PRE BUDGET MEMORANDUM 2020 - 21

(Suggestions on Direct Tax)

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory Body under an Act of Parliament)

www.icmai.in

Headquarters: CMA Bhawan, 12 Sudder Street, Kolkata - 700016
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Delhi Office: CMA Bhawan, 3 Institutional Area, Lodhi Road, New Delhi - 110003
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"Behind Every Successful Business Decision, there is always a CMA"

MISSION STATEMENT

"The CMA Professionals would ethically drive enterprises globally by creating value to stakeholders in the socio-economic context through competencies drawn from the integration of strategy, management and accounting."

VISION STATEMENT

"The Institute of Cost Accountants of India would be the preferred source of resources and professionals for the financial leadership of enterprises globally."

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About The Institute

The Institute of Cost Accountants of India (ICAI) is a premier professional body of Management Accountants in the country established on 28th May, 1959 under the Cost and Works Accountants Act, 1959 enacted by the Act of Parliament to regulate the profession of Cost and Management Accountancy in India. It is Statutorily Recognized by the Act of Parliament in 1959 - as The Cost & Works Accountants of India (ICWAI). The ICWAI is recognized by the Parliament as The Institute of Cost Accountants of India (ICAI), w.e.f. 1st Feb, 2012.

The Institute is governed by a Council in accordance with provisions of the Cost and Works Accountants Act, 1959 as may be amended from time to time and Rules and Regulations framed there under.

The Institute, as a part of its obligation regulates the profession of Cost and Management Accountancy. The Institute also pursues the vision of cost competitiveness, cost management, efficient use of resources and structured approach to cost accounting as the key drivers of the profession. The Institute has been associated and taken part in all the major tax reforms in the country starting from Direct Tax to Indirect Tax regime including VAT/Central excise/Service Tax ending with the biggest tax reform in India in the way of implementation of GST

Over the year the Cost and Management Accountancy profession has registered a tremendous growth and has occupied a prominent role in our economy and society.

The curriculum of the Institute is designed to impart professional knowledge of Cost and Management Accountancy, taxation and related subject to make the qualified CMA industry ready. The expertise of the students qualifying in the Institutes Examinations are suited to render effective services to Industries, Financial bodies, etc.

The Institute is a member of the International Federation of Accountants (IFAC), The Confederation of Asian and Pacific Accountants (CAPA), The South Asian Federation of Accountants (SAFA), National Foundation for Corporate Governance (NFCG), Federation of Indian Chambers of Commerce and Industry (FICCI), Confederation of Indian Industry (CII) and The Associated Chambers of Commerce and Industry of India (ASSOCHAM). The Institute, as a leader in the field of accountancy in the South Asian Region, is also imparting training to accountants from overseas countries.

The consistent and determined efforts of the Institute to promote the growth of Cost and Management Accountancy Profession and valuable services rendered to the Industrial and commercial organization fuelled the urge that the profession should play its due role in the economic development of the nation.

Our Contribution

COST AND MANAGEMENT ACCOUNTANCY PROFESSION IN INDIA

With the globalization of all economic activities, the industries both in manufacturing and service sector have recognized the potential of Cost and Management Accounting profession in giving support in effective resource management and making the operations more cost effective for facing the challenges of management

Cost and Management Accountants provide services in investment planning, profit planning, project management and overall managerial decision making process. The Institute and its members have been contributing constructively in the field of accountancy and Taxation besides cost & management accounting. The members of the Institute are professionally qualified and experts to handle the critical issues relating to Accounting and taxation in and outside the Country. Many members of the Institute are holding top management positions, viz., Chairman, CEO/CFO, Managing Director, Finance Director, Financial Controller, Chief Accountant, Cost Controller, Marketing Manager, Chief Internal Auditor etc. With members of the Institute both in practice and employement in industry, the Institute has been one of the major pillars of the accounting and taxation system of country.

Central Government has constituted an all India cadre known as Indian Cost Accounting Service (ICAS) at par with class-I services for framing fiscal and tax policies.

The Specialized knowledge and skill of the professional members of the Institute are being given due recognition from time to time for different Audit or Certification work under different statutes like maintenance of Cost Accounting Records and Cost Audit under section 148 of The Companies Act 2013 and Valuation Audit, Cenvat Audit/Service Tax Audit under section 14A, and 14AA of the Central Excise Act, 1944, and Audit under VAT of Different states. CMAs are also recognized as auditor in GST rules. Apart from the above, various certification works also entrusted to PCMAs' under DT and IDT regime.

The Institute, in recent past, has come out with a number of publications, handbooks on the both Direct and Indirect Tax for the benefit and capacity building of its members and other stakeholders. As a part of its obligation towards the society and stakeholders, the Institute has been organizing seminars, webinars, workshops and certificate courses on both Direct and Indirect Taxation in order to ensure capacity building among its stakeholders.

The Objectives of Taxation Committee

- Monitoring of Current tax legislation and analyzing changes of the existing legislation.
- Sharing of knowledge and experiences, proposing and recommending collective suggestions to the Ministries and Bodies for consideration to amend the legislation.
- To examine various laws, rules, regulations, circulars etc which are enacted or issued by the Government from time to time.
- To prepare and submit representations to the Governmental authorities and to send suitable Pre-Budget and Post-Budget Memoranda containing suggestions for improvements in the respective legislation.
- To respond to issues on Tax laws and practice referred by the Governmental authorities/Statutory Authorities/ Regulatory Bodies and stake holders.
- To assist, advice, update and guide to amend or modify Tax laws in the country for transparency, simplification and inclusion.
- To disseminate the knowledge through webinars and seminars, workshops to the members and students of the Institute.
- To conduct Seminars, workshops in different locations of the country to make aware the members and general public on various changes in the tax laws and capacity building
- To bring out new Publications and revise the existing publications relating to Direct and Indirect Tax laws.
- To organize courses on Tax Laws and practice.
- To update members in the field of taxation through fortnightly issue of E-Bulletin.
- To carry out various researches and publish the same.
- To deal with such other matters as the Council or the Taxation Committee may consider appropriate.

Executive Summary

We would like to extend our gratitude to Hon'ble Finance Minister Smt Nirmala Sitharaman for giving an opportunity to the Institute to submit the Pre–Budget Memorandum 2020-21on Direct Tax.

Suggestions were called from our members for incorporating the same in Pre Budget Memorandum 2020-21. Suggestions received in response from the members and business houses have been incorporated and compiled to prepare the final suggestion which we are submitting for kind consideration.

The suggestions has been drafted keeping in mind the progress and the vision of the country in order achieve Simplification and better control in terms of transparency and faster resolution of disputes etc.

Suggestions on Direct Tax – Pre Budget Memorandum 2020-21

1. Enhancement of exemption limit of the amount received under VRS Scheme – Sec (10C)

This amount of ex gratia given at the time of voluntary retirement under an approved scheme was fully exempted from Income Tax till 31.3.1993. The amount of exemption was limited to Rs.5 lakhs by amendment to Sec 10(10C) wef 1.4.1993. No revision has been taken place from last 26 years. The exemption limit, however, need to be revisited at least for the upward change in inflation by taking cost of inflation index applicable for 1993 and present year.

Suggestion:

In view of above the limit of exemption should be at least Rs.25 lakhs.

2. Exemption of Leave Salary, Children Education Allowance & Hostel Allowance

As per present provisions of Act, Leave salary encashment at the time of retirement is exempted up to Rs. 3 lakhs, children education allowance is exempt up to Rs 100 per month for 2 children. And hostel allowance is exempted up to Rs.300 per month per child for 2 children. Revision of exemption limit of these benefits and allowances are not taken up since long.

Suggestion:

Considering the current cost of education and inflation, time frame it is suggested to enhance Leave Salary encashment up to Rs.15 lakhs, children education allowance exemption limit up to Rs.5000 PM per child maximum 2 children and hostel allowance up to Rs.10,000 PM for two children (or as suggested by the competent authority).

3. Income chargeable under the head profits and gains of business or profession – section 28(iv) of the Act

Section 28(iv) of the Act provides that the value of any benefit or perquisite convertible into money or not arising from business or exercise of profession is taxable under the head "Profits and Gains of Business or Profession'. This provision is applicable irrespective of whether the benefit or perquisites are contractual or gratuitous. So this section refers to " income" which can be charged under the head 'profits and gains of business or profession' and therefore, when a particular advantage, perquisite or receipt is not in the nature of income, there cannot be any occasion to bring the same to tax u/s 28(iv) of the Act. Further it is settled law that a capital receipt, in principle, is outside the scope of income chargeable to tax except under section 45 as capital gain.

It has been seen that the departmental tax authorities are widely interpreting this section so as to charge to tax even the receipts which are purely of capital nature and which does not arise in the regular business dealings of the assessee or having any nexus with business.

Suggestion:

In view of above provisions, it is suggested that a clarification by way of explanation on scope of section 28(iv) may be given. Besides above Capital receipts (arising out of the transfer of capital assets) which are covered under charging section 45 of the Act should not be forming part of this income.

4. Depreciation on Leasehold Land:

Section 32 of the Act, provides that the Depreciation is a deduction allowed for the decline in the real value of a tangible or intangible asset used by a taxpayer. Depreciation is calculated on the WDV of a Block of assets. Block of assets is a group of assets falling within a class of assets comprising of:

- Tangible assets, being building, machinery, plant or furniture,
- Intangible assets, being know how, patents, copyrights, trade-marks, licenses, franchises or any other business or commercial rights of similar nature

At present depreciation on leasehold land is not allowed as deduction. At the same time the premium paid on leasehold land and amortised in the accounts is also not allowable as deduction under section 30 or any other section. There is no logic of disallowance of such expenses while computing income from business or profession.

Suggestion:

A substantial amount is spent by business asessee on acquisition of leasehold land. Suitable amendment shall be made to allow depreciation on leasehold land as it is an Intangible Asset in the financial statement prepared in compliance to Ind AS and Companies Act 2010

5. Extension of Sunset clause u/s 32AC – Investment in New Plant and Machinery

As per section 32AC, Investment allowance (equal to 15% of actual cost of new assets) is available only where an assessee, being a company, engaged in the business of manufacture or production of any article or thing, acquires and installs new assets and the amount of actual cost of such new assets acquired during any previous year exceeds twenty-five crore rupees and such assets are installed on or before the **31st day of March, 2017**. Govt. of India taking initiative for successful 'Make in India. Besides above tax linked incentives on capital expenditure should be given consistently for longer periods. Extending sunset time will boost make in India programme successful.

Suggestion:

In view of above, it is suggested to that benefit under section 32AC should be extended to further years for at least for 5 year period. The investment allowance eligible for deduction u/s 32AC of the Act should be reduced while computing book profits of the company under the provisions of section 115JB of the Act.

Specific provisions for carry forward and set off of investment allowance for an indefinite period should be brought in the Act

6. Deduction in respect of Expenditures in eligible projects – Section 35AC/Section 37(1)

Under section 35AC, where an assessee incurs any expenditure by way of payment of any sum to a public sector company or local authority or to an association or to institution approved by the National Committee, for carrying out any eligible project or scheme, the assessee shall subject to the provisions of this section be allowed a deduction of the amount of such expenditure incurred during the previous year with few conditions. This deduction is not available from assessment year on or after 1st April 2018.

At the same time Explanation 2 to Section 37(1) provides that – for removal of doubt, it is hereby declared that for the purpose sub section (1), any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act 2013 shall not be deemed to be an expenditure incurred by the assessee for the purpose of business or profession.

Corporate contributing huge sums for this cause under their responsibility towards the society and the environment as also to fulfill conditions relating to CSR funding. The whole initiative for the rural development and the upliftment of the poor may take a backseat, if no deduction is allowable in computing the income

Suggestion:

It is suggested to continue to provide impetus to rural sector and weaker sections of the economy for which section 35AC was enacted.

As an alternative, CSR spending may be considered as deductible business expenditure under section 37(1), in keeping with the fact that it is a charge on the profits of the corporate.

Taxability of Deemed Dividend u/s 2(22)(e) and clarity

Section 2(22)(e) of the Act provides that any loan or advance made to 'a shareholder, being a person who is the beneficial owner of shares' shall be taxed as deemed dividend. The relevant provision stated below.

"Section 2 (22) "dividend" includes —

……

(e) any payment by a company, ……………., by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares (….) holding not less than ten per cent of the voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest ……………"

The issue which disputed is that the taxability will arise in the hands of a registered shareholder who is having beneficial owner of shares or only beneficial share holder. Divergent view came from following decisions of Hon'ble Supreme Court.

In **Ankitech Private Limited reported in [2011] 11 taxmann.com 100)**, the High Court **(as affirmed by SC)** held that would apply only when the recipient of the loan is both beneficial and registered shareholder of the company providing the loan.

In case of **National Travel Services reported in 89 taxmann.com 332**, held that 'shareholder', for the purposes of this section needs to be only a 'beneficial shareholder', and that the Ankitech ruling requires reconsideration.

Suggestion:

In view of above divergent view on taxability in the hands of shareholders, it is suggested that section 2(22)(e) be amended as follows.

*(e) any payment by a company, ……………., by way of advance or loan to a shareholder, being a person who is the **registered and beneficial owner** of shares (….) holding not less than ten per cent of the voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest ……………"*

7. Employees' contribution to Provident Fund - Section 36(1)(va)

Section 43B of the Act allows deduction towards employer contribution to PF/ any other fund for the welfare of the employees if the same is deposited before due date of filing the return of income. However, deduction for employees' contribution to PF/ ESI or any other fund is governed by section 36(1)(va) of the Act which mandates that the employees' contribution should be credited to the relevant fund by the due date specified under the relevant Act, rule, order or notification governing that fund. On this issues there are number of contradictory decisions by different judiciary authorities.

Suggestion:

A suitable amendment should be made in the Act so as to bring the provisions relating to the Employees' contribution towards employee welfare funds in line with the employer's contribution towards such funds.

8. Retirement Fund – withdrawal of limits of contribution to superannuation fund / PF.

Rule 87 of the Income Tax Rules provides that an employer is permitted to make a total contribution not exceeding 27% of the employee's salary in respect of Provident Fund and Superannuation. Further, as per schedule IV of Part A rule 6 of the Income Tax Act, the employer is permitted to contribute upto 12% of the employee's salary in respect of Recognised Provident Fund. In other words, the Income Tax Law permits contribution upto 15% for Superannuation and 12% for PF.

Suggestion:

Instead of restricting contribution as above, the employers should be encouraged to increase the quantum of contributions to ensure a proper annuity / pension for the employees.

The law should only stipulate that the annuities should be purchased from recognized and approved Life Insurance agencies.

The stipulations under section 36(1)(iv) and consequential limits fixed on initial contributions should be totally done away with.

9. Inclusion of Electricity Duty under Section 43B

Section 43B of income tax act allowed statutory dues such as tax, duty, cess or fee etc to be deductible in computation of income from business in hands of a Company if it is paid by due date of filling return of income that is by 30th Sept / 30th Nov of next financial year. Electricity duty is not specifically covered in this section. There are number of Courts decisions where Electricity Duty is not considered as tax or duty to be covered under 43B to be deductible on payment by due date. Electricity charges are paid along with Electricity Duty. Power Sector is in cash deficiency due to non-recovery of Electricity Duty from the Consumers as well as Electricity Duty from Generators.

Suggestion:

It is suggested to include Electricity Duty under Section 43B of income tax for allowing deduction if paid within due date of filling return.

10. Maintenance of books of accounts Sec 44AB

Section 44AB provides for compulsory Audit -

A person carrying on business – if total sales, turnover or gross receipt in business exceeds Rs.1 crores (Rs.2 crores for persons declared profit u/s 44AD)

A person carrying on profession – If gross receipts from profession exceed Rs.50 lakhs

The current limit took effect from 1 April 2013.

Suggestion:

It is suggested to increase the threshold limit for compulsory Audit Rs.1 crore to Rs.2 crores and in case of profession from Rs 50 lacs to Rs75 lacs (or as may be decided by the competent authority) factoring the impact of CPI inflation for the past four years and the next two years and different compliance provisions implemented.

11. Withdrawal of ICDS:

Ten "Income Computation and Disclosure Standards" have been introduced with effect from AY 2017-18. The same are mandatorily to be followed by all assesses at the time of computation of income chargeable to income tax under the head "Profit and gains of business or profession" or "Income from other sources". To overcome the judicial pronouncement and to revalidate the provisions of ICDS, Finance Act 2018 has included some of the provisions of ICDS in the Act and thereby, it has become a law.

ICDS in its present form is not adding any value and in fact, is bound to create uncertainty and deterrence in the conduct of business in India. It is apparent that with a huge divergence in the accounting prescribed under Ind AS regime, overwriting of the law established through judicial precedents and duplicating the work increasing unintended tax litigations. ICDS is not serving any purpose and will only lead to duplication and wastage of efforts in maintenance of dual set of book keeping, increased complexity, high compliance cost, which is counter-productive to doing business with ease in the country. Further, multiple accounting methods, one for the books of accounts and other for tax purposes, creates confusion, interpretation issues, multiplicity of records and additional compliance burden which may outweigh the gains to be obtained by the application of ICDS.

Suggestion:

In view of above, it is suggested that Provisions of ICDS should completely be withdrawn.

12. Change of basis for calculation of Cost of Inflation Index

All income should be reported including exempted income. All incomes should be disclosed in the return including taxable and exempted Capital gain. Long Term Capital Gain is calculated by taking into account the Consideration received or receivable less Index Cost of Acquisition and Index Cost of Improvement.

The Cost of Inflation Index is calculated as follows.

75% of the average rise in the Consumer Price Index* (urban) for the immediately preceding year.

*Consumer Price Index compares the current price of a basket of goods and services (which represent the economy) with the price of the same basket of goods and services in the previous year to calculate the increase in prices.

Suggestion:

It is suggested to take 100% of the rise in the consumer price index for calculation of Cost Inflation Index instead of 75%.

13. Investment in Bonds under section 54EC to claim exemption from Long Term Capital Gain.

As per provisions of Section 54EC, a maximum limit of Rs.50 lacs per assessee in respect of the long term capital gains tax saving bond has been provided. Currently, huge amounts are required to be deployed in the infrastructure sector and this vehicle could be used for raising such infrastructure development funds. Moreover, the interest income on such bonds is fully taxable. This mode of investment carries less interest and it is a low cost raising bond which can be utilised for infrastructure development.

Suggestion:

It is suggested that this limit of investment in bonds should either be removed or substantially increased.

14. Set-off of loss arising under the head "Income from house property' – Section 71(3A)

Finance Act, 2017 has inserted a new sub section (3A) to section 71 of the Act, restricting the set-off of losses arising under the head 'Income from house property' to Rs.2.00 lakhs. Introducing such provisions is causing undue hardship to the assessee and discouraging investments in immovable properties.

Suggestion:

It is suggested that to dispense with such provisions that putting restriction of set-off of losses arising under the head 'Income from house property'.

15 .Carry forward of business losses on merger under s.72A

Section 72A provides the *provisions relating to carry forward and set off of accumulated loss and unabsorbed depreciation allowance in amalgamation or demerger, etc. It provides that,* where there has been an amalgamation of a company owning an industrial undertaking or a ship with another company, then, a banking company with a specific bank, one or more public sector company or companies engaged in the business of operation of aircraft with one or more public sector company or companies engaged in similar business, notwithstanding anything contained in any other provision of this Act, the accumulated loss and the unabsorbed depreciation of the amalgamating company shall be deemed to be the loss or, as the case may be, allowance for depreciation of the amalgamated company for the previous year in which the amalgamation was effected, and other provisions of this Act relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly.

E-commerce sector plays very important role in the growth of economy. Such businesses require acquisition / consolidation for growth and expansion / diversification.

Suggestion:

It is suggested either to amend the definition of 'Industrial Undertaking' to include e-commerce or include E-Commerce sector, so that it is eligible for carry forward of losses in case of amalgamation / merger / demerger. Further, the section should be amended to replace stringent conditions with liberal ones, such as reducing period of holding assets and carrying on of business from 5 years to 3 years.

16. Carry forward of losses u/s 79 in the case of intra-group share transfer

Section 79 of the Act provides that,

"*Notwithstanding anything contained in this Chapter, where a change in shareholding has taken place in a previous year, —*

(a)………. no loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year, unless on the last day of the previous year, the shares of the company carrying not less than fifty-one per cent of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than fifty-one per cent of the voting power on the last day of the year or years in which the loss was incurred "

Provisions of section 79 of the Act state that carry forward of loss shall not be allowed in case there is a change of 'beneficial' shareholding of the company during the year.

There are conflicting decisions of judiciary, some holding that the change in immediate shareholding should be tested, and others holding that the change in ultimate shareholding should be tested, to invoke Section 79.

In the case of business reorganization within the group, effectively, there is no change in shareholding as envisaged by the section. If the carry forward of loss is denied in such cases by invoking provisions of section 79 of the Act, it would cause avoidable financial loss to the Companies.

Suggestion:

It is recommended that an explanation should be inserted in Section 79 to provide that in a case of business reorganization within a group such that the ultimate shareholder of the company remains the same, provisions of section 79 shall not be applicable.

17. Carry forward of excess Foreign Tax Credit

As per present provisions of Income Tax Act, allows for set off in respect of foreign taxes paid on overseas income. However, in case of loss / inadequate profits, no set off may be possible. In the current economic scenario of the global economy, business outlook has become extremely uncertain and results have become very volatile.

Suggestion:

The assessee should be permitted to carry forward such unutilized credit for a period of 5 years for adjustment in future years.

18. Deduction u/s 80C in Chapter VIA - Deduction for Personal Tax Computation

The Finance (No.2) Act, 2014 had increased the overall limit to Rs.1.5 lac in respect of deduction under section 80C which is deductible in computation of income of an Individual. The amount increased is not at par with inflationary trend. Secondly this investment may generate fund which is kept as social security measure in old age.

Suggestion:

It is suggested that this limit be increased to at least Rs.2.5 lac. This would act as a fillip to investments and also generate greater savings for the tax payer.

19. Increase of Tax exemption limit for Senior Citizens:

In India adequate and a robust social security / pension fund investment facility during their working life is not available for "senior citizens". They mostly available on interest on FD. Since the rate of interest has come down drastically in the past one year leaving the senior citizens in financial difficulty. Further, actual inflation is much higher than headline inflation numbers. This has added to their misery.

Suggestion:

In view of above, a beneficial tax measures should be introduced for senior citizens in the upcoming budget. At the same time maximum exemption limit for senior citizens (60 years age to 80 years age) should be increased to Rs. 8 lakh from the current threshold of Rs. 3 lakh. -Very Senior Citizens who are aged above 80 years should not pay tax if their income is upto Rs. 13 lakh.

20. Extension of Period of Tax Holiday for Power Sector available U/S 80IA.

Under Section 80 IA of the Income Tax Act, deduction in respect of profits and gains from power undertakings (including for captive power generation plants) is available for any ten consecutive assessment years out of fifteen years beginning from the year in which the undertaking generates power. This benefit was available for power undertakings which began power generation before 31st March, 2017.

In the current scenario, new power undertakings in the area of solar and other renewable energy sources are becoming critical, especially in the context of protection of the global environment along with the need for generation of adequate power in the present power-starved national economy. Also, sub-section 12A to section 80IA imposes a restriction on any merged or demerged undertaking for not allowing the benefit of deduction from taxable income after such restructuring. In fact, this benefit is not passed on to the successor of business for the unexpired period after the said restructuring.

Suggestion:

Provisions of section 80IA, should be extended till 31st March, 2022, specially in respect of generation of power from renewable sources like solar, wind etc.. Further, the restriction under section 80IA(12A) for mergers / demergers, is extremely unfair and should be deleted, since it adversely affects a lot of corporate restructuring decisions.

21. Withdrawal of Dividend Distribution Tax ('DDT') levied u/s 115-O

As per the provisions of Section 115-O of the Act, an Indian company declaring dividends must pay DDT at the rate of 20.56 per cent (including surcharge and cess) on the amount of dividend declared, paid or distributed. Further, as per Section 10(34) of the Act, such dividend income is tax-free in the hands of shareholders. However, section 115BBDA of the Act provides that the Specified Assessee (i.e., persons other than domestic company, trust etc.) having dividend income aggregating to Rs 10 lakh or more, are required to pay tax @ 10% (plus applicable surcharge and cess).DDT levy leads to double taxation on corporate sector. Payment of DDT leads to reduction of available fund with the company which will be alternatively utilized for infrastructural development and expansion of industry.

Suggestion:

In view of above, it is suggested to withdraw the provisions of DDT which leads to double taxation.

22. Reassessment - section 147/section 148

It is observed that day by day, the department is issuing reopening notices under section 148 for assessment u/s 147 with large numbers. It appears that there is no consideration in following the principles on the subject laid down by the Hon"ble Supreme Court and High Courts over the years. Simple audit observations, even on points of law, are frequently being used as grounds for re-opening leading to extreme harassment to all assessee. In fact, the position has become so bad that even for legislations which have become obsolete like Interest Tax (withdrawn in Finance Act, 2001) reopening are being done for very old years since the relevant law permitted reopening without any time limit. Further, the said reopening provisions are being misused.

Suggestion:

It is suggested that proper stipulations be laid down for any reopening and the period of reopening be also reduced to 2 years from the end of the assessment year.

23. Reassessment u/s 147 should not to be applied on the matter which has examined:

As per Provisions of section 147, the Assessing Officer may assess or reassess other than matters which are the subject matter of any appeal, reference or revision. However, in respect of matters which have already been examined at the time of original assessment, the current law as laid down by the various courts categorically stipulates that reassessment of the same cannot be done since it will result in change of opinion. Moreover, it does not make sense to keep on assessing / reassessing the same matter again and again. The assessment / reassessment procedure should be normal and routine and should not provide for excessive powers to harass assesses.

Suggestion:

In view of above it is suggested that a suitable explanation should be introduced under section 147 with details of matter which have been examined in the original assessment should not be reassessed.

24. Reduction of Pre-payment of disputed demand on granting stay / disposal of Appeals.

CBDT on 31 July 2017 has increased liability to deposit from 15% to 20% of disputed demand for granting stay of demand by department till disposal of first appeal. It is observed that frivolous demand raised on assessee by way of high pitched assessments causes undue hardship to genuine taxpayers and hence payment of 20% of such outstanding demand is unwarranted. Instead, it is suggested that there should be mechanism for early disposal of such cases where the income tax department feels that demand should be recovered at the earliest. The existing rate of 20% for pre-deposit seems to be on the higher side and detrimental to the business.

Suggestion:

It is suggested that the rate of 20% should be reduced to 10% of disputed demand.

25. TDS Certificate (Sec 203)

Section 203 provides a time frame for issue of TDS Certificate to deductee in case tax deducted at source under Chapter XXVI. The TDS statements / returns are furnished electronically; tax credit appears in the account of the payee / deductee. Delay in issue / non-issue of TDS certificate also attracts penalty. Issuing of TDS Certificate stipulates and additional procedure that involves time, efforts and costs. The efforts are unnecessary, as the entire data is otherwise available with the concerned parties.

Suggestion:

This section mandates issue of TDS Certificates and physically delivery should be dispensed with.

26. TDS on year end provisions entries in books of account

The business assessee those who are following accrual system of account is required to make year-end provisions of expenses to close the books of accounts. Very often provision for expenses at the year-end are made based on reliable estimates available with the taxpayer even if the supporting invoice is received subsequently. In few cases the payee also not available (particularly labour contracts where the retirement benefit of contract labourer carried forward from contractor to contractor. For deduction of tax at source and deposit of the same which will be credited to payees account require PAN of the payee. However where payee is not available the difficulties faced to file the return of TDS and credit of TDS to the account of such payee.

Following are few judiciary pronouncements which hold that there is no need to deduct tax at source when the details of payee is not available.

- Industrial Development Bank of India v. ITO (2007) (107 ITD 45) (Mum)
- Dishnet Wireless Limited (ITA Nos. 320 to 329/Mad/2014) (Chennai)
- Pfizer Ltd. v. ITO (TDS)[2012] 28 taxmann.com 17/[2013] 55 SOT 277 (Mum.)
- Alliance Media & Entertainment Ltd. v. ITO (TDS)[2017] 79 taxmann.com 114 (Mum. - Trib.)
- Apollo Tyres Ltd. v. Dy. CIT[2017] 78 taxmann.com 195/163 ITD 177 (Delhi - Trib.)
- UCO Bank v. Union of India[2014] 369 ITR 335 / 51 taxmann.com 253/[2015] 228 Taxman 141 (Delhi HC)

As per the current tax regime, tax is required to be deducted on such provisions which often leads to excess deduction and deposit of tax, disputes with the vendor and unnecessary burden casted on the payer in carrying extensive reconciliations.

Suggestion:

So it is suggested that the required amendment should be made by introducing provision for non-deduction of tax at source on provisions for expenses made in the accounts at the yearend / provisions for expenses made during the year which is required to be reversed and the provisions for expenses made at the yearend where details of the payee are not available.

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