on the gross amount of such income. This rate of 25% was provided by Finance Act, 2013.

However, in order to promote Modi regime's 'Make in India' initiative and to curtail treaty

shopping exercises, it was necessary to lower such high TDS rates on import of Technical services and technological assistance in India. And accordingly, it is proposed to amend the Act to reduce the rate of tax provided under section 115A on royalty and FTS payments made to non-residents to 10%.

Issue of Global Depository Receipts

Presently, the Dividends and Long term capital gains arising to Non-Resident (in terms of Sec 115AC) and resident investors who are employees of Indian company engaged in specified knowledge industry on GDRs are taxed at the rate of 10% as under section 115ACA.

It is now proposed to give the benefit of concessional rate to residents also holding GDRs of listed companies and FCCBs of issuing company, since, as per new Depository Receipts scheme notified on 21st October 2014, Depository Receipts can be freely held and transferred by both residents & non-residents.

Deferment of General Anti Avoidance Rules (GAAR)

General Anti Avoidance Rules, were introduced by the Finance Act, 2012 and were subsequently amended by the Finance Act, 2013. These Rules were to be implemented from April 2015. However, it is proposed to defer its implementation again by a period of 2 years. Considering that India is an active participant of the Base Erosion and Profit Shifting (BEPS) project of the OECD, which also has similar objects of protecting tax base of source country, it is a welcome move to defer GAAR. However, it would have been better if GAAR was deleted or deferred at least for a period of five years so as to give better clarity to investor in their tax structuring. India's economic status is in right frame to attract much needed foreign investment and deferring of GAAR for longer tenure would have been better over.

Now since GAAR is applicable only from April 2017, the tax structuring and planning done by investors prior to such implementation would not be covered by GAAR.

Amendment to Section 195(6)

At present, sub-section 6 of section 195 requires a person responsible for paying **any sum chargeable to tax** to a non resident to furnish the information relating to such payment in Forms 15CA and 15CB in the manner prescribed under Rule 37BB. The Finance Bill 2015 however proposes to extend this requirement of furnishing information in the above mentioned forms to even include those **payments which are not chargeable** to tax. This amendment may ***prima facie*** look insignificant since the only addition to the sub-section is of the words **'whether chargeable to tax or not'** but it will however lead to a substantial increase the reporting requirements at the end of the remitter. It is perceived that even for import of goods, the requirement of reporting may crop up because of use of the words "whether or not chargeable to tax".

It may be noted that as per the Supreme Court judgments in the case of ***Vodafone International Holdings B.V. vs. UOI (204 Taxman 408)*** and ***GE Technology Cen (P) Ltd vs. CIT (193 Taxman 234)***, the provisions of Section 195 would apply only if the sum is chargeable to tax. Further, Rule 37BB, notified vide Notification 67/2013 dated 2 September 2013, also provides that the specified information (i.e. Form 15CA and Form 15CB) is required to be furnished only in the case of payments made to the non-resident which are chargeable to tax in India. This notification further provides that Forms 15CA and 15CB are not required for 28 items of remittances to the non-resident. This understanding will now require to be revisited in line with new provisions proposed in Sec 195(6).

However, CBDT officials have clarified that not all payments are to be reported; **only that information which may be 'Prescribed' would have to be furnished.**

Further, currently there is no provision for levying of penalty for non-submission/inaccurate

submission of the prescribed information in respect of remittance to the non-resident. For ensuring submission of accurate information in respect of remittance to a non-resident, it is further proposed to insert Sec 271-I to levy a penalty of 1,00,000 for non-furnishing of information or furnishing of incorrect information under Section 195(6). Clarity is however needed with respect to levying of penalty, whether it is per remittance or per financial year.

These amendments will take effect from 1st June, 2015.

Enabling the Board to notify rules for giving foreign tax credit

Sub-section (1) of section 91 of the Act provides for relief in respect of income tax on the income which is taxed in India as well as in the country with which there is no Double Taxation Avoidance Agreement (DTAA). It provides that an Indian resident is entitled to a deduction from the Indian income-tax of a sum calculated on such doubly taxed income, at the Indian rate of tax or the rate of tax of said country, whichever is lower. The Act does not provide the manner for granting credit of taxes paid in any country outside India.

Accordingly, it is proposed to amend sub-section (2) of section 295 of the Income-tax Act so as to provide that CBDT may make rules to provide the procedure for granting relief or deduction, as the case may be, of any income-tax paid in any country or specified territory outside India, under section 90, or under section 90A, or under section 91, against the income-tax payable under the Act.

This amendment will take effect from 1st day of June, 2015.

Amendments related to the Foreign Exchange Management Act, 1999 (FEMA)

1. Section 6 of FEMA is proposed to be amended to provide that directions and regulations on capital account transactions 'other than debt' will be exercised by the Government, in consultation with the Reserve Bank of India.

   However, the power to exercise control over capital account transactions involving debt instruments shall still continue to be vested with the Reserve Bank of India.

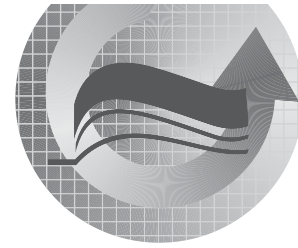
   This is a significant change as powers to frame regulations on Capital Account pertaining to equity are shifting to Central Government from RBI.

2. Sub section 3 has been inserted in section 47 to provide that all the regulations made by the Reserve Bank of India before the date on which the provisions of this section are notified under section 6 and section 47 of this Act on capital account transactions, the regulation making power in respect of which now vests with the Central Government, shall continue to be valid, until amended or rescinded by the Central Government.

3. Special provisions relating to assets held outside India in contravention of section of section 4:

   A new section 37A has been proposed to be inserted giving powers to the Authorised dealer to seize value equivalent, situated within India, of any foreign exchange, foreign security or immovable property if he believes that any foreign exchange, foreign security, or any immovable property, situated outside India, is suspected to have been held in contravention of section 4

   No such seizure can be made in case where the aggregate value of such foreign exchange, foreign security or any immovable property, situated outside India, is less than the value as may be prescribed.



CA. Atul Suraiya

Proposals Relating to TDS

Introduction

This article deals with the provisions contained in the Clauses 41, 42 and 43 of the Finance Bill, 2015.

A. Clause 41 proposes to insert **a new section 192A** dealing with **deduction of tax at source on specific withdrawals from Provident Funds** by employees.

The present provisions are contained in Part A of Schedule IV of the Act.

i. Rule 8

Where an employee withdraws the accumulated balance from the Recognised Provident Fund, before completing five years of service with the employer, except on account of ill-health or discontinuance of the employer's business or reasons beyond the control of the employee, then the same included in the taxable income of the employee. This provision shall not apply if the accumulated balance is transferred to another recognised provident fund. Also where the transfers take place between different funds and the total period exceeds five years, then these provisions are not applicable.

Thus withdrawals from recognised provident fund within five years of employment (except under certain circumstances) is taxable as income

ii. Rule 9

The amount of tax payable on the income determined under Rule 8 will be determined on the basis of the benefit availed of u/s. 80C and the tax saved thereon during the period when the contributions were made.

iii. Rule 10

Deduction of tax on the taxable withdrawal determined under Rule 9 should be paid by the Trustees of the Recognised Provident Fund as if the same is to be taxed under the head "Salaries".

iv. Section 10(12) provides exemption of the withdrawal from recognised provident fund, subject to the provisions of **Rule 8 of Part A of Schedule IV.**

v. **Different practices being followed are**

Some employers are deducting tax on the withdrawn amount by treating the same as regular income in the year of withdrawal, some are taxing the same at maximum marginal rate.

Amendment

In order to bring a uniformity and to standardise the process, the new section 192A is sought to be inserted prescribing the rate of 10% to be deducted and paid on the withdrawal of accumulated balance from recognised provident fund, provided the amount exceeds ` 30,000 and the PAN of the payee is provided.

In absence of PAN tax will be deducted at the maximum marginal rate of 30%.

The **effective date** of introduction of this section is **1st June, 2015,** thus all withdrawals from recognised provident funds attracting TDS after 1st June, 2015 will be subject to deduction of tax at 10%/30%.

Drafting errors

Rule 10 of Part A of Schedule IV needs to be amended to provide that tax to be deducted and paid will be as prescribed under section 192A as against the deduction to be made as per Rule 9 mentioned hereinabove.

B. Clause 42 seeks to amend section194A of the Act with respect to TDS on interest on time deposits with Banks.

Present Provisions:

i. Section 194A(3)(i) prescribes that where the interest credited or paid in respect of **time deposits** with a banking company or co-operative society are being **computed with reference to a branch of the banking company or co-operative society** exceeding rupees ten thousand; (in case of public company tax is required to be deducted if the interest exceeds rupees five thousand.)

ii. Section 194A(3)(v) provides exception to interest **credited or paid** by all co-operative societies (whether co-operative bank, or not) to its members, from the application of provisions of TDS on interest.

iii. Section 194A(3)(ix) lays down that interest credited or paid by way of interest on the compensation amount awarded by the Motor Accident Claims Tribunal in excess of ` 50,000 attracts deduction of tax

iv. Explanation defines "time deposits" means deposits (excluding recurring deposits) repayable on the expiry of fixed periods.

Amendments

i. With core banking solutions having been adopted by most banks the information of deposits

is easily available across branches throughout the length and breadth of the country. Hence the amendment is being made to **do away with the provision for deposits per branch, and the emphasis is on the deposits per bank.**

ii. The exception provided by clause (v) shall apply to co-operative societies **other than co-operative banks. Hence, from 1st June 2015, interest on deposits with co-operative banks, exceeding ` 10,000 with attract TDS.**

iii. The provisions related to interest on compensation awarded by the Motor Accidents is proposed to be split between credited and paid. The existing clause (ix) is sought to apply to interest credited without the cap of ` 50,000; a new clause (ixa) is sought to be inserted in respect of interest **paid, subject to the limit of ` 50,000/-**

iv. The definition of "time deposits" will now include recurring deposits also. The TDS net is thus widened.

v. **All the amendments will take effect from 1st June, 2015.**

Clause 43 proposes to amend section 194C of the Act, with respect to the exemption provided to persons carrying on the business of plying, hiring or leasing goods carriages.

Present provisions

i. Section 194C(6) provides that no deduction of tax shall be made from any sum credited or paid during the previous year to the account of a contracting during the course of business of plying, hiring or leasing of goods carriages, on furnishing of his PAN, to the person crediting or paying such sum.

Amendment

It is proposed to restrict the exception only to those contractors who own ten or less than ten goods carriages at any time during the previous year and furnishes his PAN to the person paying such sum.

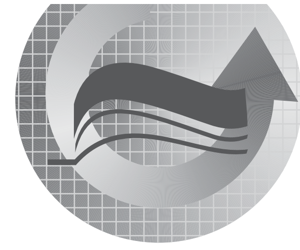
Only the small truck operators will thus benefit from the amendment, and the large transport companies will be brought at par with other businesses of their size.

The general perception that freight charges do no attract TDS is therefore sought to be diluted with effect from 1st June 2015.

Conclusion

Deductors need to put their systems in place and update the changes effective 1st June, 2015.

The mind is but the subtle part of the body. You must retain great strength in your mind and words.



CA. Hitesh R. Shah

Proposals Relating to TDS /TCS Procedures

Every Budget has proposals relating to TDS provisions and this Budget is no exception. Over years, deduction of tax at source has become one of the most important mechanism of tax collection and recovery. The scheme of the provisions for deduction of tax at source applies not only to the amount paid, which bears the character of 'income', such as salaries, dividends, interest on securities, etc. but also to gross sums, the whole of which may not be income or profits in the hands of the recipient, such as payment to contractors or sub-contractors. Very wide, vast, varied, complex, complicated, confusing, overlapping provisions for tax deduction at source are contained in Chapter XVII of the Income-tax Act, 1961. Collection and recovery of tax through mechanism of TDS and TCS is a delegated function of Govt, however onerous duty has been cast on a person to comply with provisions of the Chapter XVII resulting in increased cost of compliances in addition to payment of interest, penalties and fees payable.

Amendment proposed in the Finance Bill, 2015 are more compliance based and clarificatory in nature. It also harmonises some of the sections and widens scope. It has also proposed to levy penalties to enforce provisions of the TDS/TCS provisions contained in Chapter XVII.

In this brief write-up, the proposed amendments relating procedure relating to deduction or collection of tax at source have been summarised.

Clause 49: Amendment to Section 197A

The Finance (No. 2) Act, 2014, inserted section 194DA in the Income-tax Act with effect from 1-10-2014 to provide for deduction of tax at source at the rate of 2% from payments made under life insurance policy, which are chargeable to tax. It has been further provided that no deduction shall be made if the aggregate amount of payment during a financial year is less than ` 1,00,000.

Further the Finance Bill, 2015 seek to introduce new section 192A which casts responsibility upon the trustees of the Employees' Provident Fund Scheme or any person authorised, that in a case where the accumulated balance due to an employee participating in a recognised provident fund is includible in his total income owing to conditions laid in Rule 8 of Part A of fourth Schedule of Recognised Provident Fund being not applicable, shall deduct tax at source @10% at the time of payment of accumulated balance due to the employee.

Under both scenarios tax is required to be deducted though the total income of the recipient is NIL.

The existing provisions of section 197A of the Act ***inter alia*** provide that tax shall not be deducted, if the recipient (not being a company or firm) of the certain payment on which tax is deductible furnishes to the payer a self-

declaration in prescribed Form No. 15G/15H declaring that the tax on his estimated total income of the relevant previous year would be nil. It is, therefore, proposed to amend the provisions of section 197A for making the recipients of payments referred to in section 194DA and 192A also eligible for filing self-declaration in Form No.15G/15H for non-deduction of tax at source in accordance with the provisions of section 197A.

Above provision will give relief to person where tax on his total income is Nil from the rigours of TDS.

This amendment will take effect from 1st June, 2015.

Clause 37: Amendment to Section 154

The Bill seeks to amend section 154 of the Income-tax Act relating to rectification of mistake.

It is proposed to insert a new clause (d) in sub-section (1) of the aforesaid section so as to provide that an income-tax authority may amend an intimation issued under sub-section (1) of section 206CB in response to return of tax collected at source filed by the assessee which was not there in the erstwhile provisions.

Presently as per section 154(2), the authority concerned may make amendment to the orders passed by it or intimation or deemed intimation issues either at its own motion or which has been brought to its notice by the assessee or by deductor or where the concerned authority is CIT(A) then by the Assessing Officer. However the said section does not cover mistake brought to the notice of concerned authority by the collector of tax at source which has been now sought to be amended.

It is also proposed to amend sub-section (3) of the aforesaid section to insert the reference of "Collector" in addition to assessee or deductor, so as to provide a reasonable opportunity of being heard to collector of Tax at source where amendment which has the effect of enhancing an assessment or reducing the refund or otherwise increasing the liability of the collector.

Similar amendments have been proposed to amend sub-section (5) for issuance of refund to the collector of Tax at Source, Sub-section (6) for AO to serve notice to collector of Tax where amendment has the effect of enhancing the assessment or reducing the refund already made or otherwise increasing the liability of the collector and sub-section (8) relating to an application for rectification under section 154 is filed by the collector, the income-tax authority shall pass an order within six months from the end of the month in which application is received.

Now the benefit of Section 154 relating to rectification ***of mistake shall also apply to intimation issued u/s. 206CB processing returns of tax collected at source.***

These amendments will take effect from 1st June, 2015.

Clause 38: Amendment to Section 156

Clause 38 of the Bill seeks to amend section 156 of the Income-tax Act relating to notice of demand.

The existing provisions contained in the proviso to the aforesaid section provide that where any sum is determined to be payable by the assessee or by the deductor under sub-section (1) of section 143 or sub-section (1) of section 200A, the intimation under those sub-sections shall be deemed to be a notice of demand for the purposes of this section.

It is proposed to amend the aforesaid proviso to *section 156 so as to include any sum which is* ***determined to be payable by the collector under*** *section 206CB(1), the intimation under those sub-* ***sections shall be deemed to be a notice of demand for the purposes of this section.***

Henceforth any notice of demand issued pursuant to processing of TCS return u/s. 206CB shall now be considered as notice of demand issued u/s.

156 of the Act and provisions of the Act shall apply ***accordingly.***

This amendment will take effect from 1st June, 2015.

Clause 40: Amendment to Section 192

Clause 40 of the Bill seeks to amend section 192 of the Income-tax Act relating to salary.

Under the existing provisions contained in sub-section (1) of the aforesaid section, any person responsible for paying any income chargeable under the head "Salaries" shall, at the time of payment, deduct income-tax on the amount payable at the average rate of income-tax computed on the basis of the rates in force for the financial year in which the payment is made on the estimated income of the assessee under the head "Salaries" for that financial year.

It is proposed to insert sub-section (2D) in the said section to provide that the person responsible for making the payment referred to in sub-section (1) of the said section shall, for the purposes of estimating income of the assessee or computing tax deductible under sub-section (1), obtain from the assessee the evidence or proof or particulars of prescribed claims (including claim for set-off of loss) under the provisions of the Act in such form and manner as may be prescribed.

It is stated in Memorandum to the Finance Bill, that the existing provisions of the Act do not contain any guidance regarding nature of evidence/documents to be obtained by the person paying income chargeable under the head salaries. In order to bring clarity in this matter, it is proposed to amend the provisions of section 192 of the Act to provide that the person responsible for paying, for the purposes of estimating income of the assessee or computing tax deductible under section 192(1) of the Act, shall obtain from the assessee evidence or proof or particulars of the prescribed claim (including claim for set-off of loss) under the provisions of the Act in the prescribed form and manner.

Though the above amendment seeks to provide clarity, ***it will make task of the employer more cumbersome in timely collecting the evidences and maintain the same particularly in case of organisation having large number of employees. Such amendment does not fall in line with Honourable Prime Minister advocacy of*** *simplification of tax procedures or business friendly* ***environment.***

This amendment will take effect from 1st June, 2015.

Clause 48: Amendment to section 195

Clause 48 of the Bill seeks to amend section 195 of the Income-tax Act relating to other sums.

The existing provisions contained in sub-section (6) of the aforesaid section provide that any person responsible for paying any interest (other than interest referred to in sections 194LB or 194LC or 194LD of the Act) or **any sum chargeable to tax** (not being salary income) to a non-resident, not being a company, or to a foreign company shall furnish the information relating to payment of any sum in forms 15CA and 15CB.

It is proposed to substitute sub-section (6) of the aforesaid section so as to provide that the person responsible for paying to a non-resident, not being a company, or to a foreign company, any sum, **whether or not chargeable under the provisions of this Act,** shall furnish the information relating to payment of such sum, in such form and manner, as may be prescribed, i.e., in Form 15CA and 15CB.

The existing provisions of sub-section (6) of section 195 of the Act provide that the person referred to in section 195(1) shall furnish information in forms 15CA and 15CB only in cases where person responsible for making payment to a non-resident, not being a company or to a foreign company any sum chargeable to tax referred to in section 195(1) of the Act. Now Bill seeks to provide forms 15CA and 15CB even whether or not sum is chargeable under the provisions of the Act.

Memorandum to the Finance Bill provides rationale of introducing the change as under:

'The mechanism of obtaining of information in respect of remittances fulfils twin objectives of ensuring deduction of tax at appropriate rate from taxable remittances as well as identifying the remittances on which the tax was deductible but the payer has failed to deduct the tax. Therefore, obtaining of information only in respect of remittances which the remitter declared as taxable defeats one of the main principles of obtaining information for foreign remittances i.e., to identify the taxable remittances on which tax was deductible but was not deducted. In view of this, it is proposed to amend the provisions of section 195 of the Act '

This provision cast onerous responsibility on the remitter to submit forms 15CA and 15CB even if the sum is not chargeable to tax u/s. 195 and also increases cost of compliance without generating any revenue to the Government.

This amendment will take effect from 1st June, 2015.

Clause 72 : Insertion section 271-I, levying Penalty for non compliance of section 195

It is worth mentioning here that bill seeks to introduce section 271-I, a new provision in the Act to provide for levy of a penalty of ` 100,000 in case of non-furnishing of information or furnishing of incorrect information under sub-section (6) of section 195(6) of the Act as stated above.

Clause 75 (II): Amendment to section 273B for non levy of penalty

Corresponding amendment is also proposed in section 273B so as to include non-levy of penalty u/s. 271-I where there is an existence of reasonable cause for the failure to comply with section 195(6) mentioned above.

This amendment will take effect from 1st June, 2015.

Clause 50 : Amendment to section 200

The Bill seeks to amend section 200 of the Income-tax Act relating to duty of the person deducting tax.

The existing provisions contained in sub-section (1) of the aforesaid section provide that any person deducting any sum in accordance with the provisions of Chapter XVII (collection and recovery of Tax) shall pay within the prescribed time the sum so deducted to the credit of the Central Government or as the Board directs. The existing provisions contained in sub-section (2) of the said section provide that the employer referred to section 192(1A), responsible for paying any income in the nature of perquisite which is not provided for by way of monetary payment, shall pay within the prescribed time, the tax to the credit of the Central Government or as the Board directs.

It is proposed to insert sub-section (2A) in the said section to provide that in case of an office of the Government, where the sum deducted in accordance with the foregoing provisions of this Chapter or tax referred to in sub-section (1À) of section 192 has been paid to the credit of the Central Government without the production of a challan, the Pay and Accounts Officer or the Treasury Officer or the Cheque Drawing and Disbursing Officer or any other person by whatever name called, who is responsible for crediting such sum or tax to the credit of the Central Government, shall deliver or cause to be delivered to the prescribed income-tax authority, or to the person authorised by such authority, a statement in such form, verified in such manner, setting forth such particulars and within such time as may be prescribed.

Under the existing scheme of payment of TDS Government deductors are allowed to make payment of tax deducted by them without production of challan i.e. through book entry. For generating credit for TDS paid through book entry by the Government deductors , a system of capturing information from PAO/

TO/CDDO has been introduced by amending Rule 30 and Rule 37CA of the Income-tax Rules, 1962 with effect from 1-4-2010 which requires person to file details of such payment of TDS through book entry in Form 24G. In the absence of specific provision for enforcing filing of Form 24G, it has resulted in non-filing of Form 24G in a large number of cases by PAO/ TO/CDDOs and delay in furnishing of the TDS statement by the DDO consequently.

In order to improve the reporting of payment of TDS/TCS made through book entry and to make existing mechanism enforceable, it is proposed to amend the provisions of sections 200 of PAO/ TO/CDDO or any other person by whatever name called who is responsible for crediting such sum to the credit of the Central Government, shall furnish within the prescribed time a prescribed statement for the prescribed period to the prescribed income-tax authority or the person authorised by such authority by verifying the same in the prescribed manner and setting forth prescribed particulars.

Its worth mentioning here that to ensure compliance of this proposed obligation of filing statement, it is proposed to levy a penalty u/s 272A of ` 100/- for each day of default during which the default continues subject to the limit of the amount collectible in respect of which the statement is to be furnished. (Clause 74 of the Finance Bill).

This amendment will take effect from 1st June, 2015

Similar provision has been introduced in section 206C on account of tax collected at source by Govt. authorities.

Clause 53 : Amendment to Section 206C

The Bill seeks to amend section 206C of the Income-tax Act relating to profit and gains from the business of trading in alcoholic liquor, forest produce, scrap, etc.

The existing provisions contained in sub-section (3) of the aforesaid section provide that any person collecting any amount under sub-section (1) or sub-section (1C) or sub-section (1D) shall pay within the prescribed time, the amount so collected to the credit of the Central Government or as the Board directs.

It is proposed to insert sub-section (3A) in the said section to provide that in case of an office of the Government, where the amount collected under sub-section (1) or sub-section (1C) or sub-section (1D) has been paid to the credit of the Central Government without the production of a challan by the Pay and Accounts Officer or the Treasury Officer or the Cheque Drawing and Disbursing Officer or any other person, by whatever name called, who is responsible for crediting such tax to the credit of the Central Government, shall deliver or cause to be delivered to the prescribed income-tax authority, or to the person authorised by such authority, a statement in such form, verified in such manner, setting forth such particulars and within such time as may be prescribed.

Further to ensure compliance of this proposed obligation of filing statement, it is proposed to levy a penalty u/s. 272A of ` 100/- for each day of default during which the default continues subject to the limit of the amount collectible in respect of which the statement is to be furnished. (Clause 74 of the Finance Bill).

The existing provisions contained in the proviso to sub-section (3) of the said section provides that any person collecting tax on or after 1st April, 2005 in accordance with the provisions of the said section shall, after paying the tax collected to the credit of the Central Government within the prescribed time, prepare such statements for such period as may be prescribed and deliver or cause to be delivered to the prescribed authority, or to the person authorised

by such authority, such statement in such form and verified in such manner and setting forth such particulars and within such time as may be prescribed.

It is proposed to insert sub-section (3B) in the said section so as to provide that any person collecting tax in accordance with the provisions of section 206C(1)(1C) or (1D) may also deliver to the prescribed authority under the said proviso, **a correction statement for rectification of any mistake or to add, delete or update the information furnished** in the statement delivered under the said proviso in such form and verified in such manner, as may be specified by the authority.

Currently, the provisions of sub-section (3) of section 200 of the Act enable the deductor to furnish TDS correction statement and consequently, section 200A of the Act allows processing of the TDS correction statement. However, currently, there does not exist similar provision for allowing a collector to file correction statement in respect of TCS statement which has been furnished. It is, therefore, proposed to amend the provisions of section 206C of the Act so as to allow the collector to furnish TCS correction statement.

This amendment will take effect from 1st June, 2015.

Clause 51: Amendment to section 200A

The Bill seeks to amend section 200A of the Income-tax Act relating to processing of statements of tax deducted at source.

The existing provisions contained in sub-section (1) of the aforesaid section provide that statement of tax deduction at source or a correction statement has been made by a person deducting any sum under section 200 then such statement shall be processed in the following manner:

(a) After taking into account any arithmetical error in the statement or an incorrect claim, apparent from any information in the statement;

(b) The interest, if any, shall be computed on the basis of the sums deductible as computed in the statement;

(c) The sum payable or refundable shall be determined after adjusting the aforesaid computed sum against any amount paid under section 200 or section 201 and any amount paid otherwise by way of tax or interest.

It is proposed to amend sub-section (1) of the said section to provide that statement of tax deduction at source or correction statement made under section 200 shall be processed and sum deductible under Chapter XVII shall be computed **after also taking into account the fee, if any, payable in accordance with the provisions of section 234E.** The sum payable or refundable shall be determined after adjusting the aforesaid computed sum against any amount paid under section 200 or section 201 or section 234E and any amount paid otherwise by way of tax or interest or fee.

It is stated in the Memorandum to the Finance Bill that in order to provide effective deterrence against delay in furnishing of TDS/TCS statement, the Finance Act, 2012 inserted section 234E in the Act to provide for levy of fee for late furnishing of TDS/TCS statement. The levy of fee under section 234E of the Act has proved to be an effective tool in improving the compliance in respect of timely submission of TDS/TCS statement by the deductor or collector.

Finance (No. 2) Act, 2009 inserted section 200A in the Act which provides for processing of TDS statements for determining the amount payable or refundable to the deductor. However, as

section 243E was inserted after the insertion of section 200A in the Act, the existing provisions of section 200A of the Act does not provide for determination of fee payable under section 234E of the Act at the time of processing of TDS statements. It is, therefore, proposed to amend the provisions of section 200A of the Act so as to enable computation of fee payable under section 234E of the Act at the time of processing of TDS statement under section 200A of the Act.

Now as per the amendment proposed the fee payable** u/s. 234E shall be included while determining the sum payable u/s. 200A(1), while processing **TDS return consequently any demand arising** therefrom shall constitute demand u/s. 156 of the **Act and accordingly other provisions of the Act shall apply.

This amendment will take effect from 1st June, 2015.

Clause 52 : Amendment to Section 203A

The Bill seeks to amend section 203A of the Income-tax Act relating to tax deduction and collection account number.

Under the provisions of section 203A of the Act, every person deducting tax (deductor) or collecting tax (collector) is required to obtain Tax Deduction and Collection Account Number (TAN) and quote the same for reporting of tax deduction/collection to the Income-tax Department. However, currently, for reporting of tax deducted from payment over ` 50,00,000 made for acquisition of immovable property (other than rural agricultural land) from a resident transferor under section 194-IA of the Act, the deductor is not required to obtain and quote TAN and he is allowed to report the tax deducted by quoting his Permanent Account Number (PAN).

It is proposed to insert sub-section (3) in the said section so as to provide that the provisions of the said section shall not apply to a person notified by the Central Government in this behalf.

***The obtaining of TAN creates a compliance burden for those individuals or Hindu Undivided Family** (HUF) who are not liable for audit under section 44AB of the Act.* The quoting of TAN for reporting of Tax Deducted at Source (TDS) is a procedural matter and the same result can also be achieved in certain cases by mandating quoting of PAN especially for the transactions which are likely to be one time transaction such as single transaction of acquisition of immovable property from non-resident by an individual or HUF on which tax is deductible under section 195 of the Act. To reduce the compliance burden of these types of deductors, it is proposed to amend the provisions of section 203A of the Act so as to provide that the requirement of obtaining and quoting of TAN under section 203A of the Act shall not apply to the notified deductors or collectors.

This amendment will take effect from 1st June, 2015.

Clause 54: Amendment to Section 206CB

The Bill seeks to insert a new section 206CB of the Income-tax Act relating to processing of statements of tax collected at source. The existing provisions contained in the Income-tax Act provide the method of processing of statements of tax deducted at source. Since **there is no procedure specified with respect to the processing of tax collected at source, it is proposed to insert a new section 206CB** relating to processing of statements of tax collected at source and the said section provide that statement of tax collection at source or a correction statement made under section 206C shall be processed on lines similar to processing of

TDS returns as specified in Section 200A as stated above .

This amendment will take effect from 1st June, 2015.

Clause 55 : Amendment to Section 220

The Bill seeks to amend section 220 of the Income-tax Act relating to when tax payable and when assessee deemed in default.

It is proposed to insert sub-section (2C) in the aforesaid section so as to provide that notwithstanding anything contained in subsection (2) of section 220, where interest is charged under subsection (7) of section 206C on the amount of tax specified in the intimation issued under sub-section (1) of section 206CB after processing of TC statement for any period, then, no interest shall be charged under the said sub-section (2) on the same amount for the same period.

Further, as the intimation generated after proposed processing of TCS statement shall be deemed as a notice of demand under section 156 of the Act, the failure to pay the tax specified in the intimation shall attract levy of interest as per the provisions of section 220(2) of the Act. However, section 206C (7) of the Act also contains provisions for levy of interest for non-payment of tax specified in the intimation to be issued. **To remove the possibility of charging interest on the same amount for the same period of default both under section 206C(7) and section 220(2) of the Act,** it is proposed to provide that where interest is charged for any period under section 206C(7) of the Act on the tax amount specified in the intimation issued under proposed provision, then, no interest shall be charged under section 220(2) of the Act on the same amount for the same period.

The proposed amendment is clarificatory in nature so ***as to avoid cascading effect of levy of interest twice on default payment and in my view it should apply retrospectively.***

This amendment will take effect from 1st June, 2015.

Clause 62: Amendment to section 246A

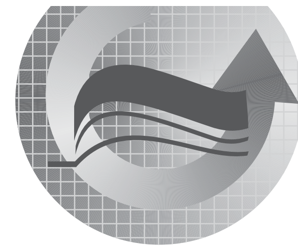
The Bill seeks to amend section 246A of the Income-tax Act relating to appealable order before Commissioner (Appeals).

The existing provisions of aforesaid section, *inter alia,* provide for appeal to be preferred by any assessee or deductor of tax at source to the Commissioner (Appeals) as against the orders passed under various provisions of the Income-tax Act as specified in sub-section (1) thereof. It is proposed to include the reference of "any collector", in addition to any assessee or any deductor, in sub-section (1) of the said sub-section so as to enable such collector of tax at Source also to prefer an appeal under the said section.

It is further proposed to amend clause (a) of sub-section (1) of the said section so as to provide that the collector may prefer an appeal to the Commissioner (Appeals) against an intimation issued under sub-section (1) of section 206CB.

This amendment will take effect from 1st June, 2015.

It is high time that the administrators and law makers should realise that simple law should be made which is easy to comply without increasing cost of administration and should be tax payer friendly. This will generate more revenues as compared to revenue collection through stringent provisions and procedures.



Natasha Mangat, *Advocate*

Proposals Relating to Transactions in Cash

1. Introduction

The Finance Bill, 2015 proposes to expand the ambit of the prohibitory sections 269SS and 269T along with the punitive sections 271D and 271E of the Income-tax Act, 1961 by including specified sums or advances receivable or accepted respectively in relation to transfer of an immovable property, whether or not the transfer takes place. The proposed amendment overrules the judgment of Gujarat High Court in the case of CIT v. Madhav Enterprise Pvt. Ltd. 2014 (2) TMI 564.

2. Current provisions

2.1 To counter taxpayers explaining away unaccounted cash found in the course of searches as loans or deposits made by various persons, Finance Act, 1984 inserted Section 269SS in Income Tax Act, 1961. In its current form, Section 269SS prohibits any person to take or accept from any other person any loan or deposit otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account if (a) the amount of such loan or deposit or aggregate amount of such loan and deposit; or (b) on the date of taking or accepting such loan or deposit, any loan or deposit taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or aggregate amount remaining unpaid; or (c) the amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b), is twenty thousand rupees or more. The section provides of certain exceptions and defines 'loans or deposits' to mean 'loans or deposits of money'.

2.2 Prior to the above insertion of Section 269SS, Income-tax (Second Amendment) Act, 1981 inserted Section 269T in Income Tax Act, 1961 in order to curb the proliferation of black money which was allegedly being deposited by tax evaders with banks, companies, co-operative societies and partnership firms either in their own names or in benami transactions. In its current form, Section 269T prohibits any branch of a banking company or co-operative bank and other company or co-operative society and firm or other person to repay any loan or deposit made with it otherwise than by an account payee cheque or account payee bank draft drawn in the name of the person who has made the loan or deposit or by use of electronic clearing system through a bank account if (a) the amount of the loan or deposit together with the interest, is any, payable thereon, or (b) the aggregate amount of the loans or deposits held by such person with the branch of the banking company or co-operative bank or, as the case may be, the other company or co-operative society or the firm, or other person either in his own name or jointly with any other person on the date of such repayment together with the interest, if any payable on such loan or deposits is twenty

thousand rupees or more. This section too provides for certain exceptions and defines 'loan or deposit' to mean any loan or deposit of money which is repayable after notice or repayable after a period and, in the case of a person other than a company, includes loan or deposit of any nature.

2.3 Further, Direct Tax Laws (Amendment) Act, 1987 inserted Sections 271D and 271E providing for penalty on non-compliance of Sections 269SS and 269T respectively. In their current form sections 271D and 271E provide for penalty equal to the sum of such loan or deposit so taken or repaid.

3. CIT v. Madhav Enterprise Pvt. Ltd.

Gujarat High Court, in the case of ***CIT vs. Madhav Enterprise Pvt. Ltd.(ITA.No. 561 of 2013)*** adjudicated in favour of the assessee who was in the business of construction activity and had paid a sum of ` 13,91,330/- to 25 different parties not through cheques and in excess of ` 20,000/- each. The Assessing Officer took the transactions to be hit by section 269T and levied a penalty under section 271E on the assessee. The Assessee stated that the amounts were advances from parties for booking of immovable property which were later cancelled and the advances were returned to the parties without interest. The amounts were neither loans nor deposits, hence they were not covered by section 269T. Both CIT(A) and ITAT held in favour of the assessee. On Revenue's appeal to High Court, the court held that 'Section 269T contains an explanation which define the term "loan or deposit" to mean any loan or deposit of money which is repayable after notice or repayable after a period and, in the case of a person other than a company, includes loan or deposit of any nature. What the respondent received from the prospective buyers was advance money simpliciter which was neither a loan nor a deposit even within the meaning of the said term assigned to under section 269T of the Act. When such amount is returned that too without interest, we do not find any applicability of section 269T of the Act.' In this way, the Hon'ble High Court made it clear that advances received in relation to immovable property did not fall within the meaning of deposits or loans as defined under section 269SS or 269T of the Act.

4. Brief about the proposed amendment

4.1 With the view to overrule the above mentioned judgment and take into its sweep dealings in cash in relation to immovable property transactions, Finance Act, 2015 proposes to amend Section 269SS so as to prohibit any person to take or accept from any other person any loan or deposit or any specified sum, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account, if, (a) the amount of such loan or deposit or specified sum or the aggregate amount of such loan, deposit and specified sum; or (b) on the date of taking or accepting such loan or deposit or specified sum, any loan or deposit or specified sum taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid; or (c) the amount or aggregate amount referred to in clause (a) together with the amount or aggregate amount referred in clause (b), is twenty thousand rupees or more. The Section, other than providing for the same exceptions as before also provides for the meaning of the term "specified sum" to mean any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not transfer takes place.

4.2 Similarly, Section 269T is proposed to be amended to include the term "specified advances" along with loan or deposit prohibiting any branch of a banking company or a co-operative bank and other company or co-operative society and firm or other person from repayment of any loan or deposit made with it or any specified advance received by it otherwise than by an account payee cheque or account payee bank draft drawn in the name of the person who has made the loan or deposit or paid the specified advance or by use of electronic clearing system through a bank if (a) the amount of the loan or deposit or specified advance together with the interest, if any payable thereon, or the aggregate amount of the loans or deposit held by such person or specified advance received by such person either in his own name or jointly with any other person on the date of such

repayment together the interest, if any payable on such loans or deposits or such advances respectively. The Section, other than providing for the same exceptions as before also provides for the meaning of the term "specified advances" to mean any sum of money in the nature of advances, by whatever name called, in relation to transfer of any immovable property, whether or not the transfer takes place.

4.3 Accordingly, the consequential amendment of penalty Sections 271D and 271E is proposed to include the terms "specified sums" and "specified advances" respectively after the words "loan or deposit" to levy a penalty of a sum equal to the amount of the loan or deposit or specified sum/advance so taken or accepted or repaid.

5. Purpose

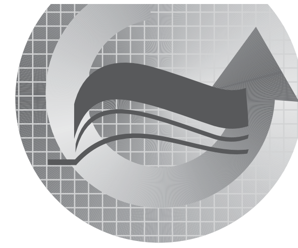
The Finance Minister has shown his intention to 'disincentivise' cash transactions. In pursuance he has proposed the amendment of sections 269SS and 269T along with sections 271D and 271E of the Act so as to include transactions specifically in immovable property and prohibit and penalise acceptance and repayment of sums or advances in cash of ` 20,000/- or more. The relevant provisions in their current form only mentioned 'loans and deposits', by the proposed amendment 'advances' with relation to immovable property have also been taken into the ambit of Sections 269SS and 269T. The purpose is shown to be to curb generation of black money by way of dealings in cash in immovable property transactions.

6. Impact

It is now imperative for every transaction (payment or repayment) in relation to immovable property, above the amount of ` 20,000/- to be made through banking channels (cheque/draft/transfer). It is undisputed that the evils of black money are required to be tackled stringently and at the earliest not only in the real estate market but in all markets. But at the same time it is necessary to understand the exigencies in business and the need of immediate and ready finance at appropriate times. Where on one hand, our Finance Minister has chosen to focus on facilitate the ease of doing business, at the same time he purports to prohibit and penalise cash transactions in the immovable property sector in enthusiasm of curbing black money transactions. Perhaps the new amendments would narrow the noose on illegal transactions and take away the often used justification of loans/deposits/advances for unaccounted cash in search cases, but it would also put undue hardship on genuine parties and may curtail growth in the real estate sector due to procedural requirements. Secondly, the proposed amendment does not envisage any raise in limit of the amount of ` 20,000/-, which in the given times of inflation is a negligible amount, especially in the property market. It has also been proposed that a new and more comprehensive Benami Transaction (Prohibition) Bill will be introduced in the current session of Parliament which would enable the confiscation of Benami property and also provide for prosecution in relevant cases. Further, the Act already did not define 'loan or deposit' adequately, the new amendment does little justice to the definition of 'specified sum or advances'.

7. Conclusion

Whether the proposed amendment would provide for curbing proliferation of black money in the relation to transactions involving immovable property or become a dampener on the real estate business will be revealed within a span of few months. However, the current amendments have failed to address the more pressing need of clarity in cases involving the sections 269SS, 269T and penalty sections 271D and 271E where the Revenue has invoked these section if only journal entries are made, or the question as to what actually comes in the ambit of loans or deposits. Furthermore, clarity to the revenue on cases where section 273B comes into play to due to 'reasonable causes' so penalty shall not be imposed. These areas of concern have led to frequent and long drawn litigation causing inconvenience and financial stress on assessees and perhaps need further specification and clarity for the revenue authorities may be by issuing Circulars/Notifications by CBDT.



CA. Pramod Shingte

Proposals relating to Search and Seizure Provisions

This Finance Bill, 2015 proposes following amendments, related to search and seizure

1. Amendment to section 132B,
2. Amendment to section 153C,
3. Amendment to section 234B.

1. Amendment to section 132B

Finance Bill 2015 proposes to substitute certain words in clause (i) of sub section (1) of section 132B and after the insertion of new section will be read as follows:

***132B.** (1) The assets seized under section 132 or requisitioned under section 132A may be dealt with in the following manner, namely:—*

the amount of any existing liability under this Act, the Wealth-tax Act, 1957 (27 of 1957), the Expenditure-tax Act, 1987 (35 of 1987), the Gift-tax Act, 1958 (18 of 1958) and the Interest-tax Act, 1974 (45 of 1974), and the amount of the liability determined on completion of the assessment [under section 153A and the assessment of the year relevant to the previous year in which search is initiated or requisition is made, or the amount of liability determined on completion of the assessment under Chapter XIV-B for the block period, as the case may be] (including any penalty levied or interest payable in connection with such assessment) and in respect of which such person is in default or is (deemed to be in default, may be recovered out of such assets): will be replaced by;

"deemed to be in default, or the amount of liability arising on an application made before the Settlement Commission under sub-section (1) of section 245C, may be recovered out of such assets"

In most of the searches, the assets such as cash, jewellery, deposits (which have liquidity) are seized by the income Tax Department. Section 132B provides that the assets that are seized u/s 132 or requisitioned u/s. 132A may be allowed and be adjusted against the amount of existing liability under the Income-tax Act, Wealth Tax Act, Expenditure Tax Act, Gift Tax Act, Interest Tax Act and also the liability determined on completion of assessment or block assessment.

Provisions of section 245C allows filing an application before Settlement Commission and in many cases of search, assessees were filing such applications for amicably settling the issues. However, as per the provisions of the said section it was essential to make the full payment of taxes on such additional income which is declared post search action and while filing such application it was essential to pay the entire tax relatable to such additional income.

Pre budget provisions of section 132B were enabling the Assessee to adjust the assets seized or requisitioned u/s 132 or 132A respectively. However, such option of adjusting such assets was not available if assessee wants to file an application before the Settlement Commission and in many cases besides the seized assets if

assessee wanted to file an application, he has to deploy additional money from internal accruals or from borrowings otherwise it was not possible to file such application u/s 245C.

However, with the proposed amendment this situation has been taken care of and even those assessee who wants to make an application before the Settlement Commission can take advantage of section 132B and make a request to adjust such amount against seized assets and for the purpose of section 245C he will be allowed to file an application without affecting his liquidity or without borrowing money for payment of taxes.

This is a welcome proposal and will definitely help the assessee who wants to settle their disputes before the settlement commission and will benefit large number of cases.

2. Amendment to section 153C

Provisions of section 153A to 153C of the Income-tax Act, 1961, deals with procedure for assessment in case of search or requisition. Section 153A elaborately deals with complete procedure of completion of assessment of a person who has been searched u/s. 132 and section 153C deals with assessment of income of any other person in the search proceedings. As per the current provisions of the Sec. 153C, if any asset, article or books of account or document belong to a person other than the searched person then in such circumstances the Assessing Officer who is conducting the search shall hand over such asset, article or books of account or documents to the Assessing Officer having jurisdiction and such other Assessing Officer shall proceed against other person, if he is satisfied that the books of accounts or documents or assets seized have a bearing on determination or his total income.

Controversy

The issues indispute was interpretation of term "belongs to" used in Section 153C, and it was argued that there may be a reference of any other person in the books of account or documents, but if such books or documents does not belong to such other person, then the entire action u/s.153C will be in jeopardy, and accordingly action based on the same will be a nullity.

In following rulings this proposition has been accepted:

Hon'ble Gujarat High Court in the case of, ***Vijaybhai N Chandran vs. ACIT (2011) 333 ITR 436 (Guj.)*** has held that:

"Notices issued u/s. 153 on the basis of loose papers which bears the name of assessee but actually did not belong to assessee was without jurisdiction, because u/s. 153C notice can be issued only where the money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned actually belong to assessee."

Similar proposition is held valid in following other cases:

Pepsico India Holding P. Ltd. vs. ACIT (2014) 270 CTR (Del.) 467

Pepsi Foods P Ltd. vs. ACIT (2011) 367 ITR 112 (Del)

However, Hon'ble Gujarat High Court in the judgement of :

Kamleshbhai Dharamshibhai Patel vs. CIT (2013) 263 CTR (Guj) 362, had occasion to deal with the issue and on the given facts Hon'ble Highcourt has given the verdict in favour of revenue and observed that :

"...Term "belong" is not defined and does not have ***legally technical connotation and therefore, we once again fall back on the dictionary meaning of the same. We need to ascertain if such document can be stated to "have relation or reference to" to the petitioners....."***

This also gets support from Memorandum explaining the said provision, which reads as follows:

"Disputes have arisen as to the interpretation of the words "belongs to" in respect of a document as for instance when a given document seized from a person is a copy of the original document. Accordingly, it is proposed to amend the aforesaid section to provide that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing belongs to, or any books of account or documents seized or requisitioned pertain to, or any information contained therein, relates to, any person, other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A".

The Finance Bill, 2015 proposes to amend sub-section (1) of section 153C so as to provide that where the Assessing Officer is satisfied that;

a) Any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or

b) Any books of accounts or documents, seized or requisitioned, retained or pertained to, or any information contained therein, related to, a person other than the person referred to in Sec. 153A, then.....

Thus the word belongs to used in the context of books of account or documents has been replaced by word "pertain or pertains to" and further it has been added that any information contained in such books of accounts or documents related to a person other than the person referred to in Sec. 153A.

The proposed change has enlarged the scope of this Section 153C and will have far reaching implications and now every case of section 153A, it will not be necessary that such books of account or documents shall pertain to other person; but now even if it pertains to such other person or if any information contained in such books of account or documents relates to other person, then such other person shall be covered u/s 153C.

The above provisions are made applicable w.e.f 1st June, 2015, undoubtedly the provisions will apply to all those searches which are conducted after 1st June, 2015, but serious issue will arise that searches conducted prior to 1st June, 2015, an action u/s.153C can be taken on the basis such information contained in books of account or documents which relates to other person, and therefore the scope of this amendment will raise new litigations.

3. Amendment to section 234B

The Finance Bill, 2015 also proposes an amendment in Section 234B, by which it proposes to insert sub-section (2A), and also proposes to substitute Sub-section (3) in Section 234B, and the proposed subsections are as follows:

"(2A) (a) Where an application under sub-section (1) of section 245C for any assessment year has been made, the assessee shall be liable to pay simple interest at the rate of one per cent for every month or part of a month comprised in the period commencing on the 1st day of April of such assessment year and ending on the date of making such application, on the additional amount of income-tax referred to in that sub-section. (b) Where as a result of an order of the Settlement Commission under sub-section (4) of section 245D for any assessment year, the amount of total income disclosed in the application under sub-section (1) of section 245C is increased, the assessee shall be liable to pay simple interest at the rate of one per cent. for every month or part of a month comprised in the period commencing on the 1st day

of April of such assessment year and ending on the date of such order, on the amount by which the tax on the total income determined on the basis of such order exceeds the tax on the total income disclosed in the application filed under sub-section (1) of section 245C.";

"(3) Where, as a result of an order of reassessment or recomputation under section 147 or section 153A, the amount on which interest was payable in respect of shortfall in payment of advance tax for any financial year under sub-section (1) is increased, the assessee shall be liable to pay simple interest at the rate of one per cent for every month or part of a month comprised in the period commencing on the 1st day of April next following such financial year and ending on the date of the reassessment or recomputation under section 147 or section 153A, on the amount by which the tax on the total income determined on the basis of the reassessment or recomputation exceeds the tax on the total income determined under sub-section (1) of section 143 or on the basis of the regular assessment as referred to in sub-section (1), as the case may be.";

As per the current provisions of section 234B(4) it is provided that where on an order of the Settlement Commission under sub-section (4) of section 245D, the amount on which interest was payable under sub-section (1) or sub-section (3) is increased or reduced, the interest shall be increased or reduced accordingly, However, in case an application is filed before the Settelment Commission u/s. 245C declaring an additional amount of income tax, there was no specific provision in section 234B for charging interest on that additional amount.

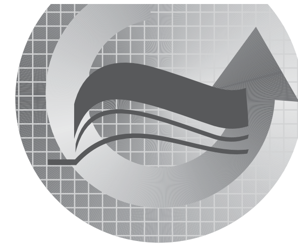
On the other hand Hon'ble Supreme court in the case of ***Brij Lal vs. CIT, [2010] 328 ITR 477 (SC)*** has given the ruling that interest u/s. 234B will be charged upto the date of filing an application u/s. 254C(1) and not upto the date of order passed u/s. 245D(4).

In view of this, new sub-section (2A) is inserted to provide that if an application is made under sub-section (1) of section 245 the assessee shall be liable to pay simple interest at the rate of one per cent for every month or part of the month completed in the period commencing on the 1st Day of April of each such assessment year and ending on the date of making such application, on the additional amount of income tax as determined by the order of Settlement Commission, further it is provided that if the amount of additional income is increased by the order of Settlement Commission then assessee shall be liable to pay the simple interest from period commencing from 1st April of such assessment year till the date of such order.

Similarly, it is also proposed to substitute sub-section (3) to Section 234B. As per the existing provisions of sub-section (3) of Section 234B, where the total income is increased on reassessment u/s 147 or section 153A the assessee shall be liable to pay the interest @1% on the amount of increase in total income for the period commencing from the date of determination of total income u/s. sub-section (1) of Section 143 or on regular assessment and ending on the date of reassessment u/s. 147 or 153A.

With the new proposed substitution henceforth such interest shall be calculated from 1st day of April next following the financial year and till the end on the determination of total income u/s.147 or 153A.

The effect of both this changes will substantially increase the interest burden on the assessee, the rationale as explained in Memorandum specifies that the tax payers true liability is right from the beginning and it was with reference to that amount the advance tax should have been paid within the prescribed due date.



CA. Haresh Kenia

Proposals Relating to Cases before Settlement Commission

Existing provision

Interest for defaults in payment of advance tax in case of reassessment and where additional income is disclosed before the Settlement Commission under section 245C.

1. The existing provision u/s. 234B (4) of the Income-tax Act provides that where on an order of the Settlement Commission u/s. 245D(4), the amount on which interest was payable under sub-section (1) or sub-section (3) is increased or reduced, the interest shall be increased or reduced accordingly.

2. Section 234B provides for the payment of interest on default in the payment of advance tax. The provision is attracted where in any financial year: (i) An assessee who is liable to pay advance tax has failed to do so; or (ii) Where the advance tax paid by the assessee is less than ninety per cent of the assessed tax. The assessee in such a case is liable to pay interest as specified in the section from the first day of April next following the financial year to the date of determination of the total income under section 143(1) and, where a regular assessment is made, to the date of the regular assessment. Interest is payable on "an amount equal to the assessed tax or, as the case may be, on the amount by which the advance tax paid as aforesaid falls short of the assessed tax". Sub-section (4) of section 234B applies in a situation where, as a result of orders passed under sections 154, 155, 250, 254, 260, 262, 263 or 264 or an order of the Settlement Commission under section 245D(4), "the amount on which the interest was payable under sub-section (1) or (3) has been increased or reduced, as the case may be." Thereupon, the provision is that interest shall be increased or reduced accordingly. In a case where the interest is increased, the Assessing Officer has to serve on the assessee a notice of demand whereas if the interest is reduced, the excess interest has to be refunded.

Amendment

3. Clause 56 of Finance Bill, 2015 proposes to insert a new sub-section (2A) so as to provide that where an application under sub-section (1) of section 245C for any assessment year has been made, the assessee shall be liable to pay simple interest at the rate of one per cent for every month or part of a month comprised in the period commencing on the 1st day of April of such assessment year and ending on the date of making such application, on the additional amount of income-tax referred to in that sub-section. Further, where as a result of an order of the Settlement Commission under sub-section (4) of section 245D for any assessment year, the amount of total income disclosed in the

application under sub-section (1) of section 245C is increased, the assessee shall be liable to pay simple interest at the rate of one per cent for every month or part of a month comprised in the period commencing on the 1st day of April of such assessment year and ending on the date of such order, on the amount by which the tax on the total income determined on the basis of such order exceeds the tax on the total income disclosed in the application filed under sub-section (1) of section 245C.

Reason

4. Under the existing provision of section 234B(4), it was realised that interest is charged on the principle that the amount of tax determined on the total income determined u/s. 143(1) or on assessment or reassessment or total income declared in a Settlement Commission was taxpayer true and correct liability right from the beginning and fundamentally it was reference to that amount the advance tax should have been paid within the prescribed period. Further, in case an application is filed before Settlement Commission u/s. 245C declaring an additional amount of income tax, there exist no specific provision in section 234B for charging interest that additional amount for the period up to order u/s. 245D(4) of the Act.

5. There was strong interpretation in respect of 234B(4) that it provides that where as a result of an order of Settlement Commission u/s. 245D(4), the amount on which interest was payable under sub-section (1) or sub-section (3) has been increased or reduced as the case may be. The interest may be increased or reduced accordingly. Based on this, the inference is drawn that only the quantum of income on which interest is charged which is varied but the period remains the fixed. There is an absence of extended legal provision and the liability to pay interest beyond the date of application for settlement. This is the position even after coming into force of the Finance Act, 2007.

6. The forum of Commission for 'Settlement of Cases' is not created to put a premium on fraud or misrepresentation of tax evaders. The provisions contained in Chapter XIX-A merely aim at encouraging taxpayers to approach the Settlement Commission with full disclosure of their income which they had not earlier disclosed in the source of regular assessment. Such assessee who co-operate with the assessing authorities in making proper assessment of tax can be granted immunity from prosecution and penalty.

7. The Finance Bill, 2015, accordingly purposes *vide* clause 56(i) for insertion of a new clause (2A) seeks to provides the two things.

- Where an application u/s. 245C(1) for any assessment year has been made, levy of interest @ 1% per month commencing on the 1st day of April of such assessment year and ending on the date of making such application, on the additional amount of income tax referred to in that sub section. This is not new provision as the same was contained in existing provisions.
- Where as a result of an order of the Settlement Commission u/s. 245D(4) for any assessment year, the amount of total income disclosed in the application u/s. 245C(1) is increased, the assessee shall liable to pay interest @ 1% per month or part of a month comprised in the period commencing on the 1st day of April of such assessment year and ending of the day of such order, on the amount by which total income determined on the basis of such order exceeds the tax on income disclosed in the application filed u/s. 245C(1). This fills the gap for period of levy of interest from date of order u/s. 245D(1) to the date of order u/s. 245D(4) of the Act.

Supreme Court decision in case of ***Brijlal vs. CIT – 320 ITR 477***

8. The issue of terminal point for levy of interest u/s. 234B was also settled by Supreme Court decision in case of ***Brijlal vs. CIT – 320***

ITR 477 wherein it is held that the interest u/s. 234B would be payable up to the stage of section 245D(1). There is no provision under the Chapter XIX-A or u/s. 140A, which deals with the self-assessment, to charge interest beyond the date of application for settlement after the same is admitted by the commission u/s. 245D(1).

9. The current section 234(4) refers to a situation where "the amount on which interest was payable under sub-section (1) or sub-section (3) has been increased or reduced" ***inter alia*** as a result of an order of the Settlement Commission. The amount which is referred to in sub-section (4), is the amount on which interest is payable under sub-section (1) or sub-section (3). That amount is the amount by which the advance tax paid falls short of the assessed tax. When sub-section (4) of section 234B refers to "the amount on which interest was payable under sub-section (1) or sub-section (3)", that amount is the difference between the advance tax paid and the assessed tax. The words "on which interest was payable" have been used in a descriptive sense to identify the amount specified in sub-section (1), or as the case may be, in sub-section (3). In sub-section (1), the amount is the difference between the advance tax and the assessed tax. The effect of the order of the Settlement Commission in this case is to enhance the assessed income. The amount by which the advance tax paid by the assessee falls short of the assessed tax has been increased as a result of the order passed by the Settlement Commission. This is the amount on which interest was payable under sub-section (1) for if the assessee were to make a correct disclosure of his income in the first instance, the assessee would have been liable to pay interest under sub-section (1) on the shortfall.

10. The aforesaid interpretation of sub-sections (1) and (4) of section 234B is consistent with the interpretation placed by the Supreme Court, on the provisions of the statute. In Anjum M.H. Ghaswala's 252 ITR 1 case, a Constitution Bench of the Supreme Court was considering the question as to whether the Settlement Commission has the jurisdiction to reduce or waive interest chargeable under sections 234A, 234B and 234C while passing an order of settlement under section 245D(4). The principle of law which emerges from the judgment of the Supreme Court is that though section 245D(4) confers a wide power on the Commission while settling a case, nevertheless the Act mandates that this shall be done in accordance with the provisions of the Act. The Supreme Court held that the liability to pay interest under sections 234A, 234B and 234C is mandatory and the Commission would have no power to waive or reduce interest payable statutorily except to the extent of granting relief under circulars issued by the Board under section 119. It is only after Anjum M.H. Ghaswala's case that the law got settled that the nature and the character of the interest was compensatory and mandatory and that the Commission had no such power. But even in Anjum M.H. Ghaswala's case the question as to whether such interest under section 234B should run up to the order under section 245D(1) or up to the date of the order under section 234D(4) was not decided.

In the case of ***CIT vs. Hindustan Bulk Carriers [2003] 259 ITR 449***, a 3-Judge Bench of Supreme Court, by majority, held that where, upon the Order of the Settlement Commission under section 245D(4), there arises a deficit in the payment of advance tax under section 208, the end point or the terminus of the period for which interest has to be paid under section 234B on the deficit is the date on which the Settlement Commission passes the order under section 245D(4). This decision was delivered on 17-12-2002 after the judgment of this Court in Anjum M.H. Ghaswala's case. On the same day, the same Bench in the case of Damani Bros. held that interest charged under section 234B becomes payable on the income disclosed in the return and the income disclosed before the Settlement Commission; that, such interest is chargeable till the Commission acts in terms of section 245D(1) and that after the Settlement Commission allows the application for settlement to be proceeded

with there will be no further charge of interest under section 234B.

11. The provisions of Chapter XIX-A deals with settlement of cases and is a self contained code. It requires the procedures to be followed by Settlement Commission u/ss. 245C and 245D in the matter of computation of undisclosed income, in the matter of computation of additional income tax payable on such income with interest thereon, the filing of settlement application indicating the amount of income returned in the return of income and the additional income tax payable on undisclosed income to be aggregated as total income. It shows that Chapter XIX-A indicates aggregation of income so as to constitute total income which indicates that the special procedure under Chapter XIX-A has in-built mechanism of computing total income which is nothing but assessment. One finds that provision dealing with regular assessment, self assessment and levy and computation of interest for default of advance tax are engrafted in such computation.

12. It is only when the Settlement Commission formally allows the application u/s. 245C(1) for being considered for "Settlement" the regular assessment proceeding and recoveries initiated for tax penalty or interest pursuant thereto, becomes subject to the power of commission. In other words, merely filing of an application by the assessee for settlement and before the same is formally allowed for consideration, would have no adverse effect on the proceedings of assessment or recovery pending or initiated against the assessee under the regular procedure for assessment and recovery for dues under the Income-tax Act.

13. The Settlement Commission has to pass order on the matter of determining the quantum of income and tax in accordance with the other relevant provisions of the Act applicable to the relevant assessment year or years. There is no power with the Settlement Commission to settle the 'case' ***de hors*** the provisions of Income-tax Act applicable to regular assessment because the provisions contained in scheme of settlement under Chapter XIX-A, do not envisage and allow the Commission to settle a 'case' based on disclosure of income before it in any other manner. The memorandum of Statement of Objects and Reasons for introducing Chapter XIX-A, which can be taken aid of for construing various provisions of the Act, the forum of Settlement Commission is constituted for 'early recovery of tax and to unearth black money'. The only impetus given to the assessee to avail the forum is to allow him to make a request to the Settlement Commission to grant immunity from prosecution and penalty in exercise of its powers under section 245H. In all other respects, on the question of tax and interest, the Settlement Commission has to settle a 'case' in accordance with the other provisions of the Act as are applicable to regular assessment proceedings. The Act does not make distinction or differentiation in treatment between the assessees who honestly disclose income and are willing to pay the tax and the other assessees who do not fully or partly disclose the income to avoid payment or tax in due time and approach the Commission for disclosure of their earlier concealed income. Such distinction or differentiation between the above-mentioned two classes of assessees is not permitted by the provisions contained in Chapter XIX-A, it being neither legally valid nor just. The Chapter XIX-A providing settlement of cases is not intended to benefit the assessees who had not earlier honestly disclosed their income and paid the tax in due time. The settlement procedure aims to bring such assessees at par with the assessees who had honestly disclosed their income and paid the tax. The provisions of Chapter XIX-A, therefore, have to be read harmoniously with other provisions of the Act and thus applied to give full effect to other relevant provisions of the Income-tax Act which confer all powers of Income-tax authority under the Act on the Settlement Commission for assessing the income and determining the tax.

14. As regard liability towards interest in various statutorily contemplated contingencies of a 'case' brought for settlement under Chapter XIX-A of the Act, it is noticed that after insertion of the said Chapter for Settlement of Cases, corresponding legislative changes have been effected by insertion of sections 234A to 234C in Income-tax Act to redetermine quantum of interest payable in various contemplated contingencies under the Act.

15. The necessary adjustment to be made towards interest income on the tax due after settlement of a case in case of default in payment of advance tax can be found in sub-section 4 of section 234B.

16. The Supreme Court in the case of ***Brij Lal vs. CIT*** held that the terminal point of levy of interest u/s. 234B would be up to the date of order u/s. 245D(1) and not up to date of order of settlement u/s. 245D(4) of the Act. This judgment overruled the Supreme Court decision in the case of ***CIT vs. Hindustan Bulk Carriers 126 Taxman 321*** and approved the decision of Damani Brothers 259 ITR 475.

In the Brij Lal's Case, it was contended that the provisions of sections 245D(1) and 245D(4), are two distinct stages – one allowing the application to be proceeded with (or rejected) and the other of disposal of the application by appropriate orders being passed by the Settlement Commission. In between the two stages, there are provisions which require the applicant to pay the additional income-tax and interest under section 245D(6), it is laid down that every order under section 245D(4) shall provide for the terms of settlement including any demand by way of tax, penalty or interest. In the case of ***CIT vs. Damani Bros. [2003] 259 ITR 475***, a 3-Judge Bench of the Supreme Court, while analysing the scheme of Chapter XIX-A, has held that section 234B, section 245D(2C) and section 245D(6A) operate in different fields. Section 234B comes into operation when there is default in payment of advance tax, whereas liability to pay interest under section 245D(2C) arises when the additional amount of income-tax is not paid within time specified under section 245D(2A). Section 245D(6A), on the other hand, imposes liability to pay interest only when the tax payable in pursuance of an order of the Settlement Commission under section 245D(4) is not made within the specified time.

17. Section 245C(1) deals with computation of total income. There is one more way of looking at the Act. Chapter XIX-A refers to procedure of settlement under section 245D(1). Section 245D(1) provides for expeditious recovery of tax by way of pre-assessment collection. Interest on default in payment of advance tax comes under sections 234A, 234B, 234C, which fall in Chapter XVII which deals with collection and recovery of tax. It is important to note that interest follows computation of additional payment of income-tax under sections 245C(1B) and (1C). This is how sections 234A, 234B and 234C get engrafted into Chapter XIX-A at the stage of section 245D(1). Till the Settlement Commission decides to admit the case under section 245D(1), the proceedings under the normal provisions remain open. But once the Commission admits the case after being satisfied that the disclosure is full and true, then the proceedings commence before the Settlement Commission. In the meantime, applicant has to pay the additional amount of tax with interest, without which the application for settlement would not be maintainable. Thus, interest under section 234B would be payable up to the stage of section 245D(1). This view is supported by the amendment made by the Finance Act, 2007 with effect from 1-6-2007 in which interest is required to be paid for maintainability of the application for settlement.

18. In a situation where the 90% of assessed tax is paid but on a basis of the order u/s. 245D(4) the advance tax paid turns out to be less than 90% of the assessed tax. The interest was not leviable for the period of order u/s. 245D(1) to order u/s. 245D(4) in view of absence of any legal provision. Therefore, the interest

u/ss. 234A, B and C was applicable up to the stage of section 245D(1) up to order passed by the Settlement Commission.

19. There was no provision under Chapter XIX-A or even under section 140A (dealing with self-assessment) to charge interest beyond the date of application for settlement after the same is admitted by the Commission under section 245D(1). Moreover, under the Act, there is a difference between assessment, in law, [regular assessment or assessment under section 143(1)] and assessment by settlement under Chapter XIX-A. The order under section 245D(4) is not an order of regular assessment. It is not an order under section 143(1) or 143(3) or 144. Under sections 139 to 158, the process of assessment involves the filing of the return under section 139 or under section 142 inquiry by the Assessing Officer under sections 142 and 143, and making of the order of assessment by the Assessing Officer under section 143(3) or under section 144 and issuing of notice of demand under section 156 on the basis of the assessment order. The making of the order of assessment is an integral part of the process of assessment. No such steps are required to be followed in the case of proceedings under Chapter XIX-A. The said Chapter contemplates the taxability determined with respect to undisclosed income only by the process of settlement/arbitration. Thus, the nature of the orders under sections 143(1) and 143(3) is different from the order of the Settlement Commission u/s. 245D(4).

However it was the contention of the department and also the observation of the Supreme Court in Hindustan Bulk Carrier that on Harmonising various provisions of the Act and the legislative intent in introducing Chapter XIX-A, the position is indisputable that the end-point of the terminus has to be the date on which the Commission passes an order under section 245D(4). Any other interpretation would lead to absurd result because the assessee who has concealed income is placed at a more advantageous position vis-a-vis one who has declared his income truly and fairly. By way of illustration it would be seen that a person who has disclosed rupees ten lakhs as income and paid advance tax correctly is in a way deprived use of the amount paid as advance tax for the period during which an assessee who has not disclosed the correct income and has disclosed rupees two lakhs before the Assessing Officer and subsequently goes before the Commission disclosing rupees eight lakhs makes use of the amount which was required to be paid as advance tax. It is for this default in not paying the correct advance tax that interest under section 234B is levied and has to be till the date of order under section 245D(4).

It was also argued that a construction which reduces the statute to a futility has to be avoided. A statute or any enacting provision therein must be so construed as to make it effective and operative on the principle expressed in maxim ***ut res magis valet quam pereat***, i.e., a liberal construction should be put upon written instruments, so as to uphold them, if possible and carry into effect the intention of the parties.

It was further contended that there is no scope for double levy of interest; (i) for non-payment of advance tax for which interest is chargeable under section 234B of the Act, and (ii) for delay in payment of the amount of interest, if any, payable in terms of section 245D(2C) or section 246D(6A) needs to be considered. There can be no dispute that double levy of interest is not permissible. But this principle is applicable only when the interest is chargeable more than once for same set of infractions. If the provisions under which interests are charged operate in different fields, there is no statutory bar on levying the interest, because in essence it does not amount to double levy of interest but levy of interest separately for different infractions. Section 234B, section 245D(2C) and section 245D(6A) operate in different fields. Section 234B comes into operation when there is default in payment of advance tax. Liability to pay interest under section 245D(2C) arises when additional amount of income-tax is not paid within time

specified under sub-section (2A). Section 245D(6A) fastens liability to pay interest when tax payable in pursuance of an order under sub-section (4) is not paid within the specified time. Therefore, when interest is charged in respect of the said provisions it does not amount to double levy of interest, as the infractions are different.

It was further justified that the interests charged in terms of sections 234A, 234B and 234C become payable on the income already disclosed in the returns filed, together with the income disclosed before the Commission. The concerned interest as aforesaid shall be on the consolidated amount of income, i.e., both disclosed and undisclosed. As indicated above, such interests shall be charged till the Commission acts in terms of section 245D. Thereafter, the prescription relating to charging of interest etc. becomes operative, after the Commission allows the application for settlement to be proceeded with. In such an event, there is no further charge of interest in terms of sections 234A, 234B and 234C. The interest charged in terms of section 245D is a separate levy and not in terms of interest chargeable under sections 234A, 234B and 234C. Therefore, the apprehension that there is scope for charging of interest on interest is without any basis.

The Supreme Court in the Hindustan Bulk Carriers held that the inevitable conclusion is that interest has to be charged for the period beginning from the first day of April next following the relevant financial year up to the date of Commission's order at the rate applicable, on interest chargeable under section 234B, when an order under section 245D(4) is passed, followed by quantification under section 245D(6).

20. In view of the above discussion, the proposed amendment in section 234B(4) in the nature of insertion of new clause (2A) is logical and it clearly provides for levy of interest for the period up to the date of order u/s. 245D(4) of the Act which was not covered in the existing provision of section 234B(4) of the Act.

Unintended implication

21. In view of the introduction of clause (2A) there is a unintended benefits to the revenue as regard the cases of reassessment under section 147 or section 153A of the Income-tax Act. Presently, the assessees who is assessed under section 147 or section 153A, the interest u/s. 234B(3) starts from the date of order passed u/s. 147 or section 153A and if such assessee decides to make an application to Settlement Commission then by virtue of the new provision under sub section (2A), such assessee is required to pay interest from the first day of the such assessment year. Therefore, the assessee while applying for a Settlement Commission has to pay interest u/s. 234B from the 1st day of assessment year instead of from the date of the order under section. 147 or section 153A of the Income-tax Act.

This may not be the intention of the legislation while introducing clause (2A) to the statute.

Settlement Commission

The Finance Bill 2015 which was presented on 28th February, 2015, seek to amend the provisions relating to Chapter XIX-A dealing with settlement of cases. As per the memorandum all the proposed amendments relating this chapter are in order to provide for rationalisation measures.

Introduction

Chapter XIX-A of the Act provides for the process and procedure to be followed by an assessee for determination of his tax liability, particularly, in respect of undisclosed income by the Settlement Commission.

The chapter ***inter alia*** provides for :

a. Definition of case

b. Date of commencement and conclusion of proceedings

c. Quantum of tax liability exceeding which an application can be made

d. Limitation period for passing an order by the Settlement Commission.

Section 245A – Definition of case

Existing provision

The Finance Bill, 2015 seeks to amend clause (i) of the explanation to clause (b) of section 245A by substitution new clause (i).

Presently, an assessee can make an application to the Commission at any stage of the proceeding in his case pending before any Income-tax authority. This includes clause (i) of explation to clause (b) to section 245A. This clause (i) provides that an assessee can make the application during the pendency of proceeding for assessment or reassessment u/s. 147 in response to notice u/s. 148 of the Act. The date of the commencement of the proceeding is the date of issue of notice u/s. 148 of the Act.

Amendment

The clause 57 of the bill seeks to amend section 245A of the Income-tax Act relating to definition in respect of settlement.

Clause 57 of the Bill seeks to amend section 245A of the Income-tax Act relating to definitions in respect of settlement of cases by substituting existing clause (i) with a new clause (i).

It amends clause (i) of the Explanation to clause (b) of the said section to provide that a proceeding for assessment or reassessment or recomputation under section 147 shall be deemed to have commenced—

(a) From the date on which a notice under section 148 is issued for any assessment year;

(b) From the date of issuance of such notice referred to in sub-clause (a), for any other assessment year or assessment years for which a notice under section 148 has not been issued but such notice could have been issued on such date, if the return of income for the other assessment year or assessment years has been furnished under section 139 or in response to a notice under section 142.

Reasons

The purpose of substitution of clause (i) of the explanation to clause (b) as per the memorandum, as stated that it was observed that issue relating to the escapement of income is often involved in more than one assessment year. In such situation, the assessee becomes eligible to approach Settlement Commission only for the assessment year for which notice u/s. 148 has been issued. With a view of obviate the need for issue of a notice in all such assessment years for commencement of pendency, clause (i) of said explanation is accordingly amended.

History

This provision has been the favourite topic of Finance Minister and known for frequent amendments.

Finance Act, 2007

The Finance Act, 2007 amended the majority of the provisions of Chapter XIX-A of the Act which is in the nature of revised Settlement Scheme. The memorandum states that 'with a view to avoid delay in determining the tax liability of an assessee which is caused because of factors like duplication of proceedings, absence of statutory timeframe for settling the case, and also with a view to streamline the proceedings before the Settlement Commission'.

Prior to 31-5-2007, assessee could make an application to the Commission at any stage of the proceedings in his case pending before any Income Tax authorities. After the amendment effect from 31-5-2007, assessee could make an application to the Commission only during the pendency of proceeding before the Assessing Officer. Further, assessee could not make the application during the pendency of following proceedings of assessment : -

a. Assessment/reassessment proceedings in response to a notice under section 148;

b. Assessment or reassessment proceedings under section 153A;

c. Proceedings of making fresh assessment where original assessment was set aside under section 254 by the appellate tribunal or under sections 263 and 264 by the Commissioner.

The proviso to section 245A(b) excluded these proceedings from the purview of 'case' and explanation thereto specified the date from which such proceedings shall be deemed to have commenced such as : -

Proceedings	Demand date of commencement of proceedings
Assessment or reassessment, under section 147 of the Act	Date of issue of notice under section 148 of the Act
Assessment or reassessment for the years referred in section 153A(b) or 153B(1)(b) in case of persons referred in section 153A or 153C	Date of intimation of search under section 132 or requisition under section 132A
Fresh assessment pursuant to order under section 253 or 263 or 264	Date of order under section 253 or 263 or 264

Finance Act, 2010

The Finance Act, 2010 seeks to extend settlement of cases by Settlement Commission also in case of search or requisition, with effect from 1-6-2010 and accordingly carries out the following amendments:

a. In proviso to section 245A(b) clauses (ii) and (iii) are omitted so as to include search and requisition case within the meaning of case.

b. In explanation below section 245A(b) providing for the date of commencement and conclusion of the proceedings (to determine whether it could be a pending case or not), clause (iiia) is inserted to provide for commencement date and conclusion date in case of search or requisition proceedings, as also clause (iv) of explanation is amended, ***inter alia***, to include reference to clause (iiia) as inserted.

Pursuant to the deletion of clauses (ii) and (iii) under the proviso, the following proceedings of assessment or reassessment would constitute proceedings for assessment under the Act and accordingly 'case' :

a. Proceedings for assessment or reassessment of a person in whose case a search is carried out under section 132 or books of account or other documents or assets are requisitioned under section 132A after 31-5-2003, for 6 assessment years immediately preceding the assessment year relevant to previous year of search or requisition.

b. Proceedings, for assessment or reassessment of a person to whom any money, bullion, jewellery or other valuable articles or things or books of account or documents seized or requisitioned belong to, pursuant to the search or requisition referred above.

c. Proceedings for assessment of a person in whose case search or requisition is carried out, as aforesaid, for the assessment year relevant to the previous year in which search or requisition was carried out.

d. Proceedings for assessment of other person (referred above) for the assessment year relevant to the previous year in which search is conducted or requisition made.

To illustrate, a search was carried out in the Financial Year 2014-15. Accordingly, the

proceedings for assessment or reassessment could be for :

a. Six assessment years proceeding Assessment Year 2015-16, that is, Assessment Years 2009-10 to 2014-15; and

b. Assessment year relevant to the previous year in which the search was carried out, assessment year 2015-16.

Finance Act, 2014

The Finance (No. 2) Act, 2014 amended the definition of case u/s. 245A(b) w.e.f. 1-10-2014 which permitted the recourse to the Commission for settlement in all pending cases. These effectively means the following are reintroduced and covered within the meaning of 'case'.

- Proceeding for assessment or reassessment or re-computation u/s. 147 and for which date of commencement of proceeding will be on date of which notice u/s. 148 is issued.
- Proceeding for making fresh assessment under section 254 or section 263 or section 264, setting aside or cancelling an assessment and for which date of commencement of proceeding will be from the date on which order under section 254 or 263 or 264 is passed.

Amendment in clause (iv)

There is another amendment in clause (iv) to said explanation to clause (b) of section 245A.

Existing provision

The Finance Bill also seeks to amend clause (iv) of said explanation to clause (b) of section 245A. Presently the clause (iv) deals with a proceedings for any assessment year other than proceeding for the assessment or reassessment proceedings u/s. 148 and u/s. 153A, proceedings for making fresh assessment u/s. 254 or u/s. 263 or u/s. 264 [referred to in clause (i) or clause (iii) or clause (iiia) of the explanation] shall deemed to have commenced from first day of assessment year and concluded on the date on which the assessment is made.

Amendment

The Finance bill seeks to amend clause (iv) to provide that the proceeding for assessment shall deemed to have commenced from the date of which return of income for that assessment year is furnished u/s. 139 or in response to notice u/s. 142 and concluded on the date on which the assessment is made or on the expiry of the two year of the end of the relevant assessment year in case where no assessment is made.

Implication

Now the assessee can apply and approach settlement commission not only for the assessment year for which notice u/s. 148 but also for the other assessment year for which notice u/s. 148 is not issued but could not been issued on such date. However, this is with the condition that the return of income for other assessment year or assessment years has been furnished u/s. 139 or in response to notice u/s. 142.

Apparently, these proposed amendment is likely to attract those assessee who are faced with the situation like purchases from the suspicious dealers who has declared themselves before the MVAT authority (Sales Tax authority) that they are simply name lenders and not effected any actual purchase or sales of goods or services. The assessee in such cases is faced with a situation of such purchases from suspicious dealers for years more than one assessment year and the notice is issued by the department only for one assessment year. Presently, assessee is faced with a such situation was under dilemma to apply to the Settlement Commission since notice u/s. 148 is not issued for the other assessment year or years. These proposed amendments likely to help such assessees to apply to the Settlement Commission for all the years including the years for which notice u/s. 148 are not issued.

Effective date

These amendments will apply to the settlement filed after 1-6-2015.

The provisions relating to the Settlement Commission have undergone a drastic change by the Finance Act, 2007. The CBDT issued the explanatory notes on the provisions relating to direct taxes in the Finance Act, 2007 on 12-3-2008 under Circular No. 3 of 2008. There was a decision of special bench of Income Tax Settlement Commission in case of Rescuwear Corporation – 177 Taxman 281. In this case the Chairman of the commission was requested to constitute of special bench constituting of 5 members and here the settlement application and decide the issues involved. The issues to be determined by the special bench were identified and were held as under. The clarification issued by the CBDT in the said circular was considered by the Special Bench of the Settlement Commission and it has been held by the Special Bench as under.

(i) Issue :– For the years for which returns have been filed but have neither been processed under section 143(1) of the Act nor notices have been issued under section 143(2) of the Act, whether proceedings for the assessment are pending or not?

The bench held :– For the years for which returns had been filed but had neither been processed under section 143(1) nor notices had been issued under section 143(2), proceedings for the assessment were pending;

(ii) Issue :– For the years for which returns have been processed under section 143(1) of the Act but now no time is left for issue of notices under section 143(2) of the Act, whether proceedings for the assessment years are pending or not?

The Bench Held : - For the years for which returns had been processed under section 143(1) but no time was left for issue of notices under section 143(2), proceedings for the assessment were pending in view of the CBDT Circular No. 3 of 2008, dated 12-3-2008;

The Bombay High Court in the case of Income Tax Settlement Commission - 38 taxman.com 115 held that even if notice of initiation under section 143(1) for relevant year is in appeal before an Appellate Authority, it would still be open to an assessee to file an application before Settlement Commission so long as no order of assessment under section 143(3) has been passed within period of time provided under section 153.

(iii) Issue :– The meaning of 'date of conclusion of proceeding' under clause (iv) of sub-section (b) of section 245A of the Act;

The Bench held :– As per the provisions of section 245A(b), pendency of proceedings for the assessment before the Assessing Officer for one or more assessment years is a necessary condition for invoking the jurisdiction of the Settlement Commission in respect of a settlement application. Clause (iv) of the Explanation to the said section clearly states that a proceeding for the assessment shall be deemed to have commenced on the first day of the assessment year and concluded on the date on which the assessment is made. On one hand, it had been argued that the 'literal and strict interpretation' of the relevant provisions would clearly lead to conclude that proceedings for the assessment commencing on the first day of the assessment year shall continue to be pending till the assessment is made and in terms of the CBDT's Circular No. 3 of 2008, it would mean that they shall conclude only when the assessment order is served on the applicant. On the other hand, it had also been argued that such interpretation may lead to an absurd situation where proceedings may be deemed to be pending before

the Assessing Officer for certain years, although under the Act the Assessing Officer may not be empowered to take any action in respect of those years. In the above circumstances, it can be said that proceedings for the assessment can be said to be pending for particular assessment years only up to such time till the Assessing Officer has power to take action in respect of those assessment years. Therefore, the meaning and scope of 'date of conclusion of proceedings' under clause (iv) of the Explanation to the section 245A(b) is that the proceedings for assessment can be said to be pending before an Assessing Officer in respect of those assessment years only for which he can still take action/initiate the proceedings under the Act;

(iv) Issue :– In the case of composite application for five years, proceedings for certain assessment years are pending but are not pending for other years, whether the application can be admitted for those years for which proceedings are pending and held as 'invalid' for other years or the same has to be held as 'invalid' in totality for all the years ?

The Bench held :– Since in the instant composite application for five years, proceedings were pending for some assessment years but were not pending for other years, application could be admitted for those years for which proceedings were pending and would be invalid for other years. Whole of the application did not need to be declared as 'invalid' if proceedings for assessment were pending before the Assessing Officer for some of the years and not for other years. The settlement application could be proceeded with for those years for which proceedings for the assessment were pending before the Assessing Officer.

One can see that the proposed amendment brings out the correct position of the law and clears the hardships for the eligible assessee.

Section 245D(6B) – Power to rectify order

The Delhi High Court, in ***Capital Cables (India) (P.) Ltd. vs. Income Tax Settlement Commission [2004] 139 Taxman 332*** has held that the order made by the Settlement Commission is conclusive and final, and, therefore, it cannot be rectified under section 154. Similar view was taken by the Calcutta High Court in ***Income Tax Settlement Commission vs. Netai Chandra Rarhi & Co. [2004] 271 ITR 514.***

The Memorandum to the Finance Bill, 2011 states that :

"It is prepared to insert a new sub-section (6B) in section 245D so as to specifically provide that the Settlement Commission may, at any time within a period of six months from the date of its order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under section 245D(4)".

The Finance Act, 2011 inserts clause (6B) – It is inserted in section 245D, with effect from 1-6-2011 so as to confer the power to rectify and provides as follows:

- The Commission may, at its discretion, rectify any mistake apparent from the record any order passed by it under section 245D (4);
- The Commission can pass the order at any time within a period of six months from the date of order under section 245D(4);
- If the order has the effect of modifying the liability of the applicant the Commission has to give an opportunity of being heard to the Commissioner as well as the applicant.

Existing provision u/s. 245D(6B)

The existing provision contained in sub-section (6B) of section 245D of the Income-tax Act provides that the Settlement Commission may, at any time within a period of six months from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (4).

Reason for amendment

Provisions of sub-section (6B) of section 245D of the Income-tax Act do not provide for additional time where the assessee or the Commissioner files an application for rectification towards the end of the limitation period. Accordingly, sub-section (6B) of section 245D of the Income-tax Act is suitably amended.

Amendment

Clause 58 of the Bill seeks to amend section 245D of the Income-tax Act relating to procedure on receipt of an application under section 245C by substituting existing sub-section (6B) with new sub-section (6B).

It amends the said sub-section (6B) to provide that the Settlement Commission may, with a view to rectify any mistake apparent from the record, amend any order passed by it under sub-section (4) -

(a) At any time within a period of six months from the end of month in which the order was passed;

(b) On an application made by the Principal Commissioner or Commissioner or the applicant before the end of period of six months from the end of month in which the order was passed, at any time within a period of six months from the end of month in which such application was made.

Effective date

This amendment will take effect from 1st June, 2015.

Section 245H - Power of Settlement Commission to Grant Immunity from Prosecution and Penalty

Existing Provisions

The existing provision contained in sub-section (1) of section 245H of the Income-tax Act provides that the Settlement Commission may, if it is satisfied that any person who made the application for settlement under section 245C has co-operated with the Settlement Commission in the proceedings before it and has made a full and true disclosure of his income and the manner in which such income has been derived, grant to such person, immunity from prosecution.

Amendment

Clause 59 of the Bill seeks to amend section 245H of the Income-tax Act relating to power of Settlement Commission to grant immunity from prosecution and penalty.

It amends the said sub-section to provide that the Settlement Commission may, if it is satisfied that any person who made the application for settlement under section 245C has co-operated with the Settlement Commission in the proceedings before it and has made a full and true disclosure of his income and the manner in which such income has been derived, grant to such person, for the reasons to be recorded in writing, immunity from prosecution.

Reason

As immunity is provided from prosecution by the Settlement Commission, it is proposed to amend sub-section (1) of section 245H of the Income-tax Act so as to provide that the Settlement Commission while granting immunity to any person shall record the reasons in writing in the order passed by it.

Effective date

This amendment will take effect from 1st June, 2015.

Is grant of immunity automatic?

The question arises whether the grant of immunity is automatic on the applicant fulfilling the necessary conditions ? It was difficult to presume such a proposition. The Supreme Court had occasion to review this aspect in the case of *CIT vs. B.N. Bhattachargee [1979] 118 ITR 461/ 1 Taxman 348* and observed :

"It is not inappropriate to state that the policy of the law as disclosed in Chapter XIX-A is not to provide a rescue shelter for big tax dodgers who indulge in criminal activities by approaching the Settlement Commission. The Settlement Commission will certainly take note of the gravity of economic offences on the wealth of the nation which the Wanchoo Committee had emphasised and will exercise its power of immunisation against criminal prosecutions by using its power only sparingly and in deserving cases, otherwise, such orders may become vulnerable if properly challenged". (p. 487)

The grant of immunity is not automatic and will depend on the facts and circumstances of each case. It creates a problem for the Commission in determining what constitutes gravity of an offence or what constitutes a deserving case. The quantum of concealed income cannot be the determining factor because that will depend upon volume of business carried on by such person and will have little impact on the gravity of the offence. It may be reasonable to assume that to determine the gravity the Commission may have to look into nature of the business operation, the manner in which such income has been earned rather than giving weightage to the quantum of the concealment.

Section 245HA – Abatement of proceeding before Settlement Commission

Introduction

The Finance Act, 2007 provided that, if the application made on or after 1-7-2007 is

- Rejected or
- Pending application is declared invalid or
- Admitted and undisposed application is not allowed to be further proceeded with or
- The settlement order is not passed within the specified period,

the proceedings before the Commission shall abate and the Assessing Officer or other Income Tax Authority before whom the proceedings were pending at the time of making the application, as the case may be, shall resume and complete the proceedings. Credit shall be allowed by the Assessing Officer for the tax and interest paid by the assessee. The period from the date on which the application was made before the Commission and up to the date on which proceedings get abated shall be excluded from the time-limit for completing the proceedings by the Assessing Officer.

Existing provision

The existing provision contained in sub-section (1) of section 245HA of the Income-tax Act provides for abatement of proceedings in different situations (as enumerated above) i.e the Settlement Proceedings come to an end.

Proposed Amendment

Clause 60 of the Bill seeks to amend section 245HA of the Income-tax Act relating to abatement of proceeding before Settlement Commission by inserting new clause (iiia) to sub-section (1) and new clause (ca) to the Explanation.

It amends sub-section (1) of section 245HA of the Income-tax Act to provide that where in respect of any application made under section 245C, an order under sub-section (4) of section 245D has been passed not providing for the terms of settlement as required under sub-section (6), then, the proceedings before the Settlement Commission shall abate on the day on which the order under sub-section (4) of section 245D was passed not providing for the terms of settlement.

Reason

The existing provision contained in sub-section (1) of section 245HA of the Income-tax Act

provides for abatement of proceedings in different situations. Sub-section(6) of section 245D provides that every order passed under sub-section (4) shall provide for the terms of settlement including any demand by way of tax, penalty or interest, the manner in which any sum due under the settlement shall be paid and all other matters to make the settlement effective and shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts.

Section 245K – Bar on subsequent application for settlement

The Finance Act, 2007 provided that after 1-6-2007, an assessee can apply for Settlement Commission only once during his life time. However, an application not admitted shall not be deemed to be an application.

Existing provisions

The existing provisions contained in the sub-section(2) of Section 245K provides that where an application of a person has been allowed to be proceeded with under sub-section (1) of section 245D, then, such person shall not be subsequently entitled to make an application before the Settlement Commission. Sub-section(1) further provides that in certain situations the person shall not be entitled to apply for settlement before the Settlement Commission.

Amendment

Clause 61 of the Bill seeks to amend section 245K of the Income-tax Act relating to bar on subsequent application for settlement.

It amends section 245K of the Income-tax Act to provide that any person related to the person who is barred on subsequent application for settlement also cannot make any application subsequently before the Settlement Commission. The expression "related person" with respect to a person has also been clarified to mean : –

(i) Where such person is an individual, any company in which such person holds more than fifty per cent of the shares or voting power at any time, or any firm or association of person or body of individual in which such person is entitled to more than fifty per cent of the profits at any time, or any Hindu undivided family in which such person is a karta;

(ii) Where such person is a company, any individual who held more than fifty per cent of the shares or voting power in such company at any time before the date of application before the Settlement Commission by such person;

(iii) Where such person is a firm or association of person or body of individual, any individual who was entitled to more than fifty per cent of the profits in such firm, association of persons or body of individuals, at any time before the date of application before the Settlement Commission by such person;

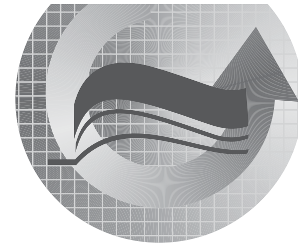
(iv) Where such person is an undivided Hindu family, the karta of that Hindu undivided family.

Reason

The restriction of subsequent application is presently applicable to a person. Therefore, an individual who has approached the Settlement Commission once can subsequently approach again through an entity controlled by him. This defeats the purpose of restricting the opportunity of approaching the Settlement Commission only once for any person. Accordingly, section 245K of the Income-tax Act is amended to provide that any person related to the person who has already approached the Settlement Commission once, also cannot approach the Settlement Commission subsequently.

Effective date

This amendment will take effect from 1st June, 2015.



Mihir Naniwadekar, *Advocate*

Proposed Amendments to Revision and Reopening Provisions

1. Introduction

One of the themes underlying the tax proposals made in Budget Speech 2015 of the Hon'ble Finance Minister has been the promotion of 'Make in India': promotion of manufacturing and entrepreneurship in India. One of the key ingredients for successfully pursuing such a policy has been a recognition of the need for a tax regime which promotes certainty, predictability and stability. To achieve these objectives, one important element is to ensure finality of proceedings. The existing law also recognises this, in ensuring key checks on powers to revisit concluded assessments and reopen concluded issues. At the same time, finality cannot be an end in itself; and it is necessary to balance the need for finality with the need to ensure that errors are not perpetuated. The Finance Bill, 2015 proposes to introduce some amendments in provisions pertaining to reopening and revisionary proceedings in order to achieve a balance between these competing interests.

2. Amendments pertaining to sanction for reopening

Section 147 of the Income-tax Act, 1961, gives wide powers to the Assessing Officer to reopen a concluded assessment if the Officer has reason to believe that income has escaped assessment. The Courts have interpreted the phrase "reason to believe" in a purposive manner to ensure that the powers u/s. 147 are not exercised arbitrarily without any fresh or tangible material. The concept of "change of opinion" has been considered as an in-built check on such arbitrary reopening. Another check is provided in section 151 in the form of sanction for reopening required from superior departmental authorities, as a means of ensuring that the Assessing Officer does not exercise unbridled and unguided discretion. However, the requirement of sanction in the existing section 151 prescribed different sanctioning authorities based on whether original assessment was completed u/s. 143(3), whether notice is issued within 4 years or beyond 4 years, what is the rank of the AO proposing to issue notice u/s. 148 etc. The Finance Bill, 2015 (clause 35) proposes an amendment in the sanctioning procedure in order to ensure simplicity. With effect from 1-6-2015, it is proposed to provide that for notices issued within 4 years of the end of the relevant assessment year, approval of the Joint Commissioner shall be required; while for notices beyond 4 years, approval of the Principal Chief Commissioner/Chief Commissioner/Principal Commissioner/Commissioner shall be essential. The sanctioning procedure is thus sought to be simplified by providing adequate departmental oversight over exercise of discretion, based on the number of years which have elapsed since the end of the relevant assessment year.

3. Proposed amendment to s. 263

Other than the power to reopen assessment, the main provision which allows the Department to correct orders of Assessing Officers which are

prejudicial to the interests of the revenue is s. 263. S. 263 authorises the Commission to revise an order which is erroneous in so far as it is prejudicial to the interests of the revenue.

The Supreme Court has held that both the elements – 'erroneous' and 'prejudicial to the interests of the Revenue' – must be satisfied before invoking powers u/s. 263: ***Malabar Industrial Co. 243 ITR 83.*** An incorrect application of law will constitute an erroneous order, and total non-application of mind by the Assessing Officer will also constitute an erroneous order. However, where the AO has taken one of two possible views, then the order cannot be said to be erroneous. Some of the principles pertaining to exercise of jurisdiction u/s. 263 were summarised by Delhi High Court in Ashish Rajpal's case 320 ITR 624, as under:

– The power is supervisory in nature, whereby the Commissioner can call for and examine the assessment records…

– The Commissioner can revise the assessment order if the twin conditions provided in the Act are fulfilled, that is, the assessment order is not only erroneous but is also prejudicial to the interest of the Revenue. The fulfilment of both the conditions is an essential prerequisite. ***[See Malabar Industrial Co. Ltd vs. CIT (2000) 243 ITR 83(SC)]***

– An order is erroneous when it is contrary to law or proceeds on an incorrect assumption of facts or is in breach of principles of natural justice or is passed without application of mind, that is, is stereo-typed, in as much as, the Assessing Officer, accepts what is stated in the return of the assessee without making any enquiry called for in the circumstances of the case…

– Every loss of tax to the Revenue cannot be treated as being "prejudicial to the interest of the Revenue". For example, when the Assessing Officer takes recourse to one of the two courses possible in law or where there are two views possible and the Commissioner does not agree with the view taken by the Assessing Officer which has resulted in a loss. ***[See CIT vs. Max India Ltd. (2007) 295 ITR 282 (SC)]…***

– If the Assessing Officer acts in accordance with law his order cannot be termed as erroneous by the Commissioner, simply because according to him, the order should have been written "more elaborately". Recourse cannot be taken to Section 263 to substitute the view of the Assessing Officer with that of the Commissioner. ***[See CIT vs. Gabriel India Ltd (1993) 203 ITR 108 (Bom)]…***

The Finance Bill, 2015 [clause 65] proposes to introduce a second Explanation to s. 263 to clarify the ambit of the phrase "erroneous in so far as it is prejudicial to the interests of the revenue". As noted in Ashish Rajpal, there has been some controversy relating to the interpretation of s. 263 and particularly when powers u/s 263 are sought to be invoked when in the opinion of the Commissioner, the AO granted relief to assessees without making proper enquiry.

In this connection, the Courts appear to have made a distinction between cases where there is total non-application of mind by the AO (which would be considered erroneous and prejudicial to the interests of the revenue), and other cases where the AO makes some enquiry and takes a possible view, but the CIT feels that the enquiry ought to have been more detailed. The general position taken has been that powers u/s. 263 can be invoked in the former case but not in the latter. Further, as recently held by the Hon'ble Bombay High Court in ***CIT vs. Fine Jewellery ITXA 296/2013 (decided on 3-2-2015)***, once the AO has raised a query in relation to a certain aspect, he is to be treated as having examined the issue. Even if the assessment order does not discuss the issue, if the AO raises a query in assessment proceedings, then he is deemed to have applied his mind and there can be no recourse to s. 263.

The new Explanation proposed to be inserted in s. 263 reads as follows:

"Explanation 2.—For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner,—

(a) The order is passed without making inquiries or verification which should have been made;

(b) The order is passed allowing any relief without inquiring into the claim;

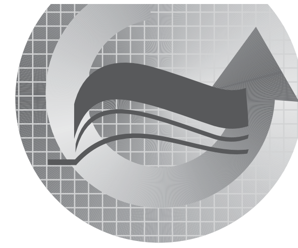
(c) The order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or

(d) The order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person."

The Explanation uses the words "in the opinion of the Principal Commissioner or Commissioner"; however, it seems clear that this "opinion" must be based on objective and cogent reasons and materials. In so far as categories (c) and (d) enlisted therein, there cannot be any difficulty: if the assessment is contrary to a CBDT Circular or to decisions of the Supreme Court or jurisdictional High Court, then the assessment order will certainly be erroneous and prejudicial to the interests of the revenue. However, categories (a) and (b) may give rise to some difficulties. In particular, category (b) deems an order to be erroneous and prejudicial to the interests of the revenue if relief is allowed without inquiring into the claim. This category could conceivably refer to the cases where there is no inquiry whatsoever, i.e., there is no application of mind at all by the Assessing Officer. Category (a) is the most troublesome. It deems an order to be erroneous and prejudicial to the interest of the revenue if in the Commissioner's opinion, the assessment order is passed 'without making inquiries or verification which should have been made'. If one were to read this literally, it could argued that this would cover cases where in the Commissioner's opinion, the AO ought to have made a more detailed enquiry. In other words, a literal reading would suggest that the Commissioner's opinion is being allowed to substitute the view taken by the AO. It is respectfully submitted that such a literal reading ought not be taken. Just as Courts in interpreting s. 148 have brought in the concept of "change of opinion" as an in-built check on powers to reopen, so also, it is necessary to interpret the words "in the opinion of the Commissioner, the order is passed without making enquiries or verification which should have been made" purposively. The Memorandum explaining the provisions clearly states that the amendment is intended to provide clarity to the issue: the underlying scheme or nature of the provision is not sought to be changed. In other words, it is essential that before exercising powers under clause (a) of the Explanation, there ought to be some objective, tangible material before the Commissioner to indicate that enquiries which clearly ought to have been made were not actually made. The "opinion" of the Commissioner cannot be read as purely the subjective satisfaction of the Commissioner that enquiry could have been made differently. Unless the new Explanation is read in such manner, it is respectfully submitted that there would be a risk of giving unbridled discretion to the Commissioner: that surely does not seem to be the real intent behind the provision.

4. Conclusion

The Finance Bill has thus sought to bring in some important changes, particularly in relation to s. 263. In so far as s. 151 is concerned, the proposed amendments are clearly to ensure streamlining of the procedure for obtaining sanction. However, the proposed amendments to s. 263 appear to be slightly different. Although stated to be only for bringing clarity, the amendments may result in some lack of clarity on when jurisdiction u/s. 263 can be exercised. It is respectfully submitted that the new amendment must be read keeping in mind the scheme of the entire section, and taking into account the principle that concluded assessments ought not be revised simply on the basis of different opinion of the Commissioner. The reference to the Commissioner's 'opinion' that the order is erroneous and prejudicial must not be read as being purely subjective in nature, but the opinion must be based on objective and cogent material. Unless so interpreted, there would be a risk of the explanation placing unguided discretion in the hands of the Commissioner: surely, this would be contrary to the legislative intent.



CA. H. N. Motiwalla

Proposals Relating to Definition of Accountant in Section 288

Authorised representative

The title of section 288 of the Income-tax Act, 1961 is "Appearance by Authorised Representative". The section permits an assessee to represent before the Appellate Tribunal or any Assessing authority in connection with any proceedings under the Act by an authorised representative. The term authorised representative is define under sub section (2) of section 288. The authorisation should be in writing for the representation. The right to appear through an authorised representative does not extent to cases where the assessee is required under section 131 to attend personally for examination on oath or affirmation.

As per sub-section (2) of section 288 authorised representative means a person authorised by the assessee in writing to appear on his behalf, being:

"(i) A person related to the assessee in any manner, or a person regularly employed by the assessee; or

(ii) Any officer of a Scheduled Bank with which the assessee maintains a current account or has other regular dealings; or

(iii) Any legal practitioner who is entitled to practise in any civil court in India; or

(iv) An accountant; or

(v) Any person who has passed any accountancy examination recognised in this behalf by the Board; or

(vi) Any person who has acquired such educational qualifications as the Board may prescribe for this purpose; or

[(via) Any person who, before the coming into force of this Act in the Union Territory of Dadra and Nagar Haveli, Goa, Daman and Diu, or Pondicherry, attended before an income-tax authority in the said territory on behalf of any assessee otherwise than in the capacity of an employee or relative of that assessee; or]

(vii) Any other person who, immediately before the commencement of this Act, was an income-tax practitioner within the meaning of clause (iv) of sub-section (2) of section 61 of the Indian Income-tax Act, 1922 (11 of 1922), and was actually practicing as such.

Explanation.— In this section, "accountant" means a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949), and includes, in relation to any State, any person who by virtue of the provisions of sub-section (2) of section 226 of the Companies Act, 1956 (1 of 1956), is entitled to be appointed to act as an auditor of companies registered in that State".

Thus, authorised representative includes an "accountant" as defined in the Explanation.

Proposal and object of amendment

Now, clause 77 of the Finance Bill, 2015 proposes to amend the Explanation with effect from June 1, 2015. The Memorandum explaining the provisions of the Bill clarifies the object for propose amendment as under:

"The Act contains several provisions (e.g. section 44AB, section 80-IA, section 92E, section 115JB, etc.) which mandate the taxpayers to furnish audit reports and certificates issued by an 'accountant' for ensuring correct reporting/computation of taxable income by the tax-payers. Explanation below section 288(2) of the Act defines an 'accountant' as a chartered accountant within the meaning of Chartered Accountants Act, 1949 (including a person eligible to be appointed as auditor under section 226(2) of the Companies Act, 1956, of the companies registered under any State).

The Comptroller and Auditor General of India (C&AG) published its report on "Appreciation of Third Party (Chartered Accountant) Certification in Assessment Proceedings" (No. 32 of 2014). In para 3.9 of the Report, it has been stated that the Chartered Accountants Act, 1949 debars an auditor to express his opinion on the financial statement of any business or any enterprise in which he, his relative, his firm or partner in the firm, has substantial interest. However, during the course of audit, it has been noticed that an auditor has furnished his report in Form 56F in respect of a closely held company in which the auditor's brother was the managing director.

To ensure the independence of auditor, sub-section (3) of section 141 of the Companies Act, 2013 contains a list of certain persons who are not eligible for appointment as auditor. The audit/certification function under the Income-tax Act is mainly provided for protecting the interests of revenue. An auditor who is not independent cannot meaningfully discharge his function of protecting the interests of revenue. Therefore, it is proposed to amend section 288 of the Act to provide that an auditor who is not eligible to be appointed as auditor of a company as per the provisions of sub-section (3) of section 141 of the Companies Act, 2013 shall not be eligible for carrying out any audit or furnishing of any report/certificate under any provisions of the Act in respect of that company. On similar lines, ineligibility for carrying out any audit or furnishing of any report/certificate under any provisions of the Act in respect of non-company is also proposed to be provided. However, it is proposed to provide that the ineligibility for carrying out any audit or furnishing of any report/certificate in respect of an assessee shall not make an accountant ineligible for attending income-tax proceeding referred to in sub-section (1) of section 288 of the Act as authorised representative on behalf of that assessee. It is further proposed to provide that the person convicted by a court of an offence involving fraud shall not be eligible to act as authorised representative for a period of 10 years from the date of such conviction. (It is also proposed to revise the definition of 'accountant' in Explanation below section 288(2) of the Act on the lines of definition of 'chartered accountant' in the Companies Act, 2013).

Prohibition by ICAI

The Institute of Chartered Accountants of India *vide* Council Guidelines No. 1-CA(7)/02/2008 dated August 8, 2008 invited attention to its members as under:

"A member of the Institute shall not express his opinion on financial statements of any business or enterprise in which one or more persons, who are his "relatives" within the meaning of section 6 of the Companies Act,1956 have either by themselves or in conjunction with such member, a substantial interest in the said business or enterprise".

For the purpose of compliance of clause (4) of Part I of the Second Schedule of the Chartered Accountants Act, 1949 the Institute has clarified that "substantial interest" means not less than 20% of voting power or 20% share of profit owned beneficially.

Thus, the Institute has prohibited the members to express any opinion on the financial statement of any business or enterprise in which his relative has substantial interest.

The Finance Bill, 2015

In pursuance to the object stated above the Bill proposes to amend the Explanation to provide that the expression "accountant" means a Chartered Accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 who holds a valid certificate of practice under sub-section (1) of section 6 of that Act. It is further proposed to provide that the accountant shall not include the following persons except for the purpose of representation before any Income Tax proceeding.

(a) In case of assessee, being a company, the person who is not eligible for appointment as an auditor of the said company in accordance with the provisions of sub-section (3) of section 141 if the Companies Act, 2013, or

(b) in any other case:

 (i) The assessee himself or in case of the assessee, being a firm or association of persons or Hindu undivided family, any partner of the firm, or member of the association or the family;

 (ii) In case of the assessee, being a trust or institution, any persons referred to in clauses (a), (b), (c) and (cc) of sub-section (3) of section 13;

 (iii) In case of a person other than persons referred to in sub-clauses (i) and (ii), the person who is competent to verify the return under section 139 in accordance with the provisions of the section 140;

 (iv) Any relative of any of the persons referred to in sub-clauses (i), (ii) and (iii);

 (v) An officer or employee of the assessee;

 (vi) An individual who is a partner, or who is in the employment, of an officer or employee of the assessee;

 (vii) An individual who, or his relative or partner is holding any security of or interest in the assessee. It is also provided that the relative may hold security or interest in the assessee of the face value not exceeding one hundred thousand rupees;

(viia) An individual who, or his relative or partner is indebted to the assessee. It is also provided that the relative may be indebted to the assessee for an amount not exceeding one hundred thousand rupees.;

(viib) An individual who, or his relative or partner has given a guarantee or provided any security in connection with the indebtedness of any third person to the assessee. It is also provided that the relative may give guarantee or provide any security in connection with the indebtedness of any third person to the assessee for an amount not exceeding one hundred thousand rupees;

(viii) A person who, whether directly or indirectly, has business relationship with the assessee of such nature as may be prescribed;

(ix) A person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction".

Further, it is also proposed to amend sub-section (4) of the said section so as to provide that a person who has been convicted by a Court of an offence involving fraud shall not be qualified to represent an assessee under sub section (1) of the said section for a period of 10 years from the date of conviction.

Another Explanation at the end of sub section (7) of section 288 proposes to provide that the expression "relative" in relation to an individual means:

"a) Spouse of the individual;

(b) Brother or sister of the individual;

(c) Brother or sister of the spouse of the individual;

(d) Any lineal ascendant or descendant of the individual;

(e) Any lineal ascendant or descendant of the spouse of the individual;

(f) Spouse of a person referred to in clause (b), clause (c), clause (d) or clause (e);

(g) Any lineal descendant of a brother or sister of either the individual or of the spouse of the individual.".

Companies Act, 2013

Sub-section (3) of section 141 of the Act, prohibits the following persons for appointment as an auditor of the company read with Rule 10 of the Companies (Audit and Auditors) Rules, 2014.

a) A body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008 (6 of 2009);

(b) An officer or employee of the company;

(c) A person who is a partner, or who is in the employment, of an officer or employee of the company;

(d) A person who, or his relative or partner —

(i) Is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a

subsidiary of such holding company:

Provided that the relative may hold security or interest in the company of face value not exceeding rupees one lakh.

(ii) Is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of rupees one lakh or

(iii) Has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of rupees one lakh.

(e) A person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company as prescribed in sub-rule (4) of Rule 10.

(f) A person whose relative is a director or is in the employment of the company as a director or key managerial personnel;

(g) A person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such person or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies;

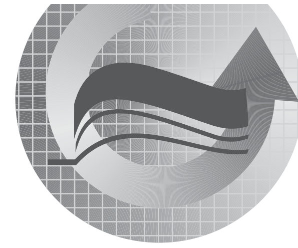
(h) A person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction;

(i) Any person whose subsidiary or associate company or any other form of entity, is engaged as on the date of appointment in consulting and specialised services as provided in section 144.

Conclusion

So, from reading above it is clear that no financial statement, certificate, or report would be attested by any person who is covered as an "accountant" in the proposed Explanation to sub section (2) of section 288. However, such person is entitled to represent before the Assessing Officer or any other proceeding including Appellate proceedings on behalf of the assessee, though he may be an accountant in the proposed Explanation.

However, it is not clear why the proposed amendments have been suggested in this section, particularly this section provides for representation by authorised representative before the Income-tax authorities. An accountant though disqualified for attestation function is allowed to represent as authorised representative in other capacity. But, a Chartered Accountant can represent if he holds a valid certificate of practice i.e. his certificate is not cancelled or suspended.



CA. Kinjal Bhuta

Miscellaneous Proposals in Finance Bill, 2015

Following are few of the Miscellaneous Provisions as proposed by the Finance Minister in the Finance Bill presented by him.

1. Wealth tax abolished (with effect from 1-4-2016)

1.1 The existing provisions contained in sub section (2) of the section 3 of the Wealth tax Act, provides that Wealth tax in respect of net wealth of every individual, HUF and company is charged at the rate of one percent of net wealth exceeding ` 30,00,000/-. This Act commenced from 1st April, 1993 and the subsequent years.

1.2 It is now proposed to amend the said section, to provide that no wealth tax shall be charged after 1st April, 2016. Accordingly, wealth tax shall not be Applicable from A.Y.: 2016-17. The levy of wealth tax over the years has brought a nominal revenue collection but created a significant amount of compliance burden for assessee as well as administrative burden on the income tax department.

1.3 However at the same time, it is also necessary to tax the super rich and the high net worth individuals, therefore it is proposed by the government to levy a surcharge of two per cent on taxpayers earning income over rupees one crore. Levy of such surcharge shall enhance the revenue and also reduce the burden of compliance from assessee and administrative point of view. It is also proposed that the information which was provided by the assessee regarding the assets in the wealth tax return, now shall be suitably captured in the income tax returns only and to that extent the return forms shall be modified.

2. Exemption of income of Core Settlement Guarantee Fund (with effect from 1-4-2016)

2.1 Under the provisions of Securities Contracts (Regulation) (Stock Exchanges & Clearing Corporations) Regulations, 2012 (SEC) notified by SEBI, the clearing corporations are mandated to establish a fund, called Core Settlement Guarantee fund (Core SGF) for each segment of each recognised stock exchange to guarantee the settlement of trades executed in respective segments of the exchange.

2.2 Currently, income by way of contributions to the Investors Protection Fund set up by recognised stock exchanges in India, or by commodity exchanges and depository are exempt from tax. To align with the existing provisions, it is proposed to insert new clause (23EE) to section 10 to provide exemption in respect of income of Core SGF arising from contribution received and investment made by the fund and from the penalties imposed by Clearing Corporation subject to similar conditions as provided in case of Investor's Protection Fund set up by a recognised stock exchange or a commodity exchange or a depository.

2.3 However, any amount standing to the credit of Fund and not charged to income-tax during any previous year and is shared, either wholly or in part with recognized clearing corporation which

establishes and maintains the Core Settlement Guarantee Fund and the recognised stock exchange being the shareholder of such company corporation, the amount so shared shall be deemed to be the income of year in which such amount is shared

3. Tax neutrality on merger of similar schemes of mutual fund (with effect from 1-4-2016

3.1 This is a welcome provision to bring in simplicity and reduce multiplicity of schemes offered by mutual funds. Securities and Exchange Board of India has been encouraging mutual funds to consolidate different schemes having similar features so as to have simple and fewer number of schemes. However, such mergers/consolidations are treated as transfer and capital gains are imposed on unitholders under the Income-tax Act and therefore the consolidation of schemes had become troublesome because of high tax impact.

3.2 In order to facilitate consolidation of such schemes of mutual funds in the interest of the investors, it is proposed to provide tax neutrality to unitholders upon consolidation or merger of mutual fund schemes provided the following:

i. The consolidation is of two or more schemes of an equity oriented fund or two or more schemes of a fund other than equity oriented fund.

ii. The cost of acquisition of the units of consolidated scheme shall be the cost of units in the consolidating scheme.

iii. Period of holding of the units of the consolidated scheme shall include the period for which the units in consolidating schemes were held by the assessee.

3.3 Consolidating scheme is defined as the scheme of a mutual fund which merges under the process of consolidation of the schemes of mutual fund in accordance with the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 and Consolidated Scheme as the scheme with which the Consolidating Scheme merges or which is formed as a result of such merger.

4. Introduction of 2 new funds to section 10(23C) and deductions under section 80G

4.1 Since coming into power, the current Government has always focused on sanitation and clean India through their project of Swacch Bharat Abhiyan. With a view to encourage and enhance people's participation in the national effort to improve sanitation facilities and rejuvenation of river Ganga, it is proposed to amend section 80G of the Act so as to incentives donations to the two funds.

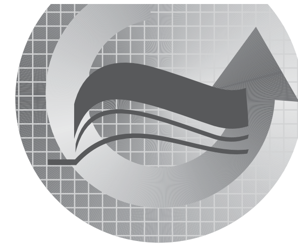
4.2 Section 80G of the Act, provides for deduction of 50% of amount donated to charitable funds and institutions, except in certain funds and institutions which are formed for social purpose of national importance, wherein 100 per cent deduction of amount donated is allowed to the donor.

4.3 It is proposed to provide that donations made by any donor to Swachh Bharat Kosh and any domestic donors to Clean Ganga Fund will be eligible for 100% deduction from the total income. However, any amount spent by assessee in pursuance to corporate social responsibility under section 135(5) of Companies Act, 2013 will not be eligible for deduction from the total income of donor.

4.4 Section 10(23C) provides for exemption of tax from income of certain charitable funds and institutions which are specified in the section. Considering the importance of Swachh Bharat Kosh and Clean Ganga Fund, it is proposed to amend section 10(23C) to exempt income of these funds from tax. These beneficial provisions are applicable from 1-4-2015 itself. i.e., any person making donation before 31st March, 2014 can avail of deduction in A.Y: 2014-15 itself.

4.5 Section 80G is also amended to provide 100 percent deduction in respect of donations made to the National Fund for control of drug abuse constituted under section 7A of Narcotic Drugs and Psychotropic substance Act, 1985. This amendment shall be applicable from 1-4-2016.

All the above provisions introduced are a step forward towards social development of India. It shall foster a simplistic tax regime and shall entail into an investor friendly economy provided the provisions are executed in its true spirit.



CA. Bhavna Doshi

Budget 2015 – Overview of Indirect Tax Proposals

The focus of indirect tax proposals in the Finance Bill, 2015 is on the proposed big-bang reform of indirect tax system; Goods and Services Tax (GST). The commitment of Government to facilitate implementation of GST from 1-4-2016 is reiterated by the Finance Minister in the Budget Speech.

Finance Minister also stated that work on different fronts is in progress for GST implementation though we do find much detailing in public domain at present. One would have expected the law, the rules and the processes to be finalised by now and available to businesses to enable them to prepare for transition to this completely new regime from 1-4-2016, expected to be a game changer for the country. It is expected to reduce cost of doing business, enhance competitiveness of Indian businesses, bring major part of economic activities above ground besides several other benefits.

As of today, while the design of the new system is, so to say, finalised, there does not seem to be complete clarity and different versions and perspectives prevail. Take for example, the recent article in ***Mumbai Mirror*** on March 1, 2015 where the understanding is that there will be one GST at the Central Level and that "all States of India give up their right to charge State level sales tax (called VAT)". That would, of course, be dream come true for businesses and make doing business much, much easier as compared to current environment but, is it so?

We hear and see presentations by senior officers of Government, read reports of deliberations at Empowered Committee as also have reference of enabling power proposed in the Constitutional Amendment Bill that there will be Central GST imposed and collected by Central Government, subsuming Central Excise Duty and Service Tax as principal taxes and State GST imposed and collected by each State, subsuming State Level VAT as principal tax. So, we will have one Central GST and several State GSTs; parallel levies with no cross credits.

The question, businesses who have initiated work to assess impact of proposed GST often ask is: will this system reduce or increase the cost of compliance? Answer depends on the ability of Governments to understand the challenges and work towards solutions which can be win-win for all.

Several issues need to be resolved and many challenges to be met starting from Constitutional Amendment itself for implementation of GST. Let us hope, the Finance Minister will ensure, like what he has done for proposals in current Budget relating to change in corporate tax rates, removal of exemptions, that the trade and industry get time of at least 6 months, if not one year, to prepare for implementation; change processes, systems and train all concerned. Government too will need to invest heavily in imparting training and more so, in changing mindset of administrators.

In preparation for GST, Finance Minister has proposed removal of education cess; rate of basic Central Excise Duty is proposed to be rounded off to 12.50% (from current 12%) and that of Service tax is proposed to be increased to 14% (from current 12%). In addition, enabling power is taken by

Central Government to increase this rate to 16% (2% being for Swachh Bharat Abhiyan), if need arises.

While removal of education cess is a welcome step, is the rate of 14% an indication of the rate that Central Government is looking at for C-GST? The rate of State GST is also now around 14% in most States.

But, then, the rate of Central Excise Duty is maintained at 12.5% and not increased to 14%. Key thought for this move seems to be to support manufacturing sector, which, as per reports, has remained stagnant for several years losing its share in GDP. Whereas, services sector has been growing steadily and share of services sector in GDP is now almost 65%. At the same time, the share of services sector in tax revenue is fairly low at 11.5%. Service sector thus has scope to bear burden of additional taxes. And, that seems to be the reason for taking enabling power to impose Swachh Bharat cess of 2% only on services and not on goods or income, in general.

This move will also start preparing services sector for the additional burden that it will have to bear initially, which, ultimately will be passed on to the consumers and, in that sense, it will also prepare service consumers for the additional burden that they will have to bear when GST is introduced as the rate of tax, at that time, will increase with State Governments also imposing tax on services. Of course, its impact will not be equal to the rate since the sector will also be eligible for input tax credits of State VAT (it will be S-GST at that time).

One thought is that the total burden of tax in GST regime on services sector will be 16% (8% for Central Government and 8 % for State Government) and it will not be as high as 28% (14%+14%) though, current indications of revenue neutral rate (prior to the proposal to not levy GST on petroleum products) do indicate range of 24-28%. This could reduce following decision relating to petroleum products.

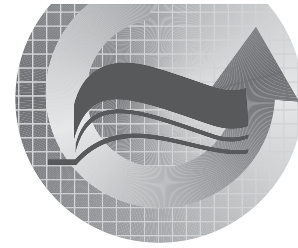
While rate of Service tax is increased in preparation for GST, one would have liked to see increase in basic exemption too from current level of ` 10 lakhs. Threshold under GST, as per current indications, could be ` 50 lakhs and if that is so, the basic exemption for service sector could have been increased to ` 20-25 lakhs.

Major changes are required in CENVAT Credit Scheme to prepare for implementation of GST like allowing input tax credit for all expenses incurred wholly for furtherance of and in the course of business. Similarly, amendments are also required in Place of Provision of Service Rules to avoid double or no taxation. These have not been addressed and we do hope that these and other issues will be dealt with in the days to come as stated by State Finance Minister in the interviews post Budget presentation. These are increasing cost of doing business as also litigation and need redressal with urgency. Rationalisation of penalty regime is a welcome step in this direction. Changes proposed in the Finance Bill, 2015 are dealt with, in detail, separately in articles in this booklet.

It is heartening to note that Government is studying, in detail, recommendations made by Tax Administration Reforms Commission (TARC) in its Reports which have identified several areas in tax administration that need attention. In fact, this is much needed reform in our tax system to transform our tax administration from what is often referred to as "Bullock Cart Age" to the "New Tech Age"; reposing trust and faith in the tax payers while being tough on evaders; removing the scourge of corruption which can only come from clarity, transparency, openness and above all, accountability.

I learnt recently, while dealing with an international matter where identical business model prevailed in more than one country, that in one of the developed nations, additions/disallowances are not unreasonable since the tax officer who proposes (makes) the addition/disallowance is personally accountable for them and the Tax Department is answerable for the same. Thus, if the Court does not uphold them, costs are imposed and tax-payer is compensated for the trouble, time and cost that the tax-payer has to bear due to unreasonable disallowances.

Let us dream of such accountability and hope that we will have the New Look Tax Administration and Policy that will bring "Acche Din" in true sense for the tax-payers.



CA. Rajkamal Shah & CA Naresh Sheth

Service Tax Proposals and Amendments

The Hon'ble Finance Minister has introduced Finance Bill, 2015 in Lok Sabha on 28-2-2015 charting the road map of economic recovery, boosting saving and investment including introduction of social security scheme leading India towards major economic power of the world. The changes are proposed in the direct and indirect tax regime. An attempt is made in this article to explain Service amendments and CENVAT credit amendments in relation to services.

Highlights of Service tax amendments

- Change in the rate of tax to 14% (subsuming the Cesses levied currently) from 12.36%.
- Swachh Bharat Cess – An enabling provision is made to empower the Central Government to impose Swachh Bharat Cess @2% on all or any taxable services as may be notified.
- All services provided by the Government or local authority to business entities now becomes taxable.
- Services like of lottery agents/ distributors, foremen of chit fund are now covered under service tax ambit.
- Construction, erection, commission, installation, repairs maintenance etc. for Government educational, clinical, are and cultural establishments now becomes taxable.
- Certain services like lottery, right to admission to entertainment event or amusement facility, activity of manufacture or production of alcoholic liquor for human consumption are removed from the negative list and / or the exemption list, giving rise to double taxation by the State and the Centre to a certain extent.
- Revamping / streamlining the penalty regime and introducing penalty on non – payment / short payment of service tax or erroneous refund even without invoking fraud, collusion, wilful misstatement or suppression of facts without intent to evade payment of service tax.
- Reimbursement of expenditure made part of consideration.
- Streamlining the registration process.
- Changes in exemptions, abatements and reverse charge mechanism.
- Time limit of taking CENVAT credit of duty paid on inputs or service tax paid on inputs by manufacturer or output service

provider is extended from six months to twelve months.

The above changes are explained below in the chronological order of the effective date coming into force.

Effective from 1-3-2015

1. Registration of single premise

For trust based registration the Order prescribes simplification of registration process with immediate effect, the requirement of documentation, time limits and procedure for registration is also laid down. It is necessary to have Permanent Account No. (PAN) for registration except in case of Government department and the existing registrants not having PAN is required to obtain the same and apply online for conversion of temporary registration to PAN based registration within 3 months, failing which the temporary registration shall be cancelled after giving opportunity to represent against such cancellation. Registration for single premises would be granted within two days of filing online completed application form and registration certificate which can be downloaded from ACES which would be sufficient proof of registration. The applicant is required to submit self attested copy of the required documents by registered / speed post to the concerned division within 7 days of filing of Form ST – 1 online, thus obviating the need of interface with the department. In case the need of verification of premise arise, the same shall have to be authorised by an officer not below the rank of Additional or Joint Commissioner. Provision is also made for revocation of certificate of registration in certain circumstance of specified default on the part of the assessee however not before granting an opportunity to an assessee. [Rule 4(9)]

(Order No. 1/15-ST, dated 28/02/2015 re. R. 4 of STR, effective from 01/03/2015 – copy attached)

Facility for issuing digitally signed invoices is introduced along with the option of maintaining records in electronic form and their authentication by means of digital signatures with reference to maintenance of records, issue of invoice and distribution of input service credit (R.4A of STR), consignment notes (R.4B of STR) and maintenance of records (R.5 of STR). The CBEC will notify the conditions and procedure in this regard. (Introduction of R. 4C in Service Tax Rules).

2. Changes in time limit for availment of CENVAT Credit

Time limit of 6 months from the date of issue of any documents specified in Rule 9(1) was introduced with effect from 01.09.2014, for availment of CENVAT Credit of duty / service tax paid on inputs or input services by a manufacturer or provider of output service. The said time limit of six months is now increased to one year [Third Proviso to Rule 4(1) and Sixth Proviso to Rule 4(7)]. So far as availment of CENVAT credit in respect of capital goods is is concerned there is no time limit prescribed as prevailing currently.

3. Exemption to overseas commission agent on export of goods –

Exemption under Notification No. 42/2012-ST dated 29-6-2012 to taxable services provided by a commission agent located outside India and used in export of goods by an exporter is withdrawn.

(Notification No. 03/2015-ST dated 1-3-2015)

The exemption is removed on the account of the fact that from 1-10-2014 a non-resident commission agent in relation to export of goods is outside the ambit of service tax on account of providing taxable service outside the taxable territory in pursuance of R.9 of Place of Provision of Service Rules, 2012 relating to intermediary in goods.

4. Service provided by aggregator

In respect of any service provided under aggregator model (under his brand name) such

as radio taxi etc., the aggregator, or any of his representatives located in India is liable for service tax. If an aggregator does not have any presence in India or a representative, any agent appointed by the aggregator is liable to pay the tax on behalf of the aggregator.

Thus, any person providing service by app based device with the help of web based software and enables a customer with persons providing service under his brand name is liable to pay service tax on his own or if he located outside India, the representative or agent in India. Classic examples are Uber, Ola Cabs.

Service Provider	Service recipients	Payable by Service recipient under RCM
Service providers providing services under the brand name of aggregator	Aggregator; or Representative of aggregator; or Agent of aggregator	100% of Tax liability

5. Facility of Advance Ruling extended to the resident firms

Hitherto the facility of Advance Ruling was available to a non-resident setting up a joint venture in India in collaboration with a non-resident or a resident; or a resident setting up a joint venture in India in collaboration with a non-resident; or wholly owned subsidiary Indian company of which the holding company is a foreign company, who or which, as the case may be, proposes to undertake any business activity in India; a joint venture in India; or a resident falling within any such class or category of persons, as the Central Government may, by notification in the Official Gazette, specify in this behalf. Now the facility extended to all resident firms. The term 'firm' is defined as follows:

i) The limited liability partnership as defined in clause (n) of sub-section (1) of the section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009); or

ii) Limited liability partnership which has no company as its partner; or

iii) The sole proprietorship; or

iv) One Person Company

- "Sole proprietorship" means an individual who engages himself in an activity as defined in sub-clause (a) of section 96A of the Finance Act, 1994.
- "One Person Company" means as defined in clause (62) of section 2 of the Companies Act, 2013 (18 of 2013).
- "Resident" has the meaning assigned to it in clause (42) of section 2 of the Income tax Act, 1961 (43 of 1961) in so far as it applies to a resident firm.

(Notification No. 09/2015-ST dated 01/03/2015)

6. Refund of CENVAT Credit

To streamline the process of refund of Cenvat credit on export of credit on, a new Explanation (1A) is inserted clarifying "export goods" to mean any goods which are to be taken out of India to a place outside India. [Rule 5]

7. Recovery of CENVAT Credit wrongly taken or erroneously refunded

a) A new sub-rule (1)(i) has been inserted to provide that in cases where **CENVAT Credit has been taken wrongly but not utilized,** the same shall be recovered from the manufacturer or provider of output service and the respective provisions of section 11A of Central Excise Act, 1944 or

Section 73 of Finance Act, 1994 shall apply. [Rule 14(i)]

b) A new sub-rule (2) has been inserted to provide that for the purpose of Rule 14(1), all credits taken during a month shall be deemed to have been taken on the last day of the month and the utilisation thereof shall be deemed to have occurred in the following manner :

- Opening balance of the month has been utilised first;
- Credits admissible in terms of these rules taken during the month has been utilised next;
- Credit inadmissible in terms of these rules taken during the month has been utilised thereafter [Rule 14(2)]

The imposition of penalty on availment of credit but not utilised is likely to cast heavy burden on the assessee as there could be any justifiable reason for taking credit particularly in view of the time limit of availment of credit. The term, 'wrongly' in the proposed sub-rule (1) in Rule 14 is liable to rise disputes of interpretation in Notification No. 18/2012 – CE (NT), the Government had wisely replaced the word 'taken or utilised wrongly' with the word, 'taken and utilised wrongly' as mere taking (availing) credit as against utilisation cannot result in any loss of revenue. Hence, levy of interest on such availment is not justified.

Effective from 1-4-2015 (Exemption Notification No. 25/2012 – ST as amended from time to time):

8. Expanding scope of Reverse Charge Mechanism

Service Provider	Service recipients	Nature of service	Payable by Service recipient under RCM
Mutual fund agent or distributor	Mutual fund or AMC	Agency or distribution service	100% of tax liability
Selling or marketing agent of lottery tickets	Lottery distributor or selling agent	Selling and distribution services	100% of tax liability

9. Health Care and Medical Services – (Entry 2)

- Present exemption is widened to cover transportation of patient by Ambulance **(To and From Clinical Establishment),** provided by Any person
- **Implications :**

Ambulance service provided by	Up to 31-3-2015	On or After 1-4-2015
Clinical establishment	Exempt	Exempt
Authorised medical practitioner	Exempt	Exempt
Para-medics	Exempt	Exempt
Persons other than above	Taxable	Exempt

10. Services to Government, local authority by way of construction, erection or commissioning – (Entry No. 12)

- This entry provides exemption for construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration services provided to Government or Local authority (Specified Services)

The exemption is now restricted as stated under :

Specified Service Relating to	Up to 31-3-2015	On or after 1-4-2015
Civil structure or other original works meant **predominantly** for use other than commerce, industry, business or profession	Exempt	Exemption Withdrawn and hence Taxable
Historical monument, archaeological site or remains of national importance, archaeological excavation or antiquity	Exempt	Exempt
a structure meant predominantly for use as: – educational ; or – clinical; or – art or cultural establishment	Exempt	Exemption Withdrawn and hence Taxable
Canal, dams, or other irrigation work	Exempt	Exempt
Pipeline, conduit, or plant for : – Water Supply; or – Water treatment; or – Sewerage treatment	Exempt	Exempt
Residential complex predominantly meant for self use or the use of their employees or other persons specified in explanation 1 to section 65B(44)	Exempt	Exemption withdrawn and hence Taxable

11. Services by way of construction, erection, commissioning or installation of original works – (Entry No. 14)

Exemption for Construction, erection, commissioning or installation pertaining to port and airport now withdrawn.

12. Services by an artist –(Entry No. 16)

- **Position till 31st March, 2015**
  - Service provided by a performing artist in folk or classical art forms of music, dance and theatre was exempt without any limit.
  - Exemption not available where such services are provided by brand ambassador.
- **Position on or after 1st April, 2015 :**
  - The above exemption is now restricted to cases where consideration for such performance **does not exceed Rupees one lakh**
  - All performances where consideration is **above Rupees One lakh**, will now be taxable

13. Transportation of goods by rail or vessel and road (by GTA) – (Entry Nos. 20 & 21)

Exemptions in respect of transportation of goods by rail, vessel or road (GTA) is restricted as under:

GTA service relating to	Up to 31-3-2015	On or after 1-4-2015
Items specified in entries 21(a) to (i) except those in 21(d)	Exempt	Exempt
Salt		
Food grains		
Flours		
Pulses		
Rice		
Milk		
Foodstuffs (all edible items excluding alcoholic beverages)	Exempt	Exemption withdrawn hence taxable
Edible oil		
Tea	Exempt	Exemption withdrawn hence taxable
Coffee		
Jaggery		
Sugar		
Milk products		

- **Implications**

– Traders/dealers of certain agro based products / foodstuff will now be liable to pay service tax under RCM.

14. Varishtha Pension Bima Yojana – (Entry 26A (d))

- **Position on or after 1st April 2015**

– Varishtha Pension Bima Yojana is also included in other Life insurance schemes

15. Specified Agent's Services – (Entries 29 (c), (d) and (e))

Exemption withdrawn in respect of following services:

Services	Upto 31-3-2015	On or after 1-4-2015
By mutual fund agent to: Mutual fund; or Asset Management Company	Exempt	• **Taxable** • To be paid under RCM by mutual fund / AMC
By distributor to : Mutual fund; or Asset Management Company	Exempt	• **Taxable** • To be paid under RCM by mutual fund / AMC
Selling / Marketing agent of lottery tickets to Lottery Distributor; or Selling agent	Exempt	• **Taxable** • To be paid under RCM by lottery distributor / selling agent

16. Telephone Call Services – (Entry 32)

- Position on or after 1st April, 2015:
  - Exemption was withdrawn for services by way of making telephone calls from
  - Departmentally run public telephone
  - Guaranteed public telephone operating only for local calls
  - Free telephones at airport and hospitals where no Bills are being issued

17. Operator of Common Effluent Treatment Plant – (New Entry 43)

- Effluent treatment services provided by Operator of Common Effluent Treatment Plant will be exempted
- **Implications:**
  - Term "operator of common effluent treatment plant" is not defined which may give rise to disputes.
  - It appears that services of operating effluent treatment plant in a separate plant or factory may not get this exemption

18. Specified services in relation to fruits and vegetables – (Entry 44)

New exemption is granted in respect of following services which do not change or alter the essential characteristics of the fruits or vegetables :

Pre-conditioning	Pre-cooling	Ripening
Waxing	Retail packing	Labelling

19. Admission to Museum, Wildlife, Natural Park etc. – (New Entry 45)

New exemption is granted w.e.f. 1-4-2015 in respect of admission for entry to :

Particulars	As defined under clause 2 of notification
Museum	Not defined
National Park	2(21) of The Wild Life (Protection) Act, 1972
Tiger reserve	38K(e) of The Wild Life (Protection) Act, 1972
Wildlife sanctuary	2(26) of The Wild Life (Protection) Act, 1972
Zoo	2(39) of The Wild Life (Protection) Act, 1972

- **Implications**
  - All above places are usually owned by Government or local authority and visited by individuals. Such services, being a Government service, is already covered in Negative List.

20. Exhibition of movie by an Exhibitor (Theatre Owner) – (New Entry 46)

- **Position till 31-3-2015:**
  - Usually there is a revenue sharing arrangement between distributor and exhibitor (theatre owner) to share revenue of film screening or renting of cinema hall.
  - Circular No. 109/03/2009 dated 23-2-2009 clarified that such revenue sharing was not liable to service tax
  - Circular No. 148/17/2011 – S.T. dated 13-12-2011 clarified that such revenue sharing is liable to service tax
  - Hon'ble Madras High court in the case of Mediaone Global Entertainment Ltd. [2014(34) STR 819] upheld the levy of service tax on exhibition service on revenue sharing basis.

- **Position on or after 1st April 2015**
  - Exhibition services provided by theatre owner to distributor is exempted said service even if it is on the revenue sharing basis to AOP consisting of himself as member is also exempt, hence no service tax is liable to be paid in relation to service provided by the exhibitor to the distributor. Hence, CENVAT credit will also not be allowed.

21. Admission to entertainment events– (Entry 47)

- Admission to entertainment events or access to amusement facility is proposed to be removed from the Negative List from the **date to be notified after enactment**
- Now, exemption is restricted by way of notification in respect of the following entertainment events:

Service	Present position	Position from notified date
Admission to : Cinema theatre • Circus • Dance performance • Theatrical performance including drama and ballet	In negative list u/s. 66D(j) and not taxable	Will be exempt irrespective of amount of admission or entry fees
Admission to: • Recognised Sporting event	In negative list u/s. 66D(j) and not taxable	Will be exempt if organised by recognised sport body where participants represent district, state, zone or country (irrespective amount of admission / entry fees)
Admission to: • Award function • Concert • Pageant • Musical performance • Sporting event (other than recognised sporting event)	In negative list u/s. 66D(j) and not taxable	Will be exempt where entry / admission fees is less than ` 500

Note: This would lead to dual taxation by the State and Central Governments on admission to entertainment event and amusement facilities.

22. Exemption to exporter on transport of goods by road

Exemption under Notification No. 31/2012 – ST to service provided by goods transport agency in a goods carriage to an exporter for transport of export goods from their place of removal to port or airport is now extended to any land custom station from where the goods are exported [NN. 4/2015 – ST dtd. 1-3-2015]

Abatements

23. Transport of Goods by Rail – Entry No. 2

- **Position till 31-3-2015:**

Particulars	CENVAT availability	Taxable Portion	Effective rate
Services by transport of goods by rail	CENVAT allowed in respect of: Input Input services Capital goods	30%	3.708%

- **Position on or after 1-4-2015**

Particulars	CENVAT availability	Taxable Portion	Effective rate (without SB Cess)
Services by transport of goods by rail	Non availability of Cenvat on: • Input ; • Capital Goods • Input services	30%	3.708% till notified date Thereafter 4.20%

- **Implications and Points for Consideration :**
  - There may be dual tax on transportation of goods by rail as credit of input service in relation to transport of goods by rail, road or air will not be allowed.

24. Transport of Passengers by Rail – Entry No 3

- **Position till 31-3-2015:**

Particulars	CENVAT Availability	Taxable Portion	Effective rate
Services by transport of passengers by rail	CENVAT allowed in respect of: Input Input services Capital goods	30%	3.708%

- **Position on or after 1-4-2015:**

Particulars	Cenvat Availability	Taxable portion	Effective rate (without SB Cess)
Services by transport of passengers by rail	Non availability of CENVAT on: • Input ; • Capital goods • Input services	30%	3.708% till notified date Thereafter 4.20%

- **Implications and points for consideration**
  - There may be dual tax on transportation of passengers by rail as credit of input service in relation to transport of passengers will not be allowed.

25. Transport of Passengers by Air – Entry No 5

- **Position till 31-3-2015**

Particulars	CENVAT availability	Taxable portion	Effective rate
Services by transport of passengers by any class	Non availability of CENVAT on: • Input • Capital Goods	40%	4.944%

- **Position on or after 1-4-2015**

Particulars	CENVAT Availability	Taxable Portion	Effective rate (Without SB Cess)
Passenger travelling by Economy class	Non availability of CENVAT on: • Input ; • Capital goods	40	**4.944% till notified date Thereafter 5.60%**
Passenger travelling by other than Economy class		60	**7.416% till notified date Thereafter 8.40%**

26. Goods Transport Agency – Entry No. 7

- **Position till 31-3-2015:**

Particulars	CENVAT Availability	Taxable portion	Effective rate
Services of Goods transport agency in relation to transportation of goods	Non availability of Cenvat on: • Input • Capital goods • Input services	25%	3.09%

- **Position on or after 1-4-2015:**

Particulars	CENVAT availability	Taxable portion	Effective rate (Without SB Cess)
Services of Goods transport agency in relation to transportation of goods	Non availability of Cenvat on: • Input; • Capital goods • Input services	30%	3.708% till notified date Thereafter 4.20%

27. Chit Fund Services – Entry No. 8

- **Position till 31.03.2015 :**

Particulars	CENVAT availability	Taxable portion	Effective rate
Services provided in relation to chit	Non availability of CENVAT on: • Input; • Capital goods • Input services	70%	8.652%

- **Position on or after 1-4-2015 :**
  - The services of foreman of chit fund is specifically brought into tax net
  - Abatement entry is omitted
  - Foreman of the chit fund is liable to pay service tax under straight charge at full rate
  - Foreman of the chit fund will be eligible to avail CENVAT credit in respect of inputs, capital goods and input services

28. Transport of goods in a vessel – Entry No. 10

- **Position till 31-3-2015:**

Particulars	CENVAT availability	Taxable portion	Effective rate
Services by transports of goods in a vessel	Non availability of CENVAT on: • Input; • Capital goods • Input services	40%	4.944%

- **Position on or after 1-4-2015**

Particulars	CENVAT availability	Taxable portion	Effective rate (Without SB cess)
Services by transports of goods in a vessel	Non availability of CENVAT on: • Input; • Capital goods • Input services	30%	3.708% till notified date Thereafter 4.20%

Note: In nut shell all transportation of goods and passengers by way of road and rail is now subject to tax on 30% instead of different values with the condition of non availability of Cenvat credit on input, capital goods and input services used for providing the output services.

29. Reverse Charge Mechanism

Changes in payment under reverse charge mechanism

Service provider	Service recipients	Payable by service provider	Payable by Service recipient under RCM
Individual, HUF, partnership firm and AOP – supplying manpower or security services	Business entity registered as body corporate	Nil (earlier 25%)	100% of tax liability (earlier 75%)

30. Changes in CENVAT Credit Rules

In cases of input service where whole or part of the service tax is liable to be paid by the recipient of service, CENVAT Credit of service tax payable by the service recipient is now allowed after such service tax is paid. Hence, the earlier condition of payment to service supplier of the invoice amount

in case of partial reverse charge for availment of CENVAT Credit, is done away with. [First Proviso to Rule 4(7)].

From the date of receiving assent of the President to the Finance Bill

31. Scope of definition of service expanded to include [S.65B (44)]:

a) Lottery distributor or selling agent in relation to promotion, marketing, organising, selling or facilitating in organising of State lottery of any kind in any manner now covered within the scope of definition of service:

b) A foreman of a chit fund for conducting or organizing a chit

The above activities are not to be considered as actionable claim or transaction in money, as the case may be.

Consequently the terms 'lottery distributor or selling agent' and 'foreman of chit fund' are defined in section 65B under clause (31A) and (23A) respectively.

32. Definition of 'Government' provided

'Government' is defined to include Central Government, State Governments, Union territory and the departments of all the three, but excludes entities created under statute or otherwise, the accounts of which are not required to be kept as per Article 150 of the Constitution or the rules framed thereunder. [S. 66D(a)(iv) read with section 65B(26A)].

33. Principles of interpretation of mail service and service used in provision of main service

An illustration is inserted in section 66F(1) explaining the difference between main service and a service used for providing the main service. It clarifies that reference to the main service, say provided by Reserve Bank of India does not include any input service used for providing the main service of Reserve Bank of India. In other words if the exemption relates to any output service then it cannot be said that the input service used for providing the said exempted output service is also exempt.

34. Valuation of taxable service

In section 67, the term 'consideration' hitherto included any amount that is payable for the taxable services provided or to be provided. It would now additionally include –

a) Any reimbursable expenditure or cost incurred by the service provider and charged in the course of providing or agreeing to provide a taxable service except in circumstances and conditions as prescribed in this regard.

b) Any amount retained by lottery distributor or selling agent from gross sale amount of lottery tickets in addition to fee/ commission/discount received i.e. the difference between the face value of lottery ticket and the price at which the distributor/selling agent gets such ticket.

35. Recovery of service tax not paid as per return filed

a) When a service provider furnishes return under self-assessment but does not pay service tax in part or full, the Government is empowered to initiate recovery proceedings by any mode provided under section 87 (garnishing provisions). However, now the Government can proceed to recover the unpaid dues WITHOUT SERVING ANY NOTICE [insertion of sub-section(1B) in section 73].

In view of the above provision, similar provision existed in R.6(6A) is now omitted.

36. Omission of S. 73(4A)

Sub-section (4A) in the said section 73 dealing with consequences of short payment, non-payment, non-levy etc. arising on audit, investigation or verification is now omitted. This sub-section provided for concessional rate of penalty of 1% per month, maximum up to 25% if true and complete details of transactions

are available in the specified records in certain specified circumstance and upon payment of tax dues along with the penalty no show cause notice could be served.

37. Penalty u/s. 76 for failure to pay service tax simplified:

In case of non-payment or short payment of service tax or erroneous refund **not involving fraud, collusion, wilful mis-statement or suppression of facts without the intent to evade service tax** the penalty shall be as under:

Situation	Penalty
Where shortfall of or unpaid service tax is paid along with interest within 30 days from the date of service of notice issued under section 73(1)	Nil
Where shortfall of or unpaid service tax is paid along with interest and penalty within 30 days from date of receipt of adjudication order under section 73(2)	25% of penalty imposed in adjudication order
If service tax amount gets modified in appellate proceeding and service tax, interest and penalty is paid within 30 days of receipt of appellate order	25% of modified penalty
In all cases not covered above	Not exceeding 10% of service tax amount

The above also apply in cases where the show cause notice,

a) Is not served under section 73(1) before the enactment of Finance Bill, 2015; or

b) Is served under section 73(1) but no adjudication order is passed before enactment of Finance Bill 2015.

Thus, penalty u/s. 76 is payable even in a case service tax is not paid unintentionally or on account of any controversial decision from 10% to 25% (as the case may be) of service tax amount unless unpaid or shortfall service tax is paid within 30 days from the date of service of notice issued u/s. 73(1). This is on account of removal of S. 80 safeguarding the assessee on account of reasonable cause for failure of payment as required under the law.

The reduced rate of penalty appears to be on account of hike in the interest rate up to 30% in case of delay payment above one year.

38. Penalty u/s. 78 simplified

- In case of non-payment or short payment of service tax or erroneous refund **involving fraud, collusion, willful mis-statement or suppression of facts, etc with the intent to evade service tax** shall be as under:

Situation	Penalty
Where shortfall of or unpaid service tax is paid along with interest and penalty within 30 days from the date of service of notice issued under section 73(1)	15% of service tax amount
Where shortfall of or unpaid service tax is paid along with interest and penalty within 30 days from date of receipt of adjudication order under section 73(2)	25% of penalty imposed in adjudication order
If service tax amount gets modified in appellate proceeding and service tax, interest and penalty is paid within 30 days of receipt of appellate order	25% of modified penalty
In all cases not covered above	100% of service tax amount

The above also apply in cases where the show cause notice:

a) Is not served under section 73(1) before the enactment of Finance Bill, 2015; or

b) Is served under section 73(1) but no adjudication order is passed before enactment of Finance Bill, 2015.

Thus, the penalty is now divided in two parts, one, without wilful intention to evade payment of service tax (S.76) and the other on account of wilful attempt to evade payment of service tax(S.78). In the later case, the department would be required to prove the wilful intention to evade the payment of tax on the part of the assessee.

39. CENVAT Credit Rules Confiscation and Penalty (amendment to R.14 & 15 of CCR):

The penal provisions for taking or utilization of CENVAT credit in respect of input goods or input services, wrongly or in contravention of provisions of CENVAT Credit Rules are aligned with the provisions of sections 11AC(1) (a) & (b) of the Central Excise Act, 1944 and section 76(1).

40. Power to waive penalty in case of reasonable cause removed:

Section 80 which provided for waiver of penalty imposable under sections 76 and 77 is now omitted.

41. Remedy against the order of Commr. (A) involving rebate of service tax to exporters

The remedy against order of Commissioner (Appeals) involving rebate of service tax on export of services lies with the Central Government in accordance with the provisions of section 35EE of Central Excise Act, 1944. All appeals filed with the tribunal, after the enactment of Finance Bill, 2012 and pending on the date of enactment of Finance Bill, 2015 will also be dealt with in the same manner.

[Section 86 amended].

42. Changes in relation to settlement Commission

Certain changes have been made in the provisions relating to Settlement Commission. These provisions, contained in the Central Excise Act, 1944, are made applicable to Service Tax, through S.83 of the Finance Act, 1994. For details, the D.O. letter of J.S. (TRU- I) may please be referred to.

To be effective from the date to be notified after enactment of the Finance Bill, 2015:

43. Change in the rate of tax

The present rate of tax 12% plus 0.36% of Education and Secondary and Higher Education Cess will now become 14% including the cess. There will not be education cess or higher and secondary cess. However, there is no clarity provided as to fate of unutilised of education and secondary higher education cess.

44. Swachh Bharat Cess

An enabling provision is being incorporated in the Finance Bill, 2015 to empower the Central Government to impose a Swachh Bharat Cess on all or any of the taxable services. This cess shall be levied from such date as may be notified by the Central Government after the enactment of the Finance Bill, 2015. The details of coverage of this Cess would be notified in due course.

45. Deletion from the Negative List:

a) Presently, 'support service' to a business entity other than certain service by way of Department of Post, services in relation to aircraft or vessel and transportation of goods or passengers (other than those covered elsewhere) and support service to business entities are covered under the Negative List and the support service is defined as "support services" means the support services in simple sense are outsourced services and not provided in terms of sovereign rights or as a part of

federal/statutory duties of Government or Local authorities. This includes infrastructural, operational, administrative, logistic, marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever, advertisement and promotion, construction or works contract, renting of immovable property, security, testing and analysis. The term, 'support' contained in Negative List [S. 66D(a)] and its definition of 'support service' as contained u/s. 65B(49) is now removed.

With the removal of the term, 'support' from the word, 'support service' from the Negative List any service provided by Government or a local authority to any business entity is now taxable.

46. Presently, 'process amounting to manufacture or production of goods' is defined u/s. 65B(40) and included under Negative List u/s. 66D(f) as the same is covered under the State Excise Duty. The activity of manufacture or production of alcoholic liquor for human consumption is removed from the definition and also from the exemption Entry 30(c) under 'job work' under Notification No. 25/2012-ST. The said activity therefore becomes liable for service tax, presumably to pave way for impending GST. Thus, the activity of manufacture or production of alcoholic liquor for human consumption or job work in relation to thereto is now liable for double taxation, i) by way of State excise and ii) by way of service tax without any credit *inter se.*

47. Presently, betting, gambling or lottery is covered under the Negative List Entry 66D(i). However, the activity in relation to lottery is removed from the Negative List and therefore promotion, marketing, selling or facilitating a lottery by lottery distributor or selling agent would become liable to service tax. Further, even the margin between the sale price and purchase price of lottery tickets is liable for service tax [section 67 read with Explanation to sections 66D(i), 65B(31A) and 65B(44)]. Not only this, alternate rate of tax on service by lottery distributor or selling agent is provided under R.6(7C) of Service Tax Rules.

48. Upon removal of Entry (j) in the Negative list [section 66D], the exemption is provided to i) right to admission to exhibition of film, circus, dance or theatrical performances including drama, or ballet; ii) recognised sporting event; and iii) admission to other events where the consideration for admission is up to ` 500/- as discussed above. Consequently, the definition of 'amusement facility' and 'entertainment event' contained in clauses (9) and (24) of section 65B are omitted.

49. Alternate rate of payment of tax in R. 6 of STR

Consequent upon change in service tax rate, the alternate rates in respect of the following services are revised as under :

Applicable Rule	Taxable Service	Existing Rate of Service Tax	Revised Rates of Service Tax
6(7)	Booking of air tickets by air travel agent	Domestic bookings– 0.6% International bookings – 1.2%	Domestic bookings– 0.7% International bookings – 1.4%
6(7A)	Life insurance service	First year – 3% Subsequent year – 1.5%	First year – 3.5% Subsequent year – 1.75%

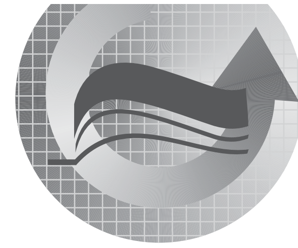
6(7B)	Money changing service		
	(i) Gross amount of currency exchanged for an amount up to ` 1,00,000	0.12% or Minimum ` 30/-	0.14% or Minimum ` 35/-
	(ii) Gross amount of currency exchanged for an amount of rupees exceeding ` 1,00,000 and up to ` 10,00,000	` 120/- and 0.06%	` 140/- and 0.07%
	(iii) Gross amount of currency exchanged for an amount of exceeding ` 10,00,000	` 660 and 0.012% or maximum of ` 6,000/-	` 770 and 0.014% or maximum of ` 7,000/-
6(7C)	Service provided by lottery distributor and selling agent	` 7,000 on every ` 10 lakh or part of ` 10 lakh of aggregate face value of lottery tickets printed by the organising State for a draw	` 8,200 on every ` 10 lakh or part of ` 10 lakh of aggregate face value of lottery tickets printed by the organising State for a draw
		` 11,000 on every ` 10 lakh or part of ` 10 lakh of aggregate face value of lottery tickets printed by the organising State for a draw	` 12,800 on every ` 10 lakh or part of ` 10 lakh of aggregate face value of lottery tickets printed by the organising State for a draw

(Notification No. 05/2015-ST dated 1-3-2015)

Conclusion

It can be seen from the changes proposed in the Finance Bill that many changes are made with a view to facilitate Goods and Service Tax to which the Hon'ble Finance Minister has referred many times in his budget speech as likely to see the light of the day from 1st April, 2016. At the same time some of these changes are likely to give rise to dual levy of tax by Central and State Governments. Alas, this could have been avoided. One needs to wait for GST to come at the earliest to sort out the current disputes and legalities. However, one would wish that tinkering with minor changes in abatements and exemptions etc could have been avoided keeping in view the short life span of the service tax law.

> Thank God for giving you this world as a moral gymnasium to help your development, but never imagine you can help the world.



CA. Hasmukh Kamdar

Changes in the Central Excise Act, 1944

[Changes effective from the date Finance Bill, 2015 receives assent of the President, except where stated otherwise]

1 Show Cause Notice. [Section 11A].

i. Sub-section (5) of Section 11A provides that where during the course of audit, investigation or verification, it is found that any duty has not been levied or short paid or has been short levied or erroneously refunded for the reason of (a) fraud or (b) collusion or (c) any wilful misstatement or (d) suppression of facts or (e) contravention of any of the provision of the Act or of the Rules made thereunder with intent to evade payment of duty but the details related to such transactions are available in the specified records, then in such cases the Central Excise Officer shall within a period of 5 years from the relevant date, serve a notice demanding the duty specified the notice along with interest under section 11AA and penalty equal to 50% of such duty. Sub-section (6) provides for an option to such a person to pay the duty demanded in full, or in part as may be accepted by him and interest thereon and penalty equal to 1% of such duty per month, not exceeding maximum of 25% of the duty demanded. Sub - Section (7) provides that the Central Excise officer, on receipt of information from the assessee regarding payment of duty etc., shall not serve any notice in respect of amount so paid and for the balance amount, if any, may proceed for recovery.

In view of the fact that the penalty provisions are proposed to be consolidated under new substituted section 11AC of the Act, sub-section (5), (6) and (7) of the Section 11A are deleted. The impact of this change is that in case of demand, where the related transactions are recorded in specified records, the option of paying penalty at the rate of 1% per month subject to maximum 25% will not be now available to the assessee.

ii. Explanation 1 to Section 11A defines the ' relevant date' for the purpose limitation of issue of Show Cause Notice in the cases where excise duty has not been levied or paid or has been short levied etc.. Clause (b)(ii) of the Explanation provides that, where the Return has been filed on due date, the 'relevant date' is the date on which such Return has been filed.

The clause (b)(ii) is amended by deleting the words "on due date." The impact of this amendment is that now irrespective of date on which Return is filed, whether on

due date or otherwise, the 'relevant date 'shall be the date on which such Return is filed.

iii. A new clause (vi) is inserted in sub-clause (b) of Explanation 1 to provide that in case were only interest is to be recovered, the relevant date for the purpose of issue of show cause notice shall be the date of payment of duty to which such inertest relates.

iv. Clause (c) of Explanation 1 which defined the term "specified records" is deleted as consequential amendment.

v. A New clause 16 is inserted in Section 11A to provide that the provision of this section shall not apply to a case where the liability of duty not paid or short-paid is self-assessed and declared as duty payable by the assessee in the periodic returns filed by him, and in such case, recovery of non-payment or short-payment of duty shall be made in such manner as may be prescribed. The impact of this amendment is that where assessee has disclosed any duty as payable in Return, but has not paid the same, there will be no requirement of issue of Show cause notice for recovery of such duty in terms of Section 11 A. Procedure for recovery of such duty shall be as may be prescribed.

vi. Explanation - 2 provides that any non-levy, short levy, non payment, short payment or erroneous refund before the date on which the Finance Bill, 2011 receives the assent of the President, shall continue to be governed by the provisions of section 11A as it stood immediately before the date such assent is received. In other words all the pending proceedings at the time of passing of Finance bill 2011 were governed by the old law as it existed prior to the amendment.

Explanation - 2 is substituted by new Explanation -2 as follows.

"for the removal of doubts, it is hereby declared that any non-levy, short levy, non-payment, short-payment or erroneous refund where no show cause notice has been issued before the date of which the Finance Bill 2015 receives the assent of the President, shall be governed by the provisions of the section 11A as amended by the Finance Act, 2015.

The impact of this change is the if any show cause notice in respect of any short levy – non-payment etc. for a period prior to the date of passing of the Finance Bill, 2015 is issued even after the date on which Finance Bill, 2015 receives the assent of the President shall also be governed by the amended provisions and not by the old law as it existed prior to the amendment.

2 Penalties [Section 11AC]

i. Section 11AC at present provides that the amount of penalty for non-levy or short-levy or non-payment or short-payment or erroneous refund shall be as follows:-

(a) Where any duty of excise has not been paid or short paid by reason of fraud, or collusion or any wilful mis-statement or suppression of facts with intention to evade payment of duty, the person shall also be liable to pay penalty equal to duty so determined.

(b) Where details of any transaction are available in the specified records, penalty shall be restricted to 50% of the duty so determined.

(c) If duty along with interest as determined in the order is paid within 30 days of the communication of the order, then the penalty shall be restricted to 25% of the duty determined provided penalty is also paid within 30 days.

(d) Where appellate authority or tribunal or court modifies any amount of duty, the person shall pay penalty and interest so modified. Where the amount modified by the appellate tribunal or court is more than the duty determined by the order, then the time which the interest or duty is payable under this Act shall be counted from the date of the order of the appellate authority or tribunal or court in respect of such increased amount.

ii. Section 11AC is substituted by a new Section 11AC providing for major changes as follows in the quantum of penalty to be imposed.

For Non suppression cases:

(a) in addition to the duty as determined under sub-section (10) of section 11A, penalty not exceeding 10% of the duty so determined or ` 5000 whichever is higher shall be payable.

(b) If duty and interest payable thereon under section 11AA is paid either before issue of show cause notice or within 30 days of issue of show cause notice, no penalty shall be payable and all proceeding in respect of said duty and interest shall be deemed to be concluded;

(c) If duty as determined under sub-section (10) of section 11A and interest payable thereon under section 11AA is paid within 30 days of the date of communication of under of the Central Excise Officers who has determined such duty, the amount of penalty shall be equal to 25% of the penalty so imposed, provided that such reduced penalty is also paid within 30 days of the date of communication of such order.

For suppression cases:

(a) in addition to the duty as determined under sub-section (10) of Section 11A, a penalty equal to the duty so determined shall be payable. In respect of cases where the detail relating to such transactions are recorded in the specified records for the period beginning with 8th April, 2011 and upto the date of assent to the Finance Bill, 2015, the penalty payable shall be 50% of the duty so determined.

(b) If duty and interest payable thereon under section 11AA is paid within 30 days of communication of show cause notice, the amount of penalty payable shall be 15% of the duty demanded, provided that such reduced penalty is also paid within 30 days of communication of show cause notice and all proceeding in respect of said duty, interest and penalty shall be deemed to be concluded.

(c) If duty as determined under sub-section (10) of section 11A and interest payable thereon under section 11AA is paid within 30 days of the date of communication of order of the Central Excise Officer who has determined such duty, the amount of penalty shall be equal to 25% of the duty so determined provided that such reduced penalty is also paid within 30 days of the date of the communication of such order.

iii. The impact of the above changes is that for the first time, in so far as Central Excise

law is concerned, the penalty is proposed even when there has been no fraud or collusion or suppression or misstatement of facts with intent to evade duty. A close look at the new Section 11AC, which seems draconian to say the least, indicates that the assessee would be completely left at the mercy of the Department, even in cases involving genuine issues of interpretation of the statuary provisions, etc. Penalty under Section 11AC was imposable if and only if the ingredients of fraud, collusion, willful misstatement, or suppression of facts with intend to evade payment of duty were specifically present. Courts have held in many cases that penalty under Section 11 AC is not leviable automatically and mechanically in each and every case of non-payment or short payment of duty and that penalty under Section 11AC is imposable only if the conditions are satisfied. Mere failure to pay duty within the time frame would now lead to drastic consequence, even in cases where the assessee had genuine reason not to pay or delay the payment of duty.

iv. An additional benefit is given in case involving fraud ,suppression etc. , where duty and interest payable thereon under section 11AA is paid within 30 days of communication of show cause notice, the amount of penalty payable shall be 15%, instead of 25% at present, of the duty demanded, provided that such reduced penalty is also paid within 30 days of communication of show cause notice

2 Settlement Commission

i. The proviso to sub-section (c) of section 31 relating to the provisions of Settlement Commission is amended to delete the reference to "in appeal or revision, as the case may be". The impact of this change is that when any proceeding is referred back, whether in appeal or revision or otherwise, by any Court, Appellant Tribunal or any other authority to the adjudicating authority for a fresh adjudication or decision, then such case shall not be entitled for settlement.

ii. The proviso to sub-section (3) of section 32 provides that where a Member of the Central Board of Excise & Custom is appointed as the Chairman, Vice Chairman or Member of the Settlement Commission, he shall cease to be a member of the Board. As per the amended Custom and Central Excise Settlement Commission (Recruitment and Condition of Service of Chairman, Vice Chairman and Members) Rules, 2000, Members of the Board are not eligible to be Member of the Settlement Commission. Hence, the proviso is redundant and is omitted.

iii. Section 32B is amended so as enable Vice Chairman or any Member of the Settlement Commission to officiate as Chairman in absence of the Chairman of the Settlement Commission.

iv. Section 32H of the Act provides that Settlement Commission can reopen the completed proceeding in certain conditions. As per the first proviso to the said section no proceeding can be reopened after five years from the date of application, and as per second proviso to the said section Settlement Commission cannot reopen any proceeding in respect of an application made after 1st day of June 2007. Thus, Settlement Commission has no powers to reopen any complete proceeding after expiry of five years from 1st day of June 2007, thus making this section redundant. Therefore, this section is omitted.

CHANGES IN THE CENTRAL EXCISE RULES, 2002

[Changes effective from 1-3-2015, except where stated otherwise]

i Rule 8(4) provides for recovery of self assessed duty and interest thereon, if not paid, by invoking recovery provisions of Section 11 of the Act. This rule is amended to include duty payable as mentioned in Return filed under the Act, and penalty payable under Rule 8(3A) also subject to recovery under Section 11. The impact of this change is that recovery proceedings under Section 11 can now be initiated for self assessed duty, duty disclosed in the Return as payable, interest thereon, and penalty under Rule 8(3A) without issue of Show Cause Notice.

ii. Rule 10 requires every assessee to maintain proper records, on daily basis, in a legible manner, indicating particulars regarding description of goods produced or manufactured, opening balance, quantity produced or manufactured, inventory of goods, quantity removed, assessable value, the amount of duty payable and particulars regarding amount of duty actually paid. Such records are allowed to be maintained in electronic form. Sub rule (4) and (5) is inserted in Rule 10 to provide that records under this rule may be preserved in electronic form and every page of the record so preserved shall be authenticated by means of a digital signature and that the Board may, by Notification, specify the conditions, safeguards, and procedure to be followed by an assessee preserving digitally signed records. The impact of this change is that it will be now possible to preserve the records in electronic form instead of hard copies, subject to conditions to be notified.

iii In terms of Rule 11(2) an excise invoice is required to be serially numbered and shall contain the registration number, address of the Central Excise Division, name of the consignee, description, classification, time and date of removal, mode of transport, duty payable etc. A proviso is inserted in the Rule provide that if goods are sent to a job worker on the direction of a manufacturer, the invoice shall also contain the details of the manufacturer as buyer and contain the details of job worker as consignee. The impact of this change is that if input goods purchased are sent directly to job worker, without bringing the same to the factory of the manufacturer, then name and address of the job worker is statutorily required to be mentioned in the excise invoice. The provision is applicable also in case of invoices issued by a registered dealer or an importer.

iv A new sub-rule 8 is inserted in rule 11 to provide that an invoice issued under this rule by a manufacturer may be authenticated by means of digital signature. It is further provided that where the duplicate copy of the invoice meant for transporter is digitally signed, a hard copy of such transporter copy of invoice duly self attested by the manufacturer shall be used for transport of goods.

v An assessee who pays duty of one crore or more in a financial year is required to file an Annual Financial Information Statement before 30th November of the

next financial year. The assessees are also required to file Annual Installed Capacity Statement by 30th April of next financial year. A new sub-rule 6 is inserted in rule 12 to provide for payment of an amount calculated at the rate ` 100 per day subject to maximum of ` 20,000 for the period of delay in submission of Annual Financial Information Statement or Annual Installed Capacity Statement.

vi Rule 17(3) provides that where any goods are removed from a hundred per cent Export Oriented undertaking to a domestic Tariff area, such unit is required to submit a monthly return, within ten days from the close of the month to which it relates. A new sub-rule 6 is inserted in rule 17 to provide for payment of an amount calculated at the rate Rs. 100 per day subject to maximum of Rs. 20,000 for the period of delay in submission of Return under Sub rule 3 by such 100% EOU clearing goods to DTA.

vii Rule 18 of is amended to provide that in respect of rebate of duty for any goods exported, the word "export" with its grammatical variation and cognate expressions, means taking goods out of India to a place outside India and includes shipment of goods as provision or stores for use on board a ship proceeding to a foreign port or supplied to a foreign going aircraft

viii Notification No. 7/2015-CE(N.T) dated 1-3-2015 is issued providing for changes in the Central Excise Registration procedure. Application for registration is required to be filed only online on the website www.aces.gov.in in the form provided on the website. It is mandatory to quote PAN number of the proprietor or legal entity being registered except in case of application made by Government departments. Applicants other than Government departments shall not be granted registration in the absence of PAN. E. mail address and mobile number is also required to be provided compulsorily. Pending post facto verification of premises and documents by the authorised officers, registration application will be approved within two days. A Registration Certification containing registration number shall be issued online and a printed copy of the Registration Certificate shall be adequate proof of registration and the signature of the issuing authority is not required on the said Registration Certificate. On the physical verification of the premises, if it is found nonexistent, the registration shall stand cancelled.

CHANGES IN THE CENVAT CREDIT RULES, 2004

[Changes effective from 1-3-2015]

i. Sub-Rule 1 of Rule 4 is amended to insert the provision that in case goods are sent directly to the job worker on the direction of the manufacturer the CENVAT credit can be availed on such inputs by the manufacturer on receipt of such inputs goods at the premises of the job worker. Further a manufacturer or service provider can now avail the CENVAT credit within one year of the date of issue of any documents specified in Rule 9 instead of six months.

ii. Sub –Rule 5 is amended to provide that CENVAT credit on the inputs shall be allowed even if any such of inputs as such or after partially processed are sent to job worker and from there subsequently to another job worker and likewise for further processing etc. if it is established from the challans etc. that in the inputs or products produced there from are received back by the manufacturer within 180 days of their being sent form the factory. Similarly any capital goods sent to the job workers is now required to be received back within 2 years.

iii Rule 6 is amended to provide exempted goods or final products shall also include non excisable goods cleared from the factory. The value of such non excisable goods for the purpose of this rule shall be the invoice value or if such invoice value is not available, the value determined by using reasonable means consistent with principal of valuation contained in the rules made under the Act. The impact of this amendment is that now CENVAT credit shall not be allowed on such quantity of inputs used in or in relation to the manufacturer of non-excisable goods. Consequently if separate accounts of inputs used in manufacture of excisable goods and non excisable goods are not maintained, the manufacturer will be required to pay an amount equal to six per cent of the value of non excisable goods.

iv Rule 14 provides that where the CENVAT Credit has been taken and utilised wrongly the same along with interest shall be recovered from the manufacturer and Section 11A and 11AA shall apply for effecting such recoveries. Rule 14 has been substituted by new Rule 14 which provides that (a) where Cenvat credit has been wrongly taken but not utilised the same shall be recovered from the manufacturer and (b) where Cenvat credit has been taken and utilised wrongly the same shall be recovered along with interest from the manufacturer and provision of Section 11A and 11AA shall apply for effecting such recoveries. The impact of this amendment is that now even wrongly availed Cenvat credit has to reversed immediately and can not be kept in the records. If this not done, SCN can be issued for recovery along with penalty under Section 11AC

v A proviso is added to Rule 4(7) whereby in cases of input service where whole or part of the service tax is liable to be paid by the recipient of service, CENVAT credit of service tax payable by the service recipient is now allowed after such service tax is paid. The earlier condition of payment to service supplier of the invoice amount in case of partial reverse charge for availment of Cenvat credit is done away with.

vii Rule 9(4) relating to maintenance of records for CENVAT credit in cases where inputs or capital goods are purchased from a first stage dealer or second stage dealer , will equally apply to an importer who issues an invoice for availment of CENVAT credit.

vii A new sub rule (2) has been inserted in rule 14 to provide that for the purpose of rule 14(1), all credits taken during a month shall be deemed to be taken on the last day of the month and the utilization thereof shall be deemed to have occurred in the following manner:

(a) Opening balance of the month has been utilised first;

(b) Credits admissible in terms of these rules taken during the month has been utilised next;

(c) Credit inadmissible in terms of these rules taken during the month has been utilised thereafter.

MAJOR AMENDMENTS IN THE FIRST SCHEDULE TO THE CENTRAL EXCISE TARIFF ACT 1985

[Effective from 1-3-2015].

i. Education Cess and Secondary & Higher Education Cess leviable on excisable goods are being subsumed in Basic Excise duty. Consequently such Cesses are fully exempted. Simultaneously, the standard ad valorem rate of Basic Excise Duty of excise (i.e. CENVAT) is increased from 12% to 12.5%..Specific rates of basic excise duty on petrol, diesel, cement, cigarettes and other Tobacco Products (other than Biris) are simultaneously changed.

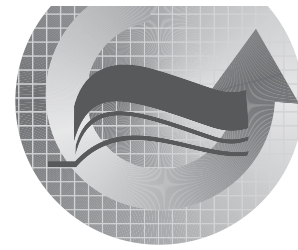
ii All goods falling under Chapter sub-heading 2101 20, including iced tea, are notified under Section 4A of the Central Excise Act for the purpose of assessment of Central Excise duty with references to the Retail Sale Price with an abatement of 30%.

III Goods, such as lemonade and other beverages, are notified under Section 4A of the Central Excise Act for the purpose of assessment of Central Excise duty with a reference to the Retail Sale Price with an abatement of 35%.

iv Excise duty of 2% without CENVAT credit or 6% with CENVAT credit is being levied on condensed milk put up in unit containers. Condensed milk is also being notified under section 4A of the Central Excise Act for the purpose of valuation with reference to the Retail Sale price with an abatement of 30%.Excise duty of 2% without CENVAT credit or 6% with CENVAT credit is being levied on peanut butter.

v Maximum speed of packing machine for packing of notified goods of various retail sale prices is being specified as a factor relevant to production for determine excise duty payable under the compounded Levy Scheme presently applicable to pan Masala, gutkha and chewing tobacco. Accordingly, deemed production and duty payable per machine per month are notified with reference to the speed range in which the maximum speed of a packing machine falls.

vi Full exemption from excise duty is extended to captively consumed intermediate compound coming into existence during the manufacturer of Agarbatties. Agarbatties attract NIL rate of duty.



CA. Udayan Choksi

Amendments in Customs

There are only a few amendments in customs in this year's Finance Bill, centred on the idea of ease of doing business in India. The key changes are set out below.

Reduction in penalty under section 28

A proviso to section 28(2) is proposed, to the effect that in a case not involving collusion or wilful mis-statement or suppression of facts, if the duty liable along with interest is paid within 30 days from the date of receipt of notice, no penalty will apply and the proceedings will be deemed to be concluded. Even in respect of cases involving collusion etc. there is a proposed amendment to sub-section (5) to reduce the penalty from 25% to 15% if the duty and interest is paid within 30 days from the date of receipt of notice. An explanation 3 is proposed to be inserted to introduce a transition provision whereby the aforesaid reduced penalty outcomes will be available in respect of show cause notices issued but not adjudicated before the date on which the Finance Bill, 2015 receives Presidential assent, if payment of duty, interest and due penalty is made within 30 days of the date of assent.

Reduction in penalty under sections 112 and 114

The Customs Act includes separate penalty provisions in respect of, *inter alia*, doing or omiting to do an act which action would render import goods liable for confiscation, or acquiring possession of or in any other manner being concerned with goods liable for confiscation, under section 111 (improper importation). Section 112(b)(ii) is proposed to be amended to reduce the penalty in such cases involving dutiable goods other than prohibited goods, from 100% of the value of the goods or ` 5,000, whichever is greater, to 10% of the value of the goods or ` 5,000, whichever is greater. The same reduced penalty has also been proposed in section 114 relating to export goods, in respect of doing or omiting to do an act that would render dutiable goods other than prohibited goods, liable for confiscation, under section 113. In both cases, if the duty and interest is paid within 30 days of the date of communication of the adjudication order, the penalty amount is proposed to be reduced to 25% of the penalty determined.

Amendments relating to settlement of cases

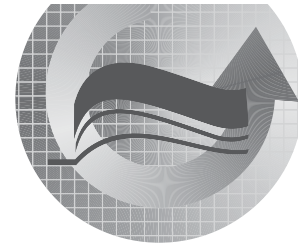
The proviso to section 127A is proposed to be amended to cover all cases where a matter is referred back for fresh adjudication, whether in appeal or revision, or otherwise. Also, several provisions in Chapter XIVA relating to 2007, which referred to 2007 and had become redundant, are proposed to be omitted.

Extended availability of advance rulings

Notification 6/2015 – Customs has been issued in pursuance of section 28E to specify that a 'resident firm' can apply for an advance ruling. The notification clarifies that "resident" takes its meaning from the section 2(42) of the Income-tax Act, 1961 in so far as it applies to firms, and "firm" includes LLPs, sole proprietorships and one person companies.

Changes to duty rates

Several changes have been made to duty rates, most significantly to address the situation of inverted duty structures. This is with a view to support the Make in India initiative, which will facilitate import substitution as well as promote exports.



CA. Ninad Karpe

No sixer, but many boundaries !

When the Finance Minister rose to present the Budget in the Parliament on 28th February, 2015, there were a lot of expectations from all sections of industry. Most expected some big ticket reforms and a strong message to foreign investors that India is ready, willing and open for business. The Finance Minister may have disappointed those who expected big ticket reforms, but he hasn't presented a disappointing budget.

This was the first full Budget of the new Government, under the backdrop of a strong GDP growth of 7.5 per cent and precipitous drop in oil prices. The Indian economy is truly in a "sweet spot" and if the fiscal deficit is handled well, it is now "ready to fly".

There is strong push in the Budget on the infrastructure, social sectors and education and skilling. The Finance Minister has underlined the need to a strong push on public investment, due to the weak private investment in infrastructure via the PPP model. This is a modulation from the earlier policies where the thrust was exactly the opposite – public money was not available for huge investment required in infrastructure and hence, private investment had to step in.

There are a slew of announcements on increasing the social security net – increase in allocation to MNREGA, accidental death insurance of ` 2 lakhs for an annual premium of ` 12 and many more schemes – all designed to provide social security to the under-privileged.

The focus of the Government on skilling continues in this Budget. Skilling initiatives of the Government which are presently dispersed across various Ministries will be consolidated under the National Skills mission through the Skill Development and Entrepreneurship Ministry. This Mission will also standardise procedures and outcomes across 31 Sector Skill Councils. A new scheme (Deen Dayal Upadhyay Gramin Kaushal Yojana) has been announced to enhance employability of rural youth. ` 1,500 crores has been set apart in this budget for this scheme and, interestingly, disbursements will be made through a digital voucher directly into the qualified student's bank account.

Availability of finance to students wanting to pursue Higher Education has never been easy in India. This Budget has made a bold announcement and hopefully, it ensures that no student is unable to pursue higher

education due to lack of finance. A fully IT based Student Financial Aid Authority will be set up to administer and monitor scholarships as well as loans through the Pradhan Mantri Vidya Lakshmi Karyakram. Other than that, many new educational institutes (AIMS, IIT, etc.) have been announced to be set up across India.

The IT industry has not much attention in this Budget. In a short span of two decades, Indian IT companies have emerged as global leaders, employing 40 lakh people directly, with revenues of USD 150 billion, including exports of over USD 100 billion. IT industry contributes to around 8 per cent of the GDP and is expected to grow by 13 per cent next year.

In the early 1990s when the IT industry was in a nascent stage and growing at a scorching pace, the common joke was that the industry was growing fast because the government could not understand the IT industry! The current Budget has very little to offer to the IT industry.

The Finance Minister has acknowledged the leading role played by the IT industry and has proposed a new scheme or incubation of start-ups, especially technology start-ups. He has announced that the Government will establish a new mechanism to be called SETU (Self-Employment and Talent Utilisation). An amount of ` 1000 crores has been set aside for SETU, which will be a Techno-Financial, Incubation and Facilitation Programme to support all aspects of start-up businesses, and other self-employment activities, particularly in technology-driven areas.

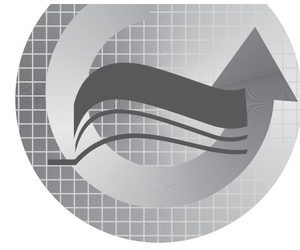
Incubating and mentoring start-ups is really the need of hour. If India wants to become a meaningful player in the global IT product space, it will need to mimic some of the factors which have made IT companies successful in the Silicon Valley. In the Valley, there is an excellent ecosystem, which supports IT start-ups and hopefully, SETU will borrow the best practices from the Silicon Valley and create at least 100 world class IT start-ups.

A lot more could be done to encourage the IT industry, which is a significant part of India's economy.

The Finance Minister has also promised many structural reforms – implementation of GST w.e.f. 1st April, 2016, new bankruptcy law, crackdown on black money stashed abroad, direct cash transfers (JAM – Jan Dhan Yojna, Aadhar and Mobile) and a host of other measures.

All in all, the Finance Minister has presented a Budget with a host of measures which will have a salutary effect on the economy. There may not be a Sixer in this Budget, but there are many boundaries – just as well, given the World Cup fever!

We must plunge heart and soul and body into the work. And until we are ready to sacrifice everything else to one Idea and to one alone, we never, never will see the Light.



CA. Vijai Mantri

Preparing India for long haul

Union Budget 2015 is one of the few steps this Modi government has taken to achieve full potential of our great mother land. There are many provisions of the budget which you may have ready and understood. My attempt in this article is not to cover majority of the provision at superficial level but examined few in greater detail.

Section 80 CCD

This new section in addition to section 80 CC will be a path breaking provision in the way Indian investors look at investments. Section 80 CC was very crowded section with items like PPF, EPF, NSC, Bank Deposits, Insurance Premium, Housing Loans, ELSS etc. There was no necessity to invest in an investment option where capital is not guaranteed and returns are market linked. Going forward if an investor wants to get additional tax benefit of ` 50,000 under section 80 CCD then they need to invest in investment options different from the way they historically used to invest.

This will make investor taste a market return linked product in which in long term he / she will gain much better returns. Currently ` 50,000 annual investment in PPF/EPF over 30 and 40 years period will accumulate to ` 57 lacs and ` 133 lacs respectively. If the same amount of ` 50,000 get invested in MF then the accumulated corpus at the rate of 15% pa will become ` 222 lacs over 30 years and ` 907 lacs over 40 years period. A difference of 4 to 6 times. He will also learn to understand and handle volatility. This trend will encourage more investments from Indian investors in to equity and mutual fund products.

Relaxation in EPF investments

According to budget speech an employee can choose not to invest in EPFO scheme and may look at investing in pension plans which will give market linked returns. If an employee invest ` 1000 pm in EPF at 8% return than over 30 and 40 years the corpus will grow to ` 14.90 Lacs and ` 34.91 Lacs respectively. If the same ` 1000 get invested in pension product at 15% return than the same will grow to ` 141 Lacs over 30 years and ` 846 lacs over 40 years period. A difference of 10 to 20 times.

These two provisions will encourage more and more Indians to invest in market linked investment products and help them to create more wealthy and prosperous Indians.

Proposed regime to curb black money

The government has announced stiff punishment for Indian citizens hoarding money abroad. Also very encouraging was intent of policy makers in handling domestic black money. Uses of PAN card to settle bills of five star hotels in cash. Use of PAN card in purchase of more than ` 1 Lac.

These legislations will make hiding income and evasion of paying taxes more and more difficult and expensive and will bring lots of funds in formal economy. This step itself will make India more transparent and clean.

Gold monetization

Beside curbing demand for physical gold this scheme will discourage channeling large part of unaccounted gold. If a person has unaccounted gold then the same will not get him returns as he or she cannot monetize the same.

GST implementation by April 2016

I think higher devolution to state on the recommendation of 14th Finance Commission is part of GST acceptance by states in addition to avowed promise of our PM to strengthen the federal structure of our polity. This in itself will help GDP expansion by 1% in addition to increase in tax compliance.

Ratinalisation of corporate tax structure

Reduction in corporate tax and rationalization of exemption will encourage many corporate to shift their bases to India. I see this as an attempt to give much needed fillip to GIFT as well.

Focus on governance

In place of headline grabbing big bang reforms this government chose more difficult but more important path of persistent, gradual and incremental reforms.

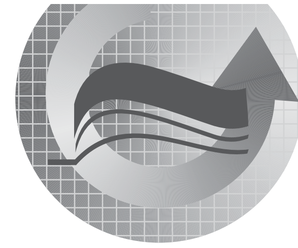
Infra Push

On the infrastructure there is a focused and decisive push. Beside this budget's focus on road, railway budget also increased allocation to infra facility. Beside rail, port and railway the strategy of bidding out of ultra mega power project along with prior clearances is right way to ensure their success. Green job and green energy in form of an ambitious 175 Giga Watt renewable energy will have huge positive impact on environment.

Modi, the man to deliver

The budget is an effort in the direction of making Mr. Modi from a consummate politician to a visionary leader. Falling oil prices is a great luck for Indian economy and Mr. Modi as a PM is great fortune for our mother land!

This world is nothing. It is at best only a hideous caricature, a shadow of the Reality. We must go to the Reality. Renunciation will take us to It.



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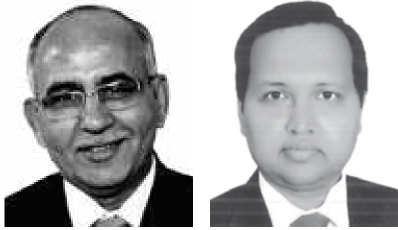


CA Amarjit Chopra & CA Sanjeev Singhal

HOT SPOT

Ind AS: A Reality Now

With the notification of Companies (Indian Accounting Standards) Rules, 2015, Ind AS have become a reality. On February 16, 2015, MCA notified 39 Indian Accounting Standards (Ind AS) and this paved the way for implementation of much awaited Ind AS in India. The foundation for notification of these Ind AS was laid down by Hon'able Finance Minister Shri Arun Jaitley in his Union Budget 2014-15 speech in which he stated that corporate India would implement the Ind AS on voluntary basis effective from 1st April, 2015, and on compulsory basis effective from 1st April, 2016.

With a view to achieve the stated objective, NACAS was reconstituted to ensure the formulation of Ind AS in time. NACAS conducted back to back meetings and approved all the Ind AS in time and submitted to MCA for notification. All the 39 Ind AS have been recently notified by MCA by notification dated 16th February, 2015. While converging with Ind AS, NACAS on one hand, moved with the objective of narrowing down the gap between IFRS and Ind AS to the extent possible but at the same time ensured that India specific issues are duly considered even if it results in carve-outs. NACAS also worked with the aim of providing a stable platform and, hence, early converged with IFRS 9 and IFRS 15 so that there is no need for a significant change in Ind AS for the next 3-4 years. NACAS has also advised ICAI to come out with detailed implementation guide on various Ind AS.

In the present article, we have discussed the roadmap to Ind AS implementation specified under the Companies (Indian Accounting Standards) Rules, 2015 and key differences between IFRS and Ind AS. These have been divided into two parts.

a) Carve-outs made in 2011 which are still continuing

b) Additional carve-outs made in 2015

Besides, we have also listed out the carve-outs that were made in 2011 but which have been dispensed with now.

Roadmap to Ind AS implementation

Rule 4(1) of Companies (Indian Accounting Standard) Rules, 2015 require that Ind AS will be implemented in a phased manner as under:–

(i) Voluntary adoption of Ind AS is permitted for any company for accounting periods beginning on or after 1st April, 2015, with the comparatives for the periods ending on 31st March, 2015, or thereafter;

(ii) Following companies should mandatorily comply with the Ind AS for the accounting periods beginning on or after 1st April, 2016, with the comparatives for the periods ending on 31st March, 2016, or thereafter:

(a) companies whose equity or debt securities are listed or are in the process of being listed on any stock exchange in India or outside India and having net worth of rupees five hundred crore or more;

(b) companies other than those covered by sub-clause (a) of clause (ii) and having net worth of rupees five hundred crore or more;

(c) holding, subsidiary, joint venture or associate companies of companies covered by sub-clauses (a) and (b) of clause (ii); and

(iii) Following companies should mandatorily comply with the Ind AS for the accounting periods beginning on or after 1st April, 2017, with the comparatives for the periods ending on 31st March, 2017, or thereafter:

(a) companies whose equity or debt securities are listed or are in the process of being listed on any stock exchange in India or outside India and having net worth of less than rupees five hundred crore;

(b) companies other than those covered in clause (ii) and sub-clause (a) of clause (iii), i.e., unlisted companies having net worth of rupees two hundred and fifty crore or more but less than rupees five hundred crore.

(c) holding, subsidiary, joint venture or associate companies of companies covered under sub-clauses (a) and (b) of clause (iii).

Exemption has been given to companies which are listed or are in the process of listing on SME Exchange of SEBI.

Key differences between IFRS and Ind AS

a) Carve-outs made in 2011 which are still continuing

1) Ind AS 101, *First-time Adoption of Indian Accounting Standards:*
Allowing the use of carrying cost of Property, Plant and Equipment (PPE), Intangible Assets, Investment Property, on the date of transition of First-time Adoption of Indian Accounting Standards.

Carve Out
Ind AS 101 provides an entity an option to use carrying values of all items of PPE as on the date of transition in accordance with previous GAAP.

Reason/Rationale for Carve-Out
IFRS 1 provides that on the date of transition, either the items of PPE shall be determined by applying IAS 16 retrospectively or the same should be recorded at fair value. However, in case of old companies retrospective application of Ind AS 16 or fair values at the transition date to determine the deemed cost may not be possible for old assets. Accordingly, Ind AS 101 provides relief that an entity may use carrying values of all assets as on the date of transition in accordance with previous GAAP as an acceptable starting point under Ind AS.

2) Ind AS 103, *Business Combinations*

Carve Out
Ind AS 103 requires the bargain purchase gain to be recognised in other comprehensive

income and accumulated in equity as capital reserve, unless there is no clear evidence for the underlying reason for classification of the business combination as a bargain purchase, in which case, it shall be recognised directly in equity as capital reserve.

Reason/ Rationale for Carve-Out

Recognition of such gains in profit or loss would result into recognition of unrealised gains which may get distributed in the form of dividends.

3) Ind AS 32, *Financial Instruments: Presentation*

Carve Out

An exception has been included to the definition of 'financial liability' in paragraph 11(b)(ii), Ind AS 32 to consider the equity conversion option embedded in a convertible bond denominated in foreign currency to acquire a fixed number of entity's own equity instruments as an equity instrument if the exercise price is fixed in any currency. This exception is not provided in IAS 32.

Reason/ Rationale for Carve-Out

IAS 32 requires that equity conversion option in case of foreign currency denominated convertible bonds should be considered as a derivative liability which is embedded in the bond. Gains or losses arising on change in the fair value of derivative need to be recognised in the statement of profit and loss as per IAS 32. Fair value of option is based on the fair value of the share prices of the company. If there is decrease in the share price, the fair value of derivative liability would also decrease which would result in recognition of gain in the statement of profit and loss. This would bring unintended volatility in the income statement due to changes in the share price. This will also not give a true and fair view of the liability as in this situation, when the share prices will fall, the option will not be exercised. However, it has been considered that if such an option is classified as equity, fair value changes would not be required to be recognised.

4) Ind AS 40, *Investment property*

Carve Out

Fair Value Model for valuation of investment property is not permitted under Ind AS 40.

Reason/Rationale for Carve-Out

Fair values of such property are not reliable. Moreover using fair value model may lead to recognition and distribution of unrealized gains.

5) Ind AS 28, *Investment in Associates and Joint ventures*

Carve Out

The phrase, 'unless impracticable to do so' has been added in paragraph 26 of Ind AS 28. Thus, uniform accounting policies may not be used by investor of an associate in case it is impracticable.

Reason/ Rationale for Carve-Out

Certain associates, e.g., regional rural banks (RRBs), being associates of nationalized banks are not in a position to use the Ind AS since these may be too advanced for the RRBs. Accordingly, it has been decided to include 'unless impracticable to do so' (i.e., it is impracticable to adopt uniform accounting policies) in paragraph 26 of Ind AS 28 to exempt such associates.

6) Definition of previous GAAP under Ind- AS

Carve-Out

IFRS 1 defines the previous GAAP as basis of accounting that a first-time adopter used immediately before the adopting IFRS.

Ind AS 101 notified in 2015 defines previous GAAP as the basis of accounting that a first-time adopter used for its statutory reporting requirement in India immediately before adopting Ind AS. For instance, companies required to prepare their financial statements in accordance with Section 133 of the Companies Act, 2013, should consider those financial statements as previous GAAP financial statements. Hence, the carve-out has been retained and has been modified in accordance with the Companies Act, 2013.

Reason/Rationale for Carve-Out

The law prevailing in India does not recognise the financial statements prepared in accordance with Accounting Standards other than those prescribed under the Companies Act.

b) Additional carve-outs added in 2015

1) Ind AS 101, *First-time Adoption of Indian Accounting Standards: Foreign currency gains/losses on translation of long-term monetary items*

Carve Out

Permission to continue the accounting policy adopted for accounting for exchange differences arising from translation of long-erm foreign currency monetary items has been given in Ind AS notified in 2015.

Reason/Rationale for Carve-Out

Now, relief provided under earlier Para 29A of Ind AS 21 would be available to companies having long-term foreign currency monetary items outstanding as on the date of convergence with Ind AS. Therefore, Ind AS 101 has been amended to allow a first time adopter to continue the policy adopted for accounting for exchange differences arising from translation of long-term foreign currency monetary items recognized in the financial statements for the period ending immediately before the implementation of Ind AS. In other words, Ind AS 21 would be applicable to the long term borrowings in foreign currency raised only after the implementation of Ind AS.

2) Ind AS 101, *First-time Adoption of Indian Accounting Standards: Amortisation of intangible assets arising from service concession arrangements related to toll roads*

Carve Out

Permission to continue the accounting policy adopted for amortisation of intangible assets arising from service concession arrangements related to toll roads has been given in Ind AS notified in 2015.

Reason/Rationale for Carve-Out

Schedule II to the Companies Act, 2013 allows companies to use revenue based amortisation of intangible assets arising from service concession arrangements related to toll roads. However, Ind AS 38, Intangible Assets, does not allow revenue based amortization in all such cases. In order to provide relief, Ind AS 101 has been amended to allow entities to continue to use the accounting policy adopted for amortisation of intangible assets arising from service concession arrangements related to toll roads recognized in the financial statements for the period ending immediately before the beginning of the first Ind AS financial statements. In other words, Ind AS 38 would be applicable to the amortization of intangible assets arising from service concession arrangements related to toll roads entered into after the implementation of Ind AS.

3) Ind AS 1, *Presentation of Financial Statements*

Carve Out

Defaults in compliance with minor procedural loan covenants to which lenders do not exercise their rights to recall the loan, would

not result in classification of liability as a current liability.

Reason/Rationale for Carve-Out
Under Indian banking system, a long-term loan agreement generally contains a large number of conditions. Some of these conditions are substantive, such as, recalling the loan in case interest is not paid, and some conditions are procedural and not substantive such as, periodic submission of stock statement by the entity. Generally customer-banker relationships are developed, whereby in case of any procedural breach, loan is generally not recalled. Also, in many cases, a breach is rectified after the balance sheet date and before the approval of financial statements. Ind AS 1 has been amended to address this issue by clarifying that where there is a breach of material provision of long-term arrangement on or before the end of reporting period with the effect that liability becomes payable on demand on the reporting date, the entity does not classify the liability as current, if the lender agreed, after the reporting period and before the approval of the financial statements for issue, not to demand payment as a consequence of breach.

Consequential carve-out has been made in Ind- AS 10, Events after the reporting period, treating such post-balance sheet events as adjusting events.

4) Ind AS 17, *Leases*

Carve Out
Where the escalation of lease rentals is in line with the expected general inflation so as to compensate the lessor for expected inflationary cost, the increases in the rentals should not be straight lined.

Reason/ Rationale for Carve-Out
Straight lining of lease rentals escalation due to inflation does not portray the economic reality of such transaction.

5) Ind AS 115, *'Revenue from contracts with customers'*

Carve Out
Treatment of penalties should be as per the substance of the contract.

Reason/ Rationale for Carve-Out
IFRS 15 provides that all penalties which may be levied in the performance of a contract should be considered in the nature of variable consideration for recognizing revenue.

However, Ind AS 115 has been amended to provide that penalties should be accounted for as per the substance of the contract. Where the penalty is inherent in determination of transaction price, it should form part of variable consideration, otherwise the same should not be considered for determining the consideration and the transaction price should be considered as fixed.

Carve-outs removed from Ind AS finalised in 2011

1. Para 29A of Ind AS 21, *The Effects of Changes in Foreign Exchange Rates*, which permitted recognition of exchange differences arising on translation of long-term foreign currency monetary items from foreign currency to functional currency directly in equity and amortisation of same in the profit and loss account, has been deleted.

2. In 2011, the phrase 'unless it is impracticable' was added as a carve-out in paragraph 25 of Ind AS 28, *Investments in Associates and Joint Ventures.* Now, the phrase 'unless it is impracticable' has been removed and, therefore, the difference between the reporting period of an associate and that of investor cannot exceed 3 months in any case.

3. In 2011, a proviso was added to paragraph 48 of Ind AS 39, *Financial Instruments: Recognition and Measurement*, which required that in determining the fair value of the financial liabilities which upon initial recognition are designated at fair value through profit or loss, any change in fair value consequent to changes in the entity's own credit risk should be ignored. Now, Ind AS 39 has been replaced by Ind AS 109, *Financial Instruments.* Ind AS 109 requires that gains on deterioration of own credit risk should be recognised in 'other comprehensive income'. Hence, the earlier carve out in Ind AS 39 has been removed by Ind AS 109.

4. Following Ind ASs/ Appendices to Ind AS has not been deferred now:

   - IFRIC 4 on *'Determining Whether an Arrangement contains a Lease'*, which was included as Appendix C to Ind AS 17 whose application was deferred earlier has been notified now and not deferred.

   - Ind AS 41, *Agriculture*, which was not formulated in 2011 is now notified based on revised IAS 41 and Ind AS 16, *Property, Plant and Equipment*, has been revised to the effect that bearer biological assets, i.e., plants which produce fruits and other products, should be accounted for in accordance with Ind AS 16.

   - Ind AS 106, *Exploration for and Evaluation of Mineral Resources*, has been notified and not deferred.

   - IFRIC 12 and SIC 29, *'Service Concession Arrangements and Service Concession Arrangements: Disclosures'*, respectively, (which were included as Appendices A and B to Ind AS 11, Construction Contracts, and the application was deferred in 2011) has been included as Appendices C and D to Ind AS 115, *Revenue from Contracts with Customers*, respectively.

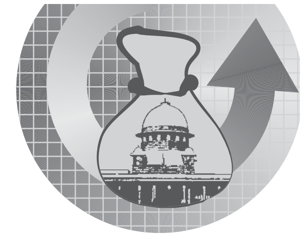
   - The earlier carve-out of not adopting IFRIC 15, *Agreements for construction of real estate*, in Ind AS 18, *Revenue*, has been removed by Ind AS 115 since the issue of revenue recognition by real estate developers has been addressed in Ind AS 115.

5. Ind AS 101 notified in 2011 required an entity to provide comparatives as per the existing notified Accounting Standards. It was provided that, in addition to aforesaid comparatives, an entity may also provide comparatives as per the Ind AS on a memorandum basis. This carve-out has been removed from Ind AS 101 notified in 2015.

Conclusion

Companies need to gear up for the implementation of Ind AS in India since Ind- AS have become a reality now. It is a giant leap for India in general and for the profession in particular.

Ind AS implementation will align corporate financial reporting in India to that of international requirements. At the same time, it will bring many opportunities for the professionals for many years to come. We all need to rise to the challenge and make this transition successful.



B.V. Jhaveri, *Advocate*

DIRECT TAXES
Supreme Court

Ss. 9(1)(i) & (vii): Concept of "source rule" vs. "residence rule" explained. Definition of expression "fees for technical services" in s. 9(1)(vii) explained with reference to "consultancy" services

GVK Industries Ltd. & Anr. vs. Income Tax Officer & Anr. Civil Appeal No. 7796 of 1997 dated 18th February, 2015.

The assessee paid fees to a non-resident company (NRC). The obligation of the NRC was to: (i) Develop comprehensive financial model to tie-up the rupee and foreign currency loan requirements of the project.(ii) Assist expert credit agencies world-wide and obtain commercial bank support on the most competitive terms. (iii) Assist the appellant company in loan negotiations and documentation with the lenders. The assessee claimed that as the fees were paid for services rendered outside India, the same were not chargeable to tax in India and that the assessee was under no obligation to deduct TDS u/s 195. However, the AO and CIT rejected the claim of the assessee. The High Court held that the said payment was not assessable u/s 9(1)(i) but that it was assessable u/s 9(1)(vii). The assessee claimed that s. 9(1)(vii) was constitutionally invalid as it taxed extra-territorial transactions. However, this claim was rejected by the Constitution Bench of the Supreme Court in 332 ITR 130. On merits, the matter was remanded to the Division Bench of the Supreme Court. The Division Bench dismissing the appeal held as under:

(i) Sec. 9(1)(i): The NRC is a Non-Resident Company and it does not have a place of business in India. The revenue has not advanced a case that the income had actually arisen or received by the NRC in India. The High Court has recorded the payment or receipt paid by the appellant to the NRC as success fee would not be taxable under Section 9(1)(i) of the Act as the transaction/activity did not have any business connection.

(ii) Sec. 9(1)(vii): Thereafter, the writ court adverted to the proposition whether success fee could fall within clause (vii)(b) of Section 9(1) of the Act. Interpreting the said provision, the High Court opined that:

"Thus from a combined reading of clause (vii)(b) Explanation (2) it becomes clear that any consideration, whether lump sum or otherwise, paid by a person who is a resident in India to a non-resident for running any managerial or technical or consultancy service, would be the income by way of fees for technical service and would, therefore, be within the ambit of "income deemed to accrue or arise in India". If this be the net of taxation under Section 9(1)(vii)(b), then 'success fee', which is payable by the petitioner company to the NRC as fee for technical service would be chargeable to income tax thereunder. ..... ."

Approving the decision of the High Court their Lordships of the Supreme Court held as under:

"12. At this juncture, it is necessary to note that a contention was advanced before the High Court by the assessee that the NRC did not render any technical or consultancy service to the company but only rendered advise in connection with payment of loan by it and hence, it would not amount to technical or consultancy service within the meaning of Section 9(1)(vii)(b) of the Act. While not accepting the said submission, the High Court observed that for the purposes of attracting the said provision, the business of the company cannot be divided into water-tight compartments like fire, generation of power, plant and machinery, management, etc. and to hold that managerial and technical and consultancy service relate to management, generation of power and plant and machinery, but not to finance. Elaborating further, the High Court observed that advice given to procure loan to strengthen finances may come within the compartment of technical or consultancy service and "success fee" would thereby come within the scope of technical service within the ambit of Section 9(1)(vii)(b) of the Act. Being of this view, the High Court opined the assessee was not entitled to the "No Objection Certificate".

"The crux of the matter is whether, in the obtaining factual matrix, the High Court was justified in concurring with the view expressed by the revisional authority that the character of success fee was substantiated by the revenue to put in the ambit and sweep of Section 9(1)(vii)(b) of the Act."

"What is required to be scrutinized is that the appellant had intended and desired to utilize expert services of qualified and experience professional who could prepare a scheme for raising requisite finances and tie-up loans for the power projects. As the company did not find any professional in India, it had approached the consultant NRC located in Switzerland, who offered their services. Their services rendered included, ***inter alia***, financial structure and security package to be offered to the lender, study of various lending alternatives for the local and foreign borrowings, making assessment of expert credit agencies world-wide and obtaining commercial bank support on the most competitive terms, assisting the appellant company in loan negotiations and documentations with the lenders, structuring, negotiating and closing financing for the project in a coordinated and expeditious manner."

"33. In this factual score, the expression, managerial, technical or consultancy service, are to be appreciated. The said expressions have not been defined in the Act, and, therefore, it is obligatory on our part to examine how the said expressions are used and understood by the persons engaged in business. The general and common usage of the said words has to be understood at common parlance.

"34. In the case at hand, we are concerned with the expression "consultancy services". In this regard, a reference to the decision by the authority for advance ruling In Re. P.No. 28 of 1995 (248 ITR 280), would be applicable. The observations therein read as follows:

"By technical services, we mean in this context services requiring expertise in technology. By consultancy services, we mean in this context advisory services. The category of technical and consultancy services are to some extent overlapping because a consultancy service could also be technical service. However, the category of consultancy services also includes an advisory service, whether or not expertise in technology is required to perform it."

"35. In this context, a reference to the decision in ***C.I.T. v. Bharti Cellular Limited and others (319 ITR 139)***, would be apposite. In the said case, while dealing with the concept of "consultancy services", the High Court of Delhi has observed thus:

"Similarly, the word "consultancy" has been defined in the said Dictionary as "the work or position of a consultant; a department of consultants." "Consultant" itself has been defined, ***inter alia***, as "a person who gives professional advice or services in a specialized field." It is obvious that the word "consultant" is a derivative of the word "consult" which entails deliberations,

consideration, conferring with someone, conferring about or upon a matter. Consult has also been defined in the said Dictionary as "ask advice for, seek counsel or a professional opinion from; refer to (a source of information); seek permission or approval from for a proposed action". It is obvious that the service of consultancy also necessarily entails human intervention. The consultant, who provides the consultancy service, has to be a human being. A machine cannot be regarded as a consultant."

"36. In this context, we may fruitfully refer to the dictionary meaning of 'consultation' in Black's Law Dictionary, Eighth Edition. The word 'consultation' has been defined as an act of asking the advice or opinion of someone (such as a lawyer). It means a meeting in which a party consults or confers and eventually it results in human interaction that leads to rendering of advice.

"37. As the factual matrix in the case at hand, would exposit the NRC had acted as a consultant. It had the skill, acumen and knowledge in the specialized field i.e. preparation of a scheme for required finances and to tie-up required loans. The nature of activities undertaken by the NRC has earlier been referred to by us. The nature of service referred by the NRC, can be said with certainty would come within the ambit and sweep of the term 'consultancy service' and, therefore, it has been rightly held that the tax at source should have been deducted as the amount paid as fee could be taxable under the head 'fee for technical service'."

(iii) "Source Rule" and "Residence Rule"

"22. ..... On a studied scrutiny of the said Clause, it becomes clear that it lays down the principle what is basically known as the "source rule", that is, income of the recipient to be charged or chargeable in the country where the source of payment is located, to clarify, where the payer is located. The Clause further mandates and requires that the services should be utilized in India."

"24. The two principles, namely, "Situs of residence" and "Situs of source of income" have witnessed divergence and difference in the field of international taxation. The principle "Residence State Taxation" gives primacy to the country of the residency of the assessee. This principle postulates taxation of world-wide income and world-wide capital in the country of residence of the natural or juridical person. The "Source State Taxation" rule confers primacy to right to tax to a particular income or transaction to the State/nation where the source of the said income is located. The second rule, as is understood, is transaction specific. To elaborate, the source State seeks to tax the transaction or capital within its territory even when the income benefits belongs to a non-residence person, that is, a person resident in another country. The aforesaid principle sometimes is given a different name, that is, the territorial principle. It is apt to state here that the residence based taxation is perceived as benefiting the developed or capital exporting countries whereas the source based taxation protects and is regarded as more beneficial to capital importing countries, that is, developing nations. Here comes the principle of nexus, for the nexus of the right to tax is in the source rule. It is founded on the right of a country to tax the income earned from a source located in the said State, irrespective of the country of the residence of the recipient. It is well settled that the source based taxation is accepted and applied in international taxation law.

"25. The two principles that we have mentioned hereinabove, are also applied in domestic law in various countries. The source rule is in consonance with the nexus theory and does not fall foul of the said doctrine on the ground of extra-territorial operation. The doctrine of source rule has been explained as a country where the income or wealth is physically or economically produced. [See League of Nations, Report on Double Taxation by Bruins, Einaudi, Saligman and Sir Josiah Stan (1923)]. Appreciated on the aforesaid principle, it would apply where business activity is wholly or partly performed is a source State, as a logical corollary, the State concept would also justifiably include the country where the commercial need for the product originated, that is, for example, where the consultancy is utilized."

Jitendra Singh & Sameer Dalal
Advocates

DIRECT TAXES
Tribunal

REPORTED

1. Capital Gain – S. 50 C of the Income-tax Act, 1961 – Computation – Circle rate prevailing on the date of registration of agreement to sell adopted to pay the stamp duty has to be adopted for computing capital gain under section 50 C of the Act and not the circle rate prevailing on the date of execution of sale deed. A.Y. 2005-06

ITO vs. Modipon Ltd. – (2015) 115 DTR (Del.) (Trib.) 99

Assessee entered in an agreement to sell with the purchaser in May 2004 for sale of land. The agreement to sell was registered on the very same day and stamp duty was computed on the basis of the circle rate as prevailing in May 2004. Thereafter, in September 2004 a formal deed of sale was executed on which the stamp due was charged at an enhanced rate prevailing at that time. The assessee computed the capital gain on the sale of land, adopting the value as prevalent in May 2004 when the agreement to sell was entered into. The Assessing Officer however adopted the value land as per the circle rate prevailing on the date of execution of sale deed that is, in September 2004 and adopted a higher sale consideration for the purpose of section 50 C of the Act while computing capital gain.

On appeal the Tribunal held that by executing the sale deed in September, 2004, the assessee has only completed the contractual obligation imposed upon him by virtue of the agreement to sell entered into in May 2004. The process of sale was initiated from the date of agreement to sell, thus, the character of the transaction for the purpose of the Act should be determined on the basis of the conditions that prevailed on the date the transaction was initially entered into that is, in May 2004. Accordingly, the applicability of the provisions of section 50C of the Act should be looked at only on the date of agreement to sell and accordingly, circle rate as prevailing as on May 2004 should be adopted to compute capital gain.

2. Capital Gain – S. 54F of the Income-tax Act, 1961 – Exemption – Construction of new house – Assessee would be entitled to exemption under section 54F of the Act with respect to the payment made to builder from time to time within the period of three years from the date of sale – Even though the construction of the flat was not

complete within the period of three years. A.Y.: 2009-10

Pradeep Kumar Chowdhry vs. Dy. CIT – (2015) 115 DTR (Hyd.)(Trib.) 208

Assessee sold a property on 12-9-2008, on which long term capital gain accrued to him. Thereafter, the assessee entered into an agreement with a builder for purchase of a residential flat. The assessee paid the amount to the builder from time-to-time. However, the flat was not in a habitable state at the end of three years period from the date of transfer/sale of original asset. The assessee claimed deduction of the amount paid to the builder as exempted under section 54F of the Act. However, in the revised return the assessee restricted the claim to the amount paid to the builder before the due date of filing the return of income. During the assessment proceedings the Assessing Officer disallowed the entire claim of the assessee under section 54F of the Act as the construction of new house was not completed within the period of three years from the sale of original asset/ property.

On appeal Tribunal held that assessee would be entitled to exemption under section 54F of the Act with respect to all the payments made by him within the period of three years from the sale of original property even though the construction of the new flat was not completed within the period of three years from the sale of original asset/property.

3. Exemption – S. 10B of the Income tax Act, 1961 – Profits derived from export – Interest income earned on fixed deposit kept as margin money with the bank for obtaining credit facilities – Assessable as Business income - Eligible for exemption under section 10B of the Act. A.Y: 2009-10

Universal Precision Screws vs. Asstt. CIT – (2015) 115 DTR (Del.) (Trib.) 57

The assessee had placed fixed deposits with banks for availing credit facilities for its business purposes. The interest earned on fixed deposits was treated as business income by the assessee and also eligible for deduction under section 10 B Act. The Assessing Officer treated the interest as income from other sources and disallowed the assessee's claim of deduction under section 10 B of the with respect to interest income earned.

On appeal Tribunal held that the interest income earned on fixed deposits placed with the banks for obtaining credit facilities bares the characteristics of business income and therefore, the same would assessable as Business Income and also eligible for deduction under section 10 B of the Act.

Note: Mumbai Tribunal in the case of, ***Watson Pharma P. Ltd. vs. Dy. CIT - (2015) 115 DTR (Mum.)(Trib.) 65*** also held that interest income and amount realised on sale of scrap is business income and should be considered while computing deduction under section 10B of the Act.

UNREPORTED:

4. Income – S. 28(i) of the Income-tax Act, 1961 - Business income – Income from House Property – Assessee developed shopping malls and business centres on property owned by it – Letting out same and also providing various facilities in said business centre – Income assessable as Business Income. A.Y's: 2001-02, 2002-03, 2004-05, 2006-07 & 2009-10

Asstt. CIT vs. Steller Developer (P.) Ltd. – [I.T.A. Nos.: 4891 / M / 2008, 6635 / M / 2009, 126 – 128 / M / 2010 and 7636 / M / 2012; Order dated: 21-1-2015; I.T.A.T. Mumbai Bench]

Assessee developed shopping malls/business centres on properties owned by it and let out same on long term lease or sub lease along with various amenities such as electricity, cooling, towers, elevators, car parking for the lessee and visitors, etc. These services and amenities provided by the assessee were inseparable and the same had to be provided along with the building and as such the services, amenities were co-terminus/co-existent with the principal subject matter of the property. The basic intention of assessee was commercial exploitation of its properties by developing them as shopping malls/business centres. Accordingly, the income therefrom was offered as business income by the assessee. The Assessing Officer treated the said income as income from house property.

On appeal the Tribunal held that merely because income is attached to a property it cannot be a sole factor for assessing the income as income from house property, it has to be seen that as to what was the primary objective of the assessee while exploiting the property, if the property is let out simply the income is assessable as Income from House Property. However, if the property is exploited in a commercial manner then the income therefrom is assessable as Business Income. In the present case, as the assessee had developed shopping malls/business centres on properties owned by it and let out same by providing various services/facilities/amenities in the said mall/business centres, it can be said that basic intention of assessee was commercial exploitation of its properties by developing them as shopping malls/business centres. Thus, the income was assessable as Business Income.

5. Revision – S. 263 of the Income-tax Act, 1961 - Where show cause notice issued by Commissioner of Income Tax set out grounds for revision as 'inadmissible deductions' - Revision order cannot be passed by CIT on the grounds of 'lack of proper inquiries' by Assessing Officer. A.Y.: 2007-08

B.S. Sangwan vs. ITO [I.T.A. No.: 2680 / Del / 2011; Order dated: 21-1-2015; I.T.A.T. Delhi Bench]

Assessee was a railway contractor. The assessment proceedings under section 143(3) were concluded after making certain additions/ disallowances. Thereafter, the Commissioner of Income-tax issued a notice under section 263 of the Act to show cause as to why the above assessment order not be cancelled/modified. The CIT was of the opinion that the order passed under section 143(3) of the Act was erroneous as was prejudicial to the interest of the Revenue. According to him if the additions/ disallowances mentioned in the notice issued by him would have been made, there would have been substantial tax effect. However, the CIT while passing order under section 263 of the Act simply restored the assessment order to the file of the Assessing Officer for fresh adjudication after making 'proper enquiries'.

On appeal quashing the order passed by the CIT under section 263 of the Act, the Tribunal held that a revision order can only be passed on the ground on which the assessee has been given reasonable opportunity of being heard, and as it is not open to CIT to set out one reason for revising the order in his notice but, actually revise the order on some other ground. Thus, the CIT was not justified in setting aside the order of the A.O. on the ground that there was, lack of proper inquiries, which an A.O. ought to have conducted during assessment proceedings, when he had issued the show cause notice on the ground that claim of deduction made by the assessee with respect to certain items of income/ expenditure was erroneous.

CA Sunil K. Jain

DIRECT TAXES

Statutes, Circulars & Notifications

NOTIFICATIONS

Section 10(23A) of the Income-tax Act, 1961 – Exemptions – Professional Associations – Notified Association

The Central Government approved the "Indian National Group of the International Association for Bridge and Structural Engineering, IDA Building, Jamnagar House, Shahjahan Road, New Delhi-110 011" for the purpose of the section 10(23A) of the Income-tax Act for the Assessment Years 2013-14 to 2015-16 provided: (i) the assessee shall apply its income, or accumulate the income for application, in accordance with the provisions of the said clause (23A), solely to the objects for which it is established; (ii) the assessee shall not be eligible for exemption under the said clause (23A) in respect of income chargeable under the head "Income from House Property" or any income received for rendering any specified services or income by way of interest or dividends derived from its investment.

(Notification No. 4/2015 dated 20-1-2015)

Section 80C of the Income-tax Act, 1961 – Deductions – in respect of insurance premium, etc. – notified plan under Section 80C(2)(viii)

The Central Government specified the 'Sukanya Samriddhi Account' for the purposes of section 80C(2)(viii)of the Income-tax Act. This notification shall come into force with effect from the date of its publication in the Official Gazette.

(Notification No. 9/2015 dated 21-1-2015)

Section 90 of the Income-tax Act, 1961 – Double Taxation Agreement – Agreement for avoidance of Double Taxation and prevention of fiscal evasion with foreign countries – South Africa – Amendment in Notification No. GST 198(e), dated 21-4-1998

The protocol amending the Agreement between the Government of the Republic of India and the Government of the Republic of South Africa for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income was signed in Pretoria in 2013. The date of entry into force of the said protocol is the 26th day of November 2014, being thirty days after the date of receipt of letter of notifications of completion of the procedures required by the respective laws for bringing the protocol into force, in accordance with Article II of the said protocol. Therefore the Central Government notified that all the provisions of the said protocol shall be given effect to in the Union of

India with effect from the 26th day of November 2014.

(Notification No.10/2015 dated 2-2-2015)

Income-tax (Second Amendment) Rules, 2015 – Safe Harbour – Amendment in Rules 10D, 10TA and insertion of Rules 10TH, 10THA, 10THB, 10THC, 10THD and Form 3CEFB

In reference to sections 92CB and 92D of the Income-tax Act, the CBDT made the Income-tax (2nd Amendment), Rules, 2015 which shall come into force from the date of their publication in the Official Gazette. In the Income-tax Rules, 1962 in Rule 10 D, after sub-rule (2), sub-rule (2A), and after Rule 10T, for the words "Safe Harbour Rules", the words "Safe Harbour Rules for International Transactions" have been substituted; after rule 10TG, "Safe Harbour Rules for Specified Domestic Transactions" have been inserted.

Rule 10TH for Definitions of "Appropriate Commission" and "Government Company have been now provided. Rule 10THA for "Eligible assessee" and rule 10THB "Eligible specified domestic transaction". Safe Harbour Rule as per 10THC and Procedure as per rule 10THD inserted. Further in Appendix II, after Form No. 3CEFA, "Form No. 3CEFB" being "Application for Opting for Safe Harbour in respect of Specified Domestic" has been inserted.

(Notification No. 11/2015 dated 4-2-2015)

Commodities Transaction Tax (First Amendment) Rules, 2015 – Amendment in Rule 3

The Central Government made the rules to amend the Commodities Transaction Tax Rules, 2013, to be called the Commodities Transaction Tax (First Amendment) Rules, 2015 which shall come into force on the date of their publication in the Official Gazette. In the Commodities Transaction Tax Rules, 2013, for rule 3, the rule regarding Agricultural Commodities has been substituted.

(Notification No.13/2015 dated 10-2-2015)

Section 35CCC of the Income-tax Act, 1961 – Expenditure on agricultural extension project – notified eligible agricultural extension project

The CBDT notified the "Oil Palm Extension Project", "Animal Feed Extension Project" and "Godrej Agrovet-Agricultural Inputs Extension Project ('GA-AIEP')" of Godrej Agrovet Limited, Pirojshanagar, Eastern Express Highway, Vikroli (East), Mumbai-400079, as eligible for the purpose of Section 35CCC of the Income-tax Act. Conditions subject to which agricultural extension project titled 'Animal Feeds Extension Project' have been notified thereunder.

The CBDT clarified that it shall withdraw the approval if the approved entity (i) has ceased its activities; or (ii) its activities are not genuine; or (iii) its activities are not being carried out in accordance with all or any of the relevant provisions of the Act or Rules; or (iv) its activities are not being carried out in accordance with all or any of the conditions subject to which the notification is being issued.

(Notification Nos. 14/2015, 15/2015 & 16/2015 all dated 16-2-2015)

Section 35(1)(ii) of the Income-tax Act, 1961 – Scientific Research Expenditure – Approved Scientific Research Associations/Institutions

The organization Academy of Scientific and Innovative Research (AcSIR), New Delhi (PAN - AAALA1352P) has been approved by the Central Government for the purpose of clause (ii) of sub-section (1) of section 35 of the Income-tax Act for the assessment year 2015-2016 and onwards in the category of "University College and other Institution", engaged in research activities subject to the specified conditions.

The Central Government further clarified that it shall withdraw the approval if the approved organization (a) fails to maintain separate books of accounts as referred to in sub-paragraph (iii) of paragraph 1; or (b) fails to furnish its audit report as referred to in sub-paragraph (iii) of paragraph 1; or (c) fails to furnish its statement of the donations received and sums applied for scientific research as referred to in sub-paragraph (iv) of paragraph 1; or (d) ceases to carry on its research activities or its research activities are not found to be genuine; or (e) ceases to conform to and comply with the provisions of above clause .

(Notification No. 17/2015 dated 17-2-2015)

CIRCULARS

Section 234A of the Income-tax Act, 1961 – Interest, chargeable as – Chargeability of interest under section 264A on self-assessment tax paid before due date of filing of return of income

Interest under section 234A of the Income-tax Act is charged in case of default in furnishing return of income by an assessee. The interest is charged at the specified rate on the amount of tax payable on the total income, as reduced by the amount of advance tax, TDS/TCS, any relief of tax allowed under section 90 and section 90A, any deduction allowed under section 91 and any tax credit allowed in accordance with the provisions of section 115JAA and section 115JD of the Act. Since self-assessment tax is not mentioned as a component of tax to be reduced from the amount on which interest under section 234A of the Act is chargeable, interest is being charged on the amount of self-assessment tax paid by the assessee even before the due date of filing of return.

It has been held by the Hon'ble Supreme Court in the case of *CIT vs. Prannoy Roy, 309 ITR 231 (2009)* that the interest under section 234A of the Act on default in furnishing return of income shall be payable only on the amount of tax that has not been deposited before the due date of filing of the income-tax return for the relevant assessment year. Accordingly, the present practice of charging interest under section 234A of the Act on self-assessment tax paid before the due date of filing return was reviewed by CBDT. The Board decided that no interest under section 234A of the Act is chargeable on the amount of self-assessment tax paid by the assessee before the due date of filing of return of income.

(Circular No. 2/2015 - dated 10-2-2015)

Section 40(a)(i) of the Income-tax Act, 1961 – Business Disallowance – Interest, etc., paid to a non-resident without deduction of tax at source – Clarification on amounts not deductible under section 40(a)(i)

Section 40(a)(i) of the Act stipulates that in computing the income chargeable under the head "Profits or gains of business or profession", any interest, royalty, fees for technical services or other sum chargeable under this Act either payable in India to a non-resident (not being a company)/a foreign company or payable outside India shall not be allowed as a deduction, if there has been a failure in deduction or in payment of tax deducted in respect of such amounts under Chapter XVII-B of the Act.

Disallowance regarding 'other sum chargeable' under section 40(a)(i) is triggered when the deductor fails to withhold tax as per provisions of section 195 of the Act. Doubts have been raised about the interpretation of the term 'other sum chargeable' i.e. whether this term refers to the whole sum being remitted or only the portion representing the sum chargeable to income-tax under relevant provisions of the Act.

Central Board of Direct taxes had already issued Instruction No. 02/2014, dated 26-2-2014 (F.No. 500/33/2013-FTD-I) regarding deduction of tax at source. *Vide* this instruction, Board has clarified that in cases where tax is not deducted at source under section 195 of the

Act, the Assessing Officer shall determine the appropriate portion of the sum chargeable to tax, as mentioned in sub-section (1) of section 195, to ascertain the tax-liability on which the deductor shall be deemed to be an assessee in default under section 201 of the Act. It has been further clarified that such appropriate portion of the said sum will depend on the facts and circumstances of each case taking into account the nature of remittances, income component therein or any other fact relevant to determine such appropriate proportion.

As disallowance of amount under section 40(a)(i) of the Act in case of a deductor is interlinked with the sum chargeable under the Act as mentioned in section 195 of the Act for the purposes of tax deduction at source, the Central Board of Direct Taxes, clarified that for the purpose of making disallowance of 'other sum chargeable' under section 40(a)(i) of the Act, the appropriate portion of the sum which is chargeable to tax under the Act shall form the basis of such disallowance and shall be the same as determined by the Assessing Officer having jurisdiction for the purpose of sub-section (1) of section 195 of the Act as per Instruction No. 2/2014, dated 26-2-2014 of CBDT. Further, where determination of 'other sum chargeable' has been made under sub-sections (2), (3) or (7) of section 195 of the Act, such a determination will form the basis for disallowance, if any, under section 40(a)(i) of the Act.

(Circular No.3/2015 - dated 12-2-2015)

INSTRUCTIONS

Section 92C of the Income-tax Act, 1961 – Transfer Pricing – Computation of arm's length price – Acceptance of order of High Court of Bombay in case of Vodafone India Services Pvt. Ltd. [2014] 50 Taxmann.com 300 (Bombay)

The CBDT drew attention to the decision of the High Court of Bombay in the case of *Vodafone India Services Pvt. Ltd. for A.Y. 2009-10 (WP No.871/2014)*, wherein the Court has held, *inter-alia*, that the premium on share issue was on account of a capital account transaction and does not give rise to income and, hence, not liable to transfer pricing adjustment. The Board has now accepted the decision of the High Court of Bombay. All the ITAT, DRPs and CsIT (Appeals) were directed that the *ratio decidendi* in the judgment must be adhered to in all cases where this issue is involved

(Instruction No. 2/2015 - dated 29-1-2015)

PRESS RELEASES

Section 80GGB of the Income-tax Act, 1961 – Deduction in respect of contributions by companies to political parties – Initiation of investigation into issuance of cheques to several persons and entities including political parties by companies which are acting as entry operators to convert illegal cash into legitimate money

Income Tax Department had initiated investigation into issuance of cheques by companies which are acting as entry operators to convert illegal cash into legitimate money. Recently in Kolkata, this investigation led to detection of substantial unaccounted income. In these cases, the unaccounted income was sought to be converted into legitimate money with the help of non-genuine companies which were acting as entry operators.

An enquiry was initiated in Delhi into issuance of cheques by companies which were alleged to be non-genuine and entry operators. The companies and their Directors could not be traced at the addresses given to Banks and Ministry of Corporate Affairs. Examination of the accounts of these companies revealed that they have issued accommodation entries to several persons and entities for substantial amounts. It was also found that sources for such entries were *prima facie* not genuine. To carry forward

the investigation process, notices were issued to about 50 persons and entities including two political parties. These notices seek information about the identity of the contributors and other relevant details which are necessary to complete the process of investigation.

(Press Release, dated 11-2-2015)

Section 276C of the Income-tax Act, 1961 – Wilful attempt to evade tax, etc. – Shift in focus of income-tax department from civil consequences to criminal consequences in serious cases of tax evasion

During 2014-15 the ITD conducted searches in 414 groups and seized undisclosed assets of ` 582 crore. Undisclosed income of ` 6,769 crore has been admitted by the taxpayers during such searches. The undisclosed income detected as a result of further enquiries is however much more. Besides, 1174 surveys conducted upto November, 2014 led to detection of undisclosed income of ` 4673 crore. Focus of investigation in the Income-tax Department had so far been on civil consequences i.e., revenue augmentation.

In its crusade against black money and with a view to have credible deterrence against generation of black money, the Government has shifted the focus to successfully prosecute the offenders in shortest possible time. Wilful attempt to evade tax is a serious offence punishable under Section 276C of the Income Tax Act, 1961 with imprisonment up to 7 years and fine. During the current year 628 prosecution complaints have been filed up to December, 2014. 56 of such prosecution complaints relate to offences concerning undisclosed foreign income.

(Press Release, dated 12-2-2015)

STATEMENT AS PER PRESS AND REGISTRATION OF BOOKS ACT

FORM IV *[See Rule 8]*

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	Address	:	3, Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai – 400 020.
6.	Names and Addresses of individuals who own the newspaper and partners or shareholders holding more than one per cent of the capital	:	The Chamber of Tax Consultants 3, Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai - 400 020.

I, Kishor D. Vanjara hereby, declare that the particulars given above are true to the best of my knowledge and belief.

Date : 9-3-2015

KISHOR D. VANJARA
Signature of the Publisher

CA Tarunkumar Singhal & Sunil Moti Lala, *Advocate*

INTERNATIONAL TAXATION
Case Law Update

A] HIGH COURT JUDGMENTS

I. ALP of interest on amounts advanced to German AE was to be determined based on EURIBOR rate of interest and not the lending rate charged by the bank in India

CIT vs. Tata Autocomp Systems Ltd. (ITA No. 1320 of 2012) (Bombay High Court) – Assessment Year: 2007-08

Facts

1. The assessee advanced an interest free loan of Euro 26.25 lakhs to its wholly owned subsidiary in Germany. During the assessment, the Transfer Pricing Officer ('TPO') determined the Arms' Length Price (ALP) i.e., interest on the loan advanced to the German subsidiary at 10.25% based on lending rate charged by the bank in India. The Assessing Officer passed the draft assessment order in line with the TPO's order.

2. The assessee carried the draft order to the Dispute Resolution Panel (DRP), where it enhanced the ALP of the interest rate on loan to 12%.

3. Being aggrieved, the assessee preferred an appeal to the Hon'ble Income Tax Appellate Tribunal wherein, it was held that:

a. the interest free loan extended came within the ambit of 'International Transaction' and the issue to be examined in such a case would be the ALP of such an International Transaction; and

b. with regard to the quantum addition on account of interest, since the amounts were advanced to a Germany Enterprise, the rate of interest was to be determined by applying the EURIBOR rate of interest i.e. rates prevailing in Europe. For this reliance was placed on the decision of the Tribunal in the case of *VVF Ltd. vs. DCIT (ITA No.673/Mum/06)* and *DCIT vs. Tech Mahindra Ltd. (46 SOT 141).*

4. Aggrieved by the aforesaid order of the Tribunal, the Revenue preferred an appeal before the Hon'ble Bombay High Court.

Judgment

1. The Hon'ble High Court while dismissing the appeal of the Revenue held that as in similar matters i.e., in the case of the VVF Ltd. (supra) & Tech Mahindra Ltd. (supra), Revenue had accepted the view of the Tribunal by not preferring any appeal against those orders, the Hon'ble High Court saw no reason to entertain the instant questions of law before it.

II. Where it is not shown that the transactions between the agent and principal assessee were not made under arm's length conditions, the said agent

will not be considered as a Dependent Agent PE of the French principal in India

DIT vs. Delmas France (ITA No. 1648 of 2012) (Bombay High Court) – Assessment Year: 2006-07

Facts

1. The assessee French company, engaged in business of operation of ships in international traffic, claimed that it did not have any permanent establishment in India and, therefore, its business profits could not be taxed in India.

2. The Assessing Officer (AO) admitted that there was an Indian agent of the assessee, who was responsible for concluding contracts of the assessee and also for various other functions such as broking, liaisoning and contracting with parties for loading of cargo etc. The agent was also managing an office of the assessee. Accordingly, the AO held that the assessee had a permanent establishment in India. He further rejected the assessee's claim with regard to applicability of section 44B with respect to freight earning and estimated the income at 10 per cent of the total freight earnings.

3. The draft assessment order of the Assessing Officer was challenged by the assessee before the Dispute Resolution Panel (DRP). After receiving directions from DRP the Assessing Officer passed his order.

4. On appeal, the Tribunal dealing with Articles 5(5) & 5(6) of the DTAA, passed an order in favour of the assessee.

5. Being aggrieved, the Revenue preferred an appeal to Hon'ble Bombay High Court.

Judgment

1. The Hon'ble High Court held that it was not demonstrated by the Revenue that transaction between assessee and its agent were not at arm's length, and thus, the Tribunal was justified in deciding matter in favour of assessee. The appeal was accordingly dismissed by the Hon'ble High Court.

III. Companies like Wipro & Infosys were giants in software development sector assuming all risks, and also had extraordinary high turnover and therefore, not comparable. Decision in Capital IQ Information Systems followed

CIT vs. M/s. Adaptec India Ltd. [TS-483-HC-2014(AP)-TP] – Assessment Year: 2007-08

Facts

1. The assessee was engaged in the business of software design, development and testing in the areas of high performance storage solutions. The assessee renders software development services to its Associated Enterprise (AE) i.e. Adaptec Inc, USA. Under TNMM, the assessee selected 28 companies with average Operating Profit / Operating Cost (OP/TC) of 14.53%. As assessee's margin of 14.03% was within +/-5% of comparable average mean, assessee claimed its transaction to be at arm's length.

2. During the assessment proceedings, the TPO conducted a fresh search applying additional filter of rejecting companies less than ` 1 crore. Further, on the basis of information obtained under section 133(6) TPO selected 19 companies as comparables with average OP/TC of 26.20% and after allowing working capital adjustments of 3.58% arrived at the adjusted arithmetic mean PLI of 22.62% and made an adjustment of ` 1.83 crore. The DRP upheld the order of the Assessment Officer.

3. Aggrieved, the assessee filed an appeal before Hon'ble ITAT and contested 2 comparable companies selected by the TPO, namely Infosys Technologies Ltd. and Wipro Ltd. The Hon'ble ITAT ruled in favour of assessee and held that Infosys & Wipro were not comparable. It followed the Hon'ble Delhi High Court judgment in ***CIT vs. Agnity India Technologies Pvt. Ltd. [ITA No. 1204 of 2011].***

4. Aggrieved, the Revenue filed further appeal with the Hon'ble Andhra Pradesh High Court.

Judgment

1. The Hon'ble High Court held that the appeal in the case of Capital IQ Information Systems had been dismissed [TS-450-HC-2014(AP)-TP] on identical issues, and accordingly dismissed Revenue's instant appeal and upheld the order of the Tribunal.

IV. Companies which have exceptionally large scale of operations, functional differences and failing Related Party Transaction filter being more than 15% cannot be comparable

CIT vs. M/s. DE Shaw India Software Pvt. Ltd (I.T.T.A. No.433 of 2014) – Assessment Year 2007-08

Facts

1. The assessee, a wholly owned subsidiary of D.E. Shaw and Co., LLP (Desco), a limited liability partnership firm was based out of USA. This firm was engaged in global financial services, investment advisory activities, broker dealer activities and computer based quantitative management. The assessee also provides software development services to its parent. For AY 2007-08, the assessee was remunerated at cost plus 12% mark-up.

2. During transfer pricing proceedings, the TPO rejected assessee's TP analysis and selected 26 comparables with average margin of 25.14%. He further allowed working capital adjustment of 1.85% and determined TP adjustment at ` 6.31 Cr. The DRP granted part relief to the assessee and accordingly TP adjustment was reduced to ` 5.55 Crores.

3. The Hon'ble ITAT in its order followed the decision in the case of *Intoto Software [TS-141-ITAT-2013(HYD)-TP]* for the issue of selection of comparables. Accordingly, the Hon'ble ITAT rejected companies on the ground of exceptionally large scale of operations, functional differences and failing Related Party Transaction filter being more than 15%. Further, relying on the decision in the case of Hellosoft [TS-59-ITAT-2013(HYD)-TP], the Hon'ble ITAT allowed risk adjustment at 1%.

4. Aggrieved against this order of Tribunal, Revenue filed further appeal before the Hon'ble High Court.

Judgment

1. The Hon'ble High Court observed that, the Tribunal had followed the decision of Co-ordinate Bench in Intoto Software. Revenue conceded to the Hon'ble High Court's observation that the Intoto ruling had been confirmed by this High Court in [TS-337-HC-2014(AP)-TP]. Accordingly, High Court held that this issue needed no further reconsideration.

V. It is the absolute duty of the payer to deduct tax at source u/s. 195 of the Act irrespective of the stance of the payee and therefore, since the entire income of a non-resident is subject to deduction of tax at source, no interest can be levied u/s. 234B of the Act on the non-resident

DIT vs. GE Packaged Power Inc. and Ors (ITA No. 352 to 291 and 402 of 2014) (Delhi High Court) – Assessment Year: 2007-08

Facts

1. A survey under Section 133A was conducted at the premises of General Electric International Operations Company Inc. ("GEIOC"), the liaison office, subsequent to which reassessment proceedings were initiated against several entities of the GE group ('assessee') for several assessment years. In the said proceedings, the learned Assessing Officer ('AO') concluded that the assessee had Permanent Establishment ('PE') in India and computed the taxable income by attributing some percentage of the sale price to such PE and also levied interest u/s. 234A and 234B of the Act.

2. On appeal, the Ld. CIT(A) confirmed the reopening of the assessment, existence of PE and attribution of profits to the PE. However, it deleted interest u/s. 234B of the Act by relying on the judgment of the Hon'ble Delhi High Court in case of *DIT vs. Jacabs Civil Inc. [330 ITR 578 (Del.)].*

3. On appeal by the Department, the Hon'ble ITAT dismissed the same by relying on the same judgment of Hon'ble Delhi High Court.

4. Aggrieved by the aforesaid order of the Tribunal, the Revenue preferred an appeal before the Hon'ble Delhi High Court.

5. Before the Hon'ble High Court, the Department contended that the assessee had a role to play in non-deduction of tax at source by the payer and therefore contended that the judgment of Hon'ble Delhi High Court in case of ***DIT vs. Alcatel Lucent USA Inc. (ITA No. 327 of 2012)*** squarely applied to the case and consequently interest u/s. 234B should be levied upon the assessee.

Judgment

1. The Hon'ble High Court while dismissing the appeal of the Revenue held that the Hon'ble Delhi High Court in case of ***DIT vs. Jacabs Civil Inc. (supra)*** has held that an obligation has been imposed on the payer to deduct tax at source u/s. 195 of the Act. Further, section 209(1)(d), prior to amendment by Finance Act, 2012, allowed the assessee to take credit of tax deductible at source, even though the same may not have been deducted by the payer.

2. Further, the Hon'ble Court held that the view taken in Alcatels case cannot be applied here, since it was the absolute duty of the payer to deduct tax u/s. 195 irrespective of the stance of the payee. The payer, therefore was duty bound to determine the income of the non-resident taxable in India and such determination was also provided for u/s. 195(2).

3. The Hon'ble High Court also distinguished the decision in case of Alcatel as being a decision turning upon its facts and limited to the circumstances of that case as the levy of interest in the said case was upheld only on account of equities that needed to be balanced based on the peculiar facts of that case and no such need was made out in the present facts.

4. Ultimately, the Hon'ble Court, relying upon the decision in case of Jacob (supra) and decision of other High Courts, held that no interest was leviable u/s. 234B of the Act on the assessee.

VI. If the consideration is paid for mere right to use or to use intellectual property rights/know-how as against for transfer of full ownership, then the consideration shall be treated as 'Royalty' under Article VIIIA of the erstwhile DTAA between India and Germany

HCL Ltd. vs. CIT (ITA No. 93 of 2002 and 120 of 2008) (Delhi High Court) – Assessment Year 1989-90 and 1990-91

Facts

1. The assessee, an Indian company, made a lump sum payment to a German company in pursuance of an agreement entered into between the two parties in consideration of the German company agreeing to provide the assessee with technical data and know-how relating to licensed product and the right to manufacture, sale and maintain the said products in India.

2. The Assessing Officer (AO) held that the said payment would constitute royalty income in the hands of the German company and treated the assessee as a representative of the said foreign company.

3. The Hon'ble Tribunal upheld the contention of the AO.

4. Being aggrieved, the assessee preferred an appeal to the Hon'ble Delhi High Court.

Judgment

1. The Hon'ble High Court held that since the definition of the term 'royalty' as given in the Article VIIIA of the erstwhile India-Germany DTAA was more beneficial than that appearing in the Act, therefore it would deal with the definition appearing in the Treaty.

2. Further, the Hon'ble Court held that the term 'royalty' was associated with the payment made for grant of the user right. Grant of user right had to be distinguished from transfer of

ownership in intangible property or know-how, i.e., sale of intangible property or know-how by the proprietor to a third person. In the latter case, the consideration paid was not for use of or right to use the intangible property or know-how but to acquire full ownership. The consideration paid for transfer of full ownership in the realm of international tax laws was normally taxed as per applicable DTAA either as capital gains or as business income.

3. Further, referring to the agreement entered into between the parties, the Hon'ble Court held that there wasn't any absolute transfer of ownership in the intellectual property right to the assessee. A particular clause in the agreement stated that the technical and other information was to remain as the foreign company's property. Further, the assessee was entitled to sub-license or sub-contract only so much of the rights that were conferred upon the assessee itself. In view of above, the Hon'ble Court held that it was not the case of full transfer of ownership but it was only a transfer of right to use or permission to use the technology.

4. Thus, it was concluded by the Hon'ble Court that the payment made by the assessee to the foreign company constituted royalty income of the foreign company under the erstwhile India-Germany DTAA.

VII. High Court upholds Tribunal's decision rejecting comparable companies a) with super normal profits, b) with substantially high turnover and c) that outsources work to third party vendors

CIT vs. Market Tools Research (P.) Limited [TS-488-HC-2014(TEL and AP)-TP] – Assessment Year: 2008-09

Facts

1. Assessee was engaged in the business of providing Information Technology enabled Services (ITeS) in the nature of survey report designing, survey data programming, data processing etc. and was remunerated at cost plus mark up of 13%.

2. Assessee adopted TNMM as the most appropriate method (MAM) with OP/TC as the PLI and identified 11 comparables. However, the TPO rejected the assessee's benchmarking analysis and conducted a fresh search. TPO identified 20 comparables with an average margin of 29.16% and made an adjustment of ` 4.22 Cr to the assessee's income. On appeal to the DRP, the Assessee was only allowed partial relief.

3. An aggrieved assessee appealed to the Hon'ble Tribunal wherein it followed the Hon'ble Delhi High Court's ruling in the case of Agnity India Technologies P. Ltd [TS-189-HC-2013 (DEL)-TP] and its decision in assessee's own case for AY 2007-08 and held that companies with substantially high turnover, such as Infosys BPO, Wipro BPO, HCL Comnet Systems and Services Ltd., should not be selected as comparables.

4. The Tribunal further rejected Eclerx Services Ltd. since it was earning very high profits. In coming to this conclusion the Tribunal relied on its decision in assessee's own case for AY 2007-08 and Capital IQ Information Systems India P. Ltd. [TS-720-ITAT-2012(HYD)-TP].

5. The Tribunal also held that Cosmic Global Ltd. could not be considered as a comparable as it had outsourced the IT enabled services to third party vendor-companies.

6. Aggrieved, the Revenue filed further appeal with the Hon'ble Andhra Pradesh High Court.

Judgment

1. The Hon'ble High Court held that there was no question of law involved in the appeal as the Tribunal had decided all the issues following decisions either of co-ordinate Bench of the Tribunal or High Court.

B) Tribunal Decisions

Whether amount received by non-resident from its Indian franchisees towards reimbursement of international sales and marketing expenses is royalty/ FIS as per India-US tax treaty- Held: Yes – In favour of the Revenue

Marriott International Inc. vs. Dy. DIT [TS-4-ITAT-2015 (Mum.)]

Assessment Years: 2006-07 to 2009-10

Facts

i) The assessee, incorporated in and a tax resident of the USA, belonged to the 'Marriott Group', which was engaged in the business of operating hotels worldwide under brands such as 'Marriott' and 'Renaissance '. The Marriot Group also gave licences to other hotels under a franchisee arrangement to enable them to carry out business under these brand names.

ii) Marriott Worldwide Corporation (MWC), an affiliate company belonging to the Marriott Group, had entered into a "licence and royalty agreement" with another Group entity (name of entity was not available) that owned the Renaissance and Marriott brands. Under the authority of this agreement, MWC gave permission or a licence to other hotels to use these two brand names upon the payment of royalty on agreed terms. Three Indian companies engaged in the business of running hotels, had entered into an agreement with MWC for use of either or both these brand names. MWC had offered the royalty received from the Indian Companies as its income in India, and the same was not disputed.

iii) Separately, the assessee had also entered into an international sales and marketing agreement ('ISMA') with the aforementioned Indian companies, under which the assessee had agreed the following:

a) Assessee to provide international sales and marketing services – The assessee was to be reimbursed by the Indian Companies at a fixed percentage of the gross revenue of the Indian Companies. This consideration was considered as the allocable share of actual costs and expenses incurred by the assessee towards the rendering of the international sales and marketing services.

b) International sales and marketing fees – Sales and marketing fees were to be paid to the assessee (over and above the actual cost and expenses mentioned above) as a percentage of the gross revenue of the Indian Companies and

c) Reimbursement of expenses by the Indian Companies to the assessee for provision of special services viz. special chain services, reservation system, advertising costs – The expenses incurred by the assessee were to be charged to the participating Indian Companies on a fair and reasonable basis.

iv) The assessee filed its return of income for AY 2006-07 treating all the above receipts as taxable. Subsequently, the assessee filed a revised return of income declaring 'nil' income and sought refund of the taxes withheld by the Indian Companies, on the ground that the said expenses were in the nature of reimbursement of expenses, on a cost-to-cost basis (without any mark-up) and hence were not taxable.

v) In course of the assessment proceedings the tax officer (TO) held as follows:

vi) The TO also charged interest under section 234B of the Act for non-payment of advance tax.

vii) Aggrieved by the TO's order, the assessee filed an appeal with the Commissioner of Income-tax (Appeals) [CIT(A)]. The CIT(A) had, in his order:

a) Accepted the TO's view and held that payments received by the assessee under Article 2.01 were taxable as royalty, and those received under Articles 2.02 to 2.04, were taxable as FIS.

b) The receipts under Article 2.05 were taxable as royalty and not FIS as the TO held.

viii) Aggrieved by the CIT(A)'s decision, the assessee filed an appeal before the Tribunal.

Assessee's contentions

i) The CIT(A) had erred in concluding that payments received for reimbursement of international sales and marketing services were in the nature of royalty and/or FIS;

ii) The impugned payments received by the assessee were mere reimbursement of expenses.

Though the agreement provided for payment of expenditure/ cost in providing international sales and marketing services under Article 2.01 and for the payment of fees under Article 2.05 as a percentage of gross revenue, yet the surplus, if any, that was available after incurring the concerned expenses, was either refunded to the hotels or included in the next year's spending. The assessee was allocating the expenses and costs incurred for marketing programs on an actual basis without adding any mark-up for profit. Accordingly, the assessee did not make any profits out of these amounts. These payments had been made for specific services which were unconnected with the payment of royalty to MWC;

iii) The Government of India had approved the payments to be made by the hotels towards royalty as well as towards international sales and marketing fees, and the same included approval for the reimbursement of costs from the Exchange Earner's Foreign Currency (EEFC) account for international sales and marketing costs covered by Articles 2.01 to 2.04. Accordingly, the said approval made it very clear that the assessee hotels were making different kinds of payments, i.e., towards royalty, reimbursement of expenses, fees, etc. As each payment was made for specific purposes, all of them could not be considered as royalty or FIS. As such, the tax authorities were not correct in taking a stand which contradicted the approval given by the Government of India. The Government of India had authorised payment of royalty to a different affiliate of the Marriott Group and not to the assessee company.

iv) The services provided by the assessee under the ISMA included the "frequent traveller programme", and the "reservation programme", both of which had nothing to do with the brand. The parties to the agreement had understood the terms and conditions of the agreement in a particular manner, and had also acted in that manner. It was not open to the TO to give another interpretation and tax the assessee. In this regard, reliance was placed on the decision of the Calcutta High Court in the case of 2 *CIT vs. Arun Dua [1989] 45 Taxman 246 (Calcutta HC).*

v) The assessee was not the owner of the brands 2 *CIT vs. Arun Dua [1989] 45 Taxman 246 (Calcutta HC)* mentioned above, but had been providing specific services to the Indian companies. Therefore, the assessee could not be assessed for the above receipts as royalty when it was not the owner of the brands.

vi) Placing reliance on the judgment of the Bombay High Court in the case of *DIT vs. NGC Networks Asia LLC [2009] 313 ITR 187 (Bombay HC)*, it was contended that since tax was deducted from the payment received by the assessee, the assessee was not liable to pay advance tax. Therefore, interest under section 234B of the Act would not be applicable

Tax Department's Contentions

i) The assessee could not identify the expenses relating to any particular Indian hotel out of the marketing expenses incurred by it. Accordingly, relying on the decision of Chennai Tribunal, in the case of *Van Oord ACZ Marine Contractors BV vs. ADIT [2012] 23 taxmann.com 146 (Chennai-Tribunal)*, it contended that the assessee had not substantiated its claim that there was no profit mark-up in the bills raised against the Indian companies. There was no evidence on record to show that the market value of services received by the Indian companies were equivalent to the payments made. The reimbursement on a cost-to-cost basis or absence of the profit element were not deciding factors, and the tax authorities were required to see the objective for which the payments were received;

ii) The advertising programmes were not directed to any particular hotel but to the brand names, 'Marriott' and 'Renaissance'. There was no direct nexus between the Indian hotels and the expenses/costs or providing the services. The Department Representative (DR), placing reliance on an identical issue in the ruling of Authority for Advance Ruling (AAR) in the case of International Hotel Licensing Co., In re [2007] 288 ITR 534 (AAR), contended that the amount received by a non-resident applicant from Indian hotels in connection with marketing and business

promotion activities conducted outside India could not be treated as mere reimbursement of costs and expenses. The same would be taxable as FIS under section 9(1)(vii) of the Act;

iii) On the approval given by the Government of India, the DR contended that the said approval did not override the provisions of the Act as the conditions attached in that approval specifically provided that the agreement shall be subject to Indian laws;

iv) The DR submitted that the assessee's Group had bifurcated the royalty amount into different types of receipts only to suit its convenience. The assessee's Group was using the funds so collected in different names only to promote its brand name. Accordingly, the "form" should be ignored and the "substance" should be looked into;

v) The ISMA and the agreement with MWC were interdependent. As such, the interconnected services rendered by two different companies should be considered as ideal in nature. The purpose or intention of the Marriott Group should be taken as the prime factor to decide the issue under consideration.

Decision

The Tribunal held in favour of the Revenue as under:

i) The conditions attached to the permission given by the Government of India for remittance by the Indian companies specifically provided that the approval would be subject to Indian laws. Therefore, the assessee's contention that "the Government of India had accorded necessary permission to remit the payment on specific head and the tax authorities were not entitled to take a different view", was not correct.

ii) The responsibility to maintain the brand value lay with the brand owner. The brand value was maintained by continuous and sustained advertisement/ marketing activities. In the instant case, the Marriot and Renaissance brands were owned by one company (whose name and activities were not available on record). The ISMA had been entered into with another company, viz. the assessee. Since the assessee had collected the charges from the hotel carrying out the marketing activities, the Revenue had contended that the charges so collected should also be construed as a part of royalty only. Therefore, the amount received by the assessee company as reimbursement of expenses from the Indian hotels should be considered as royalty, since that amount had been spent on popularising the brand name, which would otherwise be the responsibility of the brand owner;

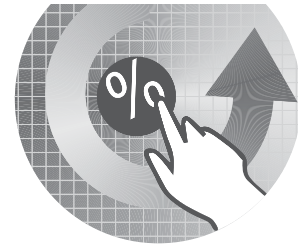
iii) The assessee's claim that it was undertaking the marketing work on a cost-to-cost basis defied logic and prudence. A commercial company would never work without profit. The very fact that it was functioning on a cost-to-cost basis proved that the assessee company was only an extended arm of the Marriott Group owning the brand name. Therefore, this was a clear tax planning by adoption of a "colourable device". Accordingly, the separate legal identity of the assessee got blurred, and the corporate veil had to be lifted. The amount received by the assessee had to be examined from the point of view of the original owner of the brand as the advertisement/ marketing programmes were carried out by the assessee in the name of Marriott and/ or Renaissance brand;

iv) Hence, all payments made by the Indian companies to the assessee went to swell the value of the existing brand names referred to above, and therefore had to be taxed as royalty in terms of Article 12 of the India-US tax treaty;

v) The TO was directed to follow the Bombay High Court decision in ***DIT vs. NGC Networks Asia LLC [2009] 313 ITR 187 (Bombay HC)*** and delete the interest under section 234B of the Act.

Note:

The assessee did not take recourse to the definition of 'make available' provisions of the India-US tax treaty when the Revenue contended that the payments ought to be taxed as FIS.



CA Bharat Shemlani

INDIRECT TAXES

Service Tax – Case Law Update

1. Services

Cargo Handling Service

1.1 Jai Jawan Coal Carriers Pvt. Ltd. vs. CST, New Delhi 2015 (37) STR 509 (Tri.-Del.)

The appellant in this case engaged in tipper loading, transportation and wagon loading of coal/mineral ore. The work orders prescribed for separate rates for tipper loading, transportation and unloading into railway wagons therefore contract to be treated as separate contract under one instrument. The Tribunal held that, coal/mineral ore loaded and unloaded meant for transportation to be treated as Cargo Handling Service. However, amount charged for transportation, is not chargeable to service tax as even if the activity is treated as GTA service, liability to pay service tax is on recipient of service. Since, the issue was under dispute before various Tribunals, longer period of limitation cannot be invoked.

1.2 CCE, Raigad vs. Maersk India Pvt. Ltd. 2015 (37) STR 555 (Tri.-Mumbai)

The assessee in this case provided storage and warehousing of export cargo in addition to normal cargo handling and classified the same as Cargo Handling Service for export. The Tribunal held that storage and warehousing of goods is a separate activity in itself and does not form part of cargo handling service. There is no evidence that storage and warehousing is a statutory requirement under any law governing container freight stations and the assessee provided the said service to selected customers on collection of separate charges. Hence, the classification under cargo handling service is not justified. It is further held that, assessee is operating under self assessment regime and if there is any material change in nature of terms and conditions of transaction, the same should have been brought to the notice of department, which is not done hence extended period of limitation is invocable.

Business Auxiliary Service

1.3 Globe Forex & Travels Ltd. CCE, Jaipur-I 2015 (37) STR 513 (Tri.-Del.)

The Tribunal in this case held that, activity of arranging visa is not covered under any clause of BAS and therefore activity is not taxable. Further it is held that, ***suo motu*** adjustment of service tax collected in respect of cancelled air ticket for discharge of service tax liability is permitted. It is also held that, no service tax is payable on cancellation charges on part of airfare received from person booking air tickets cancelled subsequently.

1.4 Sai Service Station Ltd. vs. CCEC & ST Kochi 2015 (37) STR 516 (Tri.-Bang.)

The appellant in this case engaged in sale of used/pre-owned vehicles belonging to client. The Tribunal observed that, the activity is purchase and sale of old vehicles and refurbishing, repair and other activities are have been undertaken as value addition to get maximum returns and there is no element of service in the transaction.

1.5 CST, Mumbai vs. Exxon Mobile Co. India Pvt. Ltd. 2015 (37) STR 591 (Tri.-Mumbai)

The Tribunal in this case held that, BAS and STC services provided by the assessee to its holding and affiliated companies abroad and received convertible foreign exchange are services used outside India and therefore qualify as export of service.

1.6 Grey Worldwide (I) Pvt. Ltd. vs. CST, Mumbai 2015 (37) STR 591 (Tri.-Mumbai)

The appellant in this case received incentives and volume discount from Media companies The department alleged that it is liable under BAS as promotion of business of print/electronic media by canvassing/booking order on behalf of Media companies. The Tribunal held that, assessee is merely co-ordinating between media and advertiser and there is no contractual obligation for provision of service between both the parties, hence the amounts received are not liable to service tax under BAS.

1.7 Sharma ICE Factory vs. CCE, Jaipur-I 2015 (37) STR 660 (Tri.-Del.)

The Tribunal in this case held that, process of chilling of milk to make it fit for long distance transportation without getting spoiled which does not bring into existence any change, is not liable to service tax under BAS.

1.8 GAP International Sourcing (India) Pvt. Ltd. vs. CST, Delhi 2015 (37) STR 757 (Tri.-Del.)

The appellant in this case rendered services in relation to procurement of goods to GAP, USA, which was not having any branch or project or business establishment in India. The Tribunal held that, services covered by Rule 3(1)(iii) of ESR, 2005 as the same has been used by GAP, USA in relation to business located abroad. Therefore, services to be treated as delivered and used outside India and since payment is received in convertible foreign exchange, qualifies as export of service.

1.9 Harshad Thermic Industries (P) Ltd. vs. CCE&C, Raipur 2015 (37) STR 808 (Tri.-Del.)

The department in this case contended that, joining of two pieces of rail at site for Railways by thermite welding is activity covered under production or processing of goods not amounting to manufacture and therefore liable under BAS. The Tribunal held that, part of process of laying down of track making them fit for traffic movement do not result in any deliverable goods to railways and therefore no production or processing of goods not amounting to manufacture and therefore not liable to service tax.

Commercial Training and Coaching Centre Service

1.10 Opportunités India Solutions Pvt. Ltd. vs. CST, Mumbai 2015 (37) STR 520 (Tri.-Mumbai)

The appellant in this case imparted training recognized by State Board of Vocation Examination. The Tribunal held that, assessee providing training recognized by Board but certificates were issued by Board, therefore provided taxable service and hence liable to pay service tax. Penalties are set aside in view of *bona fide* belief of non-taxability.

Tangible Goods Supply Service

1.11 Greatship (India) Ltd. vs. CST, Mumbai-I 2015 (37) STR 533 (Tri.-Mumbai)

The appellant in this case engaged in charter hire of drilling unit on time charter basis. The drilling rig along with personnel to operate the same on charter hire basis and payment for the service rendered is made on per day basis. The Tribunal held that, appellant has possession and effective control of the drilling rig and since both service provider and receiver are in India, the place of provision of service is in India. Merely because the oil rigs are deployed outside the Indian territorial waters but within the exclusive economic zone of India cannot be said provided outside India. Further, the service provided is composite service consisting of SOTG service and mining service. However, essential character is SOTG service, since 95% consideration is for supply of tangible goods for use and mining operations account only for about 5% of consideration received.

It is further held that, though at the relevant time, there was no specific rule relating to place of provision of service one can usefully and gainfully adopt the provisions of PPSR, 2012 which is an internationally accepted concept in the matter of services.

Renting of Immovable Property Service

1.12 Murli Realtors Pvt. Ltd. vs. CCE, Pune-III 2015 (37) STR 618 (Tri.-Mumbai)

The department in this case, alleged to demand service tax on notional interest on security deposit. The Tribunal held that, security deposits have been taken to provide security in case of default in rent by lessee or default in payment of utility charges or for damages caused for leasing of property. In absence of any provision in law for providing for notional addition to value/price charged, question of addition notional interest on security deposit as consideration received for services rendered cannot be sustained. Further, in absence of evidence showing security deposit influencing price i.e. rent, impugned amount cannot form part of rent. Also there is no reason for adopting rent @ 18% p.a. as rate of interest as same is neither bank rate of interest for deposits or loans nor market rate of interest and adopting of arbitrary rate militates against concept of valuation.

Commercial or Industrial Construction Service

1.13 Kedar Constructions vs. CCE, Kolhapur 2015 (37) STR 631 (Tri.-Mumbai)

The appellant provided CIC services relating to transmission of electricity to various companies and claimed exemption under notification 45/2010-ST. The Tribunal held that, expression 'relating to' under Notification No. 45/2010-ST is very wide in its amplitude and scope and all taxation services rendered in relation to transmission/distribution of electricity would be eligible for benefit of exemption under the said notification for the period prior to 27-2-2010. It is further held that, definition of transmission given in Electricity Act, 2003 covers very wide gamut of activities including sub-station and equipments.

1.14 DNS Contractor vs. CCE, Delhi-I 2015 (37) STR 848 (Tri.-Del.)

The appellant in this case contended that since main contractor has deposited the entire amount of service tax on full construction value, they are not liable to pay service tax again on such value. The Tribunal held that, if the service tax liability stands discharged on full and complete value, the sub-contractor cannot be taxed again in respect of same services on that part of value in the services provided by them. This would amount to double taxation.

1.15 *Afcons Infrastructure Ltd. vs. CST, Mumbai-I 2015 (37) STR 850 (Tri.-Mumbai)*

The appellant in this case constructed onshore Transport Terminal for loading of natural gas extracted from various wells, transported through pipe and it comprised centralized control room, and facilities like workshop, lounge, guesthouse, helipad etc. The Tribunal held that, there was no arrival from different destination and dispersal to different destination and only one item gas was transported in unidirectional and fixed manner. The said onshore terminal is not a transport terminal similar to air, sea or road. Transport terminal has to be given commonly understood meaning since it is preceded by airport, railways etc. and it would be imply similar things like bus and truck terminals.

Rent-a-Cab Scheme Operator Service

1.16 *CC&CE, vs. Sachin Malhotra 2015 (37) STR 684 (Uttarakhand)*

The High Court in this case held that, expression 'in relation to' used in section 65(105)(o) though expands scope of taxation, any service which does not relate to renting of cabs, would be irrelevant for imposing service tax. Unless control of vehicle is made over to hirer and he is given possession for howsoever short a period, to deal with the vehicle, there would be no renting service. A person chooses to hire a car where owner of vehicle, who may or may not be the driver, offer his service while retaining control and possession of vehicle with himself is liable to pay service tax under Rent-a-Cab Scheme.

Banking & Other Financial Service

1.17 *HDFC Bank Ltd. vs. CST, Mumbai 2015 (37) STR 779 (Tri.-Mumbai)*

The appellant in this case received brokerage from sale of RBI tax saving bonds and contended that as per RBI letter dated 28-10-2004, said bonds issued under section 2(2) of Public Debt Act, 1944 constituting government security issued for raising public loan and therefore no service tax liability on underwriting commission. The Tribunal held that, sale of RBI bonds amounts to statutory function and cannot be subjected to tax liability.

Also refer to *Enam Securities P. Ltd. vs. CST, Mumbai 2015 (37) STR 794 (Tri.-Mumbai)*

Programme Producers Service

1.18 *BCCI vs. CST Mumbai-I 2015 (37) STR 785 (Tri.-Mumbai)*

The Tribunal in this case held that recording of cricket match images for and on behalf of the appellant by non-resident service provider is liable to service tax under Programme Producer service and the appellant is liable to pay service tax under RCM. It is further held that, booking of hotel accommodation and transport of personnel in connection with recording of cricket matches is not covered under Programme Producers service but under Business Support Service.

2. Interest/Penalties/Others

2.1 *Nila Engineering Contractors vs. ACCE, Cuddalore 2015 (37) STR 475 (Mad.)*

In this case SCN was served at wrong address but its receipt and other communications from department at that address acknowledged by noticee with signature and stamp. Further, assessee also communicated to Department about their willingness to deposit the amount demanded. In view of the said facts it is held that, plea of assessee that, they had not received SCN is rejected.

2.2 *Ahmednagar Merchants Co-op. Bank Ltd. vs. CCE&C, Aurangabad 2015 (37) STR 478 (Tri.-Mumbai)*

In the present case, the appellant received order on 18-11-2013 and filed appeal on

17-2-2014. The department contended that the appeal is delayed as limitation for filing appeal to Commissioner(A) to be computed day wise and not month wise. The Tribunal held that, limitation period provided in section 85(3A) of FA, 1994 is to be computed month wise and not day wise as the month defined in General Causes Act is British Calendar month.

2.3 Time Ads & Publicity vs. CCEC&ST 2015 (37) STR 506 (Tri.-Bang.)

The Tribunal in this case held that, since the appellant has collected taxes and paid only when pointed out by the department, they cannot escape the penalty.

2.4 India Oil Corporation Ltd. vs. CST, Mumbai-I 2015 (37) STR 575 (Tri.-Mumbai)

The appellant filed refund claim on 24-12-2007 on the ground that assessees are integrated company subsequent to merger effective from 1-4-2004. The department rejected the same as time barred. The Tribunal held that, in light of decision is assessees own case in ***2011 (23) STR 625*** (Tribunal) date of merger with effect from 1-4-2004 ultimately decided ***vide*** amalgamation order dated 30-4-2007 issued by Ministry of Petroleum and refund is claimed within one year from 30-4-2007, hence within time.

2.5 CCE&ST, Meerut-II vs. Krishna Swaroop Agarwal 2015 (37) STR 647 (Tri.-Del.)

The assessee an authorised service station contended that value of spare parts/ accessories/consumables like lubricants and coolants etc. during provision of servicing of vehicle is sale and therefore to be excluded in value of taxable service. The Tribunal held that, the assessee established that, amount on which service tax has been demanded actually pertains to sale of spare parts/ accessories/consumables etc. by showing copies of VAT assessment orders and therefore benefit of Notification No. 12/2003-ST is available.

2.6 Jay Balaji Jyoti Steels Ltd. vs. CESTAT, Kolkata 2015 (37) STR 673 (Ori.)

The High Court in this case held that, insertion of "or by speed post with proof of delivery" after words "sending it by registered post with acknowledgement due" in Section 37C(1)(a) of CEA, 1944 was procedural and clarificatory amendment and hence had retrospective effect. The Post Office issues receipt for both i.e. 'registered post' and 'speed post' and hence both have to be treated as 'registered post' in view of section 28 of Indian Post Act, 1898 read with rules made thereunder.

2.7 CST vs. Associated Hotels Ltd. 2015 (37) STR 723 (Guj.)

The High Court in this case held that, section 85(4) gives ample powers to the Commissioner while hearing and disposing of the appeal to pass such order it thinks fit including orders for enhancing tax, interest or penalty and such powers inherently contain the power to remand a proceeding for proper reasons to the adjudicating authority. Thus, if proper enquiry is not conducted or the proceedings is decided ex parte, it would not be necessary in every case that the Commissioner(A) convert itself to the adjudicating authority and conduct the entire enquiry.

2.8 CC&CE, Alld. vs. Ashok Kumar Tiwari 2015 (37) STR 727 (All.)

The High Court in this case held that, once the legislature has used the expression 'three months' both in substantive part of section 85(3) and in its proviso, it would not be open for Courts to substitute the words 'three months' by words 'ninety days' and to do so would amount to rewriting of the legislative provision.

3. CENVAT Credit

3.1 CCE, Raipur vs. SKS Ispat & Power Ltd. 2015 (37) STR 485 (Tri.-Del.)

The department in this case disallowed CENVAT credit on the ground that assessee

did not clear goods in terms of invoices which were later on cancelled. The Tribunal held that, there is no provision in law relating to CENVAT credit for proportionate disallowance of CENVAT credit in such circumstances as no one to one correlation of input and output is to be established to claim CENVAT credit. It is further held that, CENVAT credit of pandal and shamiana service availed to preserve raw material is admissible and disallowance cannot be done on mere suspicion or assumption.

3.2 GTL Infrastructure Ltd. vs. CST, Mumbai 2015 (37) STR 577 (Tri.-Del.)

The assessee in this case provided passive telecom infrastructure which was taxable under BAS. The department denied CENVAT credit on parts of Towers, BTS Cabins, etc. heavily relying on definition of input service under rule 2(k)(i) of CCR, 2004 and explanation thereunder. The Tribunal held that, assessee is providing output service therefore rule 2(k)(ii) is relevant and Towers/ BTS cabins undisputedly used for providing BAS hence credit cannot be denied. Facts of *Bharti Airtel Ltd. 2013 (29) STR 401 (T)* are totally different hence not applicable in present case. It if further held that, reversal of wrong CENVAT credit before utilization does not attract interest liability.

3.3 Hindustan Zinc Ltd. vs. CCE, Jaipur 2015 (37) STR 608 (Tri.-Del.)

The Tribunal in this case allowed CENVAT credit on insurance of plant & machinery, goods in transit, cash in transit and insurance of vehicles and laptops being an integral part of manufacturing business to be treated as input service in terms of rule 2(l) of CCR, 2004 as it existed prior to its amendment on 1-4-2011.

3.4 Modern Insulators Ltd. vs. CCE, Jaipur-II 2015 (37) STR 625 (Tri.-Del.)

The Tribunal in this case allowed CENVAT credit of service tax paid on transit insurance meant for risk cover of goods meant for transportation from one place to other as once the insurance cover is inseparable from the risk covered by it then CENVAT claimed is undeniable.

3.5 CCE vs. HCL Technologies 2015 (37) STR 716 (All.)

The High Court in this case allowed CENVAT credit on following input services:

- Subscription for International Taxation for providing information and knowledge pertaining to International Taxation for tax compliance;
- Legal & Consultancy service in relation to filing of tax return in US;
- Medical group insurance for employees; and,
- Outdoor catering services except for consumption of alcoholic beverages.

3.6 Bhuruka Gases Ltd. vs. CCE,C&ST, Bengaluru-I 2015 (37) STR 818 (Tri.-Bang.)

The Tribunal in this case held that, factually as proved from letters written by two agents, besides sales promotion, said agent helping in selling in products, in canvassing business, making their network available for expanding business and procuring of orders, which activity can be treated as sales promotion and therefore eligible for credit.

Janak C. Pandya, Company Secretary

CORPORATE LAWS
Company Law Update

[2015] 188 Comp Cas 485 (CLB)

[Before the Company Law Board – Mumbai Bench]

Ms. Varshaben S. Trivedi vs. Shree Sadguru Switch Gears P. Ltd and Others.

The act of oppression may be fully permissible under the law as legal, however, when said action is against the probity, good conduct, burdensome, harsh and is *mala fide* or for a collateral purpose, then it would amount to oppression under section 397 of the Companies Act, 1956.

Brief Facts

The Petitioner has refiled this petition under sections 397 and 398 read with section 402 of the Companies Act, 1956 ("Act"). The said petition is for certain acts of oppression and mismanagement purportedly committed by respondents. The said petition was originally heard and decided by the CLB member at that time and had granted certain reliefs. The petitioner being aggrieved had filed petition before the Hon. High Court Gujarat. The Hon. High Court has set aside the judgment and directed the CLB to hear the case afresh.

The facts as submitted in the original petition are as follows.

1. Petitioner holds around 62.36% equity shares of the Company.
2. Respondent No. 1 is a Company where as respondent Nos. 2 to 4 are the shareholders and directors of the Company.
3. Respondent no 4 holds around 37.39% of the shareholding of the company. She resigned as director of the Company.
4. The two directors of the company as per MCA websites were related to respondents holding shares of the company.

The allegations made by the petitioner are as follows:

1. The appointment of respondent Nos. 2 and 3 as directors were illegally made and without her knowledge. As she was one of the two directors of the board. No notice was received by her for proposed board meeting, where the two directors were appointed. It was submitted that form 32 filed with RoC mentioned the board resolution is "00" thus, it shows that no board meeting was held and the director who has filed has no authority.
2. The director can be appointed by the shareholders in Extra Ordinary General Meeting ("EGM") only and board of director has limited powers for the appointment of an additional director or alternate director.

3. Registered Office of the Company has been shifted by illegally constituted board of directors. Petitioner has not received any notice for such board meeting.

4. Petitioner was illegally removed as a director under section 284 of the Act in the alleged EGM. Further, no board meeting was held before holding EGM, which is must. The petitioner has not received any notice for said board meeting or EGM.

5. The funds of the Company were siphoned by the respondent No. 2 and 3 for their personal benefit.

The following relief has been sought in the petition.

1. That petitioner be restored as a director of the Company.

2. The two respondent directors should vacate the office as their appointment is null and void.

3. The petitioner is allowed to appoint additional director form the quorum for a board meeting.

4. The two respondent directors should repay back the siphoned fund.

5. All actions taken by the two respondents directors should be declare as null and void.

From respondent sides, the above allegations were refuted. They have provided the evidence by of Certificate of Posting for sending notice for calling EGM under section 169 of the Act. They have also claimed that since the petitioner has failed to call EGM as requisitioned, they have called the EGM as provided in said section 169.

Judgments and Reasoning

1. The CLB has set aside the appointment of two respondent directors.

The CLB has reviewed the various decided case on oppression and mis-management. The judgments in the case of ***Needle Industries (India) Ltd. vs. Needle Industries Nerwey (India) Holding Ltd. [1981] 51 Comp Cas 743 (SC); 1981 3 SCC 333 ; M. S Madhusoodhanan vs. Kerala Kaumudi P. Ltd [2003] 117 Comp Cas 19 (SC); [2009] 1 SCC 212; Dale and Carrington Invt. P. Ltd v. P.K. Prathapan [2004] 122 Comp Cas 161 (SC); [2005] 1 SCC 212; Sangramsinh P. Gaekwad vs. Shantadevi P. Gaekwad [2005] 123 Comp Cas 566 (SC); [2005] 11 SCC 314*** to decide.

a. Where the conduct is harsh, burdensome and wrong.

b. Conduct is ***mala fide*** and is for collateral purpose.

c. Action is against probity and good conduct.

d. Even though the action is legally permissible, if same is otherwise against probity, good conduct or is burdensome, harsh or wrong.

The CLB has relied on various decisions on delivery of notice through "certificate of posting" including Supreme Court Judgment in the case of ***M. S Madhusoodhanan vs. Kerala Kaumudi P. Ltd.*** where it was observed that the …"evidence by certificate of posting was not reliable when relationship between the parties is already embittered…". Further, in case of ***Dankha Devi Agarwal. Tara Properties P. Ltd [2006] 133 Comp Cas 236 (SC)*** it was held by Supreme Court that …. a decision taken in a meeting without due notice of such meeting for removal or induction would be instance of oppression and mis-management." The decision in ***Zora Singh vs. Amrik Singh Hayer [2009] 149 Comp Cas 328 (P&H)***, it

was held that. "when the receipt of all the notices were denied by the respondent, the mere production of such certificates do not satisfy the requirement of law."

2. CLB has also set aside the resolution for shifting of registered office. CLB has noted that upon contention of respondents and analysis of facts and documents, same are not to be relied upon.

3. On removal of petitioner under section 284 of the Act, CLB has set aside the decision taken in EGM and declared the same is also set aside. The CLB has verified both sides of argument including that same is very much applied to even a private company. However, CLB has accepted the contention of a petitioner as to illegal removal without any valid reason. CLB accepted that when company is not working for last so many years and that company has surrendered its tax registration certificate thus there was no logic for respondent to remove her as a director which it is nothing but gaining control over the company. CLB has relied upon the judgment in ***V. G. Balasundaram vs. New Theatres Carnatic Talkies P. Ltd. [1993] 77 Comp Cas 324 (Mad.)***

4. On Siphoning of fund, CLB has noted that as per respondents, the said amount was paid to certain creditors, which were not paid by petitioner, while she was running the company. CLB has directed that Board should get the accounts audited and decided upon such allegation.

5. CLB has also rejected other contention respondents as to illegal allotment of shares by petitioner earlier and that petitioner has not come with clear hand. Further, respondent claimed that petitioner has not filed any submission for winding up of the company etc., both the above pleas were rejected.

[2015] 188 Comp Cas 1 (SC)

[In the Supreme Court of India]

I.P. Holding Asia Singapore P. Ltd and Another vs. Securities and Exchange Board of India.

The perception of the risk and threat in the business is to be decided from the perspective of the acquirer and same cannot be decided on the basis of the hindsight of the SEBI.

Brief Facts

This application is made by the appellants against the order of the Securities Appellate Tribunal ("SAT") at Mumbai. As per SAT order, the appellants were directed to pay a non-compete fee to the public shareholders of the target company as paid to outgoing promoters.

The appellant No. 1 is a Singapore based company. Appellant No. 2 is its India based subsidiary. The appellants had agreed to purchase shares from the out-going promoters ("Bangur Grup") of Andhra Pradesh Paper Mills Ltd. ("Co." or "Target Co."). The appellants had entered into two agreements with the Bangur Group to acquire their 53.46% shareholding in the company at a price of ` 523/- per share. The appellant also agreed to pay additional ` 21.20 per share as exclusivity fee. Thus, total amount to be paid was ` 544.20 per share. Appellant also entered into a non-compete and business waiver agreement for which they have paid additional amount to Bangur Group.

As per the Regulation 10 of the SEBI (Substantial Acquisitions of Shares and Takeovers) Regulations, 1997 ("Code"), appellant have an open offer to remaining shareholders of the Co. to acquire up to 21.54% equity shares at a price of ` 544.20/- per share.

On open offer letter, SEBI has made an observation to offer a share price of ` 674.93 by adding the non-compete fee paid to Bangur Group.

The contention of the SEBI is that out of total number of members of Bangur Group consisting of companies and individuals, only some of the promoters entities were eligible for non-compete fee. With regards to 13 promoter entities, as per SEBI, none of them are eligible for non-compete fee payment as they were not in the business of Target Co.

Being aggrieved with the SEBI's contention, the appellants had filed application with SAT. The SAT also agreed to the SEBI's contention.

SAT view is that payment of non-compete fee is a sham to deprive the other shareholders their rightful claim, SAT decision was based on the followings:

1. SAT relied on its earlier three appeals, that it had jurisdiction to decide on whether an excessive amount of non-compete fee paid to promoter entities and that some of them were not capable to compete with business of the Target Co.

2. Two individuals not having any experience or expertise in such business were paid such fee only because they are part of promoter's entities.

3. For other 13 non-individual promoters' entities, SAT has observed that none of them are in the business of the Target Co. and thus, cannot offer any competition to its business.

Judgments and reasoning

The Supreme Court has upheld the appeal. The following were the points considered by the Court.

1. As per Regulation 20(8) of takeover code, for non-compete fee, if exceeds above 25% of offer price, then the jurisdiction of SAT is triggered. In the present situation, the fee is less than 25% and thus, SAT has no jurisdiction. Court has noted the decision in ***G.L. Sultania vs. Securities and Exchange Board of India [2007] 137 Comp Cas 658 (SC); [2007] 5 SCC 133***. In this it was noted that "for the acquirer the decision to acquire shares is a commercial decision."

2. On the non -payment to one of the individual, after going through his degree, his working with Target Co. and his holding indirect shareholding in another promoter entities, Court has opined that it is odd that SEBI and SAT concluded that he did not have sufficient information, access or ability to be in a position to compete with the Target Co. business.

3. Court has also observed that other individuals have the master degree in business administration and also a director of the company and thus can not be said that she lacked experience to offer any competition.

4. The perception of the appellants as to risk and threat from such promoters' entities. From their perspective, such individual holding directly or indirectly shares in the Target Co. and having business experience and same can not be decided on the basis of the hindsight of the SEBI.

5. Second error on splitting the payment of non-compete fees to only certain promoter entities and excluding other entities is an error on the part of SAT. If the non-compete fee is a sham, then the entire agreement would have to be held as a sham and not only a part of it being treated as sham.

CA Mayur Nayak, CA Natwar Thakrar &
CA Pankaj Bhuta

OTHER LAWS
FEMA Update

In this article, we have discussed recent amendments to FEMA through Circulars issued by RBI:

1. Foreign Direct Investment in Pharmaceuticals sector – Clarification

In pursuance of the Press Note No. 2 (2015 Series) dated 6th January, 2015 issued by DIPP, RBI has now issued this circular to amend the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000, notified *vide* Notification No. FEMA 20/2000-RB dated May 3, 2000, (as amended from time to time) and A.P. (DIR Series) Circular No.124 dated April 21, 2014 deal with Foreign Direct Investment ('FDI') in the pharmaceutical sector in order to bring it it uniformity with the FDI Policy.

As per this circular, FDI up to 100% is permitted for manufacturing of Medical Devices under the automatic route in both greenfield and brownfield companies.

(A.P. (DIR Series) Circular No. 70 dated 02nd February, 2015) / (Notification No. FEMA.334/2015-RB dated January 9, 2015)

(Comments: Through this Circular, RBI has drawn attention of ADs to the amendments made to the Principal Notification No. 20 "Transfer or Issue of Security by a Person Resident outside India" dated May 3, 2000)

2. Foreign Investment in India by Foreign Portfolio Investors

RBI had *vide* Schedule 5 to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 (as amended from time to time) and A.P. (DIR Series) Circular No. 13 dated July 23, 2014, notified that all future investment in Government securities by registered Foreign Portfolio Investors (FPIs) shall be required to be made in Government bonds with a minimum residual maturity of three years.

Now, as per the announcement in the Sixth Bi-Monthly Monetary Policy Statement, 2014-15, issued on February 3, 2015, all future investment by FPIs in the debt market in India will also be required to be made with a minimum residual maturity of three years.

Accordingly, RBI has clarified the following with respect to Foreign Investments by FPIs:

1. All future investments by an FPI within the limit for investment in corporate bonds shall be required to be made in corporate bonds with a minimum residual maturity of three years.

2. All future investments against the limits vacated when the current investment runs off either through sale or redemption, shall be required to be made in corporate bonds with a minimum residual maturity of three years.

3. FPIs shall not be allowed to make any further investment in liquid and money market mutual fund schemes.

4. There will be no lock-in period and FPIs shall be free to sell the securities (including those that are presently held with less than three years residual maturity) to domestic investors.

5. All other existing conditions for investment by FPIs in the debt market remain unchanged.

However, after issue of this circular, RBI received a number of enquiries and has therefore provided the following clarifications in A.P. (DIR Series) Circular No. 73 dated 6th February, 2015:

1. Applicability of the directions to investment by FPIs in commercial papers (CPs) – Any fresh investments shall be permitted in any type of debt instrument in India with a minimum residual maturity of three years. Accordingly, FPIs shall not be allowed to make any further investment in CPs.

2. Applicability of these guidelines on debt instruments having maturity of three years and over but with optionality clause of less than three years – FPIs shall not be allowed to make any further investments in debt instruments having minimum initial/residual maturity of three years with optionality clause exercisable within three years.

3. Applicability of these guidelines on amortised debt instruments having average maturity of three years and above – FPIs shall be permitted to invest in amortized debt instruments provided the duration of the instrument is three years and above.

(A.P. (DIR Series) Circular No. 71 dated 3rd February, 2015) & (A.P. (DIR Series) Circular No. 73 dated 6th February, 2015)

(Comments: Imposition of three years residual maturity requirement would not only impact shorter-term loans, it would also restrict various contractual arrangements like call/ put option vis-à-vis the issuing company, part redemptions etc. to be exercised prior to the expiry of three years. However, the requirement of minimum three years residual maturity is only for fresh investments by FPIs. Existing holdings of Bonds by FPIs can continue to have call/put options and be redeemed prior to three years.

In order to encourage foreign debt, the government* vide *Finance Act, 2013 (extended till June 2017 by Finance Bill, 2015) had considerably reduced the withholding tax for corporate NCDs. However, the introduction of minimum three years residual maturity requirement is a major dampener for FPIs and corporates.)

3. Foreign Investment in India by Foreign Portfolio Investors

Schedule 5 to the foreign exchange management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000, permits registered Foreign Portfolio Investors (FPIs) to purchase on repatriation basis Government securities and non-convertible debentures (NCDs)/bonds issued by an Indian company.

In terms of the announcement in the Sixth Bi-Monthly Monetary Policy Statement, 2014-15, issued on February 3, 2015, reinvestment of coupons in Government securities will be enabled when the existing limits are fully utilized.

Accordingly, FPIs are permitted to invest in Government securities, the coupons received

on their existing investments in Government securities. These investments shall be kept outside the applicable limit (currently USD 30 billion) for investments by FPIs in government securities. AD Category-I banks shall ensure reporting of such investments as may be prescribed from time to time

RBI has directed the AD category-I banks to ensure reporting of the investments from time to time and issued the following guidelines:

1. FPIs shall be permitted to invest in Government securities, the coupons received on their existing investments in Government securities.
2. These investments shall be kept outside the applicable limit (currently USD 30 billion) for investments by FPIs in Government securities.

All other existing conditions for investment by FPIs in the Government securities market remain unchanged for this additional facility as well.

(A.P. (DIR Series) Circular No. 72 dated 5th February, 2015)

(Comments: This a welcome move by RBI as it has permitted investor to reinvest in Government securities the coupon received on their existing investments in Government securities. This will save hardships involved in repatriating small amounts)

4. Delay in utilization of advance received for exports

Regulation 16 of the Foreign Exchange Management (Export of Goods and Services) Regulations, 2000, provide that, an exporter receiving an advance payment for exports (with or without interest) from a buyer outside India shall be under an obligation to ensure that the shipment of goods is made within the stipulated period from the date of receipt of advance payment.

A substantial increase in the number and amount of advances received for exports remaining outstanding beyond the stipulated period on account of non-performance of such exports has been observed. In order to counter this problem and to avoid any delays in reporting, RBI has issued the following directions to the AD Category-I banks:

1. Follow up with the concerned exporters in order to ensure that export performance (shipments in case of export of goods) is completed within the stipulated time period.
2. Exercise proper due diligence and ensure compliance with KYC (Know Your Customer) and Anti Money Laundering (AML) guidelines so that only *bona fide* export advances flow into India.
3. Doubtful cases as also instances of chronic defaulters may be referred to Directorate of Enforcement (DoE) for further investigation.
4. A quarterly statement indicating details of such cases (as per Annex to this circular given below) may be forwarded to the concerned Regional Offices of RBI within 21 days from the end of each quarter.

Annex

Quarterly Statement showing details of overdue Export Advances
(Statement for the quarter ended ……… , 20…)

Name and Address of the Bank:

S. No	AD Code (Part-I code)	AD reference No.	Name & Address of the Exporter	Name & Address of the Foreign buyer	Details of Advance Received			Amount outstanding (in case of part exports)	Reasons for non-export	If reference made to DoE	
					Date	Currency	Amount			Date	Reasons

(A.P. (DIR Series) Circular No. 74 dated 9th February, 2015)

(Comments: This move by RBI is important as the circular shall prevent misuse of loans received in the garb of advance for export and also flouting of ECB provisions. The AD Banks have been directed to ensure that outbound shipments are carried out within the stipulated time frame, exercise proper due diligence and ensure compliance with KYC and AML guidelines, report chronic defaulters and filing quarterly statements of defaulters. These provisions will therefore ensure that only bona fide export advances are received in India)

5. Foreign Exchange Management Act, 1999 – Import of goods into India

Previously persons, firms and companies making payments exceeding USD 5,000 or its equivalent towards import of goods into India were required to fill Form A-1 as per A.P. (DIR Series) Circular No. 82 dated February 21, 2012.

In order to further liberalize and simplify the procedure, RBI has now decided to dispense with the requirement of submitting request in Form A-1. However AD banks need to obtain all the important requisite details from the importers and satisfy itself about the bonafides of the transactions before giving effect to the remittance.

(A.P. (DIR Series) Circular No. 76 dated 12th February, 2015)

(Comments: The above Circular ensures hassle free imports and helps reduce paper work. However, RBI is required to review details and bonafides of the transaction before allowing the remittances)

6. Foreign Direct Investment – Reporting under FDI Scheme on the e-Biz platform

Originally, FDI inflow required manual reporting in Form FC-GRP to the Regional Office of the Reserve Bank in whose jurisdiction the Registered Office of the company operates, within 30 days of receipt of the amount of consideration.

As an additional facility in order to provide ease of reporting to the Indian companies for reporting of transactions under Foreign Direct Investment, RBI, with the support of the e-Biz project of the Government of India has enabled the filing of the following returns with the Reserve Bank of India:

1. Advance Remittance Form (ARF) – used by the companies to report the foreign direct investment (FDI) inflow to RBI; and
2. FCGPR Form – which a company submits to RBI for reporting the issue of eligible instruments to the overseas investor against the above-mentioned FDI inflow.

For the purpose of online filing, the customer shall login into the e-Biz portal, download the reporting forms (ARF and FCGPR), complete and then upload the same onto the portal using their digitally signed certificates.

The Authorised Dealer Banks (ADs) will be required to download the completed forms, verify the contents from the available documents, if necessary by calling for additional information from the customer and then upload the same for RBI to process and allot the Unique Identification Number (UIN).

The ARF and FCGPR services of RBI have been made operational on the e-Biz platform from February 19, 2015 and the current manual system of reporting would continue till further notice.

(A.P. (DIR Series) Circular No. 77 dated 12th February, 2015)

(Comments: Enabling e-filing of these forms is a good move forward as it will save both time and cost. This platform will ensure real time submission of forms with the RBI and do away with the delay caused (sometimes) by AD Banks in accepting the forms from the Indian parties

and onward submission of the same to RBI. RBI will henceforth receive the forms online and therefore it will be helpful for Indian Companies and Professionals to report FDI without facing any complexities of manual filing of forms)

7. Risk Management and Inter Banking Dealings: Foreign Currency –INR Swaps

Eligible residents can enter into FCY-INR swaps to hedge exchange rate and/or interest rate risk exposure arising out of long-term foreign currency borrowing or to transform long-term INR borrowing into foreign currency liability, subject to operational guidelines, terms and conditions listed thereunder.

Uptill now, as per A.P. (DIR Series) circular no. 32 dated December 28, 2010 swap transactions, once cancelled, were not allowed to be rebooked or reentered, by whichever mechanism or by whatever name called.

However, in order to liberalize and provide greater flexibility to the residents borrowing in foreign currency, RBI has decided that in cases where the underlying is still surviving, the client, on cancellation of the swap contract, may be permitted to re-enter into a fresh FCY-INR swap to hedge the underlying but only after the expiry of the tenor of the original swap contract that had been cancelled. All other operational guidelines, terms and conditions governing FCY-INR swaps remain unchanged.

(A.P. (DIR Series) Circular No. 78 dated 13th February, 2015)

(Comments: By the above circular, RBI has allowed eligible residents to re-enter into fresh foreign currency swaps as long as the underlying is still surviving. However, the RBI has cautioned that such hedging shall be permitted only after the expiry of the tenor of the original swap that had been cancelled. This measure is aimed at discouraging the eligible residents from keeping unhedged positions (especially) at a time when most world currencies are volatile)

8. Guidelines on Import of Gold by Nominated Banks / Agencies

The 20:80 Scheme for Import of Gold by Nominated Banks/Agencies/Entities was withdrawn *vide* A.P.(DIR Series) Circular No.42 dated November 28, 2014.

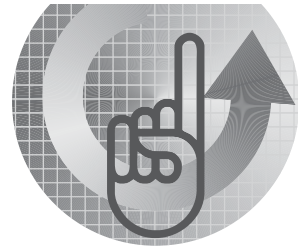
The RBI and the Government had since been receiving requests for clarification on some of the operational aspects of the guidelines on import of gold consequent upon the withdrawal of 20:80 scheme.

Accordingly, the following clarifications have been provided:

1. The obligation to export under the 20:80 scheme will continue to apply in respect of unutilised gold imported before November 28, 2014, i.e., the date of abolition of the 20:80 scheme.
2. Nominated banks are now permitted to import gold on consignment basis. All sale of gold domestically will, however, be against upfront payments. Banks are free to grant gold metal loans.
3. Star and Premier Trading Houses (STH/PTH) can import gold on DP basis as per entitlement without any end use restrictions.
4. While the import of gold coins and medallions will no longer be prohibited, pending further review, the restrictions on banks in selling gold coins and medallions are not being removed.

(A.P. (DIR Series) Circular No. 79 dated 18th February, 2015)

(Comments: This clarification by the RBI will bring a much awaited relief to jewellers and discourage smuggling due to increase supply. This circular will reduce the shortage of gold created due to restriction placed by the 20:80 scheme. However, the price differential between domestic and international gold will continue due to 10% custom duty)



Ajay Singh & Suchitra Kamble, *Advocates*

BEST OF THE REST

1. Transfer of Shares – Pledge Must be in accordance with the provisions of Act – Intention of Legislature is to ensure that third parties have notice of pledge. Depositories Act, 1996, S. 12

Under two loan agreements, respondent nos. 1 and 2 advanced a sum of ` 5 crores to the appellant. In both agreements, the suit shares were pledged by the appellant in favour of respondent Nos. 1 and 2 as security for re-payment of the loans. By clause 12 of each of the loan agreements the appellant conferred the following right upon respondent Nos. 1 and 2 i.e.: " The lender will keep the rights to utilize the provided securities/shares, which can be used as collateral for his own margin purpose." Respondent Nos. 1 and 2 accordingly, placed the pledged shares with respondent No. 3 (Stock Broker) as margin in respect of their transactions with respondent No. 3. The appellant's case is that despite having repaid the loans to respondent Nos. 1 and 2 they have not returned the shares. The appellant further claims that respondent No. 3 also has no right, title or interest in respect of the said shares.

The Hon'ble Bombay High Court held that a party is entitled to assume and proceed on the basis that a pledge, if any, would be created in the manner prescribed by the Depositories Act, 1996, and the Regulations made thereunder. In other words, if the shares have not been pledged in the manner prescribed by the Depositories Act and the Regulations thereunder, a party would be entitled to and justified in presuming that there is no pledge and that the person dealing with the share does so on his own behalf as the owner of the said shares or, in any event, for and on behalf of the owner of the shares with his knowledge and consent. This must be so in view of the new regime introduced by the Depositories Act on account of dematerialisation of shares. The intention of the Legislature was obviously to provide a mode of putting the parties concerned to express notice of pledge. Only a party with express notice of a pledge created by the beneficial owner following the manner prescribed for the creation of a pledge deals with the securities at his own risk and subject to rights of the pledger. The value of notice of a pledge of securities is too obvious to warrant any discussion. It safeguards innocent third parties who would otherwise have no means of being aware of a pledge especially of dematerialized shares. The provisions of the Depositories Act and in particular Section 12 thereof and the Regulations in particular Regulation 58 are salutary as they introduce transparency and certainty in the securities market. There is no other discernible reason for the Legislature having introduced these provisions. If a pledge could be created in any manner, there was no reason for the

Legislature to have provided for a particular manner alone for creating a pledge of shares in a dematerialized form. For a pledge to be valid, it is mandatory that the pawnor creates it in the manner prescribed by the Depositories Act and the Regulations.

Pushanjali Tie Up Pvt. Ltd. vs. Renudevi Choudhary and Ors. AIR 2015 Bombay 1.

2. Non-speaking award – Findings – Award of arbitrator unsupported by reasons – Liable to be set aside : Arbitration Act, 1940, S. 30

A non-speaking award in favour of the appellant company was set aside by Single Judge of High Court on the ground that the Arbitrator had not recorded his "findings" as required under Clause 70 of the General Conditions of Contract. Relying upon the decisions of the Supreme Court in case of ***M/s. Daffadar Bhagat Singh and Sons*** *vs. Income tax Officer, (AIR 1969 SC 340), Bhanji Bhadgwandas vs. The Commissioner of Income Tax, Madras (AIR 1969 SC 139) and Rajinder Nath etc. vs. Commissioner of Income tax, Delhi (AIR 1979 SC 1933),* the High Court held that the expression "finding" appearing in Clause 70 of the General Conditions of Contract implies something more than the mere recording of a conclusion by the Arbitrator had failed to do so, the award rendered by him was unsustainable. An appeal was preferred by the appellant – company before a Division Bench of the High Court relying upon the decision of the Supreme Court in case of *Gora Lal vs. Union of India (2003) 12 SCC 459* affirmed the view taken by the Single Judge. The appellant filed SLP before the Supreme Court.

The Supreme Court held that it is trite that a finding can be both; a finding of fact or a finding of law. It may even be a finding on a mixed question of law and fact. In the case of a finding on a legal issue the arbitrator may on facts that are proved or admitted explore his options and lay bare the process by which he arrives at any such findings. What is important is that a finding pre-supposes application of mind. Application of mind is best demonstrated by disclosure of the mind; mind in turn is best disclosed by recording reasons. That is the soul of every adjudicatory process which affects the rights of the parties. In case of finding of fact, the process of reasoning must be disclosed in order that it is accepted as a finding. The Arbitration and Conciliation Act, 1996 which has repealed the Arbitration Act, 1940 seeks to achieve the twin objectives of obliging the Arbitral Tribunal to give reasons for its arbitral award and reducing the supervisory role of Courts in arbitration proceedings. Section 31(3) of the said Act obliges the Arbitral Tribunal to state reasons upon which it is based unless the parties have agreed that no reasons be given or the arbitral award is based on consent of the parties. Clause 70 which provides a mechanism for adjudications of disputes between the parties and not only requires the arbitrator to indicate the amount he is awarding in regard to each item of claim but also the "finding on each one of such items". The underlying purpose of making such a provision in the arbitration clause governing parties, obviously was to ensure that the arbitrator while adjudicating upon the disputes as Judge chosen by the parties gives reasons for the conclusions that he may arrive at. The expression "finding" appearing in Clause 70, therefore, needs to be so construed as to promote that object and include within it not only the ultimate conclusion which the arbitrator arrives at but also the process of reasoning by which he does so. Clause 70 could not, have meant to be only a wooden or lifeless formality of indicating whether the claim is accepted or rejected. In the instant case, Arbitrator's award was admittedly unsupported by any reason, no matter the arbitrator had in the column captioned "findings" made comments like "sustained", "partly sustained", "not sustained". The High Court was justified in setting aside the award made by the arbitrator and remitting the mater to him for making a fresh award.

M/s. Anand Brothers P. Ltd. vs. Union of India and Ors. AIR 2015 Supreme Court 125.

3. General law – Special law – Apparent inconsistency between S. 299 of Succession Act, 1925 and S. 28A of Bombay Civil Courts Act, 1869 – Both provisions cannot stand together – Succession Act, 1925 is later enactment as compared to Bombay Civil Courts Act, 1869 – Later laws repeal earlier inconsistent laws. – Bombay Civil Courts Act, 1869 & Indian Succession Act, 1925

The Bombay Civil Courts Act, 1869 is a General Act enacted by the provincial Legislature, prior in point of time. Whereas the Indian Succession Act, 1925 is a particular Act enacted by the Central Legislature, later in point of time. In so far as grant and revocation of probates or letters of administration is concerned, the Indian Succession Act, 1925, apart from being a Special Act, constitutes an exhaustive code in respect of such subject matter providing for both the right as well as the remedies. The provisions of sub-Sections (2) and (3) of Section 28A of the Bombay Civil Courts Act, 1869 and the provisions of Section 299 of the Indian Succession Act, 1925 compete to occupy the same field. In terms of sub-section (2) of Section 28A of the Indian Succession Act, 1925, any order made by a Special Judge invested with powers of a District Judge under the Indian Succession Act, 1925 is made subject to appeal to the District Court in case where amount or value of the subject-matter does not exceed ten lakh rupees. Every order of the District Judge passed in Appeal under Sub-Section (2) of Section 28A of the Bombay Civil Courts Act, 1869 is subject to an appeal to the High Court under the rules, contained in the Code of Civil Procedure, applicable to the appeals from appellate decrees. In contrast, Section 299 of the Indian Succession Act, 1925 provides that every order made by the District Judge by virtue of powers conferred upon him shall be subject to appeal to High Court in accordance with the provisions of Code of Civil Procedure, 1908, applicable to the appeals. The inconsistency between the two provisions is, therefore, apparent. If one has to comply with the provisions of sub-section (2) of Section 28A of the Bombay Civil Courts Act, 1869, then in case where the amount or value of the subject-matter is less than ten lakh rupees, an appeal shall have to be filed before the District Court. Further in terms of sub-section (3) of Section 28A of the Bombay Civil Courts Act, 1869, there shall be a further appeal to the High Court which would be governed by the rules contained in Section 100 of C.P.C. applicable to the appeals from the appellate decrees. However, if one is to apply the provisions of Indian Succession Act, 1925, then as against any order passed by the Civil Judge who is invested with the powers of the District Judge under sub-section (1) of Section 28A of the Bombay Civil Courts Act, 1869, an appeal would lie before the High Court in terms of Section 299 of Indian Succession Act, 1925. Further Indian Succession Act, 1925 makes no provision for any further appeal. In such a situation both the provisions cannot stand together. One of the provisions has to yield to the other. Sub-sections 2 and 3 of Section 28A of the Bombay Civil Courts Act, 1869 are inconsistent with and repugnant to Section 299 of the Indian Succession Act, 1925 and the same accordingly stands impliedly repealed.

In light of the aforesaid, declaration is liable to issue that the provisions of Section 28A(2) and Section 28A(3) of the Bombay Civil Courts Act, 1869 are inconsistent with and repugnant to the provisions of Section 299 of the Indian Succession Act, 1925 or every order made by a District Judge under the Indian Succession Act, 1925 in terms of sub-section (1) of Section 28A of the Bombay Civil Courts Act, 1869 shall be subject to appeal to the High Court in accordance with the provisions of Code of Civil Procedure, 1908, applicable to appeals. It is clarified that the judgments and orders passed by District Courts as first Appellate Courts and High Court as Second Appellate Court in terms of sub-sections (2) and (3) of Section 28A of the Bombay Civil Courts Act, 1869, up to the date of this judgment and order shall be

regarded as valid, notwithstanding the reasoning and declaration contained in this judgment and order by applying the principle akin to ***de facto*** doctrine. However, where such judgment and orders have already been challenged on the ground of inconsistency or implied repeal of the provisions contained in Section 28A(2) and (3) of Bombay Civil Courts Act, 1869 and such proceedings are pending adjudication, then they shall not be governed by the principles of akin to ***de facto*** doctrine.

Smt. Nola Jonathan Ranbhise vs. Union of India AIR 2015 (NOC) 88 (Bom.)

4. Agreement to sell – None of other legal heirs gave authority to defendant to sell land and land also not partitioned – Defendant having only 1/7th Share in suit property – cannot have right to sell land in excess of same. – Specific Relief Act, 1963, S. 20

The appellant – plaintiff filed suit that land was owned by Sardar Singh husband of Defendant No. 3 and father of defendant Nos. 1 and 2. Thus Defendant No. 1 to 3 are legal heirs of the said Sardar Singh. The agreement pertaining to disputed land was executed by defendant No. 1 and handed over possession of the land ever since the plaintiff was in cultivator possession of the land. Defendants were told many times to execute the sale-deed which was avoided and therefore, the plaintiff filed the suit for directing the defendants to execute the sale deed. The Trial Court dismissed the suit ***inter alia*** on account of non-impleadment of all the legal representatives of Sardar Singh and Jagtar Singh.

The Hon'ble Court observed that the dismissal of the suit is not proper as in a suit for specific performance the necessary parties are the vendor and the vendee and no one else is required to be impleaded as a party, even in the event that the trial court came to the conclusion that the suit land was not wholly owned by the vendor and he had no authority on behalf of Defendant No. 1 and 3 to the extent of Defendant No. 2's share it cannot be said that the suit was not maintainable; as in a case of such nature grant of relief in a given case is permissible as held by Hon'ble Supreme Court in case of *Kartar Singh AIR 1990 SC 854* and ***A. Abdul*** *Rashid Khan 2001 AIR SCW 2361.*

Section 20 of the Specific Relief Act, 1963 provides that grant of relief of specific performance is discretionary and merely because it is lawful to grant such relief the Court is not bound to grant the same. It would be seen that Defendant No. 2 would be having 1/7th share in the land. For grant of relief sought in the suit of specific performance is not just and proper and Trial Court committed error in refusing the relief even ***qua*** share of Defendant No. 2. The appeal was dismissed.

Sohan Singh vs. LRs of Avtar Singh and Ors. AIR 2015 Rajasthan 1

5. Wills – Evidence of one of attesting witnesses – Attesting witnesses having filed affidavit, there was sufficient compliance of provisions of law – Applicant entitled to grant of probate – Succession Act, 1925, S. 63

The High Court held that Section 63 of the Indian Succession Act read with Sections 67 and 68 of the Indian Evidence Act, if read together, would require the executor and/or propounder of the Will as the case may be, to prove, the testator and the two attesting witnesses signed in each other's presence and at a time, one after the other when all three were present. As per the evidence of the witnesses though it might not be so articulate possibly due to inefficient handling by the Advocate and the long gap in between the execution and registration of the Will and the date of deposition. The attesting witness once filed an affidavit that is sufficient compliance of the provisions of law and thus the party is entitled to the Probate as prayed for.

Smt. Sabitri Pal vs. Ramendra Kumar Das AIR *2014 Calcutta 235*

CA Rajaram Ajgaonkar

ECONOMY AND FINANCE

Receding Risks

Fortunately for the world, last month turned out to be more positive than expected. No new major economic or geopolitical anxiety emerged during the period. Though the month started with great uncertainties, the situation improved gradually. The concerns which could have badly affected the global sentiments, eased out favourably. Settlements were arrived at and greater possibilities of peace emerged.

The slide of crude oil prices got arrested without interventions of OPEC or any other major economic group, and more so, by interplay of economic forces. This development gave a sense of stability to a number of countries and specially the oil exporting countries. The oil prices bounced back by about 20% from their recent lows and that gave some respite to major oil exporter economies. The trend of oil prices continues to remain stable to positive for the time being. If it continues to remain so, there can be a better stability in the world economy. However, many economists and commodity specialists believe that the price rise of oil is just a technical pull back and the bear market in oil will continue for some more time. The prices can plunge in the near future and can reach to lower levels than the recent lows. This indicates that the risk is still lurking.

A heartening development was the settlement reached by Greece with its Eurozone lenders, at least for the time being. Though the negotiations were tough and gut-testing and Greece was adamant to an extent, the conflict has been eased out for the next few months. Albeit the troubles are not fully over, the confrontation is postponed and it is hoped that a long term solution can emerge. For Greece, the issue is not only economical but also political. The new Government, which has come in power in the country, has given lots of promises to the voters. They need to do quite a balancing act between the populist measures wanted by the citizens of the country and satisfying the conditions of the European lending countries for the continuation of their support to take the Greek economy out of current trouble. At least as of now, the risk of Greece exiting or being pushed out of the European Union has receded. Though new issues may emerge after a few months, the current crisis is pushed back which has given a breather to all the concerned nations.

The US economy has continued its upward movement. Though the concerns have not fully faded, the overall progress of the economy appears to be robust and there are all the more reasons to believe that the trend will continue on the back of very low interest rates. The Central Bank of the country is indicating that it is in no hurry to increase the interest rates and the action can get deferred to the second half of the current

calendar year. The interest rate hike, when it happens, will be gradual and will give enough of breather to the borrowers to adjust. Therefore, the party in the economy can continue and the US growth can also stimulate positivity in the economies across the world. It will increase the demand and push manufacturing and service providing activities in many countries, driving the overall growth rate in the world, thereby reducing the miseries caused by the recession and the after effects thereof.

Suddenly, Europe is looking a bit better as the Greek crisis has taken a back seat. The Quantitative Easing started by the European Central Bank is massive and it is likely to have a positive effect on the economies in the region. It can pump in more monies in the economies of the Eurozone, increase consumption and give economic stimulus. This development will reduce the risk of recession in the world and can lead to a better growth and better living for many, not only in the Eurozone but in many developing countries across the world.

The BRIC countries, except India, are likely to remain slow on growth. China continues its slowdown as the economy is getting matured and the commodity cycle has eased. The wages in the country are already on the rise and labour will continue to remain not as cheap as it was in the past. Though the economy will grow much faster than those of most of the other countries in the world, its stellar performance as it was over the last couple of decades is very likely to fade. It may grow at just around 7%. Brazil seems to have lost its momentum to politics. The populist policies in the country have slowed down its economic growth and things may not change very easily unless there is an appropriate change in the policies. The populist policies make people happy but many a times they are not supportive to the economic well being of the people. Such policies, if continued for long, can impoverish an economy. Russia continues to remain economically vulnerable due to a slowdown in commodity cycle. The recent oil price drop has badly affected the economic interests of the country and as an immediate revival is not likely, the economy may suffer for quite some time to come. The recession in the country may continue for some time and even if the country comes out of the same, the growth may continue to remain poor for many quarters, if not for many years. The political equations of Russia with some of its neighbouring countries and especially those which were parts of the erstwhile Soviet Union, remains strained and that may continue to cause political uncertainty in the region leading to hampering of economic growth in Russia as well as in those countries.

Indian budget is appreciated by many but quite a few are of the opinion that the positive effects of the budgetary provisions will emerge in the long run and many current issues will remain unaddressed. There are fine points in the proposals, which are a cause of concern. There is a need to be strict about the menace of unaccounted money in the country but strict penalty provisions can cause harassment to the businesses. The uncertainties created thereby can deter the business sentiments and risk taking abilities of many entrepreneurs. The recent developments in various laws and their implementation by agencies are raising eyebrows. The uncertainties have increased in the mind of many businesses and there is a feeling that the responsibilities of alleged scams are pushed on to the entrepreneurs, without adequately punishing the responsible authorities. The ease of doing business in India is yet to reach the desired level. The economy has not gained as much momentum as is expected or hyped. This may lead to disillusionment for the investors in the days to come and it can become a risk to the economic growth. More positive action is required from the Government and there is a hope that things will change for the better. The country should not get entangled in pure politics and the development agenda should not be lost sight of. Everybody, including foreigners have great hopes and expectations from our country and hopefully our systems and policies can live up to them.

The investment climate across the world remains fairly positive and stock markets are on quite a high. Most of the markets seem to be fairly priced but positive growth numbers can provide upward traction. The trend is likely to remain positive for the time being in all the major economies in the world, though the returns may not be as high as they were clocked over the last couple of years in many stock markets. Under the current low interest regime, the options for investors are not much and stock markets are likely to give fair appreciation over the months to come. The investment sentiments in the stock markets are likely to remain positive in most of the markets around the world and Indian investors may gain well by patronizing the investments in the foreign stocks to the permissible extent for appreciation as well as for hedging their risks.

The expectations about the budget were high. How much did the Finance Minister deliver can be a matter of individual opinion. However, the Indian stock markets have reacted positively to the budget. They have continued to remain strong. The Reserve Bank of India (RBI) has reduced repo rates in a sudden move after the budget. There is a difference of opinion about its timing and its reasoning. The inflation is expected to reduce further. However, the suddenly deteriorating climatic conditions over the Indian subcontinent have created substantial uncertainties about the agricultural growth for the year. The increase in crude oil prices over the last one month can have cost push inflationary effect on the Indian economy. The expectations of Indians from the RBI about its goal of reducing inflation are quite high. Though the RBI can control internal factors, external factors like increase in oil and commodity prices on global basis create quite a risk to the success of the efforts to the Central Bank. As of now, inflation continues to move to a lower level due to the effort of RBI and its consistent stand in spite of certain pressures. The recent lowering of repo rate is a positive development for the industry. RBI may lower the interest rates over the next few months so that the businesses may get cheaper credit and even the demand for credit can increase, pushing up the economic activities in the country.

The Indian stock markets are strong and getting stronger on the positive developments. The flow of foreign funds is heartening and can keep the market high. However, the investors should not throw caution to the wind. It cannot be ignored that currently the Indian stock markets are not cheap, considering the profitability of the Indian companies. Though there are opportunities, risks are increasing due to increasing valuations. It may be advisable for the investors to remain cautious and selective. The volatility in the stock markets will remain high. The fireworks of last year may remain a history. The markets may give only reasonable returns on an annualized basis as the current valuation is no more low. Quite a bit of good news is likely to have been factored in the stock prices but the risks might not have been adequately considered. Still in India, equity remains the most attractive asset class for the investors. The Government is trying to boost participation of retail investors and fortunately it is gradually increasing, which is a great positive sign. Currently, the Indian markets are heavily dependant on foreign funds. For sustainability of the upward trend in the stock markets, continuous patronization of the retail investors is important and India is probably moving towards it after a long lull.

Interest rates have started receding, though gradually. They may fall further after March, which has peak credit demand. As a consequence, interest rates offered on fixed deposits and the bond yields may fall further, especially after the current month. It is desirable for an investor to protect his returns by appropriately locking into long term debt instruments. The interest rates may recede further and may remain low for a number of years to come.

Indian investors seem to be heading towards very interesting times.

CA Hinesh R. Doshi, Ajay Singh, *Advocate*
Hon. Jt. Secretaries

The Chamber News

Important events and happenings that took place between 8th March, 2015 and 8th April, 2015 are being reported as under.

I. ADMISSION OF NEW MEMBERS

1) The following new members were admitted in the Managing Council Meeting held on 25th February, 2015.

LIFE MEMBERSHIP

1	Mr. Sekhri Anil Avtarkrishan	CA	Mumbai
2	Mr. Rawani Dhruv Rajesh	CA	Mumbai

ORDINARY MEMBERSHIP

1	Ms. Palanpurwala Shirin Hussain (April 2014 to March 2015)	Advocate	Mumbai

STUDENTS MEMBERSHIP

1	Ms. Singh Sonam Gajendra	CA Appear	Ghaziabad
2	Mr. Ladhane Ganesh Chhaburao	CA Appear	Ahmednagar

II. PAST PROGRAMMES

Sr. No.	*Programme Name / Committee/ Venue*	*Date / Subjects*	*Chairman / Speakers*
1.	**Corporate Members Committee**		
	Lecture Meeting on Impacts of Budget Proposals on Capital Markets Venue: Jai Hind College Auditorium, Mumbai – 400 020.	**2nd March, 2015** Subject: Impact of Budget Proposals on Capital Markets	Mr. Nilesh Shah, Managing Director & CEO, Kotak Mutual Fund Mr. Vikram Kotak, Managing Partner, Crest Capital & Investment

Sr. No.	*Programme Name / Committee/ Venue*	*Date / Subjects*	*Chairman / Speakers*
2.	**Direct Taxes Committee**		
A.	**Half Day Workshop on Charitable Trusts** (Jointly with Bombay Chartered Accountants Society) Venue: Audio Visual Centre, Jai Hind College, Mumbai – 400 020.	**13th February, 2015** Subject : 1) Key Provisions of Maharashtra Public Trust Act 2) Taxation of Charitable Trusts 3) Foreign Contributions Regulations Act	Chairman: Arvind Dalal CA Vipin Batavia CA Gautam Nayak CA Rajesh Kadakia
B.	**Intensive Study Group on Direct Taxes** Venue : CTC Conference Room	**26th February, 2015** Subject : Recent Important Decisions under Direct Tax	Shri Paras S. Savla, Advocate
C.	**Half Day Seminar on Direct Tax Provisions of Finance Bill, 2015** (Jointly with WIRC of ICAI) Venue : M. C. Ghia Hall, Kala Ghoda, Fort, Mumbai	**7th March, 2015** Subject : Direct Tax Provisions of Finance Bill, 2015	Chairman : CA Kishor Karia Speakers : CA Gautam Nayak & CA Yogesh Thar
3.	**Indirect Taxes Committee**		
	Indirect Tax Study Circle Meeting Venue : Babubhai Chinai Committee Room, IMC.	**10th February, 2015** Subject : Circulars and Notifications issued during 2014-15 under Service Tax Laws	Chairman : CA Naresh Sheth Group Leader : CA Payal Shah
	Half Day Workshop on Finance Bill, 2015 (Indirect Taxes Provisions) (Jointly with WIRC of ICAI) Venue : M. C. Ghia Hall, Kala Ghoda, Fort, Mumbai	**7th March, 2015** Subject : Finance Bill, 2015 (Indirect Taxes Provision)	CA A. R. Krishnan Shri Vipin Jain, Advocate
4.	**International Taxation Committee**		
A.	**6th International Tax Conference with Focus on Practical Evolving Issues** Venue: Palladium Hotel, Lower Parel, Mumbai	**14th February, 2015** Subjects : 1) Keynote address 2) Recent Developments in Transfer Pricing	CA Pinakin Desai CA Vispi Patel

Sr. No.	Programme Name / Committee/ Venue	Date / Subjects	Chairman / Speakers
		3) Taxation in Digital economy in the light of BEPS report and Implications in Indian situation	CA Rashmin Sanghvi
		4) Emerging issues for Inbound and Outbound Structuring of Investments from tax perspective	CA Vishal Gada
		5) Emerging issues in Royalties and FTS considering BEPS	CA Pranav Sayta
B.	**FEMA Study Circle Meeting** Venue : CTC Conference Room	**24th February, 2015** Subject : External Commercial Borrowings – Part -II	Mr. Arvind Rao Mr. Pushpak Shah
5.	**Membership & EOP Committee**		
	Union Budget – 2015-16 **Jointly with The Western Maharashtra Tax Practitioners' Association, Pune.** Venue: WMTPA Association Hall, Pune.	**7th March, 2015** Subject : Well Known Faculty	CA Mehul Shah CA Manish Gadia
6.	**Residential Refresher Course & Public Relations Committee**		
	38th Residential Refresher Course Venue : Toshali Sands Resort, Puri, Odisha	**19th to 22nd February, 2015** Subjects :	
		Paper I – Deeming Provisions under the Income Tax Act	Paper Writer : CA Anil Sathe
		Paper II – Issues in Corporate Taxation including LLP	Paper Writer : CA Milind Mehta
		Paper III – Case Studies on Direct Tax	Paper Writer : CA A. K. Sabat
		Paper for Presentation : Domestic Transfer Pricing	CA Karishma Phatarphekar
		Brain Trust – Direct Tax	Brains' Trustee: Mr. Saurabh Soparkar, Sr. Advocate

Sr. No.	*Programme Name / Committee/ Venue*	*Date / Subjects*	*Chairman / Speakers*
7.	**Study Circle & Study Group Committee**		
A.	**Study Circle Meeting** Venue : Babubhai Chinai Committee Room, IMC	**23rd February, 2015** Subject : Issues in Wealth Tax (Part II)	CA Jagdish Punjabi
B.	**Study Group Meeting** Venue : Jaihind College, Mumbai – 400 020.	**27th February, 2015** Subject : Recent Judgments under Direct Taxes	Shri Vipul B. Joshi, Advocate
8.	**Students Committee**		
	Student Study Circle Meeting Venue : Maheshwari Bhawan, Mumbai	**5th March, 2015** Subjects : Union Budget 2015-16	CA Manoj C. Shah
9.	**Delhi Chapter**		
	Half Day Seminar on Finance Bill, 2015 (jointly with The Northern Region Chapter of International Fiscal Association – India Branch) Venue : Seminar Hall, New Delhi – 110 003	**4th March, 2015** Subject : Analysis of Direct & Indirect Tax Implications	Mrs. Rani Singh Nair, Member (L&C), CBDT – Chief Guest Mr. Ajay Vohra, Senior Advocate Mr. Gokul Chaudhri, Partner, BMR Advisors Mr. G. C. Srivastava, Advocate & Former DGIT (International Taxation) Mr. Arun Giri, Tax Journalist, TaxSutra Mr. Vijay Iyer, Partner, EY Mr. Rajiv Dimri, Partner, BMR Advisors
10.	**Amita Memorial Lecture Meeting** (Jointly with BCAS)		
	Venue : Jaihind College Auditorium, Mumbai – 400 020.	**13th February, 2015** Subject : Anger – The Enemy within	Brahmakumari Shivani

Sr. No.	*Programme Name / Committee/ Venue*	*Date / Subjects*	*Chairman / Speakers*
11.	**Felicitation Function of** Shri V. H. Patil		
	Venue : Walchand Hirachand Hall, IMC Mumbai - 400 020.	**16th February, 2015**	For Completing 50 magnificent years in the profession
12.	**Live Screening of Budget 2015**		
	Venue : CTC Conference Room	**28th February, 2015** The live screening of the Finance Minister's speech and presentation of Budget 2015 was arranged at CTC office.	
13.	**Public Meeting on Union Budget**	**1st March, 2015** Subject – Union Budget 2015-16	
	Jointly with :		
	- Investors Grievances' Forum, Welingkar Institute of Management, Matunga CPE Study Circle of WIRC, Forum of Free Enterprise and Matunga Gymkhana is organising Budget meeting	Venue - Matunga Gymkhana	1) CA Kanu Doshi - Direct tax, 2) Mr. Mehraboon Irani and Mr. Gul Tekchandani - Capital Market.
	- Ghatkopar CPE Study Circle and other forums has organized Public Meeting on Union Budget – 2015	Venue - Somaiya Management College Auditorium, Vidya Vihar (East), Mumbai	1) CA Mehul Shah – Direct Tax Proposed Amendments 2) CA Rajiv Luthia – Service Tax Aspects 3) Mr. Raghavendra Katoti, Senior Manager, Tata Service Ltd. – Economic Affairs
	- Thane Branch of ICAI, ICSI Thane Chapter CVO, Chartered and Cost Accountants Association Associates	Venue - 202-202, Sai Plaza Complex, Thane (West) – 400 607.	1) CA Devendra Jain – Direct Taxes 2) CA Ankit Chande - Indirect Taxes

III. FUTURE PROGRAMMES

Sr. No.	*Programme Name / Committee/ Venue*	*Date / Subjects*	*Chairman / Speakers*
1.	**Corporate Members Committee**		
	Half Day Seminar on Nitty-Gritties of Family Run Enterprises Venue : Mysore Association Hall, 393, Bhau Daji Road, Matunga (East), Mumbai – 400 019	**4th April, 2015** Subject : Nitty-Gritties of Family Run Enterprises	Prof. Parimal Merchant, Director, Global FMB Programme, S. P. Jain, School of Global Management
2.	**Direct Taxes Committee**		
A.	**Intensive Study Group on Direct Taxes** (For ISG Members only) Venue : CTC Conference Room	**17th March, 2015** Subject : Panel Discussion on Finance Bill 2015 Direct Taxes Provisions	Eminent Faculties
B.	**Full Day Seminar on Non-Banking Finance Companies** (Jointly with Allied Laws Committee) Venue : M. C. Ghia Hall, Rampat Row, Kala Ghoda, Fort, Mumbai	**18th April, 2015** Subject :	
		1) NBFC Regulatory Outlook	Official from RBI*
		2) Compliances Pertaining to Non-Deposit accepting NBFCs and important aspects of Deposit accepting NBFCs.	CA Bhavesh Vora
		3) Regulations pertaining to Core Investment Companies (CICs)	CA Jayant Thakur
		4) NBFCs – Auditors' Responsibility	
		5) Taxation of NBFCs - issues	Eminent Faculty
3.	**International Taxation Committee**		
A.	**Intensive Study Group on International Taxation** (Only for ISG on Int. Taxation Members) Venue : CTC Conference Room.	**10th March, 2015** Subject : Discussion on International Tax Amendments of Union Budget 2015	

Sr. No.	Programme Name / Committee/ Venue	Date / Subjects	Chairman / Speakers
B.	**5th Intensive Study Course on Transfer Pricing (Including Domestic Transfer Pricing) – 24 Sessions-6 Days** Venue : Hotel West End, New Marine Lines, Opp. Bombay Hospital, Mumbai	14th and 20th March, 2015 10th and 11th April, 2015 24th and 25th April, 2015 Subjects : 1. Basic of Transfer Pricing 2. Benchmarking 3. Industry Specific Sessions 4. Key Controversy Areas – Recent TP Audit experience 5. Practice Areas 6. Other areas having TP implications 7. Domestic Transfer Pricing 8. The Road Ahead – 9. Attribution issues, experiences, recent rulings and Revenue's perspective	CA Vispi Patel CA Vaishali Mane CA Vishwanath Kane CA Sanjay Kapadia CA Jigar Saiya CA Darpan Mehta CA Karishma Phatarphekar CA Waman Kale Mr. Freddy Daruwala, Advocate CA Samir Gandhi CA Maulik Doshi CA Arun Saripalli CA Sudhir Nayak CA Milind Kothari CA Ameya Kunte CA Dr. Hasnain Shroff Ms. Alpana Saxena CA Manisha Gupta Mr. Suhas Kulkarni, TPO, Pune CA Sanjay Tolia **Moderator:** CA Vispi T. Patel **Panellists:** Mr. Ajit Korde, CIT (A) Pune Mr. Ajit Kumar Jain CA Rohan Phatarphekar

Sr. No.	Programme Name / Committee/ Venue	Date / Subjects	Chairman / Speakers
C.	**9th Residential Conference on International Taxation, 2015** Venue : Radisson Blu Resort, Goa	**18th to 21st June, 2015** ***Group Discussion Paper*** • Royal & FTS – Case Studies Analysis of different sectors • Deputation of personnel – Tax issues from an employer's perspective (including PE risks) • Topic considering Union Budget 2015 Papers for Presentation • BEPS and Exchange of Information – Global Developments & Government Initiatives • Tax Implications in case of trusts used for estate protection of cross – border assets • Multi dimensional tax issues (Direct & Indirect Taxes) in respect of cross – border Transactions ***Panel Discussion*** • Case studies on International Taxation & Transfer Pricing	CA Himanshu Parekh CA Paresh Parekh Eminent Professional Mr. Akhilesh Ranjan, Jt. Secretary (FT & TR-I) with Director (FT & TR) **Chairman** – CA Dilip Thakkar **Paper Writer** – CA Bijal Ajinkya Mr. V. Sridharan, Senior Advocate Panellists Chairman – CA T. P. Ostwal Panelists – CA Anish Thacker & CA Sanjay Tolia
4.	**Membership & EOP Committee**		
	3 IN 1 – GEETMALA (Jointly with RRC & PR Committee) Venue : Will be announced in due course.	**18th April, 2015**	***The details of selection and rehearsal shall be informed in due course. The members are requested to block the date & time for this unique Musical Programme. Members, their immediate family members & Student-members interested in singing should send their names with contact No. & e-mail ID to the Chamber's office.***

Sr. No.	*Programme Name / Committee/ Venue*	*Date / Subjects*	*Chairman / Speakers*
5.	**Students Committee**		
A.	**The Dastur Essay Competition Meeting** Venue : CTC Conference Room, Mumbai - 400 020.	**9th March, 2015** Subjects : Mechanics of Essay Writing	Ms. Indira Gopal, Advocate
B.	**The Dastur Essay Competition, 2015**	**Topics – The Dastur Essay Competition, 2015 are –** (a) 10 challenges to be tackled by Prime Minister (b) Judicial Activism (c) Social sites/apps…..........…kills or builds relationship?	All Members are requested to encourage their Article Trainees and Law Students to participate in this competition. The e-mail(ctcessay@gmail.com)/ post /courier (CTC office) should reach latest by 31st March, 2015.
6.	**Study Circle & Study Group Committee**		
A.	**Study Circle Meeting (Only for Study Circle Members)** Venue : A. V. Room, 4th Floor, Jaihind College, A Road, Churchgate, Mumbai – 400 020	**13th March, 2015** Subject : Finance Bill 2015 (Direct Tax Provisions)	CA Praful Poladia
B.	**Study Group Meeting** (Only for Study Group Members) Venue Babubhai Chinai Committee Room, 2nd Floor, IMC, Churchgate, Mumbai	**9th April, 2015** Subject : Recent Judgments under Direct Taxes	Shri Keshav Bhujle, Advocate

For Further details of the Future Events, kindly visit our website www.ctconline.org.

INTERNATIONAL TAXATION COMMITTEE

6th International Tax Conference held on 14th February, 2015 at Palladium Hotel, Lower Parel, Mumbai.

CA Himanshu Parekh addressing the delegates on the subject "Emerging issues for inbound and outbound Structuring of Investments from Tax Perspective". Seen from L to R : CA Natwar Thakrar, Member, CA Avinash Lalwani, Vice President and CA Rajesh L. Shah, Member.

CA Pranav Sayta addressing the delegates on the subject "Emerging issues in Royalties and FTS considering BEPS". Seen from L to R : CA Naresh Ajwani, Chairman, CA Paras Savla, President and CA Ganesh Rajgopalan, Convenor.

Section of delegates.

AMITA MEMORIAL LECTURE MEETING

The Amita Memorial Lecture Meeting held on 13th February, 2015 on the subject "Anger – The Enemy within" jointly with BCAS at Jaihind College Auditorium, Mumbai.

Brahmakumari Shivani addressing the members.

Section of members.

DIRECT TAXES COMMITTEE

Half day workshop on Charitable Trusts jointly with BCAS held on 13th February, 2015 at Jai Hind College, Churchgate, Mumbai.

CA Ketan Vajani, Chairman, Direct Taxes Committee, CTC welcoming the delegates. Seen from L to R : CA Paras Savla, President, CTC, CA Vipin Batavia, Faculties, CA Nitin Shingala, President, BCAS and CA Ashok Sharma, Chairman, SC & SG Committee, CTC.

CA Arvind Dalal, chairing the session on the subject "Taxation of Charitable Trusts". Seen from L to R : Shri Rajeev Shah, Member, BCAS, CA Gautam Nayak, Faculty, CA Avinash Lalwani, Vice President, CTC and CA Ashok Sharma, Chairman, SC & SG Committee, CTC.

CA Vipin Batavia addressing the delegates on the subject "Key Provisions of Maharashtra Public Trust Act".

CA Gautam Nayak addressing the delegates on the subject "Taxation of Charitable Trust".

CA Rajesh Kadakia addressing the delegates on the subject "Foreign Contributions Regulation Act".

Section of Delegates.

Felicitation Function of Shri V. H. Patil for completing 50 magnificent years in the profession held on 16th February, 2015 at Walchand Hirachand Hall, IMC, Churchgate.

CA Paras K. Savla, President welcoming the members on felicitation programme. Seen from L to R : CA A. S. Merchant, Past President, Shri V. H. Patil, Advocate & Past President, Shri K. K. Ramani, Advocate & Past President and Shri Ajay Singh, Advocate & Hon. Jt. Secretary.

CA Paras K. Savla, President offering bouquet to Shri V. H. Patil, Advocate & Past President. Also seen Shri K. K. Ramani, Advocate & Past President.

Shri P. C. Joshi, Advocate & Past President offering shawl to Shri V. H. Patil, Advocate & Past President. Also seen CA Paras K. Savla, President.

Shri V. H. Patil, Advocate & Past President was felicitated by Shri P. C. Joshi, Advocate & Past President and Shri K. K. Ramani, Advocate & Past President for completing 50 years excellence in service. Seen from L to R : CA Paras K. Savla, President and Shri Ajay Singh, Advocate, Hon. Jt. Secretary.

CA Priti Savla, Vice Chairperson, Allied Laws Committee offering bouquet to Mrs. Shanta V. Patil.

Shri V. H. Patil, Advocate & Past President addressing the members on his Journey of 50 Years in Profession. Seen from L to R : CA A. S. Merchant, Past President, Shri P. C. Joshi, Advocate & Past President, Shri K. K. Ramani, Advocate & Past President, CA Paras K. Savla, President and Shri Ajay Singh, Advocate, Hon. Jt. Secretary.

Shri V. H. Patil, Advocate & Past President along with spouse Mrs. Shanta V. Patil and CA Paras K. Savla, President and other Past Presidents. **Seated from L to R :** S/Shri Pradip Kapasi, Kishor Vanjara, Narayan Varma, P. C. Joshi, K. K. Ramani, Sharad Dalal, Keshav Bhujle & Vipul Joshi. **Standing from L to R :** S/Shri Mahendra Sanghvi, Sujal Shah, Bhavesh Vora, A. S. Merchant, Ajit Rohira, Yatin Desai, Manoj Shah, Parimal Parikh, Dr. K. Shivaram and Vipin Batavia.

Shri V. H. Patil, Advocate & Past President along with spouse Mrs. Shanta V. Patil and Office Bearers. Seated from L to R : CA Hitesh R. Shah, Hon. Treasurer, CA Paras K. Savla, President & CA Avinash Lalwani, Vice President. Standing from L to R: CA Hinesh Doshi and Shri Ajay Singh, Advocate, Hon. Jt. Secretaries.

Section of members.

RESIDENTIAL REFRESHER COURSE AND PUBLIC RELATIONS COMMITTEE

38th Residential Refresher Course held on 19th to 22nd February, 2015 at Toshali Sands Resort, Puri, Odisha.

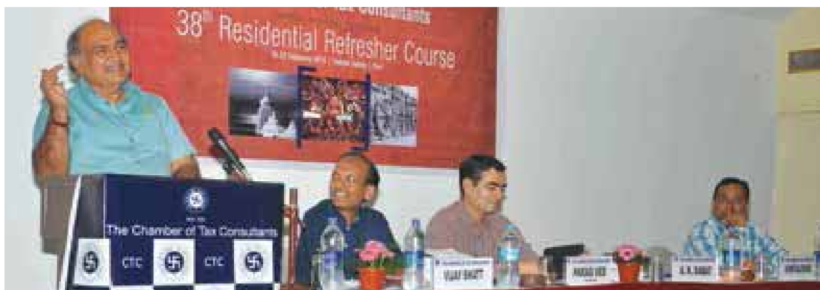
CA Paras K. Savla, President inaugurating 38th RRC by lighting the lamp. Seen from L to R : CA Bhavesh Vora, Advisor, CA Karishma Phatarphekar, Faculty, CA Ryan Fernandes, Convenor and CA Parag Ved, Chairman.

CA Paras K. Savla, President welcoming the delegates. Seen from L to R : CA Parag Ved, Chairman, CA Karishma Phatarphekar, Faculty, CA Bhavesh Vora, Advisor and CA Ryan Fernandes, Convenor.

CA Parag Ved, Chairman, welcoming the delegates. Seen from L to R : CA Karishma Phatarphekar, Faculty, CA Paras K. Savla, President, CA Bhavesh Vora, Advisor and CA Ryan Fernandes, Convenor.

CA Anil Sathe addressing the delegates on the subject "Deeming Provisions under the Income-tax Act". Seen from L to R : CA Avinash Lalwani, Vice President and CA Hinesh Doshi, Hon. Jt. Secretary.

CA Milin Mehta addressing the delegates on the subject "Issues in Corporate Taxation including LLP". Seen from L to R : Shri Ajay Singh, Advocate, Hon. Jt. Secretary, CA Bhavesh Joshi, Member and CA Hitesh R. Shah, Hon. Treasurer.



CA A. K. Sabat addressing the delegates on the subject "Case Studies on Direct Tax". Seen from L to R : CA Vijay Bhatt, Chairman, Allied Laws Committee, CA Parag Ved, Chairman, RRC & PR Committe and CA Kishor Rajeshirke, Member.

RESIDENTIAL REFRESHER COURSE AND PUBLIC RELATIONS COMMITTEE

38th Residential Refresher Course held on 19th to 22nd February, 2015 at Toshali Sands Resort, Puri, Odisha.

CA Karishma Phatarphekar addressing the delegates on the subject "Domestic Transfer Pricing". Seen from L to R: CA Parag Ved, Chairman, CA Paras K. Savla, President, CA Bhavesh Vora, Advisor and CA Ryan Fernandes, Convenor.

Mr. Saurabh Soparkar, Sr. Advocate, Brain Trustee replying the queries. Seen from L to R : CA Ketan Vajani, Chairman, Direct Taxes Committee, CA Parimal Parikh, Chairman, Membership & EOP Committee and CA Mahendra Sanghvi, Co-Chairman, Law & Representation Committee.

38th RRC – Group Photo

INDIRECT TAXES COMMITTEE

Workshop on Finance Bill, 2015 (Indirect Tax Provisions) jointly with WIRC of ICAI held on 7th March, 2015 at M. C. Ghia Hall, Kala Ghoda, Mumbai.

Dignitaries of the Workshop. Seen from L to R : CA Pranav Kapadia, Chairman, IDT Committee, CTC, CA Paras K. Savla, President, CTC, Adv. Vipin Jain, Faculty, Shri Sunil Patodia, Chairman, WIRC & Shri Sushrut Chitale, RCM, WIRC.

INDIRECT TAXES COMMITTEE

Workshop on Finance Bill, 2015 (Indirect Tax Provisions) jointly with WIRC of ICAI held on 7th March, 2015 at M. C. Ghia Hall, Kala Ghoda, Mumbai.

Shri Vipin Jain, Advocate addressing the delegates.

CA A. R. Krishnan addressing the delegates.

Section of delegates.

DIRECT TAXES COMMITTEE

Half Day Seminar on Direct Tax Provision of Finance Bill, 2015 jointly with WIRC of ICAI held on 7th March, 2015 at M. C. Ghia Hall, Kala Ghoda, Mumbai.

Dignitaries of the Seminar. Seen from L to R : CA Ketan Vajani, Chairman, Direct Taxes Committee, CTC, CA Paras K. Savla, President, CTC, CA Gautam Nayak, Faculty, CA Kishor Karia, Chairman of the session, CA Yogesh Thar, Faculty and CA Priti Savla, RCM, WIRC.

CA Kishor Karia chairing the session. Seen from L to R : CA Ketan Vajani, Chairman, Direct Taxes Committee, CTC, CA Paras K. Savla, President, CTC, CA Gautam Nayak, Faculty, CA Yogesh Thar, Faculty and CA Priti Savla, RCM, WIRC

CA Gautam Nayak addressing the delegates.

CA Yogesh Thar addressing the delegates.

Section of delegates.

CORPORATE MEMBERS COMMITTEE

Lecture Meeting on Impact of Budget Proposals on Capital Markets held on 2nd March, 2015 at Jai Hind College, Churchgate, Mumbai.

Dignitaries during the Lecture Meeting. Seen from L to R : CA Neha Gada, Convenor, CA Vipul Choksi, Chairman, CA Paras K. Savla, President, Shri Vikram Kotak, Faculty, Shri Nilesh Shah, Faculty, CA Hasmukh Dedhia, Vice Chairman.

Shri Vikram Kotak, Managing Partner, Crest Capital & Investment addressing the members.

Shri Nilesh Shah, Managing Director & CEO, Kotak Mutual Fund addressing the members.

OPENING CEREMONY OF REBUILT ADARSH VIDYAMANDIR SCHOOL, CHOMOLI

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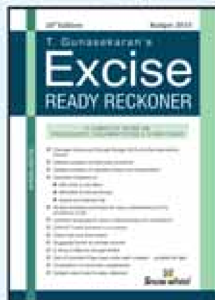

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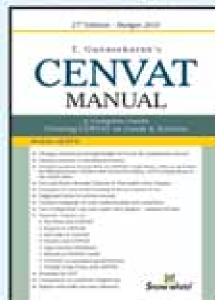

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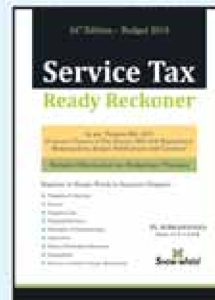

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