ESTD. 1973
PROFESSIONAL EXCELLENCE

C.V.O.CA'S NEWS & VIEWS

FOR MEMBERS / SUBSCRIBERS / VOL. 25 - NO. 8 MARCH 2022

From President's Desk...

Dear Professional Colleagues and Readers,

The Union budget 2022 is presented on 1st February 2022 by Hon. Finance Minister Nirmala Sitharaman with a focus on four pillars of development - inclusive development, productivity enhancement, energy transition and climate action. The Budget gives a blueprint of economy from India at 75 to India at 100. In a major push for digital currency, Sitharaman stated that digital rupee will be issued using blockchain technology by the RBI starting 2022-23. This will give a big boost to the economy.

Russian Invasion sparks biggest Sensex Crash in 2 Years. The news of Russia- Ukraine war had an impact on stock market as the Sensex fell over 3000 points. However, the looming risk of this crisis is no more there, it is reality today. Historically, such crises had worst possible impact drive in the prices of commodity prices, which for India will be on the adverse side as could take inflation higher. Market may remain volatile in the near term.

Rising crude oil prices are considered a major challenge for India.As any hike in raw material and energy prices may put further pressure on the margins of domestic companies going ahead. The price of Brent crude oil crossed $100 per barrel-mark on Thursday as Russian President Vladimir Putin declared war against Ukraine.According to market watchers, higher crude oil prices are major headwinds for a couple of sectors including aviation, paint, tyres and oil marketing companies.

My heartiest congratulations to all who pass out and joined professional journey as a Chartered Accountant. Approx. 50 CVO CA students have cleared this December 2021 attempt. Also Congratulations to students who have cleared CA inter and Foundation exam. Wishing all the best for the bright and successful future. Our Organisations welcomes new members and always ready for Encouragement, Guidance and Support for betterment of Society. As the organisation believes in **"Together Moulding a Smarter Future".**

Also I would like to highlight the overwhelming response from our members and their family member for the musical event **YAADEIN** organised as a Tribute to Bharat Ratna Late. Lata Mangeshkar Didi. More than 18 participant and approx. 100 audience throughout the event. Such great response and whole heartily participation from member encourage committee member to organise more and more events to know each other's skill, exchange knowledge and ideas. So keep participating each and every events and programme of the organisation and be connect with each other.

Upcoming Programme

After completion of all due dates pressure let's relax, restore our energy and balance our life with De-stress through participating in- indoor and out- door sports which will be organised soon in the month of March. The event will be organised according to the current Government Guidance and norms. The details will be shared soon through social media.

Stay healthy, Stay safe

Thank you all..... Always in Gratitude

CA Rahul Nagda

March 1, 2022

Deeksha/Sanyas/Renunciation .....CA Dinesh Shah (Chairman Comm.) 3

Tax Rate Chart & Personal Taxatin .....CA Ami Chheda 5

Proposed Amendments Relating to Business Income .....CA Nilesh Dedhia 10

Amendments to Faceless Assessment : Scheme / Assessment & Reassessment Provision .....CA Kiran Nisar 18

Amendments Relating to Charitable Instituitions .....CA Rohan Dedhia 25

Amendments Related to TDS, TCS, Penalties & Prosecutions .....CA Paras Maru 29

Central Goods and Service Tax Budget Proposals .....CA Bharat Gosar & CA Nitin Kenia 37

"Dreamzz Unlimited": Stories that Inspire .....CA Hasmukh Dedhia 40

Events in Retrospect 44-45

DEEKSHA/ SANYAS/ RENUNCIATION

CA Dinesh Shah
Email : swastikdns@hotmail.com

FROM THE DESK OF CHAIRMAN

India has offered a most priceless gift to the world, which is encouraging the evaluation of mankind and instrumental in the elevating of our consciousness, and that is popularly perceived as BHAGWATI DIKSHA/renunciation. It is life's supreme and peak of experiences, by taking vows there is an commitment, Saints are established in this unparalleled elevation. Their state of being so-exalted, their life so noble, that they are exalted to the highest pinnacle and our heads bow down at their lotus feet, in faith and reverence.

Recently hundreds of young people belonging to Jain community or followers of Jainism, have been renouncing the material world to become Sadhus/monks who always walk bare foot, eat only what they receive as alms and never bathe or use modern technology.

"I will never be able to hug my daughter again "reveals "An father", his voice breaking, He looks away determined not to reveal emotion as he says, "I can never meet her eye again."

Resignedly, he watches friends and family drift though his home, decorating the living room with gold and Pink tassels to celebrate his daughter's renunciation of the world and entry into monastic life.

In the days ahead of ceremony, family gathers around to spend her/his "Last Days' doing things she/he enjoyed which she/he will never be able to do these things again .

As a Sadhu/Sadhvi he/she will never again address as mother and father. She will pluck out her own hair, always walk barefoot and eat only what she receives in alms. He/She will never use a vehicle, never bathe, never sleep under a fan and never speak on a mobile phone again, By undergoing the ritual of renunciation and taking deeksha, he/she is withdrawing completely from the world, to focus on the aatma.

He /she is not alone, hundreds of youths are following the same path, their numbers rising each year, with women outnumbering the men, as I recollect earlier in all sect of Jains their may be around 30 to 40 Deekshas in year, But in recent past the number is rising to around 300 Deekshas in year, and may shortly reach around 400 Deekshas in a year.

Following may be Some of the reasons other than destiny.

i) **Growing disenchantment among the young with the pressures of a Modern world.**

ii) Gurus communicating religious ideas:-

They are good orators and offer young people a path which is simple, and understandable, until as recently as 15 to 20 years ago, Gurus relied literature written in the ancient Indian languages of Ardha Magadhi or Sanskrit, Now, the religious literature is offered in many Languages, Earlier or Previously the ascetics were more introverted and interested only in their own Self-purification," But recently they are more involved and are actively reaching out to young people in particular, Even discourse(Vyakhan) are published on youtube videos, making it convenient to all, to listen at their convenient time, "one Maharajsaheb who is a good orator and has published several Youtube videos that have had over a Million views," mentioned "If one wants to reach youngsters, it is easier to go to where they are rather than to try and bring them here.

iii) The Religious retreats:-

UPDHYAN a 18/35/45 retreat under the presiding guru, the retreat allows regular sadhaks to experience a monastic life- without shoes, electricity and baths, Most novices point to this grueling retreat – "where gurus exhort them to renounce a world "Full of Sorrow"- makes one to decide that they want to be SADHU, Most attendees undergo a series of short retreats to "Slowly build the confidence that YES, I can live like this for a little bit longer next time", The fear of sadhus life, the fear of giving up everything, is removed during the retreat, It is the first step, a sort of training camp to become a SADHU",

However DEEKSHA YES DEEKSHA isn't about what you give up

TO BE CONTINUED/...

TREAT OTHER THEY WAY YOU WANT TO BE TREATED

REMEMBER !!! THE SOUL IS ON JOURNEY

Thank you all..... Always in Gratitude

CA Dinesh Shah

TAX RATE CHART & PERSONAL TAXATION

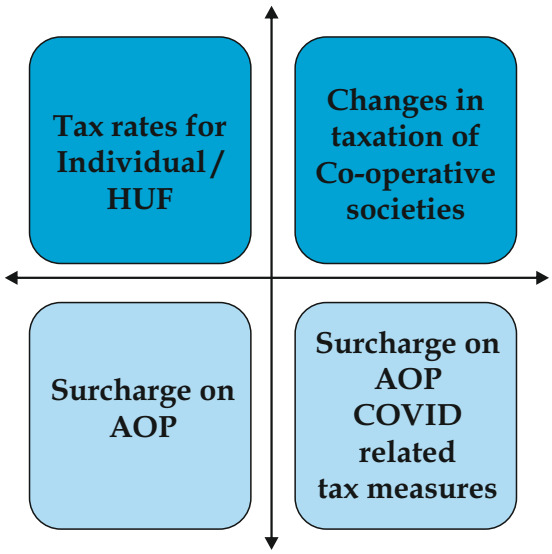
CA Ami Chheda
Email : amichheda0971@gmail.com

Introduction

The Union Budget 2022-23 was presented in Parliament on 1st February, 2022 and was the shortest budget speech by the Hon. Finance Minister; however impressive, impactful and futuristic by all means. There was a clear focus on infrastructure, agriculture and technology. Before unveiling the Budget 2022, numerous expectations were flowing in the minds of people from various walks of life and were pinning high hopes from the Modi Government.

The Finance Bill, 2022 as introduced on the budget day would get enacted as the Finance Act, 2022 except for changes on account of disputed matters, relief measures, certain omissions and inadvertent errors. In this article, an attempt has been made to elaborate on proposed amendments pertaining to Personal Taxation and Updated tax returns.

Personal Taxation



I. Tax Rates for Individual/HUF

Contradicting to the expectations, the Hon. Finance Minister did not tinker with the personal income tax rates in the Budget for 2022-23. Hence, no change has been proposed to the slab rates on the personal front.

Total Taxable Income	Old Regime			New Regime
	Age < 60 years	Senior Citizens	Very Senior	
Upto 2.5 L	0%	0%	0%	0%
2.5L to 3L	5%	0%	0%	5%
3L to 5L	5%	5%	0%	5%
5L to 7.5L	20%	20%	20%	10%
7.5L to 10L	20%	20%	20%	15%
10L to 12.5L	30%	30%	30%	20%
12.5L to 15L	30%	30%	30%	25%
Above 15L	30%	30%	30%	30%

Standard deduction with respect to Salary Income is kept unchanged at Rs. 50,000/-. Tax Rebate u/s 87A continues. Graded surcharge mechanism ranging from 0% to 37% remains.

However, an amendment is proposed to surcharge rates which are now capped to 15% in case of **Long-term capital gains**. This brings in parity with the surcharge rates for listed securities and dividend income. This proposal shall benefit only to those with a total income above Rs 2 crores.

II. Changes in taxation of Co-operative societies

Minimum Alternative Tax (MAT) for cooperative societies is proposed to be reduced from 18.5% to 15%.

Surcharge is also proposed to be reduced from 12% to 7% on total income of more than 1 crore upto 10 crores.

The Government has provided a level playing field between co-operative societies and the companies.

III. Surcharge on AOPs

In order to streamline taxability of Association of Persons in line with that of companies, surcharge rate on AOPs (comprising of all members as companies) is proposed to be capped at 15% as compared to progressive rates depending on the total income.

IV. Covid-19 related tax measures

a. <u>Exemption of amount received for medical treatment related to Covid-19 for self and family</u>

Amount received by the taxpayer on account of Covid-19 related medical treatment of self or family members is not taxable as below:

Amt received by	From	Purpose	Not taxable u/s
Taxpayer	Employer	Covid-19 medical treatment for himself or family member	17(2) - Perquisites
	Any other person		56(2)(x) – IFOS

b. Exemption of amount received on account of death due to Covid-19 by family member of the deceased person

Amount received by the family member of the deceased person shall not be taxable u/s 56(2)(x) as per the below limits:

Amt received by	From	Purpose	Exemption limit	Time period
Family member	Employer	Due to death of person related to COVID	No limit	Within 12 months from the date of death
	Any other person		Rs. 10 lakhs	

If the amount received by the family member of a deceased person is within 12 months of the date of death of the said person, then the said amount shall be exempt from gift taxation.

c. Incentives to NPS by State Govt. employees

Until Budget 2022, the limit of deduction in respect of contribution made to pension scheme by

Central Government employees – 14%

State Government employees – 10%

As per the proposed amendment, the limit of deduction in respect of contribution made to pension scheme shall be

Central Government employees – 14%

State Government employees – 14%

The above amendments given in (a), (b) & (c) are retrospectively effective from AY 2020-21.

d. Deduction in respect of medical treatment of dependent person with disability

At present, the deduction for contribution made to LIC or any other insurance company is available u/s 80DD for the benefit of the dependent who is suffering from disability. The deduction is available only if the scheme provides annuity or lumpsum amount after the death of such individual or the member of the HUF

Now, it is proposed to allow deduction even if the annuity or lumpsum amount is payable by the insurance company during the lifetime but upon attaining age of 60 years or more of the individual or the member of the HUF in whose name the scheme is subscribed and where payment or deposit has been discontinued. It is further proposed that amount received by the individual or member of HUF on the event of death of the dependent is not liable to tax by application of conditions specified.

Updated Tax Returns

In order to encourage voluntary compliance and reduce litigation, a new provision is proposed to be introduced for filing an updated tax return with additional tax within 3 years from end of respective financial year

Purpose of filing the updated return:

- Only for improving mistakes
- For correcting internal mistakes

Restrictions based on end result of updated return:

- It is a loss return
- It reduces tax liability determined on basis of earlier ITR filed
- It results in refund or increase in refund due on the basis of earlier ITR filed
- In the years, where proceeding for assessment or reassessment or recomputation or revision are pending or completed
- In case of search or survey
- In case where any prosecution proceeding has been initiated prior to date of filing updated ITR
- In case where an updated return has already been filed
- In case where the Assessing Officer has any information under PMLA, BMA, etc. and the same has been communicated to such person prior of filing updated return

Updated return shall be treated as defective unless such return is accompanied by the proof of payment of tax as required under Section 140B. Amount of additional tax payable alongwith updated return shall be computed as under:

Date of filing updated return	For AY 2022-23	Additional income tax payable
Within 12 months from end of relevant Assessment Year	1-4-23 to 31-3-24	25% of aggregate tax
After 12 months bur before 24 months from end of the relevant Assessment year	1-4-24 to 31-3-25	50% of aggregate tax

- Return for AY 2020-21 can also be updated since the time limit is upto 31-3-23 i.e. within the proposed limits for updated returns
- % of aggregate tax is including surcharge and cess and interest payable under updated ITR
- Tax payable shall be computed after all the claimed tax credits, advance tax, additional tax credits pertaining to additional income shown, available tax relief u/s 90 or 91 or 91A
- Interest u/s 234A, 234B & 234C already paid earlier in the return filed can be claimed under updated ITR

Conclusion

Despite the limited tax reforms, Budget 2022 adds to the government's triumphant efforts to rationalise direct tax system and provide covid-19 relief measures to benefit individual tax-payers.

It is advisable for all the taxpayers to wisely plan the Income tax returns to be filed on the original due dates considering the restrictions listed down so as to avoid the additional tax leviable in order to curb the deferment of the same bearing nominal interest charges.

PROPOSED AMENDMENTS RELATING TO BUSINESS INCOME

CA Nilesh Dedhia
Email : nilesh@shahnsavla.com

The finance minister presented the Budget 2022 in the parliament, while the economy is still trying to recover from the havoc caused globally by the pandemic. The budget has proposed amendments to the Income-tax Act, 1961 (the Act), many with the aim of rationalizing the provisions. The budget has also proposed few amendments which are clarificatory in nature.

In this article, I have tried to analyze the proposed amendments in provisions relevant in calculating business income.

All the proposed amendments mentioned below are will take effect from F.Y. 2022-23 (i.e. A.Y. 2023-24) unless otherwise specifically stated, subject to passing of the Finance Bill by both the houses of the Parliament and assent by the President.

I Section 35 - Deduction in respect of expenditure on scientific research

- Sub-section (1) of Section 35 of the Act allows deduction in respect of amounts spent on scientific research.

- Clause (ii) thereof allows deduction in respect of amounts paid to a research association for scientific research or to a university, college, to be used for scientific research. Clause (iia) thereof allows deduction in respect of amounts paid to company formed for scientific research / development. Clause (iii) thereof allows deduction in respect of amounts paid to a research association for research in social science / statistical research, etc.

- Sub-section (1A) to Section 35, inserted with effect from the 1st April, 2021, mandates the research association, university, college or other institution referred to in above clauses [Clause (ii) or (iii) or (iiia) of Section 35(1)] to file the statement of donations received by these entities from the donors and furnish to the donor, a certificate specifying the amount of donation.

- **Thus, the deduction claimed by the donor is sought to be disallowed in cases where the** statement of donations is not filed by the association, institution, etc**.** However, due to an inadvertent drafting error therein, the present language reads that no deduction shall be allowed to the research association, university, college or other institution, if such statement of donations is not filed. **However, that was not the intention of the law, since Section 35(1) allows deduction to donors for amount paid to an** association, university, college, etc. and not to the association or the institution to whom donations are given**.**

- Hence, it is proposed to amend Section 35(1A) to change the language of the Section to provide that the deduction claimed by the donor with respect to the donation given to any research association, university, college or other institution referred to in clause (ii) or clause (iia) or clause (iii) of Section 35(1) shall be disallowed if such research association, college, institution, etc. fails to furnish the statement of donations required to be furnished. **This amendment being curative, will take effect retrospectively from 1st April, 2021.**

II Section 37 – General deductions

- Section 37 of the Act provides for allowability of revenue and non-personal expenditure (other than those falling under sections 30 to 36) laid out or expended wholly and exclusively for the purposes of business or profession. Explanation 1 to sub-section (1) of Section 37 of the Act provides that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure.

- However, the area was subject to litigation since there have been mixed rulings of various courts and tribunals, predominantly in respect of gifts, freebies like Travel facility, Hospitality, Cash or monetary grant, etc. given to medical practitioners by pharmaceutical companies. In certain cases, courts have ruled in favour of the assessees (pharmaceutical companies) holding that Medical Council of India (MCI) Regulations, 2002 provide only limitation/curb/prohibition only for medical practitioners and not for pharmaceutical companies and hence it could not have had any prohibitory effect on assessee. Hence, the expenses incurred by assessees were purely for business purposes and hence, were not hit by Explanation 1 to Section 37(1).

- That not being the intention of the legislation, it is now proposed that Explanation 1 above shall be deemed to have always included the expenditure incurred by an assessee:

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

  ii. to provide any benefit or perquisite, to any person and acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guidelines governing the conduct of such person; or

  iii. for a purpose which is an offence or is prohibited or is for compounding an offence under any Indian law or foreign law,

  The above amendment will have wider impact in the business world, in the sense that any expenses, payment of which may not be an offence but if acceptance of the same constitutes an offence as per the guidelines of the governing body (respective institute, association, etc.) shall not be allowed to an assessee. It sets to rest controversies pertaining to legality or otherwise of expenses of the nature described above.

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

III Section 40 – Disallowance of certain expenses

- Clause (a) of Section 40 lists certain expenses which would not be allowed as deduction in computing income under the head business or profession. Sub-clause (ii) thereof states that that any sum paid on account of any rate or tax levied on the profits or gains of any business or profession or is assessed at a proportion of or otherwise on the basis of any such profits or gains shall not be an allowable expenditure in computing the income chargeable under the head "Profits and gains of business or profession."

- Whether the aforesaid sub-clause includes within its sweep education cess levied by the Finance (No. 2) Act, 2004 (and its similar variants levied by various Finance Acts from time to time) has lately been a subject matter of contentious litigation. Certain taxpayers are claiming deduction on account of 'education cess' claiming that the said levy is different from levy of tax and since 'cess' has not been specifically mentioned in section 40(a)(ii), it is not subject to disallowance. Various courts have also ruled in favour of assessees. The Finance (No. 2) Act, 2004 states Education cess to be an additional surcharge.

- It is therefore proposed to insert an Explanation 3 to Section 40(a)(ii) to provide that that for the purposes of sub-clause (ii), the term "tax" shall include and shall be deemed to have always included any surcharge or cess, by whatever name called, on such tax.'

- Since it was never the intention of the law makers to allow Education cess as an expenditure in computing business income, the aforesaid amendment, clarificatory in nature, is applicable **retrospectively from AY 2005-06,** which is the first time since education cess was levied.

IV Section 43B – Deductions allowed only on actual payment

- Section 43B of the Act provides for certain deductions to be allowed only on actual payment basis. Explanation 3C, 3CA and 3D of this section provides that a deduction of any sum, being interest payable on loan or borrowing from specified financial institution/NBFC/scheduled bank or a co-operative bank, etc. under clause (d), clause (da), and clause (e) of this section respectively, is allowed only if such interest has been actually paid. However, interest which is converted into a loan or borrowing or advance is not considered as constructive payment.

- However, certain taxpayers claim deduction of interest on conversion of such **interest payable into debentures, instead of loan.** The same has been upheld by several courts since the existing provisions of Section 43B only disallow deduction in cases where the interest payable is converted into fresh loan / advance and not debentures / any other instrument like zero coupon bonds. Such interpretation is against the intent of legislation.

- Since the section was introduced to curb the mischief of claiming deduction by the assessee, without actual payment of interest to financial institutions/NBFCs/scheduled banks or co-operative banks, an amendment is proposed to amend Explanations 3C, 3CA and 3D to include conversion of interest liability into debentures / any other instruments, along with loan / advance. The impact of the said amendment is that the conversion of interest liability into debentures / any other instruments will not be considered as actual payment and accordingly, shall be liable to be disallowed u/s 43B.

- On analysis of the proposed amendment, question to be pondered is the year of allowability of interest or in other words, when would the interest be considered as 'paid', in the eyes of law – whether it would be allowable only in the year of redemption of debentures or in any earlier year ?

  However, more than that, it needs to be seen if the amendment, in substance overrules the ratio held by hon'ble apex court in the case of M.M. Aqua Technologies Ltd. v. CIT [2021] 129 taxmann.com 145 in which the court has held that on issue of debentures in lieu of conversion of outstanding interest, it was evident that liability to pay interest had been extinguished and it does not tantamount to conversion of interest into loan, as envisaged by the Explanations 3C, 3CA and 3CD of Section 43B. Even after the amendment, the above said fact remains.

- **This amendment being curative, will take effect retrospectively from 1st April, 2022.**

V Section 50 – Computation of capital gains in case of depreciable assets

- From FY 2020-21, goodwill is not considered as a depreciable asset and hence no depreciation is allowed thereon. Correspondingly, the amended provision provided for reduction of WDV of goodwill from the block of intangible assets.

- It is now proposed to be clarified that the reduction of the amount of goodwill from block of intangible assets, in accordance with the provisions of Section 43(6)(c)(ii)(B) (W.D.V. of goodwill) shall be deemed to be transfer for the purposes of Section 50. As a result, provisions of Section 50 would be attracted and capital gains would be calculated in the same manner as applicable for any depreciable capital asset, in the situations covered in Section 50. Thus, this provision only intends to clarify that, in application of provisions of Section 50, the amount of WDV of goodwill reduced from the WDV of block of asset owing to disallowance of depreciation of goodwill on account of amendment in Income Tax Act shall be considered as transfer. Computation of short term capital gains and WDV u/s 50 in cases where depreciation on goodwill has been claimed in the past, shall have to be made after considering newly inserted Rule 8AC vide Notification G.S.R. 472(E) [NO. 77/2021/F. NO. 370142/23/2021-TPL], DATED 7-7-2021.

- Since the amendment to the effect that goodwill of a business or profession is not a depreciable asset has been made applicable w.e.f. A.Y. 2021-2022, the above amendment in Section 50 will take effect **retrospectively from 1st April 2021 and will accordingly apply from A.Y. 2021-22.**

VI Section 68 – Cash credits

- Section 68 of the Act provides that where any sum is found to be credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not satisfactory to A.O, the sum so credited is added as the income of the assessee of that previous year. The onus of satisfactorily explaining such credits remains on the assessee, being the person in whose books such sum is credited.

- Introducing unaccounted money in the books of accounts under the garb of loans / borrowings, share capital is rampant. To bring to tax such unaccounted income, Section 68 was amended by Finance Act, 2012 to provide that the nature and source of any sum credited in the books of a closely held company, in the nature of share application money, share capital or share premium shall be treated as explained only if the source of funds is also explained to the satisfaction of the Assessing Officer, in the hands of the shareholder.

- Loans / borrowings is another popular way of bringing unaccounted money in the books of accounts, next to share capital. However, in case of loan or borrowings, there is a plethora of judicial rulings in favour of assessees holding that an assessee is required to prove identity, creditworthiness of lenders and genuineness of transactions and nothing beyond. Thus, the Section, as it stands now, does not cast an onus on the assessee to explain the source of funds in the hands of creditor.

- To check this unethical practice, it is proposed to amend the provisions of section 68 of the Act so as to bring the transactions of loan / borrowing analogous to share capital money. That is to say, the proposed amendment provides that the nature and source of any sum, whether in form of loan or borrowing, or any other liability credited in the books of an assessee shall be treated as explained only if the source of funds is also explained in the hands of the creditor or entry provider. However, as in the case of share capital, a carve out is provided in cases where the creditor is a well-regulated entity, i.e., a Venture Capital Fund or Venture Capital Company registered with SEBI.

- It is also worth noting that if such source of source is not proved, then it would fall within the scope of Section 115BBE wherein tax is levied @ 60% plus 25% surcharge plus 4% cess.

- Practical implementation of the proposed amendment could be challenging since it needs to be seen, up to which level assessee would have to prove source of source. If the source of source is explained and the Assessing officer has suspicion about the source of such source (third level source), whether the source of source (second level source) proved by the assessee would be satisfactory in the opinion of the officer, has no answer.

- **This amendment being curative, will take effect retrospectively from 1st April, 2022.**

VII Section 80 IAC – Special provisions (tax holiday) in respect of specified businesses

- Currently, a deduction of 100% of the profits derived from eligible business by an eligible start-up is available for any 3 consecutive years out of first 10 years from incorporation, subject to certain conditions. One of the conditions therein is that the start-up is incorporated after 31st March, 2016 but before 31st March, 2022.

- The law makers are aware of the delays in setting up of such units on account of Covid pandemic. Thus, in order to extend the benefit to eligible start-ups, it is proposed to extend the last date of incorporation by one year, from 31st March, 2022 to 31st March, 2023.

VIII Section 115BAB – Special rate of tax for new manufacturing companies

- Currently, a new manufacturing company set-up and registered on or after 1st October, 2019 is eligible for a concessional corporate tax rate of 15% (17.16% including surcharge & cess), subject to certain conditions. One of the conditions is that it shall commence manufacturing/production by 31st March, 2023. Again, considering impact of COVID-19 pandemic, it is proposed to extend the last date for commencement of manufacturing/production from 31st March, 2023 to 31st March, 2024.

IX Section 115BBH – Scheme of taxation of Virtual Digital Assets (VDA)

- There has been a phenomenal increase in transactions in virtual digital assets. The magnitude and frequency of these transactions prompted the law makers to provide for a specific tax regime. Hence, following changes are proposed in respect of tax regime of VDA:

    - Income on transfer of any virtual digital asset (by and large crypto-currencies and Non-fungible token) will be taxed at 30% plus applicable surcharge and cess.

    - While calculating income, only deduction for cost of acquisition shall be allowed and no other deduction of any expenditure or set off of any loss shall be allowed. Owing to lack of clarification, there exists confusion if loss from crypto transactions also would be allowed to be set-off against gains therefrom, the same year.

    - Further, loss arising from transfer of VDA cannot be set off against any other income. Such loss shall also not be allowed to be carried forward to subsequent years.

- To bring transaction of gift of VDA also into the tax net, Section 56(2)(x) is proposed to be amended to include VDA within the definition of 'property'. However, gift received by an assessee in respect of VDA shall be taxable at normal rate of tax subject to the exceptions as provided in the provisions for gifts from relatives. This provision could result into double taxation given that the recipient cannot claim any benefit of cost of acquisition since then same is nil, in the absence of any clarification regarding what constitutes cost of acquisition.

- In order to widen the tax base, it is proposed that payment to a resident on transfer of VDA shall be liable for TDS @ 1% under **section 194 S**. However, **TDS shall not be required to be made** in case the payer is a specified person and the aggregate value of payment to a resident is less than Rs. 50,000 during the F.Y. In any other case, the threshold is Rs. 10,000. However, since the transactions are carried out virtually, it is not possible for a purchaser to identify the seller and deduction of TDS is yet another thing.

- **Specified person' means an individual/HUF:**
  - whose total sales, gross receipts/turnover of business does not exceed Rs. 1 crore or Rs. 50 lakhs in case of profession, during immediately preceding FY.
  - having income under any head other than 'profits and gains of business or profession'.

- In case the payment for such transfer is partly or fully in kind, before making the payment, the payer shall ensure that the tax has been paid in respect of such consideration.

- In case TDS is deducted under this provision, no TDS / TCS is required under any other section.

- **This proposed amendment for TDS will be effective from 1 st July, 2022.**

- Introduction of tax regime for cryptos, as they are popularly called, doesn't legalize them. In fact, to clear the air around the government's stance on cryptos, more so post budget 2022, hon'ble finance minister in her latest statement on February 2, has clarified that cryptocurrencies such as Bitcoin, Ethereum and Non-fungible tokens (NFTs) will never become legal tender since they are not issued by RBI.

- Though digital assets are capital assets, the taxation regime is not at par with the existing scheme of computing capital gains. Head under which the same would be taxed – Capital gains or income from other sources needs clarification.

- There is lack of clarity about the taxation of the crypto gains earned hitherto and there are mixed views about the same. However, it is here worth noting that CBDT chairman has stated that "The taxability of the crypto-currency is certain for this financial year too. Crypto investors should know that the transactions done before April 2022 will not be tax-free." This could be a word of caution to all the stakeholders taking a liberal view on the taxation of gains earned until now and in F.Y. 2021-22.

- All in all, it seems that the prima facie intention of the government is to discourage such kind of transactions / treat them at par with windfall gains and collect revenue from such gains.

- **This amendment being curative, will take effect retrospectively from 1st April, 2022.**

X Section 79A — Set off of loss in search / survey cases

- The provisions contained in Chapter VI of the Act pertaining to set-off and carry forward of losses under various heads allow set-off of losses / unabsorbed depreciation against undisclosed income detected as a result of search & seizure or survey or requisition proceedings. However, the said set-off is not allowed against incomes of similar nature like Section 68, Section 69, Section 69B etc. assessed in scrutiny assessment proceedings in the regular course of assessment.

- The provision of non-adjustment of loss or unabsorbed depreciation against undisclosed income arising out of search or survey proceedings would help in ensuring that proper tax is paid on income detected due to a search or survey and also result in increased deterrence against tax evasion.

- Therefore, it is proposed to insert a new section 79A in the Act to bar the set-off of any loss, whether brought forward or otherwise, or unabsorbed depreciation under section 32(2) against undisclosed income detected in the course of search / survey proceedings. However, the said deterrent shall not apply to TDS / TCS survey u/s 133A(2A).

- Further, for the purpose of this Section, the term 'undisclosed income' is also defined to mean the following:

  i. any income represented, either wholly or partly, by any money, bullion, jewellery or other sactions found in the course of search / survey (other than TDS / TCS survey)

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

     b. which has not been disclosed to the concerned income tax authorities (Principal Chief Commissioner or Chief Commissioner etc.) before the date of search or requisition or survey, or

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

- The definition of undisclosed income also seems to be thoughtfully drafted to ensure no income escapes out of this harsh provision.

- **This amendment will take effect from 1st April, 2022 i.e. wef AY 2022-23.**

XI Section 14A – Expenditure incurred in relation to exempt income

- The small humble Section 14A has also witnessed tremendous litigation in the recent years.
- One such point of litigation is in respect of the issue whether disallowance under section 14A of the Act can be made in cases where there is no exempt income earned during the year.
- In absence of any exempt income during an assessment year Section 14A of the Act provides that no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to exempt income.

- CBDT issued Circular No. 5/2014, dated 11/02/2014, clarifies that Rule 8D read with section 14A of the Act provides for disallowance of the expenditure even where tax payer in a particular year has not earned any exempt income. However, some courts have taken a view that if there is no exempt income during a year, no disallowance under section 14A of the Act can be made for that year.

- However, since such an interpretation defeats the legislative intent of both, section 14A as well as Section 37 of the Act. Therefore, it is proposed to insert an Explanation to section 14A of the Act to clarify that provisions of this section shall apply and shall be deemed to have always applied in a case where expenditure has been incurred to earn exempt income but exempt income has not accrued or arisen or has not been received during the previous year.

- Whether the proposed amendment ends the ongoing dispute or unsettles the law of the land is a question unanswered.

- **This amendment will take effect from 1 st April, 2022 ie wef AY 2022-23.**

Conclusion

Introduction of fiscal measures to tackle the menace of black money has been on the government's agenda since long and just like every year, this budget has also witnessed some tax proposals in the direction. Likewise, relaxation of certain time limits is also a welcome move. The government has also proposed many amendments to the Act with an intention to reduce litigation, though some come at the cost of unsettling the existing law arrived after thoughtful process by the highest judicial forum. However, it is clear that all the government intends is timely, adequate compliance, avoiding excessively aggressive, far-stretched claims in respect of deductions and penalizing the tax evaders, which seems to be just.

AMENDMENTS TO FACELESS ASSESSMENT SCHEME / ASSESSMENT & REASSESSMENT PROVISION

CA Kiran Nisar
Email : kiran_nisar@hotmail.com

AMENDMENT RELATED TO FACELESS ASSESSMENT

The Faceless Assessment was originally introduced by Faceless Assessment Scheme 2019 and later section 144B was inserted to the Income tax Act, 1961 (the Act), by the Taxation and other Laws (Relaxation and Amendment of Certain provisions) Act 2020 with effect from 01.04.2021.

The Finance Bill 2022 proposes to revamp entire section 144B, in order to streamline the process and to address various procedural and legal issues.

The existing section 144B of the Act provides for faceless assessment for assessment u/s. 143(3) and 144 of the Act only. The proposed section 144B provides for faceless assessment for assessment, reassessment, or recomputation u/s. 143(3) or 144 or 147 of the Act.

As per the proposed scheme, following 'centres' or 'units' will be operational.

- **A National Faceless Assessment Centre (NaFAC)** – to facilitate the conduct of faceless assessment proceedings in centralised manner
- **Assessment Units (AU)** – to perform the function of making assessment. The term 'Assessment Unit' refers to Assessing Officer having power so assigned by Board.
- **Verification Units (VU)** – for enquiry, verification, examination of books of accounts, recording of statement, etc. The term 'Verification Unit' refers to Assessing Officer having power so assigned by Board.
- **Technical Units (TU)** – for technical assistance, legal advice, etc. The term 'Technical Units' refers to Assessing Officer having power so assigned by Board.
- **Review Units (RU)** – for reviewing the draft assessment order. The term 'Review Units' refers to Assessing Officer having power so assigned by Board.

All the communication between the assessee and the units mentioned above shall be through NaFAC.

The existing section also provides for '**Regional e-Assessment Centres**' under the jurisdiction of the regional Principal Chief Commissioner for making assessment, which is proposed to be deleted under new section 144B proposed in the Finance Bill 2022.

Procedural lapse cannot make assessment void:

The existing sub-section (9) to section 144B provides that the assessment proceedings shall be void if the procedure mentioned in the section is not followed. This sub-section is proposed to be deleted from the date of its insertion, i.e. w.e.f. 1st April 2021. Hence assessment should not be considered as void merely because prescribed procedure is not followed.

Principle of Natural Justice:

The current scheme of faceless assessment is challenged before the various Courts mainly on the grounds of violation of principle of natural justice. The proposal in this Finance Bill makes an attempt to address such issues by providing for few measures like, requirement to first issue a show cause notice and only then prepare an income of loss determination proposal, etc.

Opportunity for hearing:

Further with reference to personal hearing, there exist some ambiguity under the existing provisions. As per existing section 144B(7), assessee may request for personal hearing where a variation is proposed in the draft order and assessee is served with show cause notice. Further the Chief Commissioner of Director General in charge of the Regional Faceless Assessment Centre may approve the request for personal hearing, if such request is covered by the circumstances laid down by the Principal Chief Commissioner with the approval of CBDT. Further the CBDT, vide Circular dated 23.11.2020 & 31.03.2021 states that personal hearing would be granted where:

- Assessee has submitted written submission in response to draft assessment order, and
- In such submission assessee disputes the facts underlying proposed modification and make a request for personal hearing

In view of word 'may' used in s. 144B(7)(viii) and the SOP in CBDT Circular dated 23.11.2020, the tax authorities have taken a stand that the personal hearing is discretionary and could be granted only where a dispute on facts is involved. The Delhi High Court in the case of Bharat Aluminium Company Ltd. [WP(C) 14528/2021] held that even under faceless assessment scheme the assessee would have a vested right of personal hearing and the same has to be granted, if an assessee ask for it. The proposed section addresses such ambiguity by use of words "shall allow such hearing" as opposed to "may approve the request for personal hearing".

The relevant provisions of the proposed sub-section (6) of section 144B, as is relevant to the personal hearing, is summarised hereunder:

- In a case where a variation is proposed in the income or loss determination proposal or the draft order, an opportunity is provided to the assessee by serving show cause notice and the assessee or his authorised representative may request for personal hearing.
- Where a request for personal hearing has been received, the income tax authority of the relevant unit shall allow such hearing through NaFAC via video conferencing.

No opportunity when matter is referred to Review Unit

The opportunity of hearing is provided at the time of preparation of the income or loss determination proposal by the AU. When the AU finalise income or loss determination proposal after considering the submission of the assssee and taking into account all the material available on record and forward the same to the NaFAC, the NaFAC may refer the same to the Review Unit (RU) and the RU may suggest some modification. If the AU accepts any of the modification suggested by the RU which is prejudicial to assessee, then again, the asseessee should be given an opportunity of hearing, which somehow seems to be missing.

Apprehension that such hearing opportunity should not become mere formality:

The bill provides that the income tax authority of the relevant unit shall allow hearing through NaFAC through video conferencing or video telephony. Now if the officer doing assessment is different from the one who hear the assessee, then again purpose is not achieved. Further, the officer who hears the assessee should reveal his identity during the hearing otherwise it will not be possible to ascertain whether the officer who pass the assessment order is the one who heard the assessee. Currently, after the negative remarks from the various High Courts, the opportunity is given to the asseessee through video conferencing, but in many cases the officer refuses to reveal his identity!!

Faceless assessment scheme for Transfer Pricing and International taxation:

The date for introducing faceless scheme for section 92CA and 144C of the Act, dealing with transfer pricing and international taxation, is extended till 31st March 2023.

The process prescribed in sub-section (1) of section 144B is briefly summarised hereunder:

- The National Faceless Assessment Centre (NaFAC) to assign case to the specific assessment unit (AU) through automated system and intimate to the Assessee that assessment will be faceless
- The assessment notice u/s. 143(2) / 142(1) will be served through the NaFAC and the assessee is required to submit its response to the NaFAC
- The AU, through NaFAC, calls for further information, documents or evidence from the assessee or other person and the assessee or any other person is required to furnish the same within specified time to the NaFAC.
- The AU may request through the NaFAC to conduct further enquiry or verification by Verification unit (VU), and NaFAC to assign such request through automated system to a VU. The report received from such VU shall be forwarded by the NaFAC to the concern AU.
- The AU may request through NaFAC for seeking technical assistance on any matter by referring the matter to the technical unit (TU), and the NaFAC to assign such request through automated system to a TU. The report received by such TU shall be forwarded by the NaFAC to the concern AU.

<u>Ex-party assessment</u>

- Where assessee fails to comply with the notice served u/s 143(2) or 142(a) or 144B(1)(v), the NaFAC shall intimate such failure to the AU and the AU then serve to the assessee, a notice u/s. 144 through the NaFAC.
- The assessee shall file his response to 144 Notice to the NaFAC within specified time, which the NaFAC shall forward to the AU.

<u>Income or loss determination proposal and opportunity of hearing</u>

- If assessee fails to file response to 144 Notice within specified time, then the NaFAC shall intimate such failure to the AU and the AU, after taking into account all the material available on record, prepare an income or loss determination proposal.
    - o If no variation prejudicial to assessee is proposed in such proposal, then such income or loss determination proposal is forwarded to the NaFAC
    - o In other case, a show cause notice as to why proposed variation should not be made, is served on the assessee through the NaFAC.

- The assessee shall file his reply to the show cause notice to the NaFAC within specified time which the NaFAC shall forward to the AU. If assessee fails to respond within specified time, the NaFAC shall intimate such failure to the AU.

- The AU, after taking into account all the relevant material available on record, prepare an income or loss determination proposal and (a) where no variation prejudice to the assessee is proposed, forward the same to the NaFAC or (b) in other case, issue a show cause notice on assessee through NaFAC call him to submit as to why the proposed variation should not be made
- The assessee shall file his reply to such show cause notice to NaFAC, which NaFAC shall forward to AU. If assess fails to respond to such show cause notice, NaFAC shall intimate such failure to the AU.
- The AU, after considering the response or after receipt of intimation about failure, and taking into account all the relevant material available on record, prepare an income or loss determination proposal and forward the same to the NaFAC.

<u>On receipt of income or loss determination proposal from AU</u>

- On receipt of the income or loss determination statement, the NaFAC on the basis of guideline issued by the Board, may
  - (a) convey to the AU to prepare a draft order in accordance with the income or loss determination proposal, or
  - (b) assign the income or loss proposal to review unit through automated system, for conducting review of such proposal.
    - The review unit shall conduct the review of such income or loss determination proposal and forward its review report to the NaFAC, which the NaFAC shall forward to the AU.
  - The AU, after considering the review report, accept or reject, some or all of the modifications proposed therein and after recording its reasons for rejection of such modification, prepare a draft order.
- The AU shall forward such draft order to the NaFAC.
  - Where there is a proposal to make any variation which is prejudicial to the interest of assessee as mentioned in section 144C(1), the NaFAC shall serve such draft order on the assessee
  - In other case, NaFAC convey to the AU to pass final assessment order in accordance with such draft order and the AU shall pass final assessment order and initiate penalty proceedings, if any, and forward it to the NaFAC.
- On receipt of final assessment order, NaFAC shall serve copy of such order and notice for initiating penalty proceedings, if any, on the assessee along with the demand notice.
- Where a draft order is served on the assessee, such assessee shall (a) file his acceptance to the variation proposed with the NaFAC, or (b) file his objection, if any, to such variation, with Dispute Resolution Panel (DRP) and NaFAC, with the time prescribed u/s. 144C(2).
- The NaFAC, upon receipt of acceptance from the assessee or not receiving any objection from the assessee within specified period, intimate the AU to complete the assessment as per the draft order. In which case the AU shall pass the assessment order within the prescribed time and initiate penalty proceedings, if any, and send order to the NaFAC.

- Where the assessee files objection with the DRP, the NaFAC shall send such intimation along with a copy of objection to the AU. On receipt of direction from the DRP, the NaFAC forward such direction to the AU. The AU to complete the assessment in conformity with the direction issued by the DRP within the time prescribed u/s. 144C(13) and initiate penalty proceedings, if any, and send copy of assessment order to the NaFAC.
- The NaFAC, upon receipt of assessment order from the AU, serve the copy of such order and notice for initiating penalty proceedings, if any, on the assessee.
- After completion of assessment, the NaFAC shall transfer all the electronic records of the case to the Assessing Officer having jurisdiction over the case.
- If at any stage of proceedings, having regard to the nature and complexity of the accounts, volumes of the accounts, doubts about the correctness of accounts, multiplicity of transactions in the accounts or specialised nature of business activity of the assessee, AU is of the opinion that the provision of sub-section (2A) of section 142 may be invoked, it may refer the case to NaFAC, after recording its reasons in writing.

Conclusion:

The faceless assessment scheme was started initially for the scrutiny assessment u/s. 143(3) / 144 of the Act and now proposed to be extended for reassessment u/s. 147 of the Act. In future such faceless scheme will be extended for the transfer pricing assessment and also for the international taxations. Hence any attempt to remove the difficulties faced by the administration and tax payer will go long way in the ultimate success of faceless assessment scheme.

The proposal in the current Finance Bill has addressed the issue on the principle of natural justice by ensuring opportunity for hearing to the assessee If this opportunity for hearing does not remain mere formality, then in reality this will be a step towards ensuring principle of natural justice. Further the opportunity of hearing, when a matter is referred to a Review Unit, seems to be missing, which appears to be unintentional and hopefully the same should be rectified once it is brought to their notice.

RATIONALISATION OF PROVISIONS RELATING TO ASSESSMENT AND REASSESSMENT

Amendments proposed for section 148 and 148A of the Act

Under the existing provisions of the Act, as per the proviso to section 148 of the Act, the notice for reassessment u/s. 148 can be issued only when the Assessing officer is in possession of some information which suggest that the income chargeable to tax has escaped assessment and a prior approval from specified authority is obtained to issue such notice.

Section 148A was introduced by Finance Act 2021, which requires AO to comply with certain procedure.

a) 148A(a) : AO to conduct enquiry, if required, with prior approval

b) 148A(b) : Opportunity of being heard to be given to assessee, with prior approval

c) 148A(c) : AO to consider reply of assessee

d) 148A(d) : Order to be passed as to whether it is a fit case for issue of notice u/s. 148, with prior approval

The present Finance Bill 2022, proposes to insert a new proviso to section 148, which provides that when an order is passed u/s. 148A(d), the approval from specified authority is not required to issue notice u/s. 148 of the Act. Since the order u/s. 148A(d) can be passed with the prior approval, there is no need for one more approval for issue of notice u/s.148.

Scope to trigger reopening is widened

Currently, under clause (ii) to Explanation 1 to section 148 of the Act, the final objection from Comptroller and Auditor General is considered as information to trigger issue of notice u/s. 148 of the Act. The bill proposes to replace such clause (ii) with following:

(ii) any audit objection which suggest that a particular assessment was not made in accordance of the Act

(iii) any information received under an agreement referred in section 90 and 90A of the Act

(iv) information made available to the AO under the Scheme notified u/s. 135A of the Act (i.e., faceless collection of information like AIS information)

(v) information which requires action in consequence of the order from Tribunal or Court

Insertion of New Section 148B

It has been provided that no order of assessment or reassessment or re-computation under the Act shall be passed by an AO below the rank of Joint Commissioner, except with the prior approval of the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director, in respect of assessments consequent to search, survey and requisition to reduce avoidable inaccuracies.

Section 149 – Time limit for issue of notice

It is proposed to extend the time limit for issue the notice to ten years from the end of relevant assessment year, where the AO is in possession of books of accounts or other documents or other evidences, which reveals that income escaping the assessment represented in the form of (a) an asset, (b) expenditure or (c) any other entries in the books of account, amounts to or is likely to amount to Rs. 50 lakhs or more.

It is also provided that no notice u/s. 148 shall be issued, if the time limit prescribed for issue of notice u/s. 148 or 153A or 153C has expired on or before 1st April 2021.

Also, a new subsection (1A) is proposed to be inserted to provide that, where income escaped assessment and represented in the form of an asset or expenditure in relation to an event or occasion and investment in such asset or expenditure in relation to such event or occasion has been made or incurred in more than one year, the notice u/s. 148 shall be issued for each of such years for assessment, reassessment or re-computation, as the case may be.

Conclusion

The provisions of the Finance bill propose to rationalise the assessment and reassessment procedure. However, in a process of rationalisation, the time limit to reopen an assessment is extended to ten years, where escaped income which is represented in the form of assets or expenditure or entries in the books of account exceed Rs. 50 Lakhs. So, maintain all the documents for a period of more than ten years will be a real challenge for most of the tax payer.

AMENDMENTS RELATING TO CHARITABLE INSTITUTIONS

CA Rohan Dedhia
Email : rohan.dedhia@yahoo.com

The last 7 years have witnessed massive overhaul in the Scheme of Regulatory and Compliance Matters applicable to charitable trusts and institutions. Keeping in line with its vision of – '*Minimum Government, Maximum Governance*', the Government has introduced plethora of amendments since 2015 to put the onus on the Trusts to comply with the laws or face the risk of losing exemptions, if found non-compliant. With the seamless flow of information between various departments and technological tools available, the government is engaging itself pro-actively by seeking timely compliances from the Trusts / NGOs. With string of amendments already introduced earlier to curb double / triple deductions by Trusts on its expenses, and new registration mechanisms, the Budget 2022 has focussed mainly on the following aspects:

A. Expenses to be allowed on payment basis only and not on accrual / mercantile basis;

B. Providing clear-cut procedure for cancellation of existing 12AB registration and disallowance of exemption by A.O.;

C. Retrospective amendment to exempt donations received for maintenance of places of worship;

D. Rationalisation of disallowance of expenses/application in case of violation of any provision by the Trusts;

E. Strict Penalties in case a Trust is found to have passed undue benefit to Trustees or Specified Persons;

F. Introducing amendments to bring clarity to already settled principles;

G. Bringing parity between exemptions u/s 10(23C) and u/s 11/12.

A. Expenses to be allowed on payment basis only and not on accrual/mercantile basis:

1. Insertion of Explanation to sec. 11 and similar amendment in sec. 10(23C):
Application of Income shall be allowed to Trusts / Institutes on the basis of actual payment only. Even if accrual/mercantile system of accounting is followed by the assessee, the application of Income will not be allowed in the year in which the liability to pay arises, but only in the year in which such amount is actually paid.

2. The Receipts & Payments Account shall now form an integral part of the Financials of the Trust. Though many Trusts follow cash system of accounting, the applicability of GST to many Trusts led such Trusts to follow accrual / mercantile system of accounting. However, there were several instances where application was being claimed only the basis of book entries without actual payment / discharge of such liabilities by the Trust. To curb the same, the above amendment has been introduced.

B. Providing clear-cut procedure for cancellation of existing 12AB registration and disallowance of exemption by A.O.:

The procedure for cancellation of sec. 12AB Registration, contained in earlier sec. 12AB(4) and 12AB(5) have been overhauled and a detailed procedure has been laid down with respect to (i) defining the violation; (ii) Cause to commence the cancellation proceedings; and (iii) Procedure for cancellation. Summary as under:

Insertion of Explanation to Sec. 12AB(4) to define 'Specified Violation'	Cause to initiate the proceedings for	Procedure to be followed for
a. If income is applied, other than for objects of the Trust; b. Trust has income from profits/gains of business, which is not incidental to the attainment of objects, or separate books are not maintained in respect of business incidental to objects; c. Trust has applied income for private religious purposes which does not endure public benefit; d. Trust has applied income for the benefit of any particular religious community or caste; e. Activity carried out is either: (i) not genuine or (ii) not carried out as per conditions of 12AB registration; f. Trust has not complied with the requirement of any other law and such non-compliance under other law has attained finality or has not been disputed.	a. PCIT or CIT notices occurrence of specified violation; or b. PCIT or CIT has received reference from A.O. under 2nd proviso to sec. 143(3); or c. The case has been selected in accordance with the risk management strategy formulated by the Board.	1. Call for such documents to satisfy himself; 2. Pass an order in writing, cancelling the registration, after affording reasonable opportunity, if he is satisfied that specified violation has occurred. 3. Pass an order, refusing to cancel the registration, if he is satisfied that specified violation has not occurred; 4. Forward copy of such order to A.O. and the assessee.

2. New Sec. 12AB(5) provides the timeline to pass the order for the above proceedings u/s 12AB(4) to 6 months from the end of the quarter in which the first notice is issued by the PCIT or CIT for calling of information.

3. Amendment has also been carried out in sec. 143 (Assessment Proceedings) to lay the procedure for allowing / disallowing exemption u/s 10 at the time of assessment by A.O. to assessees covered under registered under sub-clauses (iv) or (v) or (vi) or (via) of sec. 10(23C) has been amended and such procedure has also been made applicable to Trusts claiming exemption u/s 12AB. The procedure suggests that, if the A.O. notices any 'specified violation' (*see sub-clause 1 above*) at the time of assessment, then the A.O. shall:

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

ii. The A.O. shall not make any assessment until and unless the PCIT / CIT passes any order (either cancelling / refusing to cancel) pursuant to such reference by the A.O.

C. Retrospective amendment to exempt donations received for maintenance of places of worship:

1. In case of Trust/Institution maintaining temple, mosque, gurudwara, church or other notified place, any income received as voluntary contribution towards repair or renovation of such place or worship, may at the option of the Trust, be deemed as Corpus of the Trust, subject to certain conditions. [Explanation 3A inserted to sec. 11(1)]

2. Earlier, only such donations which were made with 'specific direction' were treated as Corpus Donation u/s 11(1)(d).

3. With the insertion of this Explanation, in the case of Trusts maintaining places of worship, no 'specific direction' is needed to be obtained from the Donors for treating such donations as 'Corpus Donations'.

4. This explanation has been added retrospectively w.e.f. 01/04/2021

D. Rationalisation of disallowance of expenses/application in case of violation of any provision by the Trusts:

1. We all have come across situations, where in case the Trust has missed filing Form 10B or Form ITR-7 in time, then the CPC used to disallow the entire expenditure / application, and levy tax at MMR on the income of the Trust. Also, in case of any violation, the A.O. used to disallow the benefits of sec. 11 and 12 to the Trust.

2. There are two amendments which rationalize the disallowance of exemption u/s 11 and 12 in certain scenarios in case of Trusts registered u/s 12AB.

3. Firstly, sub-section (10) and (11) have been inserted in section 13 to cover the following 3 violations:
   i. Violation of sec. 13(8), where 1st proviso to sec. 2(15) becomes applicable, i.e., the amount of receipts of the Trust from sources other than donation, exceeds 20%, if such trust is engaged in advancement of objects of general public utility;
   ii. Violation of 12A(1)(b), i.e. Audit Report in Form 10B is not filed in time;
   iii. Violation of 12A(1)(ba), i.e. Income Tax Return in Form ITR-7 is not filed in time;

   Then, earlier, no deduction / application was allowed from the Income of such Trust. However, with the above amendments, expenses / application, shall be allowed against the incomes, subject to certain conditions.

4. Secondly, amendments have been carried out in sub-section (1) of section 13 to cover the following two violations:
   i. For 13(1)(c) violation, i.e., where income has been applied to the benefit of any trustee or specified persons;
   ii. For 13(1)(d) violation, i.e., where the investments are made in modes other than sec. 11(5) modes,

   Then, earlier, the entire exemptions u/s 11 and 12 were forfeited. However, with the Budgetary Amendment, now only such exemption shall be forfeited, upto the extent of violation of sec. 13(1)(c) or 13(1)(d), as the case may be.

5. With the above amendments, we can now expect that the CPC will tax the gross Income of the Trusts at MMR for above compliance lapses by the Trusts.

E. Strict Penalties in case a Trust is found to have passed undue benefit to Trustees or Specified Persons:

This newly inserted penal section provides that, in case of infringement of 21st Proviso to sec. 10(23C) or of sec. 13(1)(c), i.e., if trust or institution is found to have passed any unreasonable benefit to its trustee or specified person, then the A.O. may levy penalty as under:

1. Where such violation is noticed for the first time, 100% of such amount applied to the benefit of such Trustee / Specified Person;

2. Where such violation is noticed again is any subsequent previous year, 200% of such amount applied to the benefit of such Trustee / Specified Person.

F. Introducing amendments to bring clarity to already settled principles:

1. Earlier certain Trusts, whose incomes exceeded maximum amount not chargeable to tax (Rs. 2,50,000) were required to get the accounts audited. However, there was no explicit provision which mandated such Trusts to maintain Books of Accounts. Amendment has now been made in sec. 12A(1)(b) to mandate such Trusts to first maintain the accounts in appropriate manner and subsequently get them audited.

2. Sec. 11(2) allowed any Trust to accumulate unspent amount, over and above the 15% limit, for a period of 5 years. Further, the Form 10 and Income Taxu utilities also allowed such accumulation only for a period of 5 years. However, sec. 11(3) used the words – '*accumulated or set apart during the period referred to in clause (a) of that sub-section or in the year immediately following the expiry thereof*' This created confusion and also led the Trusts to believe that the actual period of accumulation is of 6 years. Now, amendment has made in sec. 11(3) to bring clarity to the taxation of accumulated amount u/s 11(2), not utilized by the end of 5th year.

F. Bringing parity between exemptions u/s 10(23C) and u/s 11/12:

1. There are 2 schools of claiming exemption – either sec. 10(23C) or sec. 11/12. The Basic difference between the two is that exemption u/s 10(23C) is qua fund/institution and sec. 11/12 is qua trust. It was believed that the provisions of sec. 10(23C) were lenient as compared to the provisions of sec. 11 and 12.

2. Suitable amendments in the Provisos to sec. 10(23C) have been introduced to bring the taxation of assessees covered under sub-clauses (iv), (v), (vi) or (via) of sec. 10(23C) at par with the Trusts registered u/s 12AB. Budgetary Amendments carried out in sec. 11, 12A and 12AB have also been extended to the aforesaid assessees covered under sub-clauses (iv), (v), (vi) or (via) of sec. 10(23C).

3. There is one notable amendment in respect of accumulation of income over and above 15% in the case of assessees covered under sub-clauses (iv), (v), (vi) or (via) of sec. 10(23C). Earlier no intimation (*like Form 10 in case of Trusts*) was required to be made to the A.O. for such accumulation. The same has been amended now, to bring them at par with sec. 11(2), where intimation is required to be made to the A.O., and other conditions like sec. 11(5), etc. have to be fulfilled.

4. Also, the provisions of sec. 115TD (*Accreted Tax*) are now extended to assessees covered under sub-clauses (iv) or (v) or (vi) or (via) of sec. 10(23C).

◆◆◆

AMENDMENTS RELATED TO TDS, TCS, PENALTIES & PROSECUTIONS

CA Paras Maru
Email : paras@calnmaru.com

In the recent past budgets, Hon'ble Finance Minister's one of the focus area has been widening and deepening of tax base and improving deterrence against non-complying tax payers. Given the fact that tax deduction and collection provisions are one of the major contributors in widening and deepening the tax base of the country, we are witnessing introduction of new TDS/TCS provisions and strengthening of existing provisions every year. Similar approach can be seen in the Finance Bill, 2022 as well. The bill proposes to insert 2 new sections and amend 6 sections related to TDS/TCS. Also to discourage non-complying tax payers it proposes to insert 1 new section and amend 10 existing sections pertaining to penalties & prosecution.

Amendments relating to TDS\TCS

Proposed Amendments to section 194-IA : TDS on sale of immovable property

Present Position

Section 194-IA of the Act provides for deduction of tax by any person responsible for paying **to a resident** any sum by way of consideration **for transfer of any immovable property (other than agricultural land)** at the rate of **1 per cent,** if such consideration **exceeds Rs.50 Lakhs.**

Proposed Amendment

a. It is proposed to amend section 194-IA of the Act to provide that **in case of transfer of an immovable property (other than agricultural land),** tax is to be deducted at the rate of **1%** of such **consideration or the stamp duty value (SDV) of such property, whichever is higher.**

b. Stamp duty value (SDV) shall have the meaning assigned to it in clause (f) of the Explanation to clause (vii) of sub-section (2) of section 56.

c. **No deduction** of tax shall be made where the consideration paid for the transfer of an immovable property and the stamp duty value of such property **both are less than Rs.50 Lakhs.**

The amendment to this section is proposed to remove inconsistency between section 43CA, 50C and 194IA of the Act. However, proposed amendments may lead to some issues and mismatches, such as:

1. No tolerance limit of 10% is provided while deducting TDS where the actual consideration is less than SDV. There may be instances of mismatch whereby the Buyer of immovable property has done TDS on SDV whereas Seller has offered for taxation at actual sale consideration which is less than SDV but within the tolerable range of 10%.

2. Also, where the date of allotment letter, agreement and registration of agreement for the transfer of property are not the same. There could be an issue in deciding which SDV to consider for TDS. SDV as on date of allotment letter, agreement or registration of agreement.

   The aforesaid amendment is proposed to be effective from 1st April, 2022.

Proposed Amendment to section 194-IB : Payment of Rent by certain Individuals or Hindu undivided family (HUF)

Present Position

In case of payment of rent above Rs.50,000/- by certain individuals or Hindu undivided family (HUF), TDS at higher rate was required to be deducted in terms of section 206AB i.e. if deductee has not filed his return of income for previous 2 years and the amount for tax deducted at source was Rs.50,000/- or more for the current year.

Proposed Amendment

It is proposed that the provisions of section 206AB i.e. requirement to deduct TDS at higher rate in cases where deductee has not filed his return of income will not apply on payment of rent covered under Section 194-IB of the Act.

The aforesaid amendment is proposed to be effective from 1st April, 2022.

Newly introduced Section 194R : Deduction of tax on benefit or perquisite in respect of a business or profession

a. As per section 28(iv) of the Act, the value of any benefit or perquisite, arising from business or exercise of profession is taxable in the hands of the recipient. However, often such income is not getting reported in the return of income. Taking note of the above fact, Finance Minister has proposed to introduce new section 194R wherein any person responsible for providing **to a resident**, **any benefit or perquisite**, whether convertible into money or not, **arising from carrying out of a business or exercising of a profession by such resident**, shall, **before providing** such benefit or perquisite, ensure that tax has been deducted at the rate of **10 per cent** of the value or aggregate value of such benefits or perquisites.

b. In a case where the benefit or perquisite, is wholly in kind or partly in cash and partly in kind but such part in cash is not sufficient to meet the liability of deduction of tax, the person responsible for providing such benefit or perquisite shall, before releasing the benefit or perquisite, ensure that entire tax has been paid in respect of the benefit or perquisite.

c. **No tax is to be deducted** if the value or aggregate value of the benefits or perquisites to a resident person does not exceed **Rs.20,000/-** during the financial year.

d. Further, the provisions of the said section **shall not apply to an Individual or a HUF,** whose **total turnover/receipts does not exceed Rs.1 crore (in case of business) or Rs.50 Lakhs (in case of profession)** during the immediately preceding financial year in which such benefit or perquisite is provided.

◆◆◆

e. For the purpose of this section, the expression 'person responsible for providing' has been proposed to mean a person providing such benefit or perquisite or in case of a company, the company itself including the principal officer thereof.

This new section is likely to have wide ranging implications for many business/profession where multiple types of perquisites & benefits are extended to their dealers/distributors/agents/channel partners, etc. with the objective of incentivizing and motivating them for the growth of the business. One would have consider following points to ensure compliance with this new provision:

- To keep record of all non-monetary benefits being provided to vendors/business partners and check if the same is likely to be covered by definition of perquisite/benefit as per Section 28(iv) of the Act;
- Unlike other TDS sections, this section does not use the sentence "at the time of credit or payment, whichever is earlier". Under section 194R, the payer has to ensure tax is deducted before providing such benefit or perquisite to the receiver;
- In case perquisites or benefits are fully or partly in kind, one has to ensure that, the tax has been paid in respect of the entire value of benefit or perquisite;
- Difficulties may arise in valuation of such perquisites/benefits;
- The Hon'ble Supreme Court in the case of Mahindra and Mahindra Ltd [2018] has interpreted the provision of section 28(iv) of the Income Tax Act, 1961 that, only income which are in kind or party in cash or kind can be considered as benefit or perquisite under the said section. If such benefit or perquisite is entirely payable in monetary term or pure money form then this benefit or perquisite cannot be taxed under the aforesaid section. Though section 194R doesn't refer to section 28(iv) of the Act, it uses similar terminologies used in section 28(iv) of the Act, and the memorandum explaining the provisions of Finance Act, 2022 gives reference to the fact that many recipients of the benefit or perquisite covered by the section 28(iv) of the Act do not offer the same in their return of income, therefore to widen the tax base it is proposed to introduce section 194R.
- So the question remains whether tax is required to be deducted only on the benefit or perquisite which are fully in kind or partly in cash and kind; or it is required to be deducted on the benefit or perquisite which are entirely payable in monetary term as well.

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

Newly introduced Section 194S : Deduction of tax on Payment on transfer of Virtual Digital Assets (VDA).

i. Finance Bill, 2022 proposes to tax Virtual Digital Asset (VDA) transactions and thus in order to capture the transaction details, section 194S is proposed to be inserted into the Act to provide for deduction of tax on transfer of VDA. It provides for deduction of tax **on payment for transfer of virtual digital asset** to **a resident** at the rate of **1%** of such sum.

ii. However, in case the payment for such transfer is–

i. wholly in kind or in exchange of another VDA where there is no payment in cash; or

ii. partly in cash and partly in kind but the part in cash is not sufficient to meet the liability of deduction of tax,

the person making the payment shall ensure that the tax has been paid in respect of such consideration before making the payment.

a. Concessions are provided if the payer is a specified person, the provisions of section 203A (requirement to obtain TAN) and section 206AB (deduction of tax at higher rate) will not be applicable.

iii. Further, no tax is to be deducted in case **the payer is a specified person** and the value or the aggregate **value of consideration** to a resident is less than **Rs.50,000/-** during the financial year. **In case of non-specified persons**, the said limit is proposed to be **Rs.10,000/-** during the financial year.

iv. For the purposes of the said section, it is proposed that '**specified person**' means a person:––

i. being an individual or a HUF, whose total turnover/receipts does not exceed Rs.1 crore (in case of business) or Rs.50 Lakhs (in case of profession) during the immediately preceding financial year in which such VDA is transferred; or

ii. being an individual or HUF having income under any head other than the head 'Profits and gains of business or profession'

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

vi. Similar to other TDS provisions, tax is to be deducted at the time of payment or credit whichever is earlier. Therefore, even if it is credited to suspense account, TDS is required to be deducted on such sum.

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

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

Amendments to section 206AB and 206CCA

Present Position

Section 206AB & 206CCA of the Income Tax Act, 1961 provide for deduction of tax or collection of tax at a higher rate in the case of non-filers of returns. Earlier, the aforesaid sections provided that tax deduction & tax Collection rates will be higher in the case of the "Specified Person". Presently, the term "Specified Person" covers a person who has not filed his return of income for both of the **2 previous years** preceding the financial year in which tax is to be deducted or collected for which the time limit of filing ITR u/s 139(1) has expired and tax deduction and tax collection in whose case is Rs.50,000/- or more.

Proposed Amendment

a. The definition of "Specified Persons" has been proposed to be amended to **reduce the period of non-furnishing of return from 2 years to 1 year**. As such, if a person has not filed Income Tax Return for the previous year preceding the financial year in which tax is to be deducted or collected, tax shall be deducted or collected at higher rates as per section 206AB/ 206CCA.

b. Further, in order to reduce the additional burden on individual and HUF taxpayers covered under section 194-IA, 194-IB and 194M of the Act for whom simplified tax deduction system has been provided without requirement of TAN, it is proposed that the provisions of section 206AB will not apply in relation to transactions on which tax is to be deducted under the said sections of the Act.

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

Amendments to Section 201 : Related to Interest on TDS default

Present Position

Sub-section (1A) of the section 201 provides that if any person who is liable to deduct tax at source does not deduct it or after so deducting fails to pay the same to the credit of the Central Government, then he shall be liable to pay simple interest at the rates specified therein.

Proposed Amendment

In section 201 of the Income-tax Act, in sub-section (1A), new proviso is proposed where any order is made by the Assessing Officer for the default under section 201(1), the interest shall be paid in accordance with the order made by the Assessing Officer.

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

Amendments to Section 206C : Related to Interest on TCS default

Present Position

Sub-section (7) of the section 206C provides that if any person who is liable to collect tax at source does not collect it or after so collecting fails to pay the same to the credit of the Central Government, then he shall be liable to pay simple interest at the rates specified therein.

Proposed Amendment

In section 206C of the Income-tax Act, in sub-section (7), new proviso is proposed where any order is made by the Assessing Officer for the default under section 206(6A), the interest shall be paid in accordance with the order made by the Assessing Officer.

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

Amendments relating to Penalty and Prosecution

Proposed Amendments to Section 271AAB, 271AAC, 271AAD

Present Position

These sections deal with penalty provisions in case of undisclosed income found during search, unexplained credits or expenditure, fake invoice or false entry in books, etc. Till now only **the Assessing Officer** had the power to levy penalty under these sections.

Proposed Amendment

a. In order to improve deterrence against non-compliance among tax payers, it is proposed to amend the sections 271AAB, 271AAC and 271AAD to empower the **Commissioner (Appeals)** to levy penalty under these sections along with the Assessing Officer.

b. Further, definition of "specified date" in clause (a) Explanation to section 271AAB is also amended to make it applicable to a notice issued under section 148 in case where search is initiated on or after 1st April, 2021.

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

Newly introduced Section 271AAE : Penalty for passing on unreasonable benefits to trustee or specified persons

a. The Finance Minister has proposed numerous amendments in the Finance Bill, 2022 related to Charitable Trusts / educational institutions / hospital or medical institutions registered u/s 10(23C), u/s 12AA/12AB of the Act to ensure proper monitoring of such entities, bring consistency in application of provisions of the Act and providing clarity wherever required.

b. Trusts or institution are required **not to pass on any unreasonable benefit to the trustee or any other specified person** as per provision of 21st proviso to section 10(23C) or section 13(1)(c). In order to discourage such misuse of the funds of the trust or institution by specified persons, it is proposed to insert a new section 271AAE in the Act. It is proposed that if during any proceeding under the Act, the Assessing Officer finds that a trust or institution has violated the 21st proviso to section 10(23C) or section 13(1)(c), the Assessing Officer may direct such person to pay by way of penalty:

   i. **100% of amount of income applied** directly or indirectly by such trust or institution **for the benefit of specified person** where the violation is noticed for **the first time** during any previous year;

   ii. **200% of the amount** of such income where the violation is notice again in any **subsequent year**.

c. The proposed section seeks to operate without prejudice to any other provision of chapter XXI. Thus, if any penalty is leviable under any of the other provisions of this chapter, in addition to the proposed penalty, that penalty would also be applicable.

d. The 200% penalty could be harsh in situations where in the opinion of the Assessing Officer (AO) the trust or institution has provided unreasonable benefit to the trustee of specified person and such benefits are passed on in back to back years. For example, if during the assessment u/s 143(3) for the year 2022-23 the Assessing Officer (AO) is of the opinion that trust or institution has provided unreasonable benefit to the trustee or specified person. By the time the assessment order is passed by AO for the first year i.e. 2022-23, the sub-subsequent year i.e. 2023-24 would have already been over. And if such benefits are also passed in the year 2023-24. The AO may levy 200% penalty for the year 2023-24.

e. Also, the levy of penalty is discretionary and not mandatory. If sufficient explanation is provided to the satisfaction of the AO no penalty could be levied.

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

Proposed Amendment to section 271C

a. Section 271C provides for Penalty for failure to deduct tax at source under provisions of Chapter XVII-B. The sub-clause (1)(b)(ii) of the section refers to the second proviso to section 194B. However, the first proviso to section 194B was omitted with effect from 01st April 2000 by the Finance Act, 1999, and the said section currently has only one proviso.

b. Therefore, to avoid ambiguity among the sections it is proposed to omit the word "second" in section 271C(1)(b)(ii) of the Act.

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

Proposed Amendments to Section 272A

Present Position

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

Proposed Amendment

It is proposed to increase the amount of penalty for failures listed under sub-section (2) of section 272A to Rs.500/- per day.

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

Proposed Amendments to Section 276AB : Failure to pay tax to Central Govt

Prosecution provisions u/s 276AB deals with punishment for failure to comply with provisions of sections 269UC, 269UE and 269UL of the Act. It is proposed that no proceeding under this section shall be initiated on or after 1st April 2022, as the corresponding provisions have already been abolished.

Proposed Amendment to section 276B

Section 276B provides for prosecution for a term ranging from three months to seven years with fine for failure to pay tax to the credit of Central Government under Chapter XII-D or XVII-B. The clause (b) sub-clause (ii) of the section refers to the second proviso to section 194B. However, section 194B has only one proviso, hence, the word "second" is proposed to be deleted.

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

Proposed Amendments to Section 276CC : Failure to furnish return of Income

Finance Minister has introduce the concept of "Updated Return of Income" to provide taxpayers an opportunity to offer to taxation additional income which was omitted to be included in earlier return by payment of additional sum over and above tax, interest and fees, as applicable; and then submit an Updated Return of Income ("Updated ITR") for that Assessment Year, so as to avoid any further penal consequences on such income. It is proposed to amend proviso to the section 276CC to exclude penal consequence under this section on such returns.

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

Proposed Amendments to Section 278A : Punishment for second and subsequent offences

Present Provisions

Sections 278A is related to **punishment with prosecution** against persons **for second and subsequent failure to pay tax** to the credit of Central Government under Chapter XVIIB for **tax deducted at source (TDS)** in terms of section 276B. However, **no such provisions** exists against persons **failing to pay tax collected at source (TCS)** in terms of section 276BB.

Proposed Amendment

It is proposed that similar consequences of **punishment with prosecution** under section 278A shall be made applicable **for second and subsequent failure to pay tax collected at source (TCS)** in terms of section 276BB as well.

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

Proposed Amendments to Section 278AA : Punishment not to be imposed in certain cases

Present Position

This section provides immunity from penal consequence under section 276A, 276AB and 276B if it is proved that there was reasonable cause for such failure.

Proposed Amendment

It is proposed that 278AA immunity shall also be provided for the failure under section 276BB (i.e. failing to pay tax collected at source (TCS) to the credit of the government) if it is proved that there was reasonable cause for such failure.

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

CENTRAL GOODS AND SERVICE TAX BUDGET PROPOSALS:


CA Bharat Gosar
CA Nitin Kenia
Email :bharatgosar@gmail.com
ndkenia@kkca.co

Section 16(2)(ba): By Inserting clause to this Section, one additional condition is proposed for eligibility of Input Tax Credit (ITC). A registered person will be eligible to claim ITC only if such ITC, which is communicated to registered person under Section 38, is not restricted.

Section 38: This Section is newly substituted. It is proposal that registered person will be eligible to claim credit of ITC, if such credit is appearing in auto generated statement made available in prescribed Form and further it is not restricted in auto generated match-mismatch statement. Restriction in auto generated statement may be due to various reasons viz, within such period of taking registration as may be prescribed, default in tax payment for such period as may be prescribed, tax payable as per GSTR-1 is more than tax payable as per GSTR 3B, claiming of higher ITC than what is reflected as per Section 38(2)(a), default in discharging tax liability in accordance with Section 49(12) or such other reasons as may be prescribed.

Section 16(4): It is proposed to extend the time limit of availing ITC of invoice or debit note pertaining to financial year. As per existing provisions, time limit for claiming input credit is earliest of date of filing Annual Return or due date of furnishing return of September following the end of financial year. As per the proposal, time limit for claiming input credit is earliest of date of filing Annual Return or 30th November of subsequent financial year.

Section 29(2): It is proposed to amend clause (b) to empower Proper Officer to cancel the registration of a composition dealer if the annual return in Form GSTR 4 is filed beyond 3 months from the due date. Also, it is proposed to amend clause (c) to empower Proper Officer to cancel the registration of person other than composition dealer, if the return in Form GSTR 3B is not furnished for as many continuous tax periods as may be prescribed.

Section 34: It is proposed to extend the time limit for issuance of credit note till the date of furnishing Annual Return or 30th November following the end of relevant financial year whichever is earlier.

Section 37, 39 & 52: It is proposed to extend the time limit to 30th November following end of relevant financial year for rectification of errors or omissions in I) Form GSTR 1 Pertaining to statement of outward supplies u/s. 37, ii) in Form GSTR 3B pertaining to return u/s. 39 and iii) in Form GSTR 8 pertaining to statement to be furnished by e-commerce operator u/s. 52.

Section 37(4): By inserting this sub Section, it is proposed that Form GSTR 1 for any subsequent period shall not be accepted unless details of outward supplies in Form GSTR 1 for all previous periods are furnished.

Section 39(5): At present, the due date to furnish return in Form GSTR 5 by Non-resident taxable person is 20th of following month. It is now proposed to propone the time limit to 13 days instead of 20 days.

Section 39(10): It is proposed to amend this sub Section so as to restrict the registered person to furnish return in Form GSTR 3B for any tax period unless return in Form GSTR 3B as well as return in Form GSTR 1 for all the previous tax periods are furnished.

Section 41: By substituting this Section, it is proposed that ITC availed shall be reversed along with interest if the tax thereon is not paid by the supplier. It is further provided that the recipient shall be entitled to re-avail this ITC in the prescribed manner on supplier making payment of the tax at a later date.

Section 42, 43 & 43A: Section 42 of matching, reversal and reclaim of ITC, Section 43 of matching, reversal and reclaim of reduction in output tax liability and Section 43A relating to procedure for furnishing of return and availing of ITC are proposed to be omitted being no more required.

Section 47: It is proposed to levy late fees of Rs. 100 per day subject to maximum of Rs. 5,000/- per return for delay in filing Form GSTR 7 u/s. 52 pertaining to return of tax deducted at source by e-commerce operator.

Section 49(10): Newly substituted sub Section provides for transfer of any amount of tax, interest, penalty, fees or any other amount lying in electronic cash ledger under CGST Act to electronic cash ledger of IGST, CGST, SGST, UGST or Cess or IGST or CGST of a distinct person as specified in Section 25(4) and 25(5). It is further provided that such transfer shall not be allowed if there is any unpaid liability in electronic liability register.

Section 49(12): By inserting this new sub Section, the Government has taken power to specify the maximum portion of output tax liability that tax payer can discharge by utilizing ITC, subject to conditions and restrictions.

Section 50(3): Newly substituted sub Section provides to levy interest @18% p.a. on ITC where such credit is wrongly availed and utilized. This will be effective retrospectively from 01/07/2017. At present, interest is charged @ 24% p. a.

Section 54:

- In spite of provision contained in 1st proviso to Section 54(1) for claiming refund of balance in cash ledger through GSTR 3B, system permitted this to claim through RFD 01 only. It is proposed to notify Form for such refund claim.

- Further, time limit for claiming refund by UNO, Multilateral Financial Institution, Consulate or Embassy of Foreign Countries etc. is extended from present 6 months from the end of the quarter in which supply corresponding to ITC was received to 2 years from the last day of quarter in which inward supply is received.

- By deleting words 'under sub Section 3' in sub Section 10, the power to withhold the refund by Proper Officer in case of default in filing return, paying tax, etc. is now being proposed for refund under all reasons of refund. Uptill now, this was applicable for refund of unutilized ITC for zero rated supply and inverted duty structure.

- A new sub Clause (ba) in Clause 2 has been inserted to provide clarity regarding the relevant date for filing refund in respect of supplies made to Special Economic Zone Unit/ Developer. Time limit of claiming such refund is two years from the date of furnishing Form GSTR 3B by the supplier.

Miscellaneous:

- It is proposed not to levy tax on supply of unintended waste generated during the production of fish meal falling under Heading 2301, except for fish oil from 01/07/2017 to 30/09/2019.

- Service by way of grant of alcoholic liquor License against consideration in the form of License Fees or Application Fees or by whatever name called by the State Government, is declared as an activity or transactions which shall be treated neither a supply of goods nor a supply of service vide Notification No. 25/2019- central tax (R) dated 30/09/2019. This Notification has been given retrospective effect from 01/07/2017. It is further proposed that no refund shall be granted for taxes already paid on the above activates or transactions.

"DREAMZZ UNLIMITED": STORIES THAT INSPIRE

CA Hasmukh Dedhia
Email : hasmukh@kkcllp.com

P.S.- This write-up is penned down on invitation from the CVO CA Association (an organisation which occupies a place of prime importance in the writer's heart). Needless to add, the writer of this piece does not consider himself, in any manner, one above the normal. The writer humbly attempts to recapitulate the journey of life and career more from introspective perception **(સાક્ષીભાવે)** and hopes that as by-product thereof some useful derivations can be made by esteemed readership of CVOCA N&V, more particularly the younger ones. Care has been taken to avoid being normative or sermonising.

Prologue:

1 The writer of this piece (for brevity, let's call him 'H'), 6th child of parents [father, Veljibhai alias Bhavanjibhai – running a retail grain shop, like many of community people of his time, but unlike many others, he had studied primary school in English medium, was fond of reading a lot (including English, Gujrati and Hindi books and magazines), a habit or virtue inherited by H] and [mother, Kankuben an excellent homemaker, religious and practical mindset, who taught her children ethical values, not by lecturing on it, but living by the same all her life]. Despite humble background, a happy, loving and caring family indeed! 'H' considers himself lucky and blessed to have been brought up in such a good family. The fruits of well-bonded large family are benefiting even the third & fourth generations of Kankubai and Veljibapa.

2 Being the youngest member of family and somewhat good at studies, made 'H' being loved by everyone in the family, despite being not so brilliant at formal studies post-secondary grade. 'H' acknowledges the invaluable contribution in his life of the school (Chinchpokli). And of course, wonderful group of school friends, who have been 'good support system' today, even after five decades! **Importance of such life support systems like family and good friends can never be over-emphasised**. The Chinchpokli school, even in those days, offered option of commerce in addition to science & other fields from the 8th Standard itself. Thus, subjects like book-keeping, accountancy and commerce were taught to the optee students for four years till SSC i.e. 11th standard. The teachers were excellent and inspiring (special mention of teachers taking Commerce and English subjects eg R.C. Vyas sir and N.K.Desai sir is must, who always encouraged pupils to read the newspapers, especially, the economic papers, which were available in the school library). All that made the base of commerce studies strong from the school days. 'H' remembers of having scored in final SSC exam 96% in book-keeping/accountancy (and also remembers couple of his colleagues scoring 100%).

3 Admitted to Sydenham college in 1973 (then known for its elite alumnus and hi-fi atmosphere), 'H' (with his humble background and mediocre approach), found himself lost in that new world for about a year. But soon thereafter, he realised that **there is space for everyone in the world.** He began focussing on his strengths (such as: good literary base, commerce education of school and workable communication abilities), which earned him again set of good friends as also provided the ability to win over his (misplaced!) nervousness. The lesson of **"leveraging on the strengths and constantly working on weaknesses"** may not appear new today, but 'H' learnt it quite early in his study days.

Which continued to help him shape his career when he begun articleship for CA course with a well-known firm "Jayantilal Thakkar & Co". Work experience of some of the part-time or vacation jobs, during the college days, indeed helped in working environment during the artcileship. **The biggest plus point of CA curriculum is the 3 years practical training,** which even today some students fail to understand or resort to some undesirable practices to avoid it. Apart from **"hands on"** training, the opportunities of visiting and observing different entities, their practices, management culture, business models, manner of tackling issues etc provide immense knowledge, which no class-room training can impart.

Taking up challenges of **"Path less Travelled"** learnt by many of us from CA Dilipbhai J. Thakkar, who in those early days of laws / regulations pertaining to foreign exchanges i.e. FERA, had become nationwide known expert of the field. But priority obviously was completing CA. Passing CA exams is tough today; it was tougher in those days. The task was completed by 'H' sooner than expected for an average student i.e. second group in the first attempt, first and third group of final CA in the second attempt.

4 After exploring several short-term jobs, including one with a prime merchant banking entity and some consultancy assignments etc, 'H' joined one of the international firms (now known as Big4) namely, "Lovelock & Lewes" (presently, part of PWC). The three years stint with the said firm provided 'H' rich exposure to large corporates including some of the leading international organisations; the mandatory IPO's by some such international Companies, as part of FERA dilution rules, provided good experience of public issues related certifications/advisory etc under the then prevailing Controller of Capital Issues Rules (i.e. Pre-SEBI era). The principles of Corporate Governance weren't even heard of that time but some 'good to have practices' were in vogue. The good experience of working as part of a large team for some of giant-sized client entities in professional approach is considered by 'H' as unforgettable! **Life and Work are two best teachers, provided one is open to learn**. From this kind of work-exp, 'H' found himself to be aligned to his desired goal of Corporate Laws proficiencies.

At personal front, around the same period, the 5 years old friendship/relationship of 'H' with Hemlata culminated into "saat janam ka sath"! Golden period that was, enjoyable work, wider friends circle, lovely fiancée/wife and lots of recreation. She has been till date more of friend then a wife, with right kind of support for 'H'. However, amidst all these happy days, the career plans took bit of a back-seat till 'H' woke up to idea of setting up the practice, like many of his friends then had already done.

Challenge in every opportunity and opportunity in every challenge:

5 With small office set-up at Masjid Bunder (the then prime area for business as well as profession), the plan of being in practice got executed. In the initial phase of proprietary set up, one normally tends to accept whatever work comes one's way, which happened with 'H' too. Being active in professional organisations like WIRC, CVOCA, BCA etc, he participated in study circles and topics of his interest. What used to be 'workable communication abilities' in college days, gradually transformed into 'good oratory skills.' The vast reading habits, inherited from Father, immensely helped in such transformation; **since, without good contents, oratory tends to result in '(વાણી–વિલાસ)'**.

6 However, in that phase of practice, the professional assignments were skewed towards tax compliance & tax advisory more than the corporate forum work. The tax compliance work mainly of non-corporate entities used to be the focus area of work for many Small & Medium Practitioners in those days (perhaps, even today). 'H' begun leveraging the old connects of corporate clients and gradually, succeeded in reducing that imbalance. With frequent and far too many changes in the Corporate Regulatory and tax Laws, there was no dearth of professional work, especially the advisory and structuring matters including conversion of non-corporate entities into corporate ones. Several such assignments were successfully executed. But many of such assignments called for an end-to-end solution amidst ever increasing expectations of clients.

7 It necessitated networking with specialists of other fields, as 'H' was operating under proprietary set-up. **Networking (formal/informal or loose) has its own challenges**. Several alternatives explored, options examined, and experiments tested; but mixture of all that gave rise to 'jack of all' situation and diversion of focus from the specialised areas. In the process, 'H' begun to wonder if the decision to set up proprietary entity more than a decade back was thoughtful enough; though, it was in sync with prevailing trend of that time. Amidst thoughts for a desired, focused area of corporate advisory practice, the confusion prevailed over next stage of growth.

8 Discussion of such dilemma with wife once, ignited an encouraging thought as she mentioned something which, when put in the jargon of management lessons, would mean as: **Nothing comes great out of comfort zones**. Next discussion point obviously was whether if 'H' takes some such leap to move out of the comfort zone, the family would support during any 'en-route' discomfort or inconvenience. The answer from family was thoroughly positive. Some months thereafter, a CVOCA friend CA Umesh Gala mentioned and guided 'H' about one such opportunity. Around same period, several other options (including that of re-joining the same Big4, from whom such feelers kept coming) were being considered. The decision wasn't easy as the Big4's proposed emoluments were tempting. But the first meeting with partners of Khimji Kunverji & Co ('KKC') sometime in 2002, helped in deciding to collaborate. Since the idea was to work on some assignments as retainer before either side deciding on any form of long-term relationship. For 'H' such an arrangement provided optimum mixture of carrying on the existing proprietary set-up as also the job-satisfaction of large corporate forum work assignments of KKC.

When opportunity knocks, don't look back!

9 The retainership arrangement lasted bit longer than originally planned. The said five/six years' period witnessed some hits & some misses for 'H' i.e. (i) several satisfying (and successful) work assignments of KKC (ii) growing up on path of specialisation – the span whereof kept being widened from Corporate laws matters to areas like Accounting & Auditing Standards, Corporate structuring, BFSI sector, SEBI matters etc (iii) Laddering up at CVOCA, office bearer-ship and finally becoming President (iv) Only son of 'H' (Harsh) begun CA course and article ship with KKC (v) Saddening death of some close relatives i.e. mother and 2 brothers (vi) profile of 'H' as faculty on several topics of professional interests became stronger not only amongst professional circles but also amidst clients' and some Industry associations, as well. (vii) growing tie-up for work at Masjid office with one CVOCA friend CA Dilip Gosar, which later culminated into stronger, durable and mutually fruitful relationship. Masjid Office work assignments were allocated by 'H' to its old loyal team there, with positive consent of clients of that practice.

10 The professional approach coupled with personal touch and highly ethical values with which KKC carries it growth-oriented practice, there was no reason for 'H' to wait for any more time to establish long-term relationship. Similar feeling being echoed from KKC side, 'H' formally entered KKC as full-fledged partner from Oct-2008. Thereafter, till date, there is no looking back, whatsoever in the matters of professional work assignments, firms' growth matters, personal proficiencies in variety of fields, clients' relationship etc. Owing to the work profile and effective communication skills, 'H' quickly earned the required recognition amongst KKC's elite clients' as also amongst the professional circles. **Whilst there is no alternative to hard-work, concept of smart work emerged with info-tech growth**. Newer work technologies pose challenges but offer attractive opportunities. **Being always open to adopting new things or technologies can be regarded as highway towards success**.

11 The Firm KKC, being rightly placed with perfect leadership, kept growing rapidly. The said time period (2008 to 2022) witnessed some remarkable achievements of the Firm, just to count few of them: (i) grand celebration of firm's 75 years in 2012, (ii) shifting to large office premises in centrally located business hub and expanding branches (iii) two partners of Firm became Presidents of ICAI and till today are serving the profession, in different capacities to the best of their abilities, including at international arena (iv) gradual addition of quality persons as Partners of Firm (v) adequate and suitable investments in people and technology (vi) continued periodic addition of good, marquee clients to its fold.

It is normal to feel being proud to have been a part of such impressive journey. 'H' cherishes till today, after 2 decades of relationship, the fond and affectionate memories, parental approach, true ethical guidance on many matters by Late Shri Shivjibhai Vikamsey. The immense support and hard-core professional backing of all the Partners (especially, Vikamsey brothers) and of core team members at KKC is something which cannot be described in words.

12 H' kept on widening his areas of work boundaries from statutory/internal audit to corporate laws advisories, management consultancy, Ind AS matters etc. He also attempted some ICAI advance courses and cleared e.g. DISA, IFRS etc. He served several regulators in their technical sub-committees set up for specific purposes e.g. IRDA, RBI, ICAI etc. His proficiencies in the field of specialised financial services sector like Insurance, Mutual funds, ARC, NBFC, HFC etc earned him good name in professional and business circles. He often got invited to address to some Industry bodies, various chambers of commerce, regulatory platforms in addition to professional bodies like ICAI etc. Along with the work expansion and variety, he kept on being glued to efforts towards **professional excellency** (trying to imbibe and live by the motto of CVOCA, an organisation to which he owes a lot).

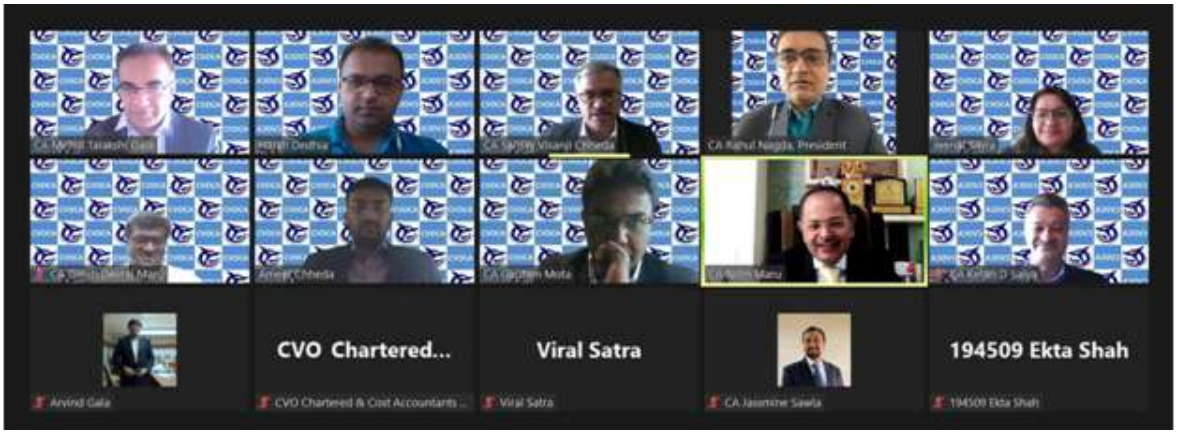
Epilogue

13 That's simple summary of an ordinary professional's transformation towards not so ordinary accomplishments. It is said that destiny decides the outcome of one's efforts but dedicated hard-work with base-line ethics epitomises a satisfying career. Looking back today, 'H' feels being immensely satisfied for variety of reasons, like (i) avoiding temptations emerging on career path and never resorting to short-cuts in life (ii) being part of well bonded, large & happy family (iii) only son (CA) setting up well in professional career (iv) reasonably good health (vi) willingness to give back to the society for whatever has been earned from it.

Readers would have noted that none of the above reasons for happiness refer to possessing of material wealth, which at the most is just the by-product and seldom a reason for happiness. With all humility writer of this piece refers to immortal preaching of Srimad Bhagvad Gita: **"कर्मण्य वाधिकारस्ते, माँ फलेशु कदाचन "!**

EVENTS IN RETROSPECT

Day & Date	Committee	Program Name	Speaker	Attendance / Views
5th February 2022 Virtual Meeting	Program Committee	Impact of Budget 2022 on Stock Markets	Speaker : CA Nilesh Shah	2900+
6th February 2022 Virtual Meeting	Program Committee	Direct Tax Proposals - Union Budget	Speaker : CA Nitin Maru	2100+



EVENTS IN RETROSPECT

Day & Date	Committee	Program Name	Speaker	Attendance / Views
12th February 2022 Virtual Meeting	Membership and Recreation Committee	YAADIEN : Musical Tribute to Late Lata Mangeshkar Didi	Our own members and their family members had participated and sent recorded videos and also did live performance on songs of Lata Mangeshkar Didi	100