DIRECT TAXES AMMENDMENTS

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Budget 2020 Views

The Hon'ble FM Smt. Nirmala Sitharaman has commenced her Budget Speech concerning the Direct Tax Proposals, while presenting the Finance Bill 2020, in the Parliament, on 1.2.2020, by quoting a verse from 'Raghuvamsa' by Kalidas,which reads as under:

Surya, the Sun, collects vapour from little drops of water. So does the King.

They give back copiously. They collect only for people's wellbeing.
[Verse 18, Sarga 1 Raghuvamsa by Kalidasa]

Well, the first prima-facie impression and euphoria of the Union Budget 2020, especially the Finance Bill 2020, appeared to be of one a taxpayer-pro budget, with the Queen (Read FM), giving copiously to her masses.

But is this euphoria for a real?

I have always believed that, **"Beauty & Devil Both Lie in the Details."**

So, let us put on our analytical skills at work and decode the very carefully and deeply knitted and worded legislative amendments and new insertions, as proposed in the Finance Bill 2020.

In this article,I have covered up Direct Tax changes only.

I will be happy to receive your valued feedback and suggestions.

Thanks

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(i) Incorporation of New Personal Taxation Regime of Reduced Tax Rates with No Deductions in Case of Individuals & HUFs.

In line with the new regime of reduced corporate tax rates, introduced by the Taxation Laws (Amendment) Act 2019, the Finance Bill 2020, has proposed the insertion of a new section 115BAC, providing for a new personal taxation regime in the cases of individuals and HUFs (hereinafter referred to as 'assessees'), wherein the assessees have been given the option of either to continue with the existing tax rates with full deductions, or to opt for the new regime of reduced tax rates with restrictions on approximately 70% of the deductions currently available to them under different chapters and sections.

The proposed reduced personal tax rates in the case of individuals & HUFs u/s 115BAC, in the Finance Bill 2020 are as under:

Total Income (Rs)	Rate (%)
Upto 2,50,000	Nil
From 2,50,001 to 5,00,000	5
From 5,00,001 to 7,50,000	10
From 7,50,001 to 10,00,000	15
From 10,00,001 to 12,50,000	20
From 12,50,001 to 15,00,000	25
Above 15,00,000	30

Surcharge and cess shall be continued to be levied at the existing rates.

However, there is a big catch to this prima-facie 'assessee-beneficial' regime, and that is the restriction/denial of the most common and recurring deductions like deductions u/s 80C, 80CCD, 80D, HRA, LTA, Standard Deduction, interest on self-occupied/let out property, to name a few. To be more specific, the individual or HUF opting for taxation under the newly inserted section 115BAC of the Act shall not be entitled to the following exemptions/ deductions:

- *(i) Leave travel concession as contained in clause (5) of section 10;*
- *(ii) House rent allowance as contained in clause (13A) of section 10;*
- *(iii) Some of the allowance as contained in clause (14) of section 10;*
- *(iv) Allowances to MPs/MLAs as contained in clause (17) of section 10;*
- *(v) Allowance for income of minor as contained in clause (32) of section 10;*
- *(vi) Exemption for SEZ unit contained in section 10AA;*
- *(vii) Standard deduction, deduction for entertainment allowance and*

employment/professional tax as contained in section 16;

viii) *Interest under section 24 in respect of self-occupied or vacant property referred to in sub-section (2) of section 23. (Loss under the head income from house property for rented house shall not be allowed to be set off under any other head and would be allowed to be carried forward as per extant law);*

(ix) *Additional deprecation under clause (iia) of sub-section (1) of section 32;*

(x) *Deductions under section 32AD, 33AB, 33ABA;*

(xi) *Various deduction for donation for or expenditure on scientific research contained in sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) of section 35;*

(xii) *Deduction under section 35AD or section 35CCC;*

(xiii) *Deduction from family pension under clause (iia) of section 57;*

(xiv) *Any deduction under chapter VIA (like section 80C, 80CCC, 80CCD, 80D, 80DD, 80DDB, 80E, 80EE, 80EEA, 80EEB, 80G, 80GG, 80GGA, 80GGC, 80IA, 80-IAB, 80-IAC, 80-IB, 80-IBA, etc). However, deduction under sub-section (2) of section 80CCD (employer contribution on account of employee in notified pension scheme) and section 80JJAA (for new employment) can be claimed.*

So, infact, the net tax outflow of the assessees, especially the salaried class, is coming out to be more in the newly proposed personal taxation regime of reduced tax rates, as compared to the old regime.

Further, the primary reason for introduction of this new personal taxation regime has been asserted to be simplification of tax laws, however, ironically, it is resulting in a more complicated scenario, wherein, the individuals and HUFs, like the corporates, are faced with the difficult question and choice of opting for one of the taxation regimes, in order to optimise their taxes.

<u>(ii) Restrictions on the Powers of Income Tax Appellate Tribunal (ITAT) to Grant Stay of Demand.</u>

Another significant amendment which has been proposed in the Finance Bill 2020, although not referred to in the Budget Speech is the amendment in the proviso to section 254(2A) of the Act to provide that ITAT may grant stay under the first proviso subject to the condition that the assessee deposits not less than twenty per cent of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act, or furnish security of equal amount in respect thereof.

It is pertinent to mention here that in existing provisions of section 254(2A), the ITAT was having full power to grant stay of income tax demand, even an absolute stay of demand, in deserving cases, if it finds it appropriate as per the provisions of Law. However, now this proposed amendment has made this power of ITAT to grant stay of demand, conditional on the deposition of atleast 20% of the outstanding demand by the assessee.

So, now, even in the cases of high pitched assessments, wherein assessed income is twice or more than the returned income, and wherein the legal position of grant of an absolute stay of demand, was well-settled, as per numerous binding legal precedents, this proposed amendment, will force the assessee to deposit atleast 20% of the outstanding demand, for even making his/her application for stay of demand being admitted and entertained by the ITAT. However, it needs to be seen as to whether this proposed amendment will muster the test of well-settled and established principles of Law, at appropriate appellate forums.

<u>(iii) Deeming Residential Status of a Person of Indian Origin or an Indian Citizen, who is not liable to tax in any other country or territory.</u>

By virtue of the existing provisions of section 6(1) read with clause (b) of Explanation 1 of said section provides that an individual who is an Indian Citizen or a person of Indian Origin, shall be Indian resident in a year, if he,-

- *(i) has been in India for an overall period of 365 days or more within four years preceding that year, and*
- *(ii) is in India for an overall period of 182 days or more in that year.*

In order or to prevent the perceived misuse of this provision, wherein an Individual being an Indian citizen or a person of Indian origin, carrying out substantial economic activities from India, manages the period of his stay in India for less than 182 days, so as to remain a non-resident in perpetuity and not be required to declare his global income in India, it has been proposed in the Finance Bill 2020, that-

- *(i) the exception provided in clause (b) of Explanation 1 of sub-section (1) to section 6 for visiting India in that year be decreased to 120 days from existing 182 days.*
- *(ii) an individual or an HUF shall be said to be "not ordinarily resident"*

in India in a previous year, if the individual or the manager of the HUF has been a non-resident in India in seven out of ten previous years preceding that year. This new condition to replace the existing conditions in clauses (a) and (b) of sub-section (6) of section 6.

(iii) an Indian citizen who is not liable to tax in any other country or territory shall be deemed to be resident in India.

This amendment will take effect from 1st April, 2021 and will, accordingly, apply in relation to the assessment year 2021-22 and subsequent assessment years.

Therefore, w.e.f. AY 2021-22, an Indian Citizen or a Person of Indian Origin, who is not liable to tax in any other country or territory even on account of operation of different tax treaties or tax heaven status of the countries of his stay, will be deemed to be the resident person of India, and accordingly will be taxed on his global income, in India.

<u>(iv) Penalty for False Entry/False Invoice.</u>

The Finance Bill 2020 proposes to introduce a new provision in the Act to provide for a levy of penalty on a person, if it is found during any proceeding under the Act that in the books of accounts maintained by him there is a:

(i) false entry or;
(ii) any entry relevant for computation of total income of such person has been omitted to evade tax liability.

The penalty payable by such person shall be equal to the aggregate amount of false entries or omitted entry. It has also been proposed to provide that any other person, who causes in any manner a person to make or cause to make a false entry or omits or causes to omit any entry, shall also pay by way of penalty a sum which is equal to the aggregate amounts of such false entries or omitted entry.

The connotation 'false entries', include use or intention to use –

(a) forged or falsified documents such as a false invoice or, in general, a false piece of documentary evidence; or
(b) invoice in respect of supply or receipt of goods or services or both issued by the person or any other person without actual supply or receipt of such goods or services or both; or
(c) invoice in respect of supply or receipt of goods or services or both to or from a person who do not exist. This amendment will take effect

from 1st April, 2020.

Thus, a penalty of 100% of the amount of bogus entries/purchase invoices, has been proposed in the Finance Bill 2020. It is pertinent to mention here, that in several judgements of different High Courts and even Supreme Court, it has been held that even in the cases of bogus purchase entries, the entire bogus purchase entries can't be disallowed, and only an appropriate NP rate may be added, if the purchases are correlated with the corresponding sales/closing stock. Therefore, this proposed amendment will definitely have some major repercussions, as far as the settled and established position of Law in this regard, is concerned.

(v) Tightening of Provisions concerning Registration and Exemption of Charitable Trusts, Educational Institutes, Universities, Schools, Hospitals and Other such Institutions:

It has been proposed in the Finance Bill 2020, to amend relevant provisions of the Act to provide that-

(i) *Filing of statement of donation by donee to cross-check claim of donation by donor:*
Certain provisions of the Act provide that an exempt entity may accept donations or certain sum for utilisation towards their objects or activities in respect of which the payer, being the donor, gets deduction in computation of his income. At present, there is no reporting obligation by the exempt entity receiving donation/ any sum in respect of such donation/ sum. With the advancement in technology, it is now feasible to standardise the process through which one-to-one matching between what is received by the exempt entity and what is claimed as deduction by the assessee. This standardisation may be similar to the provisions relating to the tax collection/ deduction at source, which already exist in the Act. Therefore, the entities receiving donation/ sum may be made to furnish a statement in respect thereof, and to issue a certificate to the donor/ payer and the claim for deduction to the donor/ payer may be allowed on that basis only. In order to ensure proper filing of the statement, levy of a fee and penalty may also be provided in cases where there is failure to furnish the statement.

(ii) *similar to exemptions under clauses (1) and (23C), exemption under clause (46) of section 10 shall be allowed to an entity even if it is registered under section 12AA subject to the condition that the registration shall become inoperative. If the entity wishes to make it operative in the future, it will have to file an application and then it* *would not be entitled for deduction under clause (46) from the date on which the registration becomes operative.*

(iii) *the registration under section 12AA would also become inoperative in case of an entity exempt under clause (23C) of section 10 as well, to have uniformity. The condition about making it operative again would also be similar to what is proposed for clause (46) of section 10.*

(iv) *an entity approved, registered or notified under clause (23C) of section 10, section 12AA or section 35 of the Act, as the case may be, shall be required to apply for approval or registration or intimate regarding it being approved, as the case may be, and on doing so, the approval, registration or notification in respect of the entity shall be valid for a period not exceeding five previous years at one time calculated from 1st April, 2020.*

(v) *an entity already approved under section 80G shall also be required to apply for approval and on doing so, the approval, registration or notification in respect of the entity shall be valid for a period not exceeding five years at one time.*

(vi) *application for approval under section 80G shall be made to Principal Commissioner or Commissioner.*

(vii) *an entity making fresh application for approval under clause (23C) of section 10, for registration under section 12AA, for approval under section 80G shall be provisionally approved or registered for three years on the basis of application without detailed enquiry even in the cases where activities of the entity are yet to begin and then it has to apply again for approval or registration which, if granted, shall be valid from the date of such provisional registration. The application of registration subsequent to provisional registration should be at least six months prior to expiry of provisional registration or within six months of start of activities, whichever is earlier.*

(viii) *the application pending for approval, registration, as the case may be, shall be treated as application in accordance with the new provisions, wherever they are being provided for.*

(ix) *deduction under section 80G/ 80GGA to a donor shall be allowed only if a statement is furnished by the donee who shall be required to furnish a statement in respect of donations received and in the event of failure to do so, fee and penalty shall be levied.*

(x) *similar to section 80G of the Act, deduction of cash donation u/s 80GGA shall be restricted to Rs 2,000/- only.*

These amendments will take effect from 1st June, 2020.

<u>(vi) Removal of Dividend Distribution Tax:</u>

At present dividend is taxed in the hands of company distributing such dividend u/s 115O. It has been proposed in the Finance Bill 2020, to abolish the existing dividend distribution tax @ 15% in the hands of companies and to shift to classical system of taxing dividend in the hands of recipient shareholders.

Therefore, the double taxation of the income in the form of dividends in excess of Rs 10 lakhs being taxed both in the hands of the recipient shareholders and the companies has been removed by this proposed amendment.

However, the Exchequer may receive higher taxes at the maximum marginal rate of 30% in the cases of high networth individuals earning dividend income upto Rs. 10 lakhs.

<u>(vii) Insertion of Taxpayer's Charter in the Act</u>

It is proposed to insert a new section 119A in the Act to empower the CBDT Board to adopt and declare a Taxpayer's Charter and issue such orders, instructions, directions or guidelines to other income-tax authorities as it may deem fit for the administration of Charter.

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

<u>(viii) Faceless 'e-Appeals' and 'e-Penalty'</u>

In line with the new scheme of 'faceless e-Assessments' as introduced u/s 143(3A) of the Act by the Finance Act 2018, for AY 2018-19, the Finance Bill 2020, has inserted the enabling provisions by way of insertion of new subsection (6A) in section 250 and subsection (2A) in section 274, to the Income Tax Act, so as to facilitate the incorporation of the 'new scheme of faceless e-appeals and e-penalty', respectively, to be notified in near future.

In order to make these path-breaking, radical and revolutionary initiatives of the 'faceless' and 'jurisdiction-less' 'e-assessments, e-appeals and e-penalty', effective and taxpayer friendly, it is essential and crucial to issue appropriate clarifications with regard to the exact modus operandi of the functionality of such schemes and to take suitable measures and steps to overcome the initial bottlenecks and hurdles by way of ensuring the commensurate and supporting IT infrastructure to enable seamless and smooth data transfer, incorporating standardization in the conduct of *assessments, appeals and penalty proceedings by Income Tax authorities, by implementing Standard Operating Procedures (SOPs) to do away with the subjective-ness and arbitrariness, and fixing proper and effective accountability in cases of high pitched assessments.*

So, all the stakeholders involved i.e. the taxpayers, the tax professionals, the assessing authorities, the regulatory body CBDT, the Finance Ministry and the Government should embrace these radical, revolutionary and path-breaking reforms of 'Faceless e-Assessments, e-Appeals and e-Penalty' in good and positive spirits and should work collectively and cohesively to make this initiative a grand success.

It is only then perhaps that these reforms and initiatives aimed at digital transformation of Indian Tax Administration, will really live up to their true potential, and taxpayers as well as the tax administration authorities will reap the benefits that these are supposed to provide.

<u>(ix) Incentives to Start-ups:</u>

In order to further rationalise the provisions relating to start-ups, the Finance Bill 2020 has proposed to amend section 80-IAC of the Act, so as to provide that-

(i) *the deduction under the said section 80-IAC shall be available to an eligible start-up for a period of three consecutive assessment years out of ten years beginning from the year in which it is incorporated;*
(ii) *the deduction under the said section shall be available to an eligible start-up, if the total turnover of its business does not exceed one hundred crore rupees in any of the previous years beginning from the year in which it is incorporated.*

This amendment will take effect from 1st April, 2021 and will, accordingly, apply in relation to the AY 2021-22 and subsequent assessment years.

<u>(x) Increase in Turnover Threshold Limit for Tax Audits u/s 44AB:</u>

The Finance Bill 2020 has proposed to increase the turnover threshold limit for the Tax Audits u/s 44AB, for the persons carrying on business, to Rs. 5 crores from the existing Rs.1 crore, in all those cases where, the aggregate annual cash receipts and cash payments, do not exceed 5% of their total receipts and payments respectively. However, the existing threshold limit of Rs 50 lakhs for the tax audits, for persons carrying on profession has not been increased.

(xi) Taxability of Employer contribution's

Under the existing provisions of the Act, the contribution by the employer to the account of an employee in a recognized provident fund exceeding twelve per cent of salary is taxable. Further, the amount of any contribution to an approved superannuation fund by the employer exceeding one lakh fifty thousand rupees is treated as perquisite in the hands of the employee. Similarly, the assessee is allowed a deduction under National Pension Scheme (NPS) for the 10% per cent of the salary contributed by employer. However, there is no combined upper limit for the purpose of deduction on the amount of contribution made by the employer.

The Finance Bill 2020 proposes to tax where the contributions under all these funds exceeds INR 750,000 in aggregate. Hence, employees with high salary income may need to revisit their salary package where the benefit was fully availed. Further, the Bill also proposes to tax the accretions from such funds in excess of INR 750,000 when such benefit accrues.

(xii) Extension of time limit for sanctioning of loan for affordable housing:

The existing provisions provides deduction of INR 150,000 in respect of interest on loan taken from any financial institution for acquisition of an affordable residential house property (wherein the assessee does not own any residential house property on the date of sanction of loan).

One of the conditions is that loan has been sanctioned by the financial institution during the period from 01 April, 2019 to 31 March, 2020. In order to continue promoting purchase of affordable housing, the period of sanctioning of loan by the financial institution is proposed to be extended to 31 March, 2021.

(xiii) ESOPs for start-ups

Presently, when ESOPs are provided by the employer to the employee it is taxable in two stages. Firstly, as perquisite at the time of exercise of option by the employee. Subsequently, when the ESOPs are transferred by the employee it is liable to capital gains. In order to reduce the burden of payment of taxes by the employees who obtain ESOPS from start-ups (who are eligible for deduction under section 80-IAC), the Finance Bill, 2020 proposes that the employer may deduct or pay tax on such perquisite value *within 14 days after the expiry of 48 months from the end of the relevant assessment year in which the ESOPs were given and employees have exercised the option. In case, the ESOPs are sold by the employee then tax has to be paid within 14 days from the date of sale of such shares. In case, the employee ceases to be in employment, within 14 days from the date of such exit from employment. The taxability is thus deferred to the date on which the employee has sale proceeds or ceases to be in employment. Also, in case the employee continues in employment a breather is given by prescribing 48 months from the end of the relevant assessment year in which it was allotted originally. This amendment is realistic and praiseworthy.*

(xiv) TDS on interest other than interest on securities:

Presently, interest credited or paid by a co-operative society to a member or to any other co-operative society is not liable for tax deduction at source in view of section 194A(3)(v). Similarly, interest credited or paid in respect of deposits with a primary agricultural credit society or primary credit society or co-operative land mortgage bank or co-operative land development bank is not liable for tax deduction in view of section 194A(3)(viia).

The Finance Bill, 2020 proposes to enlarge the scope of the section by providing that the co-operative societies are liable to deduct tax at source as given below:

(i) *Where the total sales, gross receipts or turnover exceeds Rs.50 crores during the financial year immediately preceding the financial year in which the interest is credited or paid; and*

(ii) *The amount of interest or the aggregate amount of interest credited or paid is more than Rs.50,000 to a senior citizen and Rs.40,000 to any other person,*

- *tax shall be deducted at source at 10%. This amount is effective from 01.04.2020.*

(xv) TDS under section 194K:

The Finance Bill, 2020 proposes to withdraw the exemption in respect of income from units of mutual fund by omitting section 10(35) w.e.f 01.04.2020. As a consequential measure it proposes to insert section 194K which was in statute book and was omitted by the Finance Act, 2003 earlier.

Section 194K proposed to be inserted provides for tax deduction at source in respect of income from units paid to resident taxpayers. Any person responsible for paying to a resident any income in respect of (i) units of a Mutual Fund specified in section 10(23D); or (ii) units from the Administrator of the specified undertaking or (iii) units from the specified company.

The tax is deductible at source @ 10% where the payment exceeds Rs.5,000. The erstwhile provision prior to its omission prescribed the threshold limit at Rs.2,500.

(xvi) Other amendments to TDS provisions:

Section 194J presently provides for tax deduction at 10% without making any distinction between fees for professional service or technical service. In order to minimize the litigation where the taxpayers deduct tax at 2% in the case of technical service, the Finance Bill, 2020 proposes an amendment. Thus where any sum is paid by way of fee for technical services (not being a professional service) tax is deductible at source @ 2% instead of 10%.

The Finance Bill, 2020 also proposes to insert TDS provisions for payments made to e-commerce operators. The tax is deductible at source @ 1% of the gross amount of such sales or services or both payable to e-commerce operator by the e-commerce participant. This amendment is also in tune with the present business practices.

(xvii)Amendment in Capital Gains:

The budget 2020 has proposed to change the rules of calculating cost of acquisition of the property.

For property bought prior to April 1, 2001, if the Fair Market Value (FMV), (provided FMV is more than actual cost of acquisition), exceeds the stamp duty value as on April 1, 2001, for the purpose of capital gain calculation it will get capped at the stamp duty value.

Thus, in such a case the capital gain (if any) on the sale of the property will increase. This would imply higher capital gain tax outgo.

Concluding Remarks:

This is yet to be seen as to whether the 'King has actually given back copiously or not', but nonetheless, a balanced approach towards accelerating the growth rate of economy via the tax reforms and simultaneously pegging the fiscal deficit to a tolerable range of 3.8% of GDP, which is slightly higher than the figure of 3.3 for the previous fiscal, has been maintained in the Finance Bill 2020.

All in all, the Union Budget 2020, is a mixed basket of carrots and sticks, aimed at encouraging voluntary compliance by taxpayers, augmenting tax revenues, widening the tax base and further streamlining of tax administration.

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