

Deciphering
BUDGET 2022
Direct Tax Proposals



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1. Tax Rates & Slabs

Clause 2

- There are **no changes in the Tax Rates** for Individual/HUF/AOP/BOI/AJP/Corporate Entities.
- The **AMT applicable for Co-operative Societies** has been reduced from 18.5% to 15%.
- The rate of **surcharge for Co-operative Societies** has been reduced to 7% from 12% of such Income tax in case the total income exceeds Rs.1crore but not exceeding Rs.10crores.
- The rate of **surcharge for Association of Persons (AOP)** consisting only companies as its members capped at 15%.
- Cap on **surcharge on LTCG and STCG** on sale of all classes of assets at 15%..

This amendment will take effect from 1st April 2022

2. Trusts & Charitable Institutions - Section 10(23C)

Clauses 4 & 5

- Finance Bill 2022 has proposed to **rationalize the provisions of trusts / fund / institutions** registered u/s 10(23C) and trusts registered u/s 12AA / 12AB (herein referred to as 'trust or institution') by:
 - a) ensuring their effective monitoring and implementation;
 - b) bringing consistency in the provisions of the said two exemption regimes; and
 - c) providing clarity on taxation in certain circumstances.
- Below are key amendments proposed in relation to trusts / fund / institutions registered u/s 10(23C) and trusts registered u/s 12AA / 12AB:

Penalty for passing on unreasonable benefits to trustee / specified persons

- In case trust or institution passes any unreasonable benefit to any trustee or any person specified u/s 13 of the IT act, it is proposed to levy penalty on the said trust or institution under newly introduced sec 271AAE.
- **Penalty for first time violation** - a sum equivalent to the amount of income applied, directly or indirectly, by such person, for the benefit of any trustee or any person referred in Sec 13(3).
- **Penalty in case violation in the subsequent year** - a sum equivalent to 200% of the amount of income applied, directly or indirectly, by such person, for the benefit of any trustee or any person referred in Sec 13(3).

Streamlining process of registration / approval or cancellation / withdrawal thereof

- Sec 12AB(4) of the Act is proposed to be substituted to give **powers to PCIT or CIT to call for documents / information, make any inquiry and pass order cancelling / refusing cancellation of the registration** in cases where PCIT or CIT notices one or more specified violations or on reference from Assessing officer.
- Specified violation' has been defined vide an explanation to Sec 12AB(4) to include list of various violations.

- The order regarding cancelling / refusing the cancellation shall be passed before expiry of the period of 6 months from the end of quarter in which the first notice is issued by the PCIT or CIT.
- Similar change has also been prescribed for Section 10(23C).

Allowing certain expenditure in case of denial of exemption

Presently, trust or institution is denied exemption in case of following violations:

- Commercial receipts in excess of 20% violating provisions of Sec 2(15);
- Not getting books of accounts audited;
- Non filing return of income;

New sub-section (10) is proposed to be introduced in Sec 13 which provides that **in case of the above violations, the income of trust / institution shall be computed after allowing deduction for expenditure incurred in India** in case specified conditions are fulfilled. Similar provision is also proposed to be introduced in Sec 10(23C).

Certain income taxable at special rate

- **Specified income of the Trust or institutions shall be taxable at the rate of 30% under newly introduced sec 115BBI. No deduction of any expenditure or allowance or setoff of any loss** allowed in computing specified income.
- Explanation to proposed sec 115BBI defines 'Specified Income'.

Clarification on application of Income

- It has been clarified by inserting an explanation to Sec 11 and 10(23C) that the **word 'application' means actually paid.** Accordingly, any amount shall be considered as application for the purpose of Sec 11 and Sec 10(23C) only upon actual payment irrespective of the previous year in which the liability to pay such amount was incurred by the trust.

This amendment will take effect from April 1, 2022 and will accordingly apply in relation to the AY 2022-23 and subsequent AY's.

3. Disallowance of expenditure incurred against exempt income - Section 14 A

Clause 9

- The Finance Bill, 2022 proposes to **amend Section 14A(1)** to include a non-obstante clause in respect of other provisions of the Income-tax Act and provide that no deduction shall be allowed in relation to exempt income, notwithstanding anything to the contrary in the Act.

This amendment will take effect from April 1, 2022 and will accordingly apply in relation to the assessment year 2022-23 and subsequent assessment years.

- It is also proposed to **insert an Explanation** clarify that notwithstanding anything to the contrary contained in this Act, Section 14A shall apply and shall be deemed to have always applied in a case where exempt income has not accrued / arisen or not received during the previous year and the expenditure in relation to such exempt income has been incurred during the said previous year.

This amendment will take effect from April 1, 2022.

Case laws Overruled:

1. **CHETTINAD LOGISTICS (P) LTD [TS-5361-SC-2018-0]**
2. **OIL INDUSTRY DEVELOPMENT BOARD [TS-5058-SC-2019-0]**
3. **GVK Project and Technical Services Ltd [TS-5137-SC-2019-0]**
4. **Cheminvest Limited [TS-504-HC-2015(DEL)]**
5. **McDonald's India Pvt. Ltd [TS-680-HC-2018(DEL)]**
6. **Holcim India (P) Ltd [TS-640-HC-2014(DEL)-0]**
7. **Lakhani Marketing Incl [TS-5342-HC-2014(PUNJAB AND HARYANA)-0]**

4. Exemption - Medical treatment - COVID 19

Clause – 10

- Finance Bill, 2022 proposes to **amend Sec 56(2)(x)** to provide that **any amount received by an individual, from any person**, in respect of any expenditure actually incurred by him on his **medical treatment** or treatment of any member of his family, in respect of any illness related to COVID-19 shall not be the income of such person.
- It is also proposed to provide that any **amount received by family member of deceased person from the employer of such deceased person (without limit) or from any other person or persons (to the extent that such sum or aggregate of such sums does not exceed ten lakh rupees)**, where the cause of death of such person is illness relating to COVID-19 and the payment is, received within 12 months from date of death of such person shall not be the income of such person.
- Family' will have the meaning assigned under Explanation 1 to Section 10(5).

These amendments will take effect retrospectively from April 1, 2020 and will accordingly apply in relation to the AY 2020-21 and subsequent AY's.

5. New Expln 3 - Expenditure prohibited by law – Sec 37

Clause 12

- The Finance Bill, 2022 clarifies that the claim of any expense incurred in providing various benefits in violation of the provisions of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 shall be inadmissible u/s 37(1) being an expense prohibited by the law.
- Discussing a plethora of rulings on this issue, the Memorandum clarifies that ITAT decisions allowing such expenditure are clearly not in line with the intention of the legislation.
- To discourage the claim of deduction on expenses incurred for a purpose which is an offence under foreign law or for compounding of an offence for violation of foreign law, the Finance Bill, 2022 proposes to amend Section 37 by inserting Explanation (3) to clarify the expression “expenditure incurred by an Assessee for any purpose which is an offence or which is prohibited by law” under Explanation 1.

- Such expression shall include and deemed to have included:
 - (a) expenditure incurred for 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
 - (b) to provide any benefit or perquisite, in whatever form, to a person, whether or not carrying on a business or exercising a profession, and acceptance of such benefit or perquisite by such person is in **violation of any law or rule or regulation or guideline**, as the case may be, for the time being in force, governing the conduct of such person; or
 - (c) to **compound an offence** under any law for the time being in force, **in India or outside India**.

This amendment will take effect from April 1, 2022

Case laws Confirmed:

1. Kap Scan and Diagnostic Centre Pvt Ltd [TS-5878-HC2010(PUNJAB & HARYANA)O]
2. Liva Healthcare Limited [TS-499-ITAT-2016(Mum)]
3. Ochoa Laboratories Ltd. [TS-366-ITAT-2017(DEL)]

Case laws Overruled:

1. Aristo Pharmaceuticals Pvt. Ltd. [TS-445-ITAT-2018(Mum)]
2. PHL Pharma P. Ltd. [TS-12-ITAT-2017(Mum)]
3. UCB India Pvt. Ltd. [TS-5615-ITAT-2016(Mumbai)-O]
4. Pfizer Limited [TS-559-ITAT-2019(Mum)]
5. ICARUS Health Care P Ltd [TS-107-ITAT-2021(CHNY)
6. Eli Lilly & Co (India) Pvt Ltd [TS-680-ITAT-2015(DEL)]
7. Dupen Laboratories Pvt Ltd[TS-730-ITAT-2015(Mum)]

8. Solvay Pharma India Ltd [TS-21-ITAT-2018(Mum)]

9. Cipla Ltd. [TS-938-ITAT-2021(Mum)]

6. Clarification - Cess & Surcharge – Section 40(a)(ii)

Clause 13

- Taxpayers claimed **deduction of Cess & Surcharge** u/s 40(a)(ii) on the grounds that 'cess' was not specifically covered in the said provision & therefore, an allowable expenditure.
- This view was **upheld by Courts in few judgments**. Reliance was also placed by Courts on **CBDT Circular No. 91/58/66-ITJ(19) dt. May 18, 1967** where, cess is allowed as an expenditure u/s 40(a)(ii), however 'cess' as referred to in the Circular is with reference to cess imposed by State Government which is actually of nature of "Cess" and not of the nature of "Additional Surcharge" being termed as "Cess" in relevant Finance Act.
- The **Memorandum clarifies that the interpretation of various courts** in treating cess as an allowable expenditure is **against the legislative intent**.
- The **Finance Bill, 2022 proposes to amend Sec 40(a) by inserting Expln 3** to clarify that for the purpose of this sub-clause, the term 'tax' shall include and shall always deemed to have included any surcharge or cess, by whatever name called, on such tax.

The amendment is made retrospective to make clear the position irrespective of the CBDT Circular.

This amendment is effective retrospectively from April 1, 2005 and will accordingly apply in relation to the AY 2005-06 and subsequent AY's.

Case laws Overruled:

1. Sesa Goa Limited [TS-163-HC-2020(BOM)]
2. Chambal Fertilisers And Chemicals Ltd. [TS-489-HC-2018(RAJ)]
3. Sicpa India Private Ltd [TS-154-ITAT-2020(DEL)]
4. Philips India Limited [TS-326-ITAT-2020(Kol)]

Case laws Confirmed:

1. Kanoria Chemicals & Industries Ltd [TS-1129-ITAT-2021(Kol)]

7. Conversion of interest payable into debenture or other Instruments - Section 43B

Clause 14

- Sec 43B provides for certain deductions to be allowed only on actual payment. Expln 3C, 3CA & 3D to Sec 43B provide that any interest which has been converted into a loan or borrowing or advance shall not be deemed to have been actually paid.
- Certain **taxpayers claim deduction u/s 43B** on account of conversion of interest payable on an existing loan into a debenture on the ground that such conversion is a constructive discharge of interest liability and, therefore, amounted to actual payment which has been **upheld by several Courts**.
- The Memorandum clarifies that such **interpretation is against the intent of legislation**.
- The Finance Bill, 2022 proposes to **amend Expln 3C, 3CA and 3D of Sec 43B** to provide that conversion of interest payable under clause (d), (da), and (e) of Sec 43B, into debenture or any other instrument by which liability to pay is deferred to a future date, shall also not be deemed to have been actually paid

This amendment will take effect from April 1, 2023 and will accordingly apply in relation to the AY 2023-24 and subsequent AY's.

Case laws Overruled:

1. M.M. Aqua Technologies Ltd [TS-645-SC-2021]

Case laws Confirmed:

1. Gujarat Cypromet Ltd [TS-85-SC-2019]
2. Pennar Profiles Limited [TS-219-HC-2015]

8. loan or borrowing - source of funds of creditors

Section 68

Clause 17

- The Finance Bill, 2022 proposes to amend the provisions of Sec 68 so as to provide that nature and source of any sum, whether in form of loan or borrowing, or any other liability credited in books of Assessee shall be treated as explained only if the source of funds is also explained in the hands of the creditor or entry provider.
- This proposal aims to clarify that the **onus of satisfactorily explaining the credits remains with the Assessee** and extends to explaining the source of funds in the hands of the creditor.
- The additional onus of proof of satisfactorily explaining the source in the hands of the creditor, would **not apply if the creditor is a well-regulated entity**, i.e., it is a Venture Capital Fund, Venture Capital Company registered with SEBI.

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

9. Strategic PSU disinvestment - Carry forward of losses

- Section 79

Clause 18

- In order to **facilitate disinvestment of PSU's**, Finance Bill, 2022 proposes to amend Sec 79 to provide that sub section (1) (which restricts set-off of brought forward losses in case of change of shareholding) shall not apply to an erstwhile public sector company subject to condition that the ultimate holding company of such erstwhile public sector company, immediately after completion of strategic disinvestment, continues to hold, directly or through its subsidiary or subsidiaries, at least 51 % of voting power of erstwhile public sector company in aggregate.
- It is also proposed that if the above condition is not complied with in any previous year after completion of strategic disinvestment, provisions of sub-section (1) shall apply for such previous year & subsequent previous years.

This amendment will take effect from April 1, 2022 and will accordingly apply in relation to the assessment year 2022-23 and subsequent assessment years.

10. No set off of losses against undisclosed income

- Section 79A

Clause 19

- Finance Bill, 2022 proposes to insert a new Sec 79A to provide that where there is any **income detected during search u/s 132, 132A & 133A, no set off of any loss** (whether brought forward or otherwise, or unabsorbed depreciation u/s 32(2)) shall be permitted against such undisclosed income under any provision of this Act.
- **Definition for “undisclosed income”** to include any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions which is discovered in course of search, which has remained unrecorded and has not been disclosed to PCCIT or CCIT or PCIT or CIT before the date of search or requisition or survey.
- The Definition further proposes to include any expense entry which is detected as false and would not have been found if not for the search proceedings.

This amendment will take effect from April 1, 2022 and will accordingly apply in relation to the assessment year 2022-23 and subsequent assessment years.

11. NPS - State govt. employees also to get higher deduction – Section 80CCD

Clause 20

- Presently, contribution made to NPS by Central Government is deductible upto 14% of salary whereas limit is 10% of salary for contribution made by any other employer.
- State Governments were given an option to raise contribution to 14% effective April 1, 2019 on their own volition, based on their own internal approvals and notifications, without seeking the approval of Pension Fund Regulatory and Development Authority.
- The Finance Bill, 2022 proposes to **increase the limit of deduction u/s 80CCD to 14% from present 10%, in case of contribution made by the State Government.**

This amendment will take effect retrospectively from April 1, 2020.

12. Annuity to a disabled person – Section 80DD

Clause 21

- **Sec 80DD(2)** provides that the deduction shall be allowed only if payment of annuity or lump sum amount is made to benefit of dependent, in the event of **death of the individual/ member of HUF** in whose name subscription to scheme has been made.
- **Sec 80DD(3)** provides that if **dependent with disability, predeceases the individual / member of HUF**, amount deposited in such scheme shall be deemed to be income of assessee of previous year in which it is received.
- **Supreme Court in Ravi Agrawal v. UOI** observed that that there could be harsh cases where handicapped dependants may need payment of annuity or lump sum basis even during lifetime of their parents/guardians. It was further observed that the Centre may take into consideration all the aspects, including those where a disabled dependant might need payment on annuity or lump sum basis even during the lifetime of the parents or guardians.

- The Finance Bill, 2022 proposes to **allow the deduction also during the lifetime**, i.e., upon attaining age of 60 years or more of individual/ member of HUF in whose name subscription to the scheme has been made and where payment or deposit has been discontinued.
- It is also proposed that Sec 80DD(3) shall not apply to amount received by dependent, before his death, by way of annuity or lump sum by application of the condition referred to in the proposed amendment.

This amendment will take effect from April 1, 2023

13. Start Ups - Extension of incorporation date – Sec 80IAC

Clause 22

- Eligible start-ups incorporated on or after April 1, 2016 but before April 1, 2022 and fulfilling other prescribed conditions are eligible for 100% deduction of the profits / gains derived from an eligible business for specified period.
- The Finance Bill, 2022 proposes to amend the provisions of Section 80-IAC to **extend the period of incorporation of eligible start-ups to March 31, 2023.**

This amendment will take effect from April 1, 2022 and will accordingly apply in relation to the AY 2022-23 and subsequent AY's.

13 A. Bonus & Dividend Stripping - apply to units of Business Trusts, InvIT, REIT & AIF – Section 94

Clause 25

- Existing provisions pertaining to prevention of tax evasion through bonus stripping & dividend stripping do not apply to units of Infrastructure Investment Trust (InvIT), Real Estate Investment Trust (REIT) and Alternative Investment Funds (AIFs). Further, the existing provisions of bonus stripping are not applicable to securities.
- The Finance Bill, 2022 proposes to amend Sec 94 (8), to extend applicability of bonus stripping provisions to 'securities'. In addition, the Exln to Section is amended to redefine "units" to include units of InvIT, REIT and AIFs.
- As a consequence, the Bill also proposes to **extend the provisions of bonus stripping and dividend stripping provisions to aforementioned units.**

These amendments will take effect from April 1, 2023 and will accordingly apply in relation to the AY 2023-24 and subsequent AY's.

Case laws Overruled:

1. Adar Poonawalla [TS-240-ITAT-2017(PUN)]
2. B G Mahesh [TS-7021-ITAT-2013(BANGALORE)-0]

14. New Manufacturing companies - Extension of date of commencement of production – Section 115BAB

Clause 26

- Sec 115BAB(2)(a) provides that **new domestic manufacturing company** is required to be set up and **registered** on or after Oct 01, 2019 and is required to **commence** manufacturing or production of an article or thing on or before March 31, 2023.
- The **pandemic has resulted in some delay** in setting up/registration of new domestic companies and the commencement of manufacturing or production by companies already set-up.
- The Finance Bill, 2022 proposes to amend Section 115BAB to **extend the date of commencement of manufacturing or production** of an article or thing, from March 31, 2023 to March 31, 2024.

This amendment will take effect from April 1, 2022 and will accordingly apply in relation to AY 2022-23 and subsequent AY's.

15. Dividends from foreign companies - Withdrawal of the provision – Section 115BBD

Clause 27

- The Finance Bill, 2022 proposes to **withdraw the concessional rate of tax (15%)** on dividend received from foreign companies wherein at least 26% equity was held by Indian company.
- Given the abolition of the DDT regime, the proposal aims for **uniformity in tax treatment** where dividends are received by Indian Companies from specified foreign companies as compared to dividends received from a domestic company.

This amendment will take effect from April 1, 2023 and hence, the provisions of this Section shall not apply to any AY beginning on or after April 1, 2023 i.e. AY 2023-24 onwards.

16. Virtual Digital Asset – Sections 2(47A), 115BBH, 194S & 56

Clauses – (3, 28, 59 & 16)

- Considering the **tremendous popularity gained by Virtual Digital Assets**, a new scheme to provide for taxation of such virtual digital assets has been proposed in the Bill.
- The Finance Bill, 2022 proposes to insert Section 115BBH to provide that any **income from transfer of any virtual digital asset shall be taxed at the rate of 30%**.
- Proposes that **no deduction in respect of any expenditure (other than cost of acquisition)** or allowance or set off of any loss shall be allowed to the Assessee under any provision of the Act while computing income from transfer of such asset.
- Further, **no set off/ carry forward of any loss** arising from transfer of virtual digital asset shall be allowed.

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

TDS on Transfer

- In order to widen the tax base from the transactions in relation to these assets, proposes to insert Sec 194S providing for **deduction of tax at source @1% on payment for transfer of virtual digital asset to a resident**. Where the transfer is in exchange of another digital asset or partly in cash and partly in kind, the payer shall ensure that the tax has been paid in respect of such consideration.
- Also proposes a **threshold limit** for deduction of tax at source as **Rs. 50,000 in a FY in case of specified persons and Rs. 10,000 in any other case**.
- Where tax is required to be deducted u/s 194-O along with proposed Sec 194S, the **tax shall be deducted u/s 194S and not Sec 194-O**.
- Proposes to define '**Specified Persons**' as: Individual or HUF having turnover/gross receipts/sales from business not exceeding Rs 1 Cr or income from profession not exceeding Rs. 50 lakh and Individual/ HUF having income under any head apart from business or profession.

This amendment will take effect from July 1, 2022.

Gift

- Finance Bill, 2022 proposes to amend **explanation to Sec 56(2)(x) to include virtual digital asset within the meaning of 'property'**. As a consequence, gifting of virtual digital assets will be taxable.

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

Definition

- Also proposes to insert **new clause (47A) in Section 2 to define Virtual Digital Asset** as “any information or code or number or token (not being Indian currency or any foreign currency), generated through cryptographic means or otherwise, by whatever name called, providing a digital representation of value which is exchanged with or without consideration, with the promise or representation of having inherent value, or functions as a store of value or a unit of account and includes its use in any financial transaction or investment, but not limited to, investment schemes and can be transferred, stored or traded electronically.”

This amendment will take effect from April 1, 2022.

17. Updated Return – New Sub-section 139(8A)

Clause 38

- The Finance Bill, 2022 proposes to insert a new sub-section (8A) in Sec 139 for **furnishing updated return within 24 months from the end of the relevant AY.**
- Sec 139(8A) shall **not apply if the updated return, is a return of a loss or has the effect of decreasing the total tax liability determined or increasing the total refund** due on the basis of return furnished u/s 139(1), 139(4) or 139(5).
- A person **shall not be eligible to furnish an updated return** under Section 139(8A) if:
 - (i) Search has been conducted u/s 132 or books have been requisitioned u/s 132A; or
 - (ii) Survey has been conducted u/s 133A; or
 - (iii) Notice has been issued to the effect that any money, bullion or jewellery or any books of accounts seized or requisitioned u/s 132 or 132A in the case of any other person belongs to such person/ relates to such person.

This amendment will take effect from April 1, 2023 and will accordingly apply in relation to AY 2023-24 and subsequent AY's.

- **Also no updated return shall be furnished where:**
 - i. An updated return has already been filed for relevant AY; or
 - ii. Proceedings for assessment/reassessment is pending or completed; or
 - iii. AO has communicated possession of information under Prevention of Money Laundering Act, 2002 or Black Money (Undisclosed Foreign Income & Assets) & Imposition of Tax Act, 2015 or Prohibition of Benami Property Transactions Act, 1988 or Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976; or
 - iv. Information under agreement u/s 90/90A has been received & is communicated to him; or
 - v. Prosecution proceedings under Chapter XXII have been initiated; or
 - vi. Such person or class of persons as may be notified by the Board.

- Updated return filed u/s 139(8A) shall be treated as **defective unless such return is accompanied by the proof of payment of tax** as required under Section 140B.

- The Finance Bill, 2022 inserts **new Sec 140B to provide for the tax required to be paid** for opting to file an updated return.

- Assessee shall be liable to **pay tax due together with interest & fee** payable under any provision of the Act for any delay in furnishing the return or any default or delay in payment of advance tax, along with the payment of additional tax, after taking into account advance tax, TDS/TCS, relief u/s 89, FTC u/s 90/91/90A, MAT credit and self-assessment tax paid u/s 140A, if any.
- The additional tax payable at the time of furnishing updated return u/s 139(8A) shall be **25% of total tax and interest due**, if updated return is filed after expiry of time available u/s 139(4)/(5) but **before 12 months from end of relevant AY**.
- The additional tax payable at the time of furnishing updated return u/s 139(8A) shall be **50% of total tax and interest due**, if the updated return is filed **after 12 months**.
- Interest u/s 234B shall be computed on 'assessed tax' declared in the updated return after giving credit for TDS/TCS, relief u/s 89, FTC u/s 90/91/90A, MAT credit and self-assessment tax paid u/s 140A.
- Interest u/s 234C shall be computed treating the income under updated return as returned income.
- Proposes consequential amendments in Sec 144, 153, 234A & 234B & 276CC.

These amendments will take effect from April 1, 2022.

18. Faceless Assessment – Section 144B Amendments

Clause 42

- Section 144B was inserted in the Act to provide the procedure for faceless assessment with effect from April 1, 2021. However, in view of the **difficulties faced by the administration as well as taxpayers in the operation of the faceless assessment procedure**, Finance Bill, 2022 proposes to substitute the existing provisions of sub-sections (1) to (8) of Sec 144B with a new sub-section (1) to (8) of Sec 144B, which entail the following features:
 - The provisions shall apply to faceless assessments, re-assessments or re-computation in the cases specified in Sec 143(3) or 144 or 147.
 - National Faceless Assessment Centre (NaFAC) shall assign the cases selected for faceless assessment to a specific Assessment Unit (AU) and intimation in this regard shall be sent to the Assessee.
 - Notices u/s 143(2) and 142(1) shall be served on the Assessee through NaFAC and Assessee must respond within the time prescribed in such notice. The details filed by Assessee in response to such notices will be forwarded to the AU.

Upon receipt of request from the AU, the NaFAC shall:

- I. Issue a notice for obtaining further information, documents or evidence from Assessee or any other person;**
 - II. Request the Verification Unit (VU) to conduct enquiry or verification; or**
 - III. Refer to the Technical Unit (TU) for determining ALP, valuation of property withdrawal of registration, approval, exemption or any other technical matter;**
- NaFAC shall send the report received from the VU or the TU to the concerned AU.**
 - If Assessee fails to comply with any notice issued by NaFAC, a SCN u/s 144 may be served on Assessee giving him the opportunity to explain as to why the as case should not be completed to the best of its judgement.**
 - After taking into account the relevant material available on record, AU shall prepare an income or loss determination proposal. A SCN shall be served on Assessee in respect of variations proposed to income or loss declared in return of income.**

- After considering response of Assessee or on failure of receipt of such response, and all relevant material available on the record, AU shall prepare an income or loss determination proposal proposal, and after receipt of approval from NaFAC, the AU shall prepare a draft order. The AU may also assign the income or to a Review Unit (RU) through an automated allocation system, which shall conduct a review of such order, prepare a review report and send it to NaFAC.
- Upon receipt of the review report from RU, the AU may accept or reject some or all of the modifications proposed and prepare a draft order accordingly, after recording the reasons in writing for rejecting the modifications proposed by the RU.
- In case of a draft order u/s 144C proposing to make any modifications prejudicial to assessee, NaFAC shall serve such draft order to Assessee, wherein Assessee has option to either file acceptance to such proposed modifications or file objections with DRP and NaFAC within the period specified u/s 144C(2).
- Upon receipt of the directions issued by DRP in case of eligible Assessee u/s 144C, NaFAC shall forward such directions to AU. AU shall complete the assessment within time allowed in 144C(13) and initiate penalty proceedings, if any, in conformity with directions issued by DRP and send a copy of such order to NaFAC.

- In any case, other than that of an eligible assessee u/s 144C, the NaFAC shall convey to AU to complete the assessment in accordance with such draft order and thereby pass a final assessment order and also to initiate penalty proceedings, if any.
- NaFAC shall serve a copy of such final assessment order, notice for initiating penalty proceedings, if any and the demand notice to the assessee.
- After completion of assessment, NaFAC shall transfer all the electronic records of the case to the jurisdiction AO for any action as may be required under the Act.
- CBDT may set up and specify the functions and jurisdiction of the NaFAC, AU, VU, RU and TU. The said units have been defined under new Sec 144B.
- It is proposed that all communications among AU, RU, VU or TU or with assessee or any other person as may be necessary for the purposes of making a faceless assessment shall only be through NaFAC. Further, all communications between NaFAC and assessee, or his authorized representative, or any other person and all internal communications between NaFAC and various units shall be exchanged exclusively by electronic mode by affixing digital signature.

- A person shall not be required to appear either personally or through AR in connection with any proceedings before any of the above-mentioned units. However, in case of proposed variation to the income or loss, Assessee may request for a personal hearing so as to make his oral submissions or present his case before the income-tax authority of the relevant unit, which shall be conducted exclusively through video conferencing or video telephony in accordance with procedure laid down by CBDT.
- Having regard to the nature and complexity of accounts, volume of accounts, doubts about correctness of accounts, multiplicity of transactions in accounts or specialized nature of business activity of assessee, and interest of the revenue, AU may, upon recording of reasons in writing, request NaFAC to invoke the provisions of Sec 142(2A) by forwarding the case to the jurisdictional PCCIT, CCIT, PCIT or CIT. If such request is not accepted, AU shall proceed to complete the assessment in accordance with the procedure laid down in the proposed Section.
- It is further proposed to omit Section 144B(10).

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

Case laws Confirmed:

1. **Bharat Aluminium Company Ltd. [TS-19-HC-2022(DEL)]**

Omission of Section 144B(9)

Sec 144B(9) of the Act provides that assessment proceedings shall be void if the procedure mentioned in Sec 144B was not followed. However, a large number of disputes were raised under this sub-section on account of technical issues arising due to use of information technology, leading to unnecessary litigation.

- Accordingly, it is proposed to omit Sec 144B(9) from the date of its inception.

This amendment will take effect retrospectively from April 1, 2021.

19. Faceless TP Assessments – Postponed till 2024

Clause 43

- As part of process of making tax administration transparent & efficient, provisions for notifying faceless schemes u/s's 92CA (TP assessments), 144C (DRP), 253 (Appeals to the Appellate Tribunals) and 255 (procedure of Appellate Tribunal) were introduced in the Act. The time limits for notifying such schemes under the stated Sections are slated to expire on March 31, 2022 (except Section 255, for which the time limit is March 31, 2023).
- To avoid delay in stabilization of the current information technology structure and systems, Finance Bill, 2022 proposes to **extend the timeline for issuing directions for the purposes of faceless procedures under these Sections till March 31, 2024.**
- Cognizance is also taken of the fact that for notification of scheme u/s 253 and 255, procedures will need to be formulated after due consultations with Ministry of Law & Justice.

This amendment will take effect from April 1, 2022.

20. Reassessment

- Section 148, 148A, 149, 153 & 153B

Clauses 44 to 49

- Finance Bill, 2022 proposes to insert a new proviso to Sec 148 whereby approval to issue notice under Section 148 shall not be required where AO, with the prior approval of the specified authority has passed an order u/s 148A(d) that it is a fit case to issue a notice. Also proposes to omit the requirement of obtaining approval of specified authority for providing an opportunity to show cause against reassessment to the assessee before issuance of notice u/s 148
- Also proposes to correct inadvertent drafting error in Section 148 by omitting the word 'flagged' in Explanation 1(i) explaining the meaning of the phrase "*the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means any information 'flagged'.....* in accordance with the risk management strategy formulated by the Board...."
- Proposes to amend Sec 132(8) and include assessment/reassessment u/s 143(3), 144 or 147 within its scope It is also proposed to amend Sections 132B(1)(i) and 132B(4) to include assessment or reassessment or recomputation within its scope.

- Proposes to insert Sec 148B to provide that assessment or reassessment order shall not be passed by AO of grade below JCIT, except with prior approval of Addl.CIT, Addl.DIT, JCIT or JDIT in respect of assessments consequent to search, survey and requisition to reduce avoidable inaccuracies.
- Proposes to clarify what constitutes information under Expln 1 to Sec 148 - any audit objection, or any information received from a foreign jurisdiction under an agreement or directions contained in a court order, or information received under a scheme notified u/s 135A.
- Sec 149(1)(b) is proposed to be amended to provide that notice u/s 148 shall be issued only after 3 years but before 10 years where AO has in his possession books of account/ other documents revealing - *“income chargeable to tax represented in the form of an asset, expenditure in respect of a transaction or in relation to an event or occasion or an entry or entries in the books of account”*, has escaped assessment amounting to Rs. 50 lakh or more.
- Further proposes to insert Sec 149(1A) to provide that notice u/s 148 is supposed to be issued for each year where income has escaped assessment.
- Cases where information is received by AO under faceless collection of information u/s 135A is proposed to be excluded from the scope of Sec 148A.

- **Finance Bill, 2022 proposes to insert sub-section (4) in Section 153B to exclude search u/s 132 and requisition u/s 132A from its scope on or after Apr 1, 2021**
- **Also proposes to amend first proviso to Sec 149(1) to provide that no notice u/s 148 shall be issued before Apr 1, 2021, if a notice u/s 148 or 153A or 153C could not be issued for being issued beyond the specified time limit in Sec 149(1)(b), 153A or 153C.**
- **Proposes to amend Sec 153B by inserting new clause to exclude the period commencing from date of initiation of search to date on which seized books of accounts, bullion, cash, jewellery etc. is handed over to AO having jurisdiction over Assessee, from the period of limitation.**
- **This amendment will take effect from April 1, 2022 and will accordingly apply in relation to the AY 2022-23 and subsequent AY's.**

21. Litigation Management – Avoidance of appeals on identical issues - Section 158AB

Clause 52

- Finance Bill, 2022 proposes to insert new Sec 158AB with an aim to **manage litigation with respect to appeals filed by Revenue on similar issues as already pending before SC or jurisdictional HC.**
- It proposes for **establishment of collegium** comprising of two or more Chief Commissioners or Principal Commissioners or Commissioners of Income-tax, as specified by Board.
- The proposed section provides that based on consultation and directions of collegium, CIT or PCIT may defer filing an appeal to the ITAT or HC, where the question of law arising in the present case of assessee for any assessment year is identical with a question of law already raised in case of assessee himself or any other Assessee and same is pending before jurisdictional HC or SC.

- The above **deferment of filing of appeal by Revenue can be done only after receipt of acceptance from the assessee** to the effect that the question of law in the other case is identical to that arising in the present case.
- The option to file an appeal once the question of law reaches finality in the other case is available by making an **application by the AO to the Appellate Tribunal or jurisdictional HC** to this effect.
- With the introduction of Section 158AB, a sunset clause is proposed to be inserted in sub-section (1) of Section 158AA to provide that no direction shall be given under the said sub-section on or after April 1, 2022.
- **This amendment will take effect from April 1, 2022 and will accordingly apply in relation to the AY 2022-23 and subsequent AY's.**

22. Business Reorganisation – Successor entity - Section 170 & New Section 170A

Clauses 50,53 & 54

- Finance Bill, 2022 proposes to **insert Sec 170A** to enable entities going through **business reorganization**, for filing of **modified returns** for the period between the date of effectivity of order & date of issuance of final order of the competent authority.
- **Proposed Sec 170A has an over-riding effect on Sec 139** and provides that in case of a business reorganization where prior to the HC /ITAT /Adjudicating Authority's order, any ROI has been furnished by successor u/s 139 for any AY relevant to the PY to which such order applies, a modified return can be furnished by successor within 6 months from end of the month in which the order (competent authority such as NCLT in case of merger/demerger) was issued.

This amendment will take effect from April 1, 2022 and will accordingly apply in relation to AY 2022-23 and subsequent AY's.

Case laws Overruled:

1. Maruti Suzuki India Limited [TS-707-SC-2019-TP]
2. Dimension Apparels Pvt Ltd [TS-610-HC-2014(DEL)]
3. Spice Entertainment Ltd [TS-475-HC-2011(DEL)]
4. Accenture Solutions Private Limited [TS-09-ITAT-2022(Mum)-TP]

Case laws Confirmed:

1. Dalmia Power Limited & Anr [TS-785-SC-2019]
2. Deep Industries Limited [TS-1056-HC-2021(GUJ)]
3. Padma Logistics & Khanij Pvt. Ltd. [TS-248-ITAT-2020(Kol)]
4. Vedanta Limited [TS-608-HC-2021(MAD)]

23. TDS on Sale of Immovable Property - Section 194IA

Clauses 56

- **Sec 194-IA** presently provides for **TDS** on the consideration paid by transferee to transferor, and **do not take stamp duty value** of property into account. However, for **computation of income u/s 43CA and 50C, the stamp duty value is also considered.**
- The Finance Bill, 2022 proposes to amend Sec 194-IA with a view to **remove this inconsistency.**
- It is proposed to amend Sec 194-IA to provide that in case of transfer of immovable property (other than agricultural land), tax is to be deducted at **1%** of such sum paid or credited to resident or stamp duty value of such property, whichever is higher.
- In cases where the consideration paid for the transfer of immovable property and the stamp duty value of such property are both less than 50 lakh rupees, then no tax is to be deducted u/s 194-IA
- **This amendment will take effect from April 1, 2022 and will accordingly apply in relation to the AY 2022-23 and subsequent AY's.**

24. TDS on Benefit of Perquisite in Respect of Business or Profession - Section 194R

Clause 58

- Value of any benefit or perquisites received in course of exercise of business or profession is chargeable as business income, which may not always be offered to tax by the recipient
- Finance Bill, 2022 proposes to insert Sec 194R to provide that the person responsible for providing to a resident, any benefit or perquisite, whether convertible into money or not, arising from carrying out of business or exercising of profession by such resident, shall, before providing such benefit or perquisite, as the case may be, to such resident, ensure that **tax has been deducted** in respect of such benefit or perquisite at the rate of **10% of the value or aggregate of value of such benefit or perquisite.**
- In cases where benefit or perquisite is wholly in kind or partly in cash & partly in kind but such part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of such benefit or perquisite, the person responsible for providing such benefit of perquisite shall, before releasing the benefit or perquisite, ensure that tax has been paid in respect of the benefit or perquisite.

- **No tax is to be deducted if the value or aggregate value** of the benefit or perquisite paid or likely to be paid to a resident **does not exceed Rs. 20,000** during the financial year.
- These provisions shall not apply to Individual or HUF, whose total sales, gross receipts or turnover does not exceed **1 crore rupees** in case of business or **50 lakh rupees** in case of profession during the FY immediately preceding the FY in which such benefit or perquisite is provided.
- **This amendment will take effect from April 1, 2022 and will accordingly apply in relation to the AY 2022-23 and subsequent AY's.**

25. Refund for denying liability to deduct tax under sec.195 - Section 239A

Clause 66

- Finance Bill, 2022 proposes to insert a new Sec 239A to provide that a person, who has made deduction of tax under such an agreement or arrangement and borne the tax liability (i.e. **grossing up of tax in international payments**), when no tax deduction was required, then he may file **application before AO for refund of such tax deducted**.
- Appeal against the order of AO for application made u/s 239A can be filed before CIT(A) u/s 246A.
- Finance Bill, 2022 proposes that provisions of Sec 248 shall not be applicable in cases where the date of tax payment, to credit of CG is on or after Apr 1, 2022, as a taxpayer has no recourse to approach the AO with a request for refund of tax deducted with respect to any income paid to a non-resident and claimed to have no requirement for such tax deduction.
- The taxpayer in such case had to go through the compulsory appellate proceedings for obtaining the refund.

- **This amendment will take effect from April 1, 2022 and will accordingly apply in relation to the AY 2022-23 and subsequent AY's.**

26. Dispute Resolution Committee - Section 245MA

Clause 67

- The Finance Bill, 2022 proposes to insert a new sub-section (2A) to Sec 245MA to **enable AO to pass an order giving effect to resolution of dispute by Dispute Resolution Committee (DRC).**
- Existing provisions of Sec 245MA do not contain any provision which will enable the AO to pass an order giving effect to order or directions of DRC under the said Section.
- The Bill proposes to insert the enabling provisions wherein AO shall pass the final order (of assessment, reassessment, recomputation) in conformity with the directions by the DRC, within a period of one month from the end of the month in which such order is received.
- **This amendment will take effect from April 1, 2022 and will accordingly apply in relation to the AY 2022-23 and subsequent AY's.**

27. Revision of TPO's Orders - Section 263

Clause 72

- The Finance Bill, 2022 proposes to amend Sec 263 wherein PCCIT or CCIT or PCIT or CIT (who is assigned the jurisdiction of transfer pricing) would be granted **revisionary authority over orders passed by TPO**
- As per existing provisions of Sec 92CA, the AO with the approval of PCIT or CIT could refer computation of arm's length price to TPO and consequently, based on such determination by TPO, the AO is to determine the final income. However, it is not clear as to who has the power u/s 263 to revise the order of TPO passed u/s 92CA.
- **This amendment will take effect from April 1, 2022 and will accordingly apply in relation to the AY 2022-23 and subsequent AY's.**

Case laws Overruled:

1. **JCB India [TS-26-ITAT-2022(DEL)-TP]**
2. **Tata Communications Limited [TS-361-ITAT-2013(Mum)-TP]**
3. **Essar Steel Ltd [TS-698-ITAT-2012(Mum)-TP]**

Case laws Confirmed:

1. **Agro Tech Foods Ltd [TS-681-ITAT-2020(HYD)-TP]**

28. Penalties also leviable by Commissioner (Appeals) - Section 271AAB, 271AAC & 271AAD

Clauses 73, 74 & 75

- Under existing Chapter XXI relating to penalties, CIT (A) has simultaneous powers along with AO to levy penalty in eligible cases u/s 270A, 271, 271A, 271AA, 271G, 271J which deal with deliberate concealment, non-disclosure & omission by assessee to evade tax.
- However, penalty provisions u/s 271AAB, 271AAC, 271AAD pertaining to undisclosed income (pursuant to search or otherwise), unexplained credits or expenditures, or deliberate falsification or omission in books of accounts have been provided to be initiated by only AO.
- Therefore, in order to **improve deterrence against noncompliance** among tax payers, Bill proposes to **rationalize the said provisions by extending the powers to levy penalty under the said Sections to even to CIT (A)**.
- **This amendment will take effect from April 1, 2022 and will accordingly apply in relation to the AY 2022-23 and subsequent AY's.**

29. Statements by Producers of Cinematograph films - Section 285B

Clause 84

- Finance Bill, 2022 proposes to amend Sec 285B, to **extend the reporting requirements (Form 52A)** to persons engaged in specified activities such as event management, documentary production, production of programs for telecasting on television or over the top platforms or any other similar platform, sports event management, other performing arts or any other activity as the CG may notify.
- Sec 285B currently provides for producer of cinematographic films to furnish within 30 days from the end of the FY or from the date of completion of film, whichever is earlier, a statement containing particulars of all payments over Rs.50,000/- in aggregate made by him or due from him to each person engaged by him.
- **This amendment will take effect from April 1, 2022 and will accordingly apply in relation to the AY 2022-23 and subsequent AY's.**

Thank you!

