The Chamber of Tax Consultants

Direct Tax Provisions of "Finance Bill, 2020"

Presentation by:
Yogesh A. Thar

Index

- Rates of Tax;
- Improving effectiveness of tax administration;;
- Preventing tax abuse;
- Rationalisation of provisions of the Act.;
- Vivad se Vishwas Scheme

RATES OF TAX

Rates of tax

- Effective Date: 1.4.2021 – i.e. AY 2021-22
- For Individuals and HUF – option for concessional tax rates provided they forego certain deductions / exemptions.
  - A reduction of 10% in the slab of Rs. 5 lacs to Rs. 7.5 lacs;
  - A reduction of 5% in the slab of Rs. 7.5 lacs to Rs. 10 lacs;
  - A reduction of 10% in the slab of Rs. 10 lacs to Rs. 12.5 lacs;
  - A reduction of 5% in the slab of Rs. 12.5 lacs to Rs. 15 lacs.
- No change in:
  - Slab of Rs. 2.5 lacs to 5 lacs;
  - Above Rs. 15 lacs.

Rates of tax (Cont'd ...)

- Following exemptions / deductions not available:
  - Salaried Class: LTA 10(5); HRA 10(13A); Certain allowances (except conveyance allowance) 10(14); Standard Deduction, Entertainment Allowance, P.Tax S. 16; Family pension-57(iia);
  - Chapter VI A Deductions: All (other than Employer's contribution to NPS 80CCD(2) and new employees deduction 80JJAA and 80LA(1A) IFSC Unit)
  - IFHP: Interest for SOP 24(b);
  - Business Income: 10AA, Additional Depreciation, 32AD, 33AB, 33ABA, 35(1)(ii)/(iia)/(iii), 35(2AA), 35AD, 35CCC;
  - Generally: Minor child clubbing 10(32).

Rates of tax (Cont'd ...)

- Following further conditions:
  - Set off of losses/depreciation attributable to above section – not allowed – deemed allowed;
  - Set off of loss u/h IFHP – not allowed;
  - Normal Depreciation – allowed at specifically prescribed rates;
  - If deductions allowed under any other law – not permissible.
- Option to be exercised by the Assessee:
  - Person having "business income": on or before 139(1) date & option once exercised shall apply to subsequent years. Option can be withdrawn once in any later years. Once withdrawn – never eligible;
  - Person having no "business income": along with the ROI to be furnished u/s. 139(1) for each PY.

Rates of tax (Cont'd ...)

- New section introduced for co-operative societies: S. 115BAD – option to pay tax at lower rate of 22% provided certain deductions / exemptions foregone (like S. 115BAA for companies). Effective from AY 2021-22.

- For Companies opting for 115BAA (i.e. 22% tax rate): Section amended to provide that - No deduction under Chapter- VIA will be available (except 80JJAA & 80M).

- For New Companies opting for 115BAB (i.e. 15% rate):
  - Section amended to provide that - No deduction u/c VIA will be available (except 80JJAA & 80M); and
  - Scope extended to generation of electricity. [**Note the word "electricity" instead of "power" used in 80IA, 32(1)(iia)**]

IMPROVING EFFECTIVNESS OF TAX ADMINISTRATION

E- Assessment Scheme

Background [Section 143(3A)]

- As per the provisions of section 143(3A) which was introduced by the Finance Act, 2018, the Central Government introduced an E-Assessment Scheme 2019 where under concept of faceless assessment is introduced.

Proposed Amendments

- It is proposed to expand the scope of section 143(3A) to include reference to best judgement assessment u/s. 144 as well.

- This amendment shall be effective from April 1, 2020.

E- Assessment Scheme

Our comments :

- Although the proposed amendment enlarges the scope of section 143(3A); however, after introduction of E-Assessment Scheme, 2019 quite a few questions remained in the air. The present bill does not address certain issues as under:
- Section 92CA requires the AO to refer TP cases to the TPO if he considers it necessary and expedient. It seems that the TPOs role may now be played by the Technical Unit ("TU"), though not very clear from the scheme. In any case, the assessee may not have any opportunity of personal hearing before the TPO.
- The scheme provides that the Assessment Unit ("AU") shall pass a "draft assessment order" which will be examined by National e-Assessment Centre ("NeAC") before deciding further course of action – like sending it to Review Unit ("RU") or issuing show cause to the assessee, etc. However, the Act contemplates a draft order under section 144C(1) in cases of TP / foreign companies. The two concepts of "draft order" are different. It appears that the order finalized by NeAC in such cases would become "draft order" for the purposes of section 144C(1). But as of now, this is not clear.
- The scheme provides that where the assessee is issued a show cause as to why the assessment should not be completed as per the draft order passed by the AU, the assessee may ask for a personal hearing and in such a case, personal hearing would be through video conferencing. Indeed, such video conferencing serves the purpose of granting natural justice, but, it vitiates against the "faceless assessment" motto. It is unclear as to how the two divergent objectives would be reconciled in practice.
- Whether this process will apply also to proceedings under section 148 / 263 or not is, as of now, not very clear.
- Mechanism for compliance where date of compliance is missed should be provided

S. 144C – Reference to Dispute Resolution Panel

- Presently, section 144C(1) applies only if the AO proposes to make any variation in the 'income or loss returned'.
  - Thus, this section is not applicable in respect of other variations such as variation in rate of tax, variation in status, etc.
- the words 'in the income or loss returned' proposed to be deleted
- Decisions overruled:
  - **M/s Regen Renewable Energy Generation Global Limited vs. DCIT (ITA No.153/Chny/2018)**: DRP has exceeded its jurisdiction when there was no variation in the international transactions
  - **Mausmi SA Investments LLC vs. ACIT (ITA No.7026/Mum/2018):** ITAT had rejected Revenue's contention that the expression "variation in the income or loss returned which is prejudicial to the interest of such assessee" used in Sec.144C(1) shall include the variation in tax also.

S. 144C – Reference to Dispute Resolution Panel (Cont'd ...)

- Scope of 'eligible assessee' expanded to include a non-resident not being a company, in addition to a foreign company.

- Decisions impacted :

  - **M/s. ESPN Star Sports Mauritus SNC ET Compagnie vs. UOI (WP (C) 2384/2015 & CM No.4277/2015):** Partnership firms established in Mauritius not an being 'eligible assessees' as defined u/s 144C

  - **Maquet Holdings B.V. & Co. KG vs. DCIT (ITA** No.2572/Mum/2017): Foreign LLP not "eligible assessee" u/s 144C(15)(b)

  - **Mitsui Marubeni Corporation vs. DDIT (ITA No.5658/Del/2010)**: AOP of Japanese MNCs not 'foreign company' and hence, doesn't qualify as 'eligible assessee' u/s 144C(15)

E- Appeal

Background [Section 274]

- Presently, the first appeal before the CIT(A) against the orders appealable u/s. 246A are filed in e-filing mode. However, the appellate proceedings i.e. personal hearing, filing of submissions, paperbooks, additional grounds, additional evidences, etc. take place on one to one basis between the taxpayer and the CIT(A).

Proposed Amendments

- In line with the introduction of E-Assessment Scheme, 2019 which involves faceless assessment, it is proposed to insert sub-section (6A) in section 250 to provide that the Central Government shall be empowered to notify an E-Appeal Scheme for disposal of appeals.

- It is also proposed to empower the Central Government to issue certain notifications in the Official Gazette whereunder the directions shall be issued regarding jurisdictional or procedural aspects and to provide exceptions, modifications or adaptations to the scheme regarding disposal of appeals. These notifications are to be issued on or before March 31, 2022 and each of these notifications shall be required to be laid before each House of Parliament.

- These provisions shall be effective from April 1, 2020.

E- Appeal (Cont'd ...)

Rationale

- The proposed amendment is to prevent the possible misuse of such powers by the income tax authorities and to provide check on such survey operations.

Check on surveys u/s 133A

Background [Section 274]

- As per the extant provisions of section 133A of the Act, an income tax authority exercising the jurisdiction over the assessee is empowered to conduct survey at the business premises of the said assessee. As per the present proviso to section 133A, Addl. DIT or AO or TRO under approval of the Jt. DIT or Jt. CIT are authorised to undertake such survey operations.

Proposed Amendments

- It is proposed to substitute the proviso to section 133A(6) whereby the income tax authority below the rank of Jt. CIT or Jt. DIT shall not conduct the survey operation prior to approval of Jt. CIT or Jt. DIT in cases involving information received from the prescribed authority. In any other cases, i.e. where no such information is received from the prescribed authority, then the prescribed income for above mentioned income tax authority can undertake the survey operation only after prior approval of CIT or DIT as the case may be.

- These amendments shall be effective from April 1, 2020.

Stay of Demand

- Presently, ITAT may grant stay, with or without certain conditions as it may deem fit
- Proposed amendment - ITAT shall grant stay of demand, on the assessee making payment of atleast 20% of the amount of tax, interest, fee, penalty or any other sum payable under the Act or on furnishing security of equal amount.
- At present, the CBDT Circular of 2016 requires AO to grant stay of demand in cases where appeal is pending before the CIT(A) on payment of 20% of the demand by the assessee.
- Decisions overruled
  - **CIT vs. LG Electronic India (P.) Ltd. [Civil Appeal No. 6850 of 2018, dated 20-7-2018] (SC);**
  - **CEAT Ltd. vs. Union of India 2010 (250) E.L.T. 200 (Bom HC);**
  - **UTI Mutual Fund v. ITO (2013) 31 taxmann.com 222 (Bom HC).**

Stay of Demand (Cont'd ...)

- ITAT shall extend the period of stay of demand beyond a period of 180 days where the assessee –
  - Pays 20% of demand and
  - Delay in disposing of the appeal is not attributable the assessee.
- Such extension of stay cannot be beyond a period of 365 days.
- Lawmakers have not taken the cognisance of the following decisions:

  - **Pepsi Foods (P.) Ltd. vs. ACIT (2015) 376 ITR 87 (Del HC) – SLP dismissed**

  - **CIT vs. Tata Teleservices (Maharashtra) Ltd. (2017) 286 CTR 336 (Bom HC)**

E- Penalty Scheme

Background [Section 274]

- The present penalty provisions under the Act are prescribed u/s. 274. These procedures deal with levy of penalty under Chapter XXI of the Act. Once the AO issues a show cause notice to the assessee, it is incumbent upon the assessee either to appear itself or through an authorised representative before the AO for such penalty proceedings.

Proposed Amendments

- It is proposed to insert sub-section (2A) to section 274 whereby the Central Government is empowered to introduce new e-penalty scheme in line with the current E-assessment Scheme 2019.
- It is also proposed to empower the Central Government to issue certain notifications in the Official Gazette whereunder the directions shall be issued regarding jurisdictional or procedural aspects and to provide exceptions, modifications or adaptations to the scheme. These notifications are to be issued on or before March 31, 2022 and each of these notifications shall be required to be laid before each House of Parliament.
- These provisions shall be effective from April 1, 2020.

E- Penalty Scheme (Cont'd ...)

Rationale of the proposed amendment

- The rationale for the proposed introduction of E-Penalty scheme is no different than the E-Assessment Scheme 2019 in place. The anticipated goals of the scheme are:
  - Elimination of interface between the taxpayer and the tax department;
  - Optimum utilisation of resources through economies of scale;
  - Levy of penalty can be imposed through mechanism of dynamic jurisdiction by one or more income tax authorities.

Our Comments

- Considering that the assessee or its authorised representative would now not be able to sit in front of the officer and explain him the details verbally, it would become very important that the replies / details the assessee provides are in a form that is easy to comprehend in the e-assessment scenario.

- It would be desirable for the assessee that the details furnished are also explained to the extent required in the written submissions. Good cross referencing of the documents in the written submissions would be critical for e-assessing authority to understand the facts and not get prejudiced that the assessee is trying to dump unwanted data/submissions with them. Hence, preparation of duly numbered paper book with index would be of great help before uploading the data. Prompt compliance within prescribed time limits would be necessary as the compliance tab may be closed after the time provided in the notice.

Taxpayers charter- Section 119A

- New section 119A in order to empower the Board to adopt and declare a Taxpayers' Charter. The Charter, as proposed, would contain, inter-alia, such orders, instructions, directions or guidelines to other income tax authorities for the administration of the Charter
- This insertion shall be effective from April 1, 2020.
- As per the Budget Speech

  "*We wish to enshrine in the statute a taxpayer charter through this Budget. Our government remains committed to taking measures to ensure that our taxpayers are free from time to time.*"

- Countries like Belgium, Brazil, Chile, Italy, Kenya and Mexico have a charter for tax payers as a part of their statue;

Prevention for tax abused

Penalty – section 271AAD

A new section is proposed to be introduced. Salient features thereof are as under:

- It applies “without prejudice” to other provisions of the Act;
- There is a finding in the course of any proceedings under the Act that there is:
  - A false entry; or
  - An omission of any entry which is relevant for computation of total income to evade tax.
- In such a case, the AO may direct that such person shall pay penalty;
- The quantum of penalty is “a sum equal to the aggregate of such false or omitted entry”;
- Similar penalty can be levied also on another person who causes such person to make false entries or omit an entry;

Penalty – section 271AAD (Cont'd ...)

- Quantum of penalty in the case of such other person is also the same, i.e. a sum equal to the aggregate of such false or omitted entry.

Definition of "false entry" – an inclusive definition:

- Forged or falsified documents such as a false invoice or, in general, a false piece of documentary evidence;
- Invoice in respect of supply or receipt of goods or services or both issued without actual supply or receipt;
- Invoice in respect of supply or receipt of goods or services or both to or from a person who does not exist.

Rationale – Fake invoices found by GST authorities, these should be dealt with harsher provisions.

Penalty – section 271AAD (Cont'd ...)

- Existing provisions for penalty that may overlap with this provision:
  - S. 270A - underreporting and misreporting of income;
  - S. 271A - failure to maintain books of account;
  - S. 271AA - Maintaining or furnishing incorrect information or document in respect of international transaction or specified domestic transaction;
  - S. 271AAA - undisclosed income;
  - S. 271AAC - unexplained cash credits, unexplained investments (investments not recorded in the books of account), unexplained money (money not recorded in the books of account) etc.

Can the rule against "double jeopardy" in A. 20(2) apply?

Penalty – section 271AAD (Cont'd ...)

- Existing provisions for prosecution that may also be pursued:
  - Prosecution u/s. 276C for wilful attempt to evade tax;
  - Prosecution for falsification of books of account u/s. 277A;
  - Prosecution for false statement in verification u/s. 277.

- Procedure u/s. 275 would apply like all other penalty

Penalty – section 271AAD (Cont'd ...)

- Issues to be dealt with:
  - "without prejudice to any other provisions of this Act" - in addition to various other penalties. Effectively, penalty may far exceed100% of the amount of falsification or omission.
  - The finding can be during "any proceedings under the Act". - assessment, reassessment, revision, rectification, appeal, survey, search, 281, 197, 195(2), transfer pricing, TDS, 131, 133(6) or any other proceedings under the Act.
  - "Any person" – third party?
  - However, the power to levy is only on the AO. Thus, it is unclear as to how the AO can levy penalty based on the satisfaction recorded by some other officer;

Penalty – section 271AAD

- “relevant for computation of total income” goes with false entry also or not?
- “to evade tax liability” goes with false entry also or not?
- Are all fictitious entries necessarily “false”?
- Does the general defence of ‘reasonable cause’ apply to this penalty?
- Income is disclosed, but nature is falsified?
- Income is disclosed but in a wrong person?

Rationalization of provisions of the Act

Time bound registration of charitable institutions

Background [Sections 10(23C), 12A/12AA, 80G, 35]

- Currently, a charitable institution is required to be registered with the prescribed income tax authority in order to claim various exemptions and benefit under the Act. Section 10(23C), section 12A and section 80G are certain such sections were a charitable institutions registered under the said sections can avail exemptions and benefits under the Act.

- Once a charitable institution is registered under any of the aforesaid sections, such an approval/registration remains valid perpetually till the prescribed income tax authority granting such approval/registration cancels the same

Time bound registration of charitable institutions (Cont'd ...)

Proposed Amendment:

- It is proposed that the approval/registration granted to a charitable institution shall be granted for a fixed period and the charitable institution would have to get the said approval renewed before the expiry of the said period by making an application. This provision would even apply to the existing charitable institution already registered under the existing provisions.

- Accordingly, it is proposed to insert a new section 12AB, replacing section 12AA (under which registrations are currently granted) requiring that all the charitable institution which want to avail exemption under sections 11 and 12 of the Act, including the charitable institutions that are already registered under the existing provisions, would need to apply for a fresh registration under the newly introduced section. Other provisions of the Act where reference is made to sections 12A/12AA, (such as section 56, 11(7), etc.) have also been amended to give reference to registration u/s. 12AB.

- Correspondingly, it is also proposed to insert clause (ac) after clause (ab) of sub-section (1) of Section 12A, which prescribes time limits under various scenarios within which a charitable institutions shall make an application for registration under section 12AB.

Time bound registration of charitable institutions (Cont'd ...)

Sr. No.	Scenario	Time Limit for making application	Time limit for passing order granting /rejecting application by CIT/PCIT	Period of approval
1	Charitable Institutions that are already registered under pre-amended provisions of Sections 12A/12AA	Three months from the date on which this amendment comes into force	Three months from the end of the month in which application for approval was received	Five years
2	Charitable Institutions that are registered under new Section 12AB	Six months prior to the expiry of the registration	Six months from the end of the month in which application for approval was received	Five years

Time bound registration of charitable institutions (Cont'd ...)

Sr. No.	Scenario	Time Limit for making application	Time limit for passing order granting /rejecting application by CIT/PCIT	Period of approval
3	Charitable Institutions applying for fresh registration	One month prior to the P.Y. relevant to the A.Y. from which approval is sought	One month from the end of the month in which application for approval was received	Three years provisional approval beginning with A.Y. following the F.Y. in which application was made
4	Charitable Institutions granted provisional approval would be required to apply for final approval	Six months prior to expiry of approval or commencement of activities, whichever is earlier	Six months from the end of the month in which application for approval was received	Five years, beginning with the A.Y. from which provisional approval was granted

Time bound registration of charitable institutions (Cont'd ...)

Sr.N	Scenario	Time Limit for making application	Time limit for passing order granting /rejecting application by CIT/PCIT	Period of approval
5.	Adoption/Modifications of the objects not conforming to the conditions of registration	Within thirty days from date of said adoption or modification	Six months from the end of the month in which application for approval was received	Five years

- In cases referred to in Sr. No. 2 to 5, the PCIT/CIT shall pass an order granting registration or renewing the same only after satisfying himself that the activities of charitable institution are genuine and are in compliance of requirements of any other law. However, if the PCIT/CIT is not satisfied with the same, he shall pass an order rejecting the application and cancelling the approval after giving an opportunity of being heard.

- The proposed amendment shall come into effect from June 1, 2020.

Time bound registration of charitable institutions (Cont'd ...)

- Similar amendments have been made in Section 10(23C) and 80G wherein it is proposed that the charitable institution which want to avail exemption/benefit under section 10(23C) and 80G of the Act including the charitable institution that are already registered under the existing provisions would have to apply for a fresh registration under the new provisions. Also, the approval/registration so granted to a charitable institution shall be granted for a fixed period and the charitable institution would have to get the said approval renewed before the expiry of the said period by making an application.

- The procedure, period of registration, time limit of making application, time limit of passing of order by PCIT/CIT and powers given to them for obtaining registration under the new proposed provisions of section 10(23C) and section 80G is same as that in case of a charitable institution availing exemption under sections 11/12.

- The proposed amendment shall come into effect from June 1, 2020.

Time bound registration of charitable institutions (Cont'd ...)

- Similar amendments have also been made in 35(1) wherein it is proposed that all such research association, university or institution or company referred to in clauses (ii), (iia) and (iii) shall make an intimation to prescribed authority within three months from the date on which the proposed amendment comes into force. Subject to such intimation, the notification under which such research association, university or institution or company was earlier approved shall remain valid for a period of five consecutive A.Ys. beginning with A.Y. 2021-22.

- The proposed amendment shall come into effect from June 1, 2020

Time bound registration of charitable institutions (Cont'd ...)

Rationale :

- The rationale behind the proposed amendment as per the Explanatory Memorandum is to ensure that the conditions of approval/registration are adhered to by the trusts or institutions, etc. for want of continuance of exemption. In order to keep a check on the activities of such entities, approval is granted only for five years, after which fresh approval is required to be taken.

- It also aims at providing a non-adversarial regime whereby roving inquiries into the affairs of the exempt entities will not be made on day to day basis.

- Also, it aims at granting quick approval in respect of fresh applications without detailed enquiry even in the cases where activities of the entity are yet to begin.

Procedural amendments pertaining to tax audits

Background

- As per the extant provisions of section 139(1), due date for filing of return of income for companies or assessee requiring to get the accounts audited u/s. 44AB or working partner of firm whose accounts are required to be audited u/s. 44AB of the Act or under any other law for the time being in force is 30th day of September of the Assessment Year

Proposed Amendment

- It is proposed to amend the said due date by increasing the time limit to 31st October of the assessment year.

- It is also proposed to apply the extended due date of 31st October of the assessment year to any partner of a firm (not just the working partner) whose accounts are required to be audited u/s. 44AB of the Act or under any other law for the time being in force.

- These amendments shall be effective from April 1, 2020.

Procedural amendments pertaining to tax audits (Cont'd ...)

Rationale of the Proposed Amendment

- The proposed amendments in section 44AB and 139(1) seek to enable pre-filling of income tax returns for corporate assessee who are required to undergo tax audit.

Amendments pertaining to tax audits

Background

- Presently, assessee carrying on business and having total sales, turnover or gross receipts over Rs. 1 crore in the previous year are required to get the accounts audited u/s. 44AB. Professional are required to get the accounts audited u/s. 44AB where the gross receipts from the profession exceeds Rs. 50 lakhs in the previous year. Further, the specified date of filing of report u/s. 44AB was the due date as per section 139(1).

Proposed Amendment

- It is proposed to raise the threshold applicable for having the books audited u/s. 44AB from Rs. 1 crore to Rs. 5 crores for assessee carrying on business where the aggregate amounts received in cash including amounts received for sales, turnover or gross receipts as well as aggregate payments made in cash do not exceed 5% of the said aggregate payments.

- Further, it is proposed to amend the definition of 'specified date' as per *Explanation* to section 44AB to provide that the specified date means date one month prior to the due date for furnishing the return of income.

Amendments pertaining to tax audits (Cont'd ...)

Proposed Amendment

- Parallel amendments are also made to sections 10, 10A, 12A, 32AB, 33AB, 33ABA, 35D, 35E, 44DA, 50B, 80-IA, 80-IB, 80JJAA, 92F, 115JB, 115JC, 11VW of the Act. Hence, the due date for the reports/forms required to be filed even under said provisions would now be 1 month prior to the due date for furnishing the return of income.

- These amendments shall be effective from April 1, 2020.

Amendments pertaining to tax audits (Cont'd ...)

Rationale

- The proposed amendment in the threshold mainly aims at reducing the burden of tax audit on small and medium enterprises carrying on business.

- The time gap of one month between the filing of tax audit report and filing of return of income is to enable the pre-filling of income tax return.

Verification of ROI

Background

- The extant provisions of section 140I provide for verification of return of income in case of a company by the managing director; or where for any other unavoidable reason such managing director is unable to verify or where there is no managing director, then by any other director; or for a company whose application for corporate resolution process is admitted by the Adjudicating Authority ("AA") under the Insolvency and Bankruptcy Code, 2016 ("IBC"), by the insolvency professional appointed by the AA.

- As per sec. 140(cc) in case of a limited liability partnership ("LLP"), its return of income is required to be verified by the designated partner or where for any other unavoidable reason such designated partner is unable to verify or where there is no designated partner, by any other partner.

Proposed Amendment

- It is proposed to empower the Board to prescribe any person other than those referred above to verify the Return of Income of companies and LLPs.

- These amendments shall be effective from April 1, 2020

Representative Assessee

Background

- The present provisions of section 288 provide for the list of persons entitled to appear before the income tax authorities or the Appellate Tribunal as authorised representative of the assessee in connection with the proceedings under the Act.

Proposed Amendment

- Sub-section 2 to section 288 is proposed to be amended to enable “any other person as may be prescribed by the Board” to act as an “authorised representative”. These amendments are effective from April 1, 2020.

Representative Assessee (Cont'd ...)

Rationale :

- It is specified in the Explanatory Memorandum that whereas under the IBC, insolvency professional or administrator is empowered to exercise the powers of the Board of Directors or corporate debtor, certain practical difficulties were reported on account of absence of explicit reference in section 288 to empower insolvency professional to act as an authorised representative and therefore, it is proposed to empower the CBDT to prescribe any other person to be an "authorised representative".

Requirement for furnishing of statements and certicate by the donee

Background [Sections 80G, 80GGA, 35]

Deduction is available to assessee who donate any sum to any fund, institution, association, university, etc. under section 80G(5), section 80GGA and section 35 of the Act subject to conditions specified therein.

Proposed Amendments

- It is proposed that the fund, institution, association, university, etc. under said sections shall be required to furnish a statement under prescribed form and time to the prescribed authority/person giving details of donation received, details of the donor, etc.

- Further, it is proposed to allow donors to claim deduction under said sections in their returns of income only on the basis of such statement filed by fund, institution, association, university, etc. The fund or institution will be allowed to correct mistakes in the said statement.

- Also, section 234G is proposed to be inserted where non-compliance in furnishing statement or providing certificate will result in liability to pay fee of Rs. 200/day while the failure continues, the total fees payable will however not exceed the amount in respect of which failure has occurred.

Requirement for furnishing of statements and certicate by the donee (Cont'd ...)

- Section 271K is proposed to be inserted where non-compliance in furnishing statement or providing certificate will result in liability to pay fee of Rs. 200/day while the failure continues, the total fees payable will however not exceed the amount in respect of which failure has occurred.

- The proposed amendment shall come into effect from April 1, 2021.

Rationale of the Proposed Amendment

- To ensure that only the correct and genuine amounts are claimed under these sections.

THE DIRECT TAX VIVAD SE VISHWAS BILL, 2020

General Notes

- "Appellant" means:
  - **The** person; or
  - The Income tax authority; or
  - Both

  Who has filed appeal before the:
  - SC,
  - HC,
  - ITAT,
  - CIT(A)

  And such appeal is oending on January 31, 2020
- Thus, Assessee & Department appeals, both seem to be covered!
- KVSS of 1998 did not have this concept of covering the Departmental appeals.
- "Declarant": a person who files declaration u/s. 4

Section 3: Charging section

- Subject to the provisions of this Act:
  - VSV Bill, 2020 – to become an Act. Word 'Scheme' is a misnomer.
  - Preamble: to provide for resolution of disputed tax an for matters connected or incidental thereto
- Where a "declarant" files a "declaration"
  - "Declarant": means **a** person who files a declaration u/s. 4
  - "Declaration": means a declaration u/s. 4
  - "person" – definition from the ITA. [S. 2(2) – residuary clause in definition section]
- Under the provisions of this Act
- On or before the "last date"
  - Date to be notified by the CG in OG
- To the "Designated Authority" (DA)
  - CIT notified by the PCCIT for the purposes of this Act
  - Q: How would the Assessee know who is notified? Probably FAQs may be issued.

Section 3: Charging section (Cont'd ...)

- In accordance with the provisions of s. 4
- In respect of "tax arrears"(TA). TA means:
  - <u>Base Liability cases:</u>
    - Aggregate amount of "Disputed Tax"(DT) + interest chargeable or charged on such "DT" + Penalty leviable or levied on such DT; OR
  - <u>Additional liability cases:</u>
    - "Disputed Interest" (DI); OR
    - "Disputed Penalty" (DP); OR
    - "Disputed Fee" (DF).

  As determined under the provisions of the Income-tax Act.
- Then, notwithstanding anything contained in the ITA or any other law;
  - Thus, ITA is overridden
  - Black Money Act overridden

Section 3: Charging section (Cont'd ...)

- Amount payable by the declarant under this Act shall be as under:

  - Base Liability cases:

  - If paid on or before 31.03.2020 : Amount of DT

  - If paid after 31.03.2020 and before Last date : Amount of DT

    Plus

    10% of DT
    (limited to Int & penalty)

Section 3: Charging section (Cont'd ...)

- Additional Liability cases:

If paid on or before 31.03.2020	:	25% of DI; or 25% of DP; or 25% of DF
If paid after 31.03.2020 and before Last date	:	30% of DI; or 30% of DP; or 30% of DF

Disputed Tax - S. 2(1)(j)

- To be computed Assessment Year wise. Not issue wise.
- DT = (A – B) + (C – D)
  - A: Tax on assessed TI (under normal provisions)
  - B: Tax on (Assessed TI – Disputed TI*)
  - C: Tax on assessed TI (under MAT/AMT)
  - D: Tax on (Assessed BP – Disputed BP*)

    * "as reduced by the amount of income in respect of which appeal has been filed by the **appellant**"
- Proviso 1: If common additions are disputed in both, normal and in MAT, then, do not reduce it while working out 'D'
- Proviso 2: If MAT is not applicable, then, ignore 'C-D'
- Proviso 3: In loss cases, consider the amount of addition as TI and compute 'A-B'
- Also, TDS/TCS cases eligible. DT = tax determined u/s. 200A/201/206C/206CB
- Illustration : see table

Disputed Tax - S. 2(1)(j) (Cont'd ...)

Particulars	Normal Computation	Book Profits u/s. 115JB
Return of Income	100	300
Additions:		
Total Additions	50	50
Appeal Filed (Disputed Addns)	40	50
Appeal not filed (Undisputed Addns))	10	0
Assessed Income	150 (=100+50)	350 (=300+50)
Tax Rate	30%	18.5%
	A=30%(150) = 45	C=18.5%(350) = 64.75
	B=30%(150-40)=33	D=18.5%(350-10)=62.90
	(A-B)=12 (Disputed tax on normal)	(C-D)=1.85 (Disputed tax on BP) **DT=Aggregate=13.85**

Disputed Interest – S. 2(1)(h)

- Means:
- Interest determined in any case under the ITA, where
  - Such interest is **not** charged or chargeable on disputed tax;
  - An appeal has been filed by the 'Appellant' in respect of such interest.
- Issues:
  - Thus, interest u/s. 234B, C may not qualify. Interest u/s. 201(1A), 234D may qualify.

Disputed Penalty – S. 2(1)(i)

- Means:
- Penalty determined in any case under the ITA, where
  - Such penalty is **not** levied or leviable in respect of DI or DT, as the case may be;
  - An appeal has been filed by the 'Appellant' in respect of such penalty.
- Issues:
  - The word 'not' may mean the scheme applies only where penalty is on cases like non appearance 271(1)(b), FBT 271(1)(d), non-maintenance of books 271A, or TP documentation 271AA, not doing tax audit 271B, TDS defaults 271C etc.
  - 'Appellant' includes Tax Department. In case where AO levied penalty, but CIT(A) deleted it, and Department is in appeal to ITAT, is the Scheme applicable to the assessee?
  - Whether search cases penalty u/s. 271AAA/271AAB, scheme is available? It is with reference to 'undisclosed income'. No. Because 153A/C cases not eligible

Procedure – S. 4 & 5

- 4(1): Declaration in 'prescribed form' verified in 'prescribed manner'
- 4(2): Upon filing of declaration, appeal pending before ITAT, CIT(A) in respect of disputed income, DI, DP, DF, TA, shall be deemed to have been withdrawn from date of Certificate issued by DA u/s. 5(1);
- 4(3): Where the declarant has filed an appeal before the "appellate forum", or writ petition before the HC/SC against any order I respect of TA, he shall withdraw the appeal and furnish proof along with 4(1) declaration!
- Also, 'declarant' has to withdraw appeal. Department appeals (if eligible) who withdraws?
- 4(4): All arbitration/conciliation also to be withdrawn
- 4(5): Declarant to give undertaking waiving all rights of all alternate remedies (e.g. MAP)
- 4(6): Declaration deemed never to have been furnished if:
  - Material particulars in the declaration are 'false';
  - Violation of conditions of this Act;
  - Acts not in accordance with 4(5) undertaking

  In such cases, all withdrawn litigation are "deemed to have been revived"

Procedure – S. 4 & 5 (Cont'd ...)

- 4(7): Appellate authorities not to proceed to decide any issue relating to TA in respect of which 5(1) 'order' is made
  - If the appeal is withdrawn first, how can the appellate forum ever decide?
  - Should not the bar against proceeding start applying from the date of filing the declaration?
- 5(1): Chronology seems to be as follows:
  - T : Withdraw the appeal [interpretation of S. 4(3)];
  - T1(or immediately after T) : File the declaration
  - T1+15 days=T2 :DA to pass Order determine amount payable and grant a Certificate containing particulars of TA and amount payable
  - 5(2): T2+15 days=T3 :To pay the amount so determined; and intimate the DA in prescribed form; and DA to pass an Order stating that amount is paid

Procedure – S. 4 & 5 (Cont'd ...)

- Order passed u/s 5(1):
  - to be conclusive;
  - No matter covered by 5(1) order can be reopened under IT Act;
  - No reopening under any other law;
  - No reopening under DTAA or other agreement.
- Q: Word "reopen" is used in a general sense. Even revision will not be permissible. Probably, even rectification shall not be possible.
- Immunity also from prosecution, penalty, interest under ITA in respect of TA [S. 6]
- Amount paid under the scheme not refundable.
- No immunity from ay proceedings other than those covered under the declaration

S. 9 – Scheme not applicable to:

- 153A/153C assessments
- If prosecution has been instituted on or before the date of filing the declaration
- UDI / UDA outside India
- Assessments based on exchange of information under DTAA
- CIT(A) has issued notice of enhancement on or before January 31, 2020
- CoFEPoSA cases
- Offenses under IPC, Narcotic Drugs Act, PMLA etc.

Points to ponder:

- Why “Appellant” is defined to include revenue authorities as well?
  - Assessee & Dept both in Appeal to ITAT, pay tax on both, both deemed to be withdrawn?
- Taxes already paid under protest – whether credit will be available?
- No provision/mechanism for Rectification or Correction in the order of Designated Authority?
- If quantum appeal is pending on Jan 31, 2020. Penalty not yet levied. If declaration is filed, DT is paid. Immunity from penalty available. What if, AO levies penalty after Jan 31, 2020 and before the 5(1) order is passed?
- Immunity only designated authority barred to take actions; why not income-tax Department?
- Meaning of “instituted” under prosecution – show-cause notice issued by AO or complaint filed with Magistrate;
- Deemed revival – fate of appeal and writ?

THANK YOU!!!