Finance Bill 2022

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Finance Bill 2022

(A) Rates of Income-Tax

(B) Promoting voluntary tax compliance and reducing litigation

(C) Socio economic welfare measures

(D) Widening and deepening of tax base

(E) Revenue mobilisation

(F) Phasing out of exemptions

(G) Rationalisation measures.

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Tax Rates
Rate changes

- While the slab rates under the Income Tax Act, 1961, largely remained unchanged, there has been a change in surcharge rates in the Finance Bill.
- **For co-operative societies**, the **surcharge has been reduced to 7%** from 12% for those with total income above Rs 1 crore, but less than Rs 10 crore.
- **Surcharge on AOPs consisting of only companies** as its members capped at 15% !
  - Earlier a graded surcharge of up to 37% could get attracted on income of the AOP.
- **Surcharge on LTCG (long-term capital gains)** has been capped at 15%!
  - Beneficial for long-term capital assets that previously bore the brunt of graded surcharge rates that went as high as 37%

Promoting Voluntary Tax Compliance & Reducing Litigation
"Updated Return" – S.139(8A)

- S.139 is related to provision of filing ITRS :
  - 139(1) filing return on or before due date
  - 139(4) belated return furnished 3 months prior to end of relevant AY or completion of assessment whichever is earlier
  - 139(5) revised return filed 3 months before the end of AY year or before the completion of assessment, whichever is earlier
- Effectively, in a FY to file belated or revised return the Act gives:
  - 5 months to an individual assessee,
  - 2 months to a company/auditable case and
  - 1 month to an assessee who enters into an international transaction,
- *"This additional timeline for filing a revised/belated return may not be adequate when we factor in* ***utilization of huge information and data available*** *coupled with the* ***"nudge approach"*** *that motivates the taxpayer towards the desired objective of voluntary tax compliance, starting with filing of correct tax returns."* (!!!)
- S.139(8A) and S.140B introduced. **<u>Up to 24 months from end of AY</u>**
- Consequential amendments to S.144, S.153, S.234A/B, S.276CC

Promoting Voluntary Tax Compliance & Reducing Litigation
S.139(8A) – Devil is in the details

"The proposal for updated return over a period longer than that is provided in the existing provisions of Income-tax Act would on the one hand bring use of huge data with the IT Department to a logical conclusion resulting in additional revenue realization and on the other hand, it will facilitate ease of compliance to the taxpayer in a litigation free environment."

It is proposed that an amount equal to **25% or 50% as additional tax on the tax and interest due on the additional income furnished would be required to be paid.**

The proposed 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 or results in refund or increases the refund due**!

Promoting Voluntary Tax Compliance & Reducing Litigation
S.139(8A) continued – Who is not eligible?

- When is person <u>not eligible</u> to file "updated return" ?

  (a) search has been initiated under section 132 or requisition under S.132A

  (b) a survey has been conducted under section 133A, other than 133A(2A)

  (c) a notice has been issued that any money, bullion, jewellery or valuable article or thing, seized or requisitioned under S.132/132A

  (d) a notice has been issued that any books of account or documents, seized or requisitioned under S.132, S. 132A relate to such person.

- This provision is for the AY relevant to the FY in which such search is initiated or survey is conducted or requisition is made and two AY's preceding such AY.

Promoting Voluntary Tax Compliance & Reducing Litigation
S.139(8A) - When does it not apply?

- Further, no updated return IF for relevant AY:
  - (a) an updated return has been furnished by him already or
  - **(b) any proceeding for assessment or reassessment or recomputation or revision of income under the Act is pending or has been completed for the relevant AY** or
  - (c) any proceeding pending or completed or AO has information under PMLA or Benami Act etc. and same has been communicated prior to 139(8A) filing.
  - (d) information for the relevant assessment has been received under S.90 or 90A agreements and the same has been communicated prior to 139(8A) filing
  - (e) any prosecution proceedings under Chapter XXII have been initiated for the relevant AY in respect of such person, prior to the date of 139(8A) filing
  - (f) he belongs to a class of persons, as maybe notified by the Board in this regard.
- 139(8A) shall be defective unless accompanied by the proof of payment of tax as required under S.140B!

Promoting Voluntary Tax Compliance & Reducing Litigation
S.139(8A) - Additional Tax Computation

- New S.140B for the tax required to be paid for opting to file a return under S.139(8A)

Case I: Where no return furnished earlier: where no return of income under sub-section (1) or sub-section (4) of section 139 has been furnished by an assessee, **liable to pay the tax due together with interest and 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.**

The tax payable shall be computed after taking into account advance tax, TDS/TCS, S.89 claim, S.90/91/90A relief, tax credit set off S.115JAA/115JD

Promoting Voluntary Tax Compliance & Reducing Litigation
S.139(8A) - Additional Tax Computation

Case II. In the case where, return of income has been filed u/S.139(1), 139(4) or 139(5) (referred to as "earlier return"), taxpayer is liable to **pay the tax due together with interest and fee payable under any provision of this 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, as reduced by the amount of interest paid under the provisions of the Act in the earlier return**.

Similar tax computation as in Case I. Also, the aforesaid tax shall be increased by the amount of refund, if any, issued in respect of such earlier return

S.139(8A)
Rate of Additional Tax

The additional tax, payable at the time of furnishing the return u/S 139(8A) shall be equal to **twenty-five per cent of aggregate of tax and interest payable**, as determined in Case I or II above, if such return is furnished after expiry of the time u/S.139(4) or S.139(5) and before completion of period of **twelve months from the end of the relevant assessment year.**

If S.139(8A) return is furnished **after the expiry of twelve months but before completion of twenty-four months from the end of the relevant AY,** the **additional tax payable shall be fifty per cent of aggregate of tax and interest payable, as determined in Case I or II above**.

"It is also clarified that for the purposes of computation of "additional income-tax", tax shall include surcharge and cess, by whatever name called, on such tax" ☺

Promoting Voluntary Tax Compliance & Reducing Litigation

Litigation management when in an appeal by revenue an identical question of law is pending before jurisdictional High Court or Supreme Court.

- New S.158AB in the Act, to provide that where the **collegium** is of the opinion that any question of law arising in the case of an assessee for any assessment year ("relevant case") is identical with **a question of law already raised in his case or in the case of any other assessee for an assessment year**, which is pending before the jurisdictional HC or before Supreme Court in an appeal, in favour of such assessee ("other case"), it may, decide and intimate the CIT/PCIT **not to file any appeal, at this stage,** to the ITAT or HC as the case may be.
- AO to make an application to the ITAT or HC in the prescribed form within 60 days / 120 days from the date of receipt of the order of the CIT(A)/ITAT
  - **Only if an acceptance is received from the assessee to the effect that the question of law in the other case is identical to that arising in the relevant case,**
- **For the purposes of S.158AB, "collegium" shall comprise of two or more Chief Commissioners or Principal Commissioners or Commissioners of Income-tax, as specified by the Board**
- Existing 158AA is sunset w.e.f 1st April 2022

Litigation management when in an appeal by revenue an identical question of law is pending before jurisdictional High Court or Supreme Court. Illustration

In order to illustrate the point, it may be supposed that a question of law (Q1)A1 has arisen in case of an assessee (A1) and the A1 has received a favourable decision on Q1A1 from the Commissioner (Appeals).

Further, in case of another assessee (A2), where Department's appeal on identical question of law (Q1)A2 is pending before the jurisdictional High Court or the Supreme Court and the collegium is of the opinion that Q1A1 and Q1A2 are identical questions of law.

Then in this situation, provisions of proposed section 158AB can be invoked by Revenue to defer filing of appeal for decision on Q1A1 to the higher appellate authority in ITAT till a decision on Q1A2 is communicated to Assessing Officer having jurisdiction over the assessee, A1.

Such a decision on deferment will be subject to acceptance by the assessee A1 that question of law in his case Q1A1 is identical to Q1A2 in the case of the assessee A2.

- **Bottomline:** What about multiple issues of which only is pending before HC/ITAT?

Promoting Voluntary Tax Compliance & Reducing Litigation

S.245MA – Dispute Resolution Committee

- Finance Act 2021 introduced a new chapter XIX-AA in the Act consisting of section 245MA for constituting Dispute Resolution Committee ("DRC") for specified persons who may opt for dispute resolution under the said section and who fulfil specified conditions mentioned in the said section.
- After the resolution of the dispute by the DRC the assessed income of the person who had applied to DRC has to be determined, which will be followed by, inter alia, initiation of penalty proceedings, if any and issuance of demand notice under section 156 of the Act.
- However, the existing provisions of the said section do not contain any provision which will enable the Assessing Officer to pass an order giving effect to the order or directions of the Dispute Resolution Committee under the said section.
- Therefore, it is proposed to insert a new sub-section to this section to enable the Assessing Officer to pass an order giving effect to the resolution of dispute by the DRC. However, since DRC is an alternate dispute resolution mechanism itself, a taxpayer may opt for approaching either the Dispute Resolution Panel under section 144C of the Act or the DRC under section 245MA of the Act, and the AO shall pass the final order in conformity with the order by the DRC even in the case of an eligible assessee.
- This amendment will take effect from 1st April, 2022
  - Bottomline: How many people have really used the DRC??

Promoting Voluntary Tax Compliance & Reducing Litigation
Clarification regarding treatment of cess and surcharge

- Section 40 of the Act specifies the amounts which shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession".
- Sub-clause (ii) of clause (a) of section 40 of the Act provides that any sum paid on account of any rate or tax levied on the profits or gains of any business or profession or assessed at a proportion of, or otherwise on the basis of, any such profits or gains shall not be deducted in computing the income chargeable under the head PGBP.
- Taxpayers are now claiming deduction on account of 'cess' or 'surcharge' under section 40 of the Act claiming that 'cess' has not been specifically mentioned in the aforesaid provisions of section 40(a)(ii) and, therefore, cess is an allowable expenditure.
- This view has been upheld in ***Sesa Goa Limited Vs. JCIT (2020) 117 taxmann.com Mum.HC*** and in ***Chambal Fertilizers & Chemicals Ltd Vs. JCIT (Raj HC) ITA No. 52/2018 dated 31-07-2018***. The Courts relied upon the CBDT Circular No. 91/58/66-ITJ(19) dated 18-05-1967

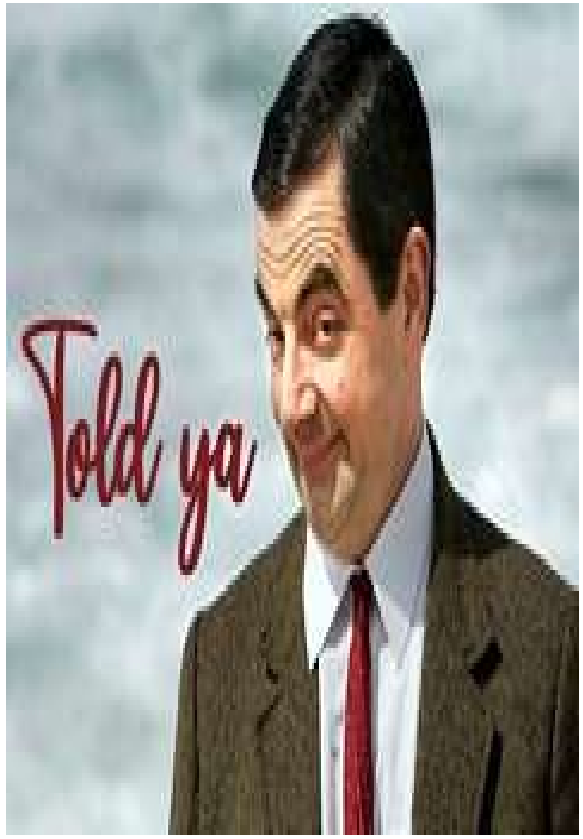
Clarification regarding treatment of cess and surcharge

- ***CIT vs. K.Srinivasan SC (83 ITR 346 SC),*** ITAT in *Kanoria Chemicals & Industries* (ITA 2184/Kol/2018), Halsbury laws to define "per incuriam" all have been cited ☺ in Explanatory Memorandum culminating in:

"Hence, in order to make the intention of the legislation clear and to make it free from any misinterpretation, it is proposed to include an Explanation ***retrospectively in the Act*** *itself to clarify that for the purposes of this sub-clause, the term "tax" includes and shall be deemed to have always included any surcharge or cess, by whatever name called, on such tax."*

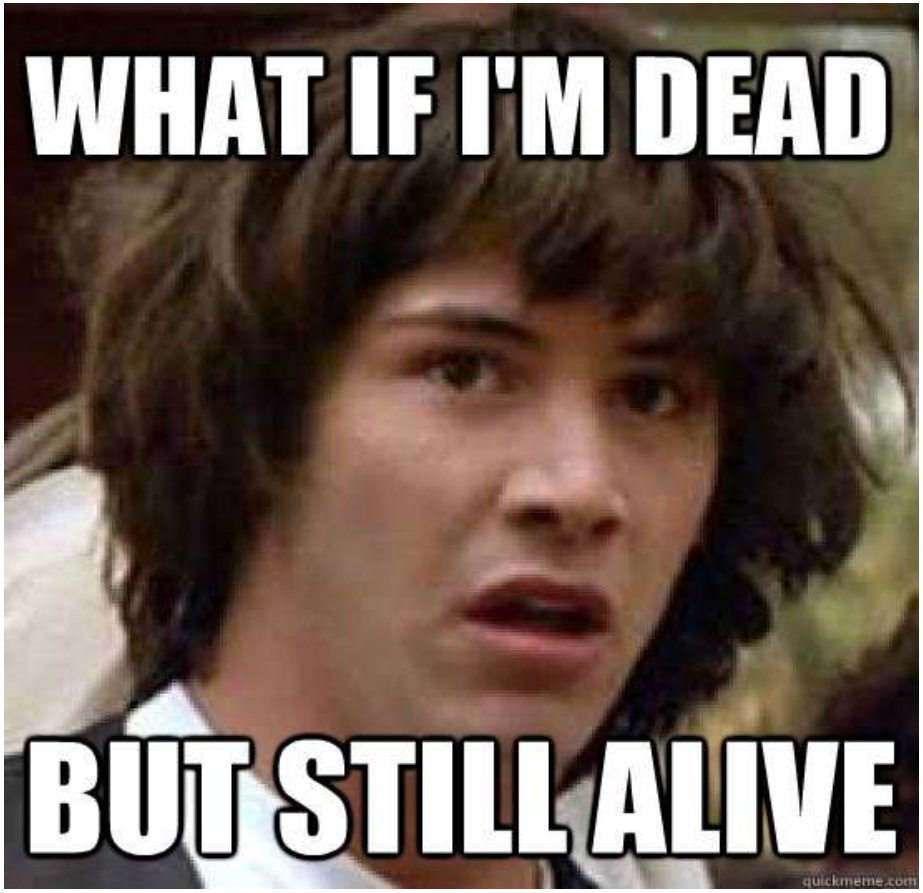
- Amendment is made retrospectively to make clear the position irrespective of the circular of the CBDT from AY 2005-06!

Bottomline: Additional grounds across judicial/quasi-judicial forums for naught?!



Amendments related to successor entity subsequent to business reorganization

- *"Reorganization often is from a preceding date. During the pendency of the court proceedings the income tax proceedings and assessments are carried on and often completed on the predecessor entities only.* ***Courts have held such proceedings and consequent assessments illegal as the predecessor assessee ceases to exist in the midst of a perfectly valid and legal proceeding.*** *Hence, till the decision of the court is received, the proceedings of the Act have to be continued in the case of the predecessor only and such proceedings once completed,* ***cannot become illegal as a result of subsequent order of any court****"*
- **S.170(2A)** inserted to provide that the assessment or reassessment or other proceedings, **made on the predecessor during the course of pendency of such reorganisation, shall be deemed to have been made on the successor** and all the provisions of this Act shall apply.



Amendments related to successor entity subsequent to business reorganization

'(2A) Notwithstanding anything contained in subsections (1) and (2), where there is a business reorganisation, the assessment or reassessment or other proceedings, made on the predecessor during the course of pendency of such reorganisation, shall be deemed to have been made on the successor and all the provisions of this Act shall, so far as may be, apply accordingly.

Explanation.— For the purposes of this sub-section, the expressions,—

(i) "business reorganisation" means the reorganisation of business involving the amalgamation or de-merger or merger of business of one or more persons;

(ii) "pendency" means the period commencing from the date of filing of application for such reorganisation of business before the High Court or tribunal or the date of admission of an application for corporate insolvency resolution by the Adjudicating Authority as defined in clause (1) of section 5 of the Insolvency and Bankruptcy Code, 2016 and ending with the date on which the order of such High Court or tribunal or such Adjudicating Authority, as the case may be, is received by the Principal Commissioner or the Commissioner.'.

Amendments related to successor entity subsequent to business reorganization
Return filing

- Budget Memo states that due to the indefinite timeline involved in issuing such orders, there is a gap between the effectivity of such order and the date on which such order is issued by the competent authority. This also affects the final accounts of such entities as they are unable to modify their already filed returns in accordance with the reorganization.
- Hence, *in order to remove this anomaly*, new S.170A enables the entities going through such business reorganization, **for filing of modified returns for the period between the date of effectivity of the order and the date of issuance of final order of the competent authority.** Confirms SC ruling in *Dalmia Power Limited*, *Marshall & Sons*...
- **Bottomline:** Spice Telecom, Maruti Suzuki etc. SC decisions where assessments carried out in the name of non-existing entity are considered invalid seems to have triggered this move!

Amendments related to successor entity subsequent to business reorganization
Reduction of demand consequent to IBC!

"Further, it has been noted that in the cases of business reorganisation, instances have been found where the Court or Tribunal or an Adjudicating Authority, as defined in clause (1) of section (5) of the Insolvency and Bankruptcy Code, 2016, as the case may be, as a part of the restructuring process, recast the entire liability to ensure future viability of such sick entities and in the process, modify the demand created vide various proceedings in the past, by the Income Tax department as well, amongst other things.

However, it is observed that there is no procedure or mechanism provided in the Act to reduce such demands from the outstanding demand register. Hence, in order to remove this anomaly, it is proposed to ***insert a new section 156A to the Act to give effect to the orders of the competent authority and to modify such demands in accordance with such directions."***

- These amendments will take effect from 1st April, 2022
- **Bottomline**: Giving legitimacy to IBC NCLT RP's! *Ghanshyam Mishra* case

S.14A to apply in absence of any exempt income!

- S.14A disallowance to apply even if no exempt income earned

"Explanation.—For the removal of doubts, it is hereby clarified that notwithstanding anything to the contrary contained in this Act, the provisions of this section ***shall apply and shall be deemed to have always applied*** *in a case where the income, not forming part of the total income under this Act, has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such income not forming part of the total income".*

  - WEF AY 2022-23
  - Prospective…. *Snehavalli Textiles, PF amendment logic*
  - Blunted by dividend income taxability?

Amendment to S.37

Currently, as it is stands Explanation 1 & 2 of S.37 read:

Explanation 1.—For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure.

Explanation 2.—For the removal of doubts, it is hereby declared that for the purposes of 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 (18 of 2013) shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession.

S.37(1) – Explanation 1
The Medial Kerfuffle

"it is seen that certain taxpayers are claiming deductions on expenditure incurred in offering certain benefits or perquisite to a person which are not intended to be allowed under this section, like meeting his expenditure related to travel, hospitality, conference etc. In these cases acceptance of such benefit or perquisite by such person is in violation of a law or rule or regulation or guidelines, as the case may be, governing the conduct of such person. "

….

Thus, the legal position is clear 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 under section sub-section (1) of section 37 of Act being an expense prohibited by the law. Delhi High Court decision which was relied upon by ITAT in some decisions was in completely different context as discussed by ITAT Mumbai in their judgment in the case of Macleods Pharmaceuticals. These ITAT decisions allowing such expenditure are clearly not in line with the intention of the legislation."

- Much litigation on whether MCI rules apply to pharma companies alone and not medical professionals and that the CBDT circular 5/12 dated 1.8.2012 is prospective.

S.37(1) – Explanation 1
Offence under foreign laws

Further, some taxpayers are seen to be claiming 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, claiming that provisions of Explanation 1 to subsection (1) of section 37 of the Act applies only to offences which are prohibited by the domestic law of the country. In some case this view has also been accepted by the tribunal. These judgments are also against the intention of the legislation as the legislation does not say that the Explanation 1 applies only to the violation of domestic law.

S.37(1) – Insertion Explanation 3
Another prospective *clarifying* amendment?

In order to make the intention of the legislation clear and to make it free from any misinterpretation, it is proposed to insert another Explanation to sub-section (1) of section 37 to further clarify that the expression "expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law", under Explanation 1, **shall include and shall be deemed to have always included** the expenditure incurred by an assessee, —

i. 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

ii. 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 guidelines, as the case may be, for the time being in force, governing the conduct of such person; or

iii. to compound an offence under any law for the time being in force, in India or outside India.

WEF 1st April 2022

Clarification on deduction of interest on actual payment

Section 43B Explanation 3C, 3CA and 3D of this section provides that a deduction of any sum, being interest payable on loan or borrowing from specified financial institution/NBFC/scheduled bank or a co-operative bank under clause (d), clause (da), and clause (e) of this section respectively, **shall be allowed if such interest has been actually paid and any interest referred to in these clauses which has been converted into a loan or borrowing or advance shall not be deemed to have been actually paid**.

Certain taxpayers are claiming deduction under section 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.

Under the provisions of this section **conversion of the outstanding interest liability into debentures** is not an actual payment and cannot be claimed as deduction.

In view of the above, it is proposed to amend Explanation 3C, Explanation 3CA and Explanation 3D of section 43B to provide that conversion of interest payable under clause (d), clause (da), and clause (e) of section 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.

WEF AY 2023-24

Clarification on deduction of interest on actual payment

S.43B Certain deductions to be only on actual payment.

…(d) any sum payable by the assessee as interest on any loan or borrowing from any public financial institution or a State financial corporation or a State industrial investment corporation, in accordance with the terms and conditions of the agreement governing such loan or borrowing, or

(da) any sum payable by the assessee as interest on any loan or borrowing from a deposit taking non-banking financial company or systemically important non-deposit taking non-banking financial company, in accordance with the terms and conditions of the agreement governing such loan or borrowing, or]

(e) any sum payable by the assessee as interest on any loan or advances from a scheduled bank or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank in accordance with the terms and conditions of the agreement governing such loan or advances, or

*Explanation 3C.—For the removal of doubts, it is hereby declared that a deduction of any sum, being interest payable under clause (d) of this section, shall be allowed if such interest has been actually paid and any interest referred to in that clause which has been converted into **a loan or borrowing** shall not be deemed to have been actually paid.*

*Explanation 3CA.—For the removal of doubts, it is hereby declared that a deduction of any sum, being interest payable under clause (da), shall be allowed if such interest has been actually paid and any interest referred to in that clause which has been converted into **a loan or borrowing** shall not be deemed to have been actually paid.]*

*Explanation 3D.—For the removal of doubts, it is hereby declared that a deduction of any sum, being interest payable under clause (e) of this section, shall be allowed if such interest has been actually paid and any interest referred to in that clause which has been converted into **a loan or advance** shall not be deemed to have been actually paid.*

Bottomline: **"*or debenture or any other instrument by which the liability to pay is deferred to a future date*" added**

Computation of interest – consequence for failure to deduct/collect tax

(i) amend sub-section (1A) of section 201 to provide that where any order is made by the Assessing Officer for the default under sub-section (1) of the said section, the interest shall be paid by the person in accordance with the order made by the Assessing Officer in this regard

(ii) amend sub-section (7) of section 206C to provide that where any order is made by the Assessing Officer for the default under sub-section (6A) of the said section, the interest shall be paid by the person in accordance with the order made by the Assessing Officer in this regard.

C. Socio-economic welfare measures
Extension of S.115BAB, S.80-IAC

- Extends date under S.115BAB(2)(a) of commencement of manufacturing or production of an article or thing, from 31st March, 2023 to 31st March, 2024.
- **Extend the period of incorporation of <u>eligible start-ups</u> to 31st March, 2023 under S.80-IAC**

C. Socio-economic welfare measures
MAT rate for co-operative societies

- To provide parity between co-operative societies and companies, S.115JC(4) modified to reduce the AMT rate at which co-operative societies are liable to pay income-tax to 15%.
  - Consequential amendment is also proposed in clause (b) of section 115JF in relation to the definition of “alternate minimum tax”.
- These amendments will take effect from 1st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years

C. Socio-economic welfare measures
IFSC tax incentives galore!

- Amend Section 10(4E) (exempting capital gains arising to a non-resident on transfer of non-deliverable forward contracts) to provide tax exemption to non-residents for income arising from transfer of off-shore derivative instruments or over-the-counter derivatives entered into with an off-shore banking unit of an IFSC as defined in Section 80LA(1).
- Amend Section 10(4F) (exempting royalties or interest received by a non-resident on lease of an aircraft) to include tax exemption to non-residents for royalties or interest income arising from lease of a "Ship" by an IFSC unit, which has commenced operations on or before March 31, 2024; "Ship" defined to mean a ship or an ocean vessel, an engine of a ship or an ocean vessel, or any part thereof.
- Amend Section 80LA(2)(d) to provide that deduction under Section 80LA(1A) is extended to income arising from transfer of "Ship" leased by an IFSC unit to any person subject to the condition that the unit has commenced operation on or before the March 31, 2024.
- Insert a new clause (4G) in Section 10 to provide tax exemption to non-residents for income arising from portfolio of securities/ financial products/ funds managed by a portfolio manager in IFSC, received in an account maintained with an off-shore banking unit in IFSC, to the extent such income is not deemed to accrue or arise in India.
- Exempt Category I or a Category II Alternative Investment Funds in IFSC from applicability of provisions of Section 56(2)(viib) (which taxes consideration received on issue of shares at premium exceeding fair market value to residents).

C. Socio-economic welfare measures
NPS subscribers for State govt. employees & 80DD

- Increase the limit of deduction under section 80CCD from 10% to 14% in respect of contribution made by the State Government to the account of its employee. Retrospective amendment from AY 2020-21 onwards.
- Allow deduction u/S 80DD upon attaining age of >= 60yrs of the individual or HUF member in whose name subscription to the scheme has been made and where payment has been discontinued.
  - And 80DD(3) shall not apply to the amount received by the dependent, before his death, by way of annuity / lump sum by application of the condition referred to in the proposed amendment.

C. Socio-economic welfare measures Covid Amendment

- S.17(2) new sub-clause in proviso to state that any sum paid by the employer in respect of any expenditure actually incurred by the employee on his medical treatment or treatment of any member of his family in respect of any illness relating to COVID-19 subject to such conditions, as may be notified by the Central Government, shall not be forming part of **"perquisite".**
- S.**56(2)(x)** two new clauses to provide that-

(i) **any sum of money 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 subject to such conditions, as may be notified by the Central Government in this behalf, shall not be the income of such person;

(ii) **any sum of money received by a member of the family of a deceased person, from the employer of the 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 twelve months from the date of death of such person, and subject to such other conditions, as may be notified by the Central Government in this behalf, shall not be the income of such person.

- "family" as defined in Explanation 1 to clause (5) of section 10.

These amendments will take effect retrospectively from 1st April, 2020 and will apply for AY2020-21 and onwards

C. Socio-economic welfare measures
Facilitate strategic disinvestment

- Amended Section 79 of the Act to provide that the provisions of sub-section (1) of section 79 shall not apply to an *erstwhile public sector* company subject to the condition that the *ultimate holding company* of such erstwhile public sector company, immediately after the completion of strategic disinvestment, continues to hold, directly or through its subsidiary or subsidiaries, at least fifty one per cent of the voting power of the erstwhile public sector company in aggregate.

D. Widening tax base
Rationalization of 206AB, 206CCA

- **Reduce 2 years to 1 year:** Amending sections 206AB and 206CCA of the Act to provide that "specified person" to mean as a person who has not filed its return of income for AY immediately preceding the FY in which tax is to be deducted or collected, as the case may be, and the amount of tax collected and deducted at source is Rs. 50,000 or more in the said previous year.
- **Individual and HUF taxpayers covered under section 194-IA, 194-IB and 194M** of the Act, S. 206AB will not apply in relation to transactions on which tax is to be deducted under these sections.
- **Bottomline: Is this a big change? Still onus on payer…..**

D. Widening tax base
Rationalization of TDS on immovable property

- TDS u/S 194-IA on transfer of an immovable property (other than agricultural land), to be deducted at the rate of 1% of such sum paid or credited to the resident or the stamp duty value of such property, whichever is higher.
  - Consideration or stamp duty value whichever is higher ☹

D. Widening tax base
S.28(iv) -> S.194R

- New S.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 a business or exercising of a profession by such resident, shall) deduct tax @ 10% of value of perquisite/benefit
  - Rs.20k threshold per year ☹
  - Individual or HUF whose gross turnover <=1 cr, profession <= 50L during preceding FY will not be hit by this
- **Yet another TDS section** 😷

D. Widening tax base
BONUS & DIVIDEND STRIPPING

- The Finance Bill, 2022 proposes to amend sub-section (8) of Section 94, to extend applicability of bonus stripping provisions to ‘securities’.
- In addition, the Explanation to the 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.
- AY 2023-24 and onwards
- Overrules Pune ITAT ruling in *Adar Poonawalla* [TS-240-ITAT-2017(PUN)] ☺

E. Revenue Mobilization
Taxation of virtual digital asset

- New S.115BBH to provide that any income from transfer of any virtual digital asset shall be taxed at the rate of 30%.
- No deduction in respect of any expenditure other than cost of acquisition) or allowance or set off of loss shall be allowed.
- No setoff/carry forward of any loss arising from transfer of virtual digital asset shall be allowed.
- With effect from AY 2023-24 and subsequent assessmet

E. Revenue Mobilization
Taxation of virtual digital asset

- S.2(47A) Virtual Digital Asset

(a) 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

E. Revenue Mobilization
Taxation of virtual digital asset

(b) a non-fungible token or any other token of similar nature, by whatever name called;

(c) any other digital asset, as the Central Government may, by notification in the Official Gazette specify:

Provided that the Central Government may, by notification in the Official Gazette, exclude any digital asset from the definition of virtual digital asset subject to such conditions as may be specified therein.

Explanation.—

For the purposes of this clause,—

(a) "non-fungible token" means such digital asset as the Central Government may, by notification in the Official Gazette, specify;

(b) the expressions "currency", "foreign currency" and "Indian currency" shall have the 21 same meanings as respectively assigned to them in clauses (h), (m) and (q) of section 2 of the Foreign Exchange Management Act, 1999.

E. Revenue Mobilization
S.194S: TDS on Virtual Digital Asset

- **1% TDS** on payment for transfer of virtual digital asset to resident.
  - Where transfer is in exchange of another digital asset or partly in kind, payer shall ensure tax has been paid in respect of such consideration
- S.194S takes precedence of S.194-O if both applicable.
- **Threshold** of Rs.50k in FY in case of specified person and Rs.10k in other cases.
  - Individual/HUF having turnover/receipts from business not exceeding Rs.1Cr or income from profession not exceeding Rs.50L and Individual/HUF having income under any head apart from business or profession.
- WEF 1st July 2022
- **Gift of VDA**: Explanation to Section 56(2)(x) to include virtual digital asset within the meaning of 'property'. Gift of VDA's taxable!
  - WEF AY 2023-24

E. Revenue Mobilization
Withdrawal of concessional tax on dividend income

- S.115BBD provides concessional 15% tax rate on dividend income received by Indian co from foreign co in which the said Indian co holds 26 % or more nominal value of equity shares.
- This rate was aligned to the rate of tax provided under section 115-O of the Act but 115-O removed in FA 2020.
- In order to provide parity in case of tax on dividends received by Indian cos from specified foreign companies *vis a vis* from domestic companies, **S.115BBD amended to provide that its shall not apply to any assessment year beginning on or after the 1st day of April, 2023.**

F. Phasing out exemptions
Withdrawal of exemption u/S 10(8/8A/8B/9)

- Withdrawal of exemption under clauses (8), (8A), (8B) and (9) of S.10
- These clauses provide for exemption to the income of an individual who is assigned duties in India in connection with any **co-operative technical assistance programmes and projects**.
  - Such co-operative technical assistance programmes and projects are required to be in accordance with an agreement entered by the Central Government and the Government of a foreign state.

G.Rationalization Measures
Faceless Scheme

Section	Faceless everything	Current deadline	New deadline
92CA	Faceless TPO	31.3.2022	31.3.2024
144C	Faceless DRP	31.3.2022	31.3.2024
253	Faceless appeal to ITAT	31.3.2022	31.3.2024
255	Faceless procedure of ITAT	31.3.2023	31.3.2024

As for notification of scheme under section 255, the Appellate Tribunal is deemed to be a civil court for all the purposes of section 195 of the Act and Chapter XXXV of the Code of Criminal Procedure, 1898. Therefore, a scheme governing the procedures to be followed by such a body needs to be formulated after due consultations with Ministry of Law & Justice. Similarly, the scheme under section 253 have to follow the scheme under section 255.

G. Rationalization Measures
Faceless Amendment

"However, various difficulties are being faced by the administration and the taxpayers in the operation of the faceless assessment procedure. In view of the above, it is proposed that the existing provisions of the section 144B of the Act may be amended to streamline the process of faceless assessment in order to address the various legal and procedural problems being faced in the implementation of the said section."

- S.144B is substituted with new S.144B(1) to (8) which streamlines the provisions.
  - The amended provisions **mandate personal hearing** if the taxpayer or his authorized representative makes requisition for the same when the tax authorities have proposed adjustments to returned income
  - The proposed provisions are applicable to regular assessment as well as reassessment cases.
  - The requirement to set-up Regional Faceless Assessment Centres is done away under proposed provisions
  - The provisions also delegates power to lay down standards, procedures and processes for effective functioning of the various centres and units.
  - Clearer drafting (avoiding terms like " final draft assessment order")
- **<u>Bottomline: End result is substantially the same.</u> Faceless is here to stay, only prayer is that it doesn't become hopeless ☺**

G. Rationalization Measures
Faceless Amendment

- *Notwithstanding anything contained in any other provision of this Act, assessment made under sub-section (3) of section 143 or under section 144 in the cases referred to in sub-section (2) [other than the cases transferred under sub-section (8)], on or after the 1st day of April, 2021, shall be non est if such assessment is not made in accordance with the procedure laid down under this section.*
  - **Omitted retrospectively w.e.f 1st April 2021**
  - "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"
  - Bottomline: retrospective omission cannot fix past errors! This is not a correct approach IMHO

G. Rationalization Measures
Faceless Amendment

- 144B(9) *Notwithstanding anything contained in any other provision of this Act, assessment made under sub-section (3) of section 143 or under section 144 in the cases referred to in sub-section (2) [other than the cases transferred under sub-section (8)], on or after the 1st day of April, 2021, shall be non est if such assessment is not made in accordance with the procedure laid down under this section.*
  - **Omitted retrospectively w.e.f 1st April 2021**
  - "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"
  - Bottomline: retrospective omission cannot fix past errors! This is not a correct approach IMHO

G.Rationalization Measures
S.68 – Source of source?

- Finance Act, 2012, it was provided that the nature and source of any sum, in the nature of share application money, share capital, share premium etc. credited in the books of a closely held company shall be treated as explained only if the source of funds is also explained in the hands of the shareholder.
- **However, in case of loan or borrowing, the judicial decisions have held that only identity and creditworthiness of creditor and genuineness of transactions for explaining the credit in the books of account is sufficient, and the onus does not extend to explaining the source of funds in the hands of the creditor.**
- It is proposed to amend the provisions of section 68 of the Act so as to provide that **the nature and source of any sum, whether in form of loan or borrowing, or any other liability credited in the books of an assessee** shall be treated as explained only if the source of funds is also explained in the hands of the creditor or entry provider.
- However, this 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.
- AY 2023-24 and beyond
  - Bottomline: Onus to explain of source of source even for loans and borrowings

G.Rationalization Measures Reassessment proceedings

- **Approval to issue notice under Section 148 shall not be required where the AO, with the prior approval of the specified authority has passed an order under Section 148A(d) that it is a fit case to issue a notice.**
- **Also proposes to omit the requirement of obtaining approval of specified authority u/S 148A(b) for providing an opportunity to show cause against reassessment to the assessee before issuance of notice u/s 148A**
- Section 149(1)(b) is proposed to be amended to provide that notice under Section 148 shall be issued only after 3 years but before 10 years where the 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.
- Proposes to clarify what constitutes information under Explanation 1 to Section 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 under Section 135A. ["faceless collection"]**
- Where information is received by AO under faceless collection of information under S.135A is proposed to be excluded from the scope of Section 148A .

G.Rationalization Measures
Reassessment proceedings – search, survey

- S.148B to provide reassessment order shall not be passed by AO of grade below JCIT in respect of assessments consequent to search, survey and requisition to reduce avoidable inaccuracies.
- S.149(1A) to provide that notice u/S. 148 to be issued for each year where income has escaped assessment.
- Amends S.132(8) and include assessment/reassessment under Section 143(3), 144 or 147 within its scope. Amend S.132B(1)(i) and 132B(4) to include assessment or reassessment or recomputation within its scope.
- Insert S.153B(4) to exclude search u/s 132 and requisition u/s 132A from its scope on or after Apr 1, 2021.
- Also proposed to amend first Proviso to S.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 Section 149(1)(b), 153A or 153C.
- Proposes to amend Section 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 the Assessee, from the period of limitation.

G.Rationalization Measures
S.79A – Set off of loss in search cases

- New S.79A in the Act to provide that consequent to a search or survey (other than S.133A(2A), the total income of any previous year of an assessee includes **any undisclosed income**, **no set off, against such undisclosed income, of any loss, whether brought forward or otherwise, or unabsorbed depreciation under sub-section (2) of section 32 shall be allowed to the assessee under any provision of this Act in computing his total income for such previous year**
  - "Undisclosed income" in this context defined
  - S.115BBE lacking in scope?

G.Rationalization Measures
New S.239A / amended S.179

- S.239A to be inserted to provide that such a person, who has made the deduction of tax under such an agreement or arrangement and borne the tax liability (i.e., gross-up), **when no tax deduction was required, may file an application for refund of such tax deducted before the Assessing Officer.**
- **S.179 "Liability of directors of private company"** title fixed finally ☺ and "fees" added in the expression "tax due" for clarity sake.

G.Rationalization Measures
Prosecution & Penalty sections

- **Transfer of Immovable Property:** The Finance Bill, 2022 proposes to amend Section 276AB to provide that no fresh prosecution cases involving transfer of immovable property (under Section 269UC, 269UE and 269UL) shall be initiated u/S. 276AB effective on or after April 1, 2022.
- The amendment in the Section has been proposed to bring it into line with the stated provisions that have been made inapplicable in the past (i.e. 2002) and as launching prosecution against offences committed 20+ years ago would be beyond reasonable time.
- **Failure to Pay Tax Collected at Source:** Recognizing the similarities between nature of offences punishable u/S. 276B and 276BB with S.278A and 278AA, the Bill proposes to amend Sections 278A and 278AA by including Section 276BB under them.
- **Penalty:** CIT(A) to have powers to levy penalty U/S.271AAB, S.271AAC, Section 271AAD pertaining to undisclosed income (pursuant to search or otherwise), unexplained credits or expenditures, or deliberate falsification or omission in books of accounts currently provided to be initiated by only AO.
- These amendments will take effect from April 1, 2022.

G.Rationalization Measures
TPO Orders can be revised

- S.263 amended to provide if PCTI/CCIT/CIT considers that any order passed by the TPO, working under his jurisdiction, **to be erroneous in so far as it is prejudicial to the interests of revenue, he may pass an order directing revision of the order of TPO**.
- S.153 consequential changes made to provide two months' time to the AO to give effect to the order of TPO consequent to the directions in the revision order.
- **Bottomline: TP 263 litigation expected to jump?**

G.Rationalization Measures
Reduction of Goodwill from block is transfer

- It is proposed to clarify that for the purposes of section 50 of the Act, **reduction of the amount of goodwill of a business or profession, from the block of asset** (in accordance with 46(3)(c)(ii)(B)) shall be deemed to be a transfer.
- Above amendment will take effect retrospectively from 1st April 2021 for AY 2021-22 in sync with goodwill amendment.
- The Memorandum also clarifies that while vide the Finance Act, 2021, the definition of “slump sale” was amended to expand its scope to cover all forms of transfer under slump sale, inadvertently, in the last sentence there is reference to the word “sales” instead of “transfer”.

G.Rationalization Measures
Provisions of Charitable Trusts & Institutions

- Trusts / Institutions are eligible to claim exemption under two regimes
  (i) Section 10(23C)(iv)/(v)/(vi)/(via) or
  (ii) Section 12AA/ 12AB.

Bottomline: The Finance Bill, 2022 proposes to rationalise the provisions related to both the exemption regimes

G.Rationalization Measures
Provisions of Charitable Trusts & Institutions

- **Books of Accounts:** Amend Section 12A(1)(b) and Section 10(23C) to introduce requirement to keep and maintain books of account and other documents in such form and manner and at such place, as may be prescribed. From AY 23-24.
- **S.271AEE Penalty:** Where if it is found that the Trust or Institution has passed on any unreasonable benefit to the trustee or any other specified person, the AO may levy a **penalty of a sum equal to the aggregate amount of income applied, directly or indirectly for benefit of person referred to in 13(3)** where the violation is noticed for the first time, **and a sum equal to 200% of the aggregate amount of income of such person applied**, directly or indirectly on violation in subsequent previous years.

G.Rationalization Measures
Specified Violation: Damocles Sword on Trusts?

- PCIT or CIT has noticed occurrence of one or more **specified violations** during any PY *or*
- PCIT or CIT has received a **reference from the AO under second proviso to S.143(3)** *or*
- **such case has been selected in accordance with the risk management strategy, formulated by the Board from time to time** then:
  - (i) call for documents, information, make inquiry
  - (ii) pass an order in writing cancelling the registration of such trust or institution, after affording a reasonable opportunity of being heard and if satisfied of specified violation having occured
  - **(iii) pass an order in writing refusing to cancel the registration of such trust or institution, if he is not satisfied about the occurrence of specified violation**
  - (iv) forward a copy of the order under clause (ii) or (iii), as the case may be, to the Assessing Officer and such trust or institution
- Order to be passed within 6 months from end of quarter in which call for documents happened.
- S.12AB(4) pari materia to S.10(23C) inserted for carrying out the above, S.143(3) amended to insert second proviso for reference by AO.

G.Rationalization Measures
Specified Violation: Definition u/S 12AB(5)

Explanation 2.—For the purposes of this proviso, the following shall mean **"specified violation",—**

(a) where any income of the fund or institution or trust or any university or other educational institution or any hospital or other medical institution **has been applied other than for the objects for which it is established**; or

(b) the fund or institution or trust or any university or other educational institution or any hospital or other medical institution **has income from profits and gains of business, which is not incidental to the attainment of its objectives** or **separate books of account are not maintained** by it in respect of the business which is incidental to the attainment of its objectives; or

(c) **any activity** of the fund or institution or trust or any university or other educational institution or any hospital or other medical institution—

(A) **is not genuine**; or

(B) **is not being carried out in accordance with all or any of the conditions subject to which it was notified or approved**; or

(d) the fund or institution or trust or any university or other educational institution or any hospital or other medical institution **has not complied with the requirement of any other law for the time being in force, and the order, direction or decree**, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality.

Bottomline: Start of an onerous regime for Trusts?

G.Rationalization Measures
Provisions of Trusts u/S 12A/B → S.10(23C)

- Amend Section 11(3) to provide that any income referred in S.11(2) which is **not utilised for the purpose for which it is accumulated** or set apart **shall be deemed to be the income of the previous year being the last previous year of the period**, for which the income is accumulated or set apart under Section 11(2)(a).
- **Accumulation provisions** of Trusts are now introduced in S.1023C to in the form of Explanation 3, 4 and 5.
- **Benefit to persons referred to in S.13(3)** has also been introduced now under S.10(23C) 21st proviso!
- **Interest payable for non-payment of tax** (S.115TD, 115TE, 115TF) to apply to S.10(23C) institutions.
- **Tax return filings of S.10(23C) institutions** under S.139(4C).

G.Rationalization Measures
Providing clarity.....in case of non-exemption

- Clarification as to What happens in case of non-availability of exemption to Trusts – for example due to late audit report
- New Section 13(10) to provide that where Section 13(8) is applicable to any Trust or Trust violates the Section 12A(1)(b)/(ba), **income chargeable to tax will be computed after allowing deduction for expenditure incurred for its objects, subject to certain conditions.**
  - Explanation to Section 10(13) to provide that for determining amount of expenditure, provisions of Section 40(a)(ia)/ 40A(3)/(3A) shall be applicable.
  - Section 13(11) to be inserted that no deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed under any other provision.
  - **Similar amendments are proposed in the context of Section 10(23C).**

G.Rationalization Measures
Trusts: Special rates of tax of “specified income”

- Section 13(1)(c) to provide that only that part of income which has been applied in violation to the provisions of the said clause shall be liable to be included in total income.
- Section 13(1)(d) is proposed to be amended to provide that only the that part of income which has been invested in violation to the provisions of the said clause shall be liable to be included in total income.
- **Section 115BBI (NEW!)** to provide that **specified income** of trust / 10(23C) institution shall be taxed at **30%** without any deduction in respect of any expenditure or allowance or set off of any loss.
- **‘Specified Income’** is defined by an Explanation to the proposed Section 115BBI to mean:

(i) **income accumulated or set apart in excess of fifteen percent of the income** where such accumulation is not allowed under any specific provisions or

(ii) **deemed income referred to in Explanation 4 to third proviso** to S.10(23C) or S.11(3) or S.11(1B); or

(iii) **any income which is not exempt** on account of violation of the provisions of **S.13(1)(c) or (d)**

(iv) **any income which is not excluded** from total income under **S.11(1)(c)**

G.Rationalization Measures
Repair of temples, Paid vs Payable, S.35(1A) donations

- **Explanation 3A to S.11(1)** to provide that that where the property held under a trust or institution includes any temple, mosque, gurdwara, church or other place notified under Section 80G(2)(b), **any amount received as a voluntary contribution for renovation or repair of such temple, mosque etc <u>maybe treated as a part of corpus</u>** subject to the fulfilment of the following conditions:

(i) applies such corpus only for the purpose for which the voluntary contribution was made;

(ii) does not apply such corpus for making contribution or donation to any person;

(iii) maintains such corpus as separately identifiable

(iv) invests or deposits such corpus in the forms and modes specified under Section 11(5)

- Explanation 3B in S.11(1) to provide where Trust has considered sum received as forming part of the corpus and subsequently any conditions are violated, such amount is deemed to be income of such trust of the FY during which the violation takes place.
- **"Paid" vs "payable"** : **Courts held application of income means actually paid** ☺
  - Explanation to S.11 make any sum **payable** by any trust shall be considered as application of income .
  - A proviso is to be inserted whereby it is provided that where during any FY, any sum has been claimed to have been applied by such trust, such sum shall not be allowed as application in any subsequent FY.
- **S.35(1A) clarified** to refer to only disallow deductions claimed donor if research institution, college etc (done) fails to file statements of donations
- **Consequential amendments to prescribed authority u/S.10(23C)**

Points to ponder

- Point and shoot judicial decisions: Govt’s prerogative
- Prospective but clarifying : The ”shall always have included” disease
- “Everything Faceless” continues
- Delegation of powers – “risk assessment strategy”
- Quiet expansion of 148a
- Shocking retrospective omission of S.144B(9)
- Onerous regime for TDS – perquisite/benefits 194R

Thanks!

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