Finance Bill 2017

Direct Tax Proposals
Impact & Analysis

Kapil Goel FCA LLB Advocate
9910272806
advocatekapilgoel@gmail.com

Prelude: Recap of latest developments

- Operation Clean Money qua cash deposits post demonetization
- GAAR on door step (CBDT Circular No. 7/2017) *AY 2018-2019 (FY 2017-2018)*
- Place of effective management (POEM) (CBDT Circular No. 06/2017)*AY 2018-2019 (FY 2017-2018)*
- Section 115BBE : Taxation Amendment law 2016 (enhanced rate of taxation) FY 2016-2017 *Sections covered sec.68 to 69D*

Prelude: Recap of latest developments

- New Benami Law from 1/11/2016
- Notification No. 1/2017 Statement of financial transactions
- Penny Stock and Client Code modification assessments
- Income disclosure scheme & Search/seizure/Survey
- Finance Act 2016 new concepts: Equalization levy, Exit tax, underreporting/misreporting of income

Approach to discern the new *bill* 2017

- Importance wise and impact wise analysis
- Clause by clause analysis
- Chapter wise and Head wise

In authors view :first one is adopted here

Documents considered for this presentation

- FM Budget Speech
- Memorandum Explaining Finance Bill 2017
- The Finance Bill 2017
- Income Tax Act 1961
- Other allied/related laws etc

Major changes having significant impact

- Real estate sector/Capital Gains provisions
- Cash less/ Less Cash transaction provisions (towards digital economy)
- TDS Provisions
- Charitable Trust taxation
- ITR/ROI Filing and enquiry provisions etc
- Search, seizure and survey
- CBDT Powers
- 197(c) IDS Law : omitted

Major changes having significant impact

- Section 56 overhauled qua *gift tax*
- *Other changes*

Supreme court 2017 latest words on key rules for interpretation

- Southern Motors vs State of Karnataka (Trade discount case law) JANUARY 18, 2017

- This Court in K.P. Varghese vs. Income Tax Officer, Ernakulam and Anr. AIR 1981 SC 1922, while interpreting Section 52 of the Income Tax Act 1961 favoured an interpretation in departure from a strict literal reading thereof;
- In Commissioner of Income Tax, Bangalore Vs. J.H. Gotla Yadagiri AIR 1985 SC 1698 this Court propounded that though equity and taxation are often strangers, attempts should be made that these do not remain always so and if a construction results in equity rather than injustice, then such construction should be preferred to the literal construction

Southern Motors vs State of Karnataka (Trade discount case law)

- As would be overwhelmingly pellucid from hereinabove, though words in a statute must, to start with, be extended their ordinary meanings, but if the literal construction thereof results in anomaly or absurdity, the courts must seek to find out the underlying intention of the legislature and in the said pursuit, can within permissible limits strain the language so as to avoid such unintended mischief

GOPAL AND SONS (HUF) SUPREME COURT OF INDIA JANUARY 04, 2017.

- *"…It is, therefore, not in dispute that such a provision which is a deemed provision and fictionally creates certain kinds of receipts as dividends, is to be given strict interpretation. It follows that unless all the conditions contained in the said provision are fulfilled, the receipt cannot be deemed as dividends. Further, in case of doubt or where two views are possible, benefit shall accrue in favour of the assessee."*

Supreme court
Vatsala Shenoy
OCTOBER 18, 2016.

- Scope of Section 45 of the Act was explained in Commissioner of Income Tax, Faridabad v. Ghanshyam (HUF) (2009) 8 SCC 412…
- In para 45 of the judgment, the Court also stated that capital gains under Section 45 of the Act are not income accruing from day to day. It is deemed income which arises at a fixed point of time, viz. on the date of transfer.

Real estate sector /Capital Gains related changes

Section 2(42A): Long term/short term holding provision : capital gains

- Change:
- *"(a) in the third proviso [as inserted by section 3 of the Finance Act, 2016], after the words and brackets "a company (not being a share listed in a recognised stock exchange in India)", the words "or an immovable property, being land or building or both," shall be inserted with effect from the1st day of April, 2018;"*

Section 2(42A): Long term/short term holding provision : capital gains

- Objective behind change
- With a view to promote the real-estate sector and to make it more attractive for investment, it is proposed to amend section 2 (42A) of the Act so as to reduce the period of holding from the existing 36 months to 24 months in case of immovable property, being land or building or both, to qualify as long term capital asset

Section 2(42A): Long term/short term holding provision : capital gains

- Effective date: AY 2018-2019 Onwards
- Impact: Since it is a benevolent change, will require liberal interpretation (refer SC Sanjeev Lal 365 ITR 389)
- Only land and building included (whether lease hold rights included ? Prima facie No, refer Mumbai ITAT Atul Puranik 132 ITD 499; 68 SOT 110; 155 TTJ 294 etc in context of sec.50C)

Section 2(42A): Long term/short term holding provision : capital gains

- Impact
- Both residential and commercial properties included; Even may apply to factory building held for more than 2 years(24 months)
- Seems applies to property held as on 1/4/2017 and may not be restricted to new purchases post 1/4/2017;

Joint development agreement ("JDA") conundrum

- *Current legislative scheme*
  - *Section 2(47)(v) deemed transfer*
  - *Incorporating : Section 53A Transfer of Property Act & Registration Act* 1908,
  - *Surgical Analysi s: P&h High court in C.S.Atwal* 378 ITR 244
  - *Mumbai ITAT in* Jawaharlal L. Agicha (28/09/2016)

Change on "JDA" Section 45

- *'(5A) Notwithstanding anything contained in **sub-section (1)**, where the capital gain arises to an assessee, **being an individual or a Hindu undivided family**, from the **transfer of a capital asset, being land or building or both, under a specified agreement**, the capital gains shall be chargeable to income-tax as income of the previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority; and for the purposes of section 48, the stamp duty value, on the date of issue of the said certificate, of his share, being land or building or both in the project, as increased by the consideration received in cash, if any, shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset:*

- *Provided that the provisions of this sub-section shall not apply where the assessee transfers his share in the project on or before the date of issue of said certificate of completion, and the capital gains shall be deemed to be the income of the previous year in which such transfer takes place and the provisions of this Act, other than the provisions of this sub-section, shall apply for the purpose of determination of full value of consideration received or accruing as a result of such transfer.*

- *Explanation.—For the purposes of this sub-section, the expression—*
  (i) "competent authority" means the authority empowered to approve the building plan by or under any law for the time being in force;
- *(ii) "specified agreement" means a registered agreement in which a person owning land or building or both, agrees to allow another person to develop a real estate project on such land or building or both, in consideration of a share, being land or building or both in such project, whether with or without payment of part of the consideration in cash;*
- *(iii) "stamp duty value" means the value adopted or assessed or assessable by any authority of Government for the purpose of payment of stamp duty in respect of an immovable property being land or building or both.'.*

Object of aforesaid change in section 45(JDA)

- ***With a view to minimise the genuine hardship which the owner of land may face in paying capital gains tax in the year of transfer****, it is proposed to insert a new sub-section (5A) in section 45 so as to provide that in case of an assessee being individual or Hindu undivided family, who enters into a specified agreement for development of a project, the capital gains shall be chargeable to income-tax as income of the previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority.*
- *It is further proposed to provide that the stamp duty value of his share, being land or building or both, in the project on the date of issuing of said certificate of completion as increased by any monetary consideration received, if any, shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset.*

Impact of section 45: JDA Change

- Only overrules sub-section 1 limitedly and not entire section 45; (sub-section 2 remains where property conveted to stock in trade: refer Karnataka high court in Wipro 382 ITR 179 case)
- Targets : Arising of capital Gains (capital asset)
- In Hands of: Individual/HUF
- For : Specified agreement (which is registered) Unregistered JDA: To be tackled by prevalent legal position

Impact of section 45: JDA Change

- Year of taxability: *previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority.*
- *Substituted Consideration: stamp duty value of his share, being land or building or both, in the project on the date of issuing of said certificate of completion as increased by any monetary consideration received, if any*
- *Exception: to an assessee who transfers his share in the project to any other person on or before the date of issue of said certificate of completion.*
- *AY Applicable: 2018-2019*
- Option to challenge stamp value before DVO like section 50C etc ? Can be read into it albeit looks difficult from plain language by literal interpretation
- Whether mandatory or optional? Tricky issue (not free from doubt) Refer SC Mahendra Mills case in depreciation context;
- Whether can be deferred as per BHC decision in Hemal Raju case 68 taxmann.com 319

TDS related change to "JDA"

- 194-IC. Notwithstanding anything contained in section 194-IA, any person responsible for paying to a resident any sum by way of consideration, not being consideration in kind, under the agreement referred to in sub-section (5A) of section 45, shall at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to ten per cent. of such sum as income-tax thereon."
- (From 1/4/2017)

Shifting base year from 1981 to 2001 for computation of capital gains

- As the base year for computation of capital gains has become more than three decades old, assessees are facing genuine difficulties in computing the capital gains in respect of a capital asset, especially immovable property acquired before 01.04.1981due to non-availability of relevant information for computation of fair market value of such asset as on 01.04.1981.
- In order to revise the base year for computation of capital gains, it is proposed to amend section 55 of the Act so as to provide that the cost of acquisition of an asset acquired before 01.04.2001 shall be allowed to be taken as fair market value as on 1st April, 2001 and the cost of improvement shall include only those capital expenses which are incurred after 01.04.2001. Consequential amendment is also proposed in section 48 so as to align the provisions relating to cost inflation index to the proposed base year
- AY 2018-2019 Effective operative year

Stock in trade & Annual value section 23

- Change
- Section 23 of the Act provides for the manner of determination of annual value of house property.
- Considering the business exigencies in case of real estate developers, it is proposed to amend the said section so as to provide that where the house property consisting of any building and land appurtenant thereto is held as stock-in-trade and the property or any part of the property is not let during the whole or any part of the previous year, the annual value of such property or part of the property, for the period upto one year from the end of the financial year in which the certificate of completion of construction of the property is obtained from the competent authority, shall be taken to be nil
- This amendment will take effect from 1st April, 2018 and will, accordingly apply in relation to assessment year 2018-19 and subsequent years.
- (refer delhi high court in Ansal case which is partially overruled
- &SC Rayala case 386 ITR 500)

Section 50CA: New Provision (Anti Abuse Provision)

- 50CA. Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, **being share of a company other than a quoted share**, is less than the **fair market value of such share determined in such manner as may be prescribed**, the value so determined shall, *for the purposes of section 48*, be **deemed** to be the full value of consideration received or accruing as a result of such transfer.
- Explanation.—*For the purposes of this section, "quoted share" means the share quoted on any recognised stock exchange with regularity from time to time*, ***where the quotation of such share is based on current transaction made in the ordinary course of business.'.***

Section 50CA Object

- In order to rationalise the provisions relating to deeming of full value of consideration for computation of income under the head "capital gains", it is proposed to insert a new section 50CA to provide that where consideration for transfer of share of a company (other than quoted share) is less than the Fair Market Value (FMV) of such share determined in accordance with the prescribed manner, the FMV shall be deemed to be the full value of consideration for the purposes of computing income under the head "Capital gains"
- *Apparent clash with section 50D: Possible conflict/overlapping : Specific provision will prevail over general*
- *Only for capital gains head and section 48 purposes*
- *Presupposes consideration in presentii (section 47(ii) remains)*

Section 10(38) change **(Anti Abuse change)**

- "*Provided also that nothing contained in this clause shall apply to any income arising from the transfer of a long-term capital asset, being an equity share in a company, if the transaction of acquisition, other than the acquisition notified by the Central Government in this behalf, of such equity share is entered into on or after the 1st day of October, 2004 and such transaction is not chargeable to securities transaction tax under Chapter VII of the Finance (No. 2) Act, 2004.";*

Loss set off : IFHP Section 71 change

- Section 71 of the Act relates to set-off of loss from one head against income from another. *In line with the international best practices it is proposed to insert sub-section (3A) in the said section to provide that set-off of loss under the head "Income from house property" against any other head of income shall be restricted to two lakh rupees for any assessment year.* However, the unabsorbed loss shall be allowed to be carried forward for set-off in subsequent years in accordance with the existing provisions of the Act.
- This amendment will take effect from 1st April, 2018 and will, accordingly apply in relation to assessment year 2018-19 and subsequent years.

Loss set off : IFHP Section 71 change

- ‘(3A) Notwithstanding anything contained in sub-section (1) or sub-section (2), where in respect of any assessment year, the net result of the computation under the head “Income from house property” is a loss and the assessee has income assessable under any other head of income, the assessee shall not be entitled to set off such loss, to the extent the amount of the loss exceeds two lakh rupees, against income under the other head.’.

Section 49: Cost adoption/succession

- Sub section (7): Corresponding cost pari passu to section 45(5A) (JDA);

- Chapter XII-EB exit tax : accreted tax pasri passu FMV to be taken as per section 115TD(2)

Section 80IBA/Housing Project

- Conditions relaxed:
  - Carpet area as per Real estate regulation and development Act 2016 & not built up area
  - 30 sq mtr restriction not to apply qua chennai, delhi, kolkatta, mumbai (within 25 Kms)
  - Completion condition: existing three years to five years

Development of capital of Andhra Pradesh Change

- Section 10(37A) insterted
- '(37A) any income chargeable under the head "Capital gains" in respect of transfer of a specified capital asset arising to an assessee, being an individual or a Hindu undivided family, who was the owner of such specified capital asset as on the 2nd day of June, 2014 and transfers that specified capital asset under the Land Pooling Scheme (herein referred to as "the scheme") covered under the Andhra Pradesh Capital City Land Pooling Scheme (Formulation and Implementation) Rules, 2015 made under the provisions of the Andhra Pradesh Capital Region Development Authority Act, 2014 and the rules, regulations and Schemes made under the said Act.
- *Explanation.—For the purposes of this clause, "specified capital asset" means,—*

- *(a) the land or building or both owned by the assessee as on the 2nd day of June, 2014 and which has been transferred under the scheme; or (b) the land pooling ownership certificate issued under the scheme to the assessee in respect of land or building or both referred to in clause (a); or (c) the reconstituted plot or land, as the case may be, received by the assessee in lieu of land or building or both referred to in clause (a) in accordance with the scheme, if such plot or land, as the case may be, so received is transferred within two years from the end of the financial year in which the possession of such plot or land was handed over to him;';*

Development of capital of Andhra Pradesh: Object

- As per section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2014, the specified compensation received by the landowner in lieu of acquisition of land is exempt from income tax. The Land Pooling Scheme is an alternative form of arrangement made by the Government of Andhra Pradesh for formation of new capital city of Amaravati to avoid land-acquisition disputes and lessen the financial burden associated with payment of compensation under that Act. In Land pooling scheme, the compensation in the form of reconstituted plot or land is provided to landowners. However, the existing provisions of the Act do not provide for exemption from tax on transfer of land under the land pooling scheme as well as on transfer of Land Pooling Ownership Certificates (LPOCs) or reconstituted plot or land…..

Tax neutral conversion from preference share to equity share

- In section 47 of the Income-tax Act, with effect from the 1st day of April, 2018,—
- (b) after clause (xa), the following clause shall be inserted, namely:—

"*(xb) any transfer by way of conversion of preference shares of a company into equity shares of that company;*".

Cash less saga

Digital economy

Summary of changes

Nature of change	Impact
Restricting Cash donation	Section 80G Amended (in order to provide cash less economy and transparency..) for the words 10K, 2k substituted from AY 2018-2019
Disallowance of depreciation u/s 32 & capital expenditure u/s 35AD on cash payment	In order to discourage cash transaction even for capital expenditure, as there is no provision to disallow capital expenditure incurred in cash, section 43 & sec.35 AD are respectively amended i) Proviso inserted in **section 43(1**) **ii) Section 35AD(8)(f)** changed **Day wise limit 10K**

Summary of changes

Nature of change	Impact
Section 40A(3)	a) Limit reduced from 20K to 10K in a single day b) Expanded /additionalmode included: use of electronic clearing system through bank a/c
Section 44AD	As stated in post demonetization cbdt circular, **from AY 2017-2018** , in order to encourage small unorganized businesses to accept digital payments etc, change Made in section 44AD: 8% RATE substituted by 6% RATE qua turnover recd. thru. a/c payee cheque, bank draft, use of electronic clearing system, during previous year/on or before due date specified in section 139(1) (other mode 8% will apply)

New law of section 269ST Mode of undertaking transactions

- 269ST. No person shall receive an amount of three lakh rupees or more—
- *(a) in aggregate from a person in a day; or (b) in respect of a single transaction; or (c) in respect of transactions relating to one event or occasion from a person, otherwise than by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account:*
- Provided that the provisions of this section shall not apply to— (i) any receipt by— (a) Government; (b) any banking company, post office savings bank or co-operative bank; (ii) **transactions of the nature referred to in section 269SS;**

  (iii) **such other persons or class of persons or receipts, which the Central Government may, by notification in the Official Gazette, specify.**
- Explanation.—For the purposes of this section,—

  (a) "banking company" shall have the same meaning as assigned to it in clause (i) of the Explanation to section 269SS; (b) "co-operative bank" shall have the same meaning as assigned to it in clause (ii) of the Explanation to section 269SS.'

New law of section 269ST Mode of undertaking transactions: Section 271DA

- "271DA. (1) If a person receives any sum in contravention of the provisions of section 269ST, he shall be liable to pay, by way of penalty, a sum equal to the amount of such receipt: **Provided that no penalty shall be imposable if such person proves that there were good and sufficient reasons for the contravention.**

  (2) Any penalty imposable under sub-section (1) shall be imposed by the **Joint Commissioner.".**

New law of section 269ST Mode of undertaking transactions

- It is also proposed to consequentially amend the provisions of section 206C to omit the provision relating to tax collection at source at the rate of one per cent. of sale consideration on cash sale of jewellery exceeding five lakh rupees.

Purpose/Objective

- *In India, the quantum of domestic black money is huge which adversely affects the revenue of the Government creating a resource crunch for its various welfare programmes. Black money is enerally transacted in cash and large amount of unaccounted wealth is stored and used in form of cash. In order to achieve the mission of the Government to move towards a less cash economy to reduce generation and circulation of black money, it is proposed to insert section 269ST in the Act…*

TDS/TCS Related changes

- Section 194IB
- '194-IB. (1) ***Any person, being an individual or a Hindu undivided family (other than those referred to in the second proviso to section 194-I),*** responsible for paying to a resident any income by way of **rent exceeding fifty thousand rupees for a month or part of a month** during the previous year, shall deduct an amount equal to five per cent. of such income as income-tax thereon. (2) The income-tax referred to in sub-section (1) shall be deducted on such income at the time of credit of rent, for the last month of the previous year or the last month of tenancy, if the property is vacated during the year, as the case may be, to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier. (3) The provisions of section 203A shall not apply to a person required to deduct tax in accordance with the provisions of this section. (4) In a case where the tax is required to be deducted as per the provisions of section 206AA, such deduction shall not exceed the amount of rent payable for the last month of the previous year or the last month of the tenancy, as the case may be. **Explanation.—For the purposes of this section, "rent" means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any land or building or both.'.**

Section 194IB Object

- Therefore, under the existing provisions of the aforesaid section, an Individual and HUF, being a payer (other than those liable for tax audit) are out of the scope of section 194-I of the Act**. In order to widen the scope of tax deduction at source, it is proposed to insert a new section 194-IB in the Act to provide that Individuals or a HUF (other than those covered under 44AB of the Act), responsible for paying to a resident any income by way of rent exceeding fifty thousand rupees for a month or part of month during the previous year, shall deduct an amount equal to five per cent. of such income as income-tax thereon.** It is further proposed that tax shall be deducted on such income at the time of credit of rent, for the last month of the previous year or the last month of tenancy if the property is vacated during the year, as the case may be, to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier. **. In order to reduce the compliance burden, it is further proposed that the deductor shall not be required to obtain tax deduction account number (TAN) as per section 203A of the Act *It is also proposed that the deductor shall be liable to deduct tax only once in a previous year.*** It is also proposed to provide that where the tax is required to be deducted as per the provisions of section 206AA, such deduction shall not exceed the amount of rent payable for the last month of the previous year or the last month of the tenancy, as the case may be. **This amendment will take effect from 1st June, 2017**

Section 194J

- n section 194J of the Income-tax Act, after the third proviso and before the Explanation, the following proviso shall be inserted with effect from the 1st day of June, 2017, namely:—
- "Provided also that the provisions of this section shall have effect, as if for the words "ten per cent.", the words "two per cent." had been substituted in the case of a payee, engaged only in the business of operation of call centre.".

Section 194LA

- In section 194LA of the Income-tax Act, after the proviso and before the Explanation, the following proviso shall be inserted, namely:—
- "Provided further that no deduction shall be made under this section where such payment is made in respect of any award or agreement which has been exempted from levy of income-tax under section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.".

Section 204

- In section 204 of the Income-tax Act, after clause (iia), the following clause shall be inserted, **namely:—**
- "(iib) in the case of furnishing of information relating to payment to a non-resident, not being a company, or to a foreign company, of any sum, whether or not chargeable under the provisions of this Act, the payer himself, or, if the payer is a company, the company itself including the principal officer thereof;".

Section 206CC (1/4/2017)

- ‘206CC. (1) Notwithstanding anything contained in any other provisions of this Act, any person paying any sum or amount, on which tax is collectible at source under Chapter XVII-BB (herein referred to as collectee) shall furnish his Permanent Account Number to the person responsible for collecting such tax (herein referred to as collector), failing which tax shall be collected at the higher

  of the following rates, namely:— (i**) at twice the rate specified in the relevant provision of this Act; or**

  (ii) at the rate of five per cent.

  (2) No declaration under sub-section (1A) of section 206C shall be valid unless the person furnishes his Permanent Account Number in such declaration. **(3) In case any declaration becomes invalid under sub-section (2), the collector shall collect the tax at source in accordance with the provisions of sub-section (1). (4) No certificate under sub-section (9) of section 206C shall be granted unless the application made under that section contains the Permanent Account Number of the applicant.**

Section 206CC

(5) The collectee shall furnish his Permanent Account Number to the collector and both shall indicate the same in all the correspondence, bills, vouchers and other documents which are sent to each other.

(6) **Where the Permanent Account Number provided to the collector is invalid or does not belong to the collectee, it shall be deemed that the collectee has not furnished his Permanent Account Number to the collector and the provisions of sub-section (1) shall apply accordingly.**

(7) The provisions of this section shall not apply to a non-resident who does not have permanent establishment in India.

Explanation.—For the purposes of this sub-section, the expression "permanent establishment" includes a fixed place of business through which the business of the enterprise is wholly or partly carried on.'.

Section 206C

- (II) after sub-clause (ii), the following sub-clause shall be inserted, namely:—
- "(iii) sub-section (1F) means a person who obtains in any sale, goods of the nature specified in the said sub-section, but does not include,— (A) the Central Government, a State Government and an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State; or (B) a local authority as defined in Explanation to clause (20) of section 10; or (C) a public sector company which is engaged in the business of carrying passengers.";

Purpose of above change

- he existing provision of sub-section (1F) of section 206C of the Act, inter-alia provides that the seller who receives consideration for sale of a motor vehicle exceeding ten lakh rupees, shall collect one per cent of the sale consideration as tax from the buyer.
- In order to reduce compliance burden in certain cases, it is proposed to amend section 206C….

Section 244A: Interest on refund due to deductor

- In section 244A of the Income-tax Act,—

  (i) after sub-section (1A), the following sub-section shall be inserted, namely:—

  "(1B) Where refund of any amount becomes due to the deductor in respect of any amount paid to the credit of the Central Government under Chapter XVII-B, such deductor shall be entitled to receive, in addition to the said amount, simple interest thereon calculated at the rate of o**ne-half per cent. for every month or part of a month** comprised in the period, from the date on which—

  (a) claim for refund is made in the **prescribed form;** or

  (b) tax is paid, where refund arises on account of giving effect to an order under section 250 or section 254 or section 260 or section 262, to the date on which the refund is granted.";

Section 244A: Interest on refund due to deductor

- It is also proposed to provide that the interest shall not be allowed for the period for which the delay in the proceedings resulting in the refund is attributable to the deductor

Section 119

- . In section 119 of the Income-tax Act, in sub-section (2), in clause (a), after the figures "271", the figures and letters ",271C, 271CA" shall be inserted.
- *In order to reduce the genuine hardship which may be faced by a person responsible for deduction and collection of tax at source due to levy of penalty under section 271C or 271CA, it is proposed to insert reference of sections 271C and 271CA in the said clause, so as to empower the Board to issue directions or instructions in respect of the said sections also*.

Section 56 /Section 58 deduction in other sources

- In section 58 of the Income-tax Act, in sub-section (1A), for the word, brackets, figures and letter "sub-clause (iia)", the words, brackets, figures and letters **"sub-clauses (ia) and (iia)"** shall be substituted with effect from the 1st day of April, 2018.
- With a view to improve compliance of provision relating to tax deduction at source (TDS), it is proposed to amend the said section so as to provide that provisions of section 40(a)(ia) shall, so far as they may be, apply in computing income chargeable under the head "income from other sources" as they apply in computing income chargeable under the head "Profit and gains of business or Profession".

Charitable Trust related changes

In section 10 of the Income-tax Act,—

- (c) in clause (23C),—
- (II) after the eleventh proviso, the following proviso shall be inserted with effect from the 1st day of April, 2018, namely:—
- "Provided also that any amount credited or paid out of income of any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), to any trust or institution registered under section 12AA, being voluntary contribution made with a specific direction that they shall form part of the corpus of the trust or institution, shall not be treated as application of income to the objects for which such fund or trust or institution or university or educational institution or hospital or other medical institution, as the case may be, is established:";

Section 11

- In section 11 of the Income-tax Act, in sub-section (1), the Explanation below clause (d) shall be numbered as Explanation 1 thereof and after Explanation 1 as so numbered, the following Explanation shall be inserted with effect from the 1st day of April, 2018, namely:—
- "Explanation 2.—Any amount credited or paid, out of income referred to in clause (a) or clause (b) read with Explanation 1, to any other trust or institution registered under section 12AA, being contribution with a specific direction that they shall form part of the corpus of the trust or institution, shall not be treated as application of income for charitable or religious purposes.".

In section 12A…

- (i) after clause (aa), the following clause shall be inserted, namely:— "(ab) the person in receipt of the income has made an application for registration of the trust or institution, in a case where a trust or an institution has been granted registration under section 12AA or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996], and, subsequently, it has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, in the prescribed form and manner, within a period of thirty days from the date of said adoption or modification, to the Principal Commissioner or Commissioner and such trust or institution is registered under section 12AA;";

Section 12A

- (ii) after clause (b), the following clause shall be inserted, namely:— "(ba) the person in receipt of the income has furnished the return of income for the previous year in accordance with the provisions of sub-section (4A) of section 139, within the time allowed under that section.".
- 10. In section 12AA of the Income-tax Act, with effect from the 1st day of April, 2018,— (a) in sub-section (1), after the word, brackets and letters "clause (aa)", the words, brackets and letters "or clause (ab)" shall be inserted; (b) in sub-section (2), after the word, brackets and letters "clause (aa)", the words, brackets and letters "or clause (ab)" shall be inserted.

Object of above changes *Anti Abuse*

- .....However, donation given by these exempt entities to another exempt entity, with specific direction that it shall form part of corpus, is though considered application of income in the hands of donor trust but is not considered as income of the recipient trust. Trusts, thus, engage in giving corpus donations without actual applications. Therefore, it is proposed to insert a new Explanation to section 11 of the Act to provide that any amount credited or paid, out of income referred to in clause (a) or clause (b) of sub-section (1) of section 11, being contributions with specific direction that they shall form part of the corpus of the trust or institution, shall not be treated as application of income. It is also proposed to insert a proviso in clause (23C) of section 10 so as to provide similar restriction as above on the entities exempt under sub-clauses (iv), (v), (vi) or (via) of said clause in respect of any amount credited or paid out of their income.

Section 12A change essence

- *Further, the provisions of section 12AA of the Act provide for registration of the trust or institution which entitles them to the benefit of sections 11 and 12. It also provides the circumstances under which registration can be cancelled, one such circumstance being satisfaction of the Principal Commissioner or Commissioner that its activities are not genuine or are not being carried out in accordance with its objects subsequent to grant of registration.* ***However, at present there is no explicit provision in the Act which mandates said trust or institution to approach for fresh registration in the event of adoption or undertaking modifications of the objects after the registration has been granted****.*
- ***Therefore, it is proposed to amend section 12A so as to provide that where a trust or an institution has been granted registration under section 12AA or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996] and, subsequently, it has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, it shall be required to obtain fresh registration by making an application within a period of thirty days from the date of such adoption or modifications of the objects in the prescribed form and manner.***

- *Further, as per the existing provisions of said section, the entities registered under section 12AA are required to file return of income under sub-section (4A) of section 139, if the total income without giving effect to the provisions of sections 11 and 12 exceeds the maximum amount which is not chargeable to income-tax. However, there is no clarity as to whether the said return of income is to be filed within time allowed u/s 139 of the Act or otherwise.*
- *In order to provide clarity in this regard, it is proposed to further amend section 12A so as to provide for further condition that the person in receipt of the income chargeable to income-tax shall furnish the return of income within the time allowed under section 139 of the Act***.**

Section 13A : latest SC views

- **Writ Petition(s)(Criminal) No(s). 177/2016 MANOHAR LAL SHARMA ADVOCATE Petitioner(s) VERSUS UNION OF INDIA AND ORS 11/01/2017**
- **Having heard the petitioner, who appears in person, we are of the view, that Section 13A of the Income Tax Act, 1961, as also, Section 29A of the Representation of the People Act, 1951, are in no manner violative of the provisions of the Constitution of India.**

Legislative *understanding*

- The existing provisions of section 13A of the Act, inter-alia provides that political parties that are registered with the Election Commission of India, are exempt from paying income-tax. To avail the exemption, the political parties are required to submit a report to the Election Commission of India as mandated under sub-section (3) of section 29C of the Representation of the People Act,1951 (43 of 1951) furnishing the details of contributions received by a political party in excess of Rs.20,000 from any person. **However, under existing provisions of the Act, there is no restriction of receipt of any amount of donation in cash by a political party. Secondly, a political party is also required to file its return of income under section 139(4B) of the Act, if its income exceeds the maximum amount not chargeable to tax (without considering the exemption under section 13A). However, filing of the return is not a condition precedent for availing exemption under the said section. In order to discourage the cash transactions and to bring transparency in the source of funding to political parties , it is proposed to amend the provisions of section 13A to provide for additional conditions for availing the benefit of the said section which are as under**: *(i) No donations of Rs.2000/- or more is received otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account or through electoral bonds, (ii) Political party furnishes a return of income for the previous year in accordance with the provisions of sub-section (4B) of section 139 on or before the due date under section 139. Further, in order to address the concern of anonymity of the donors, it is proposed to amend the said section to provide that the political parties shall not be required to furnish the name and address of the donors who contribute by way of electoral bond*

Mandatory furnishing of return by certain exempt entities

- Mandatory furnishing of return by certain exempt entities
- The existing provisions of sub-section (4C) of section 139 mandate filing f return by certain entities which are exempt from the levy of income-tax.
- **In order to verify that certain entities which enjoy exemption under section 10 actually carry out the activities for which the exemption has been provided under the Act, it is proposed to provide that any person as referred to in clause (23AAA), Investor Protection Fund referred to in clause (23EC) or clause (23ED), Core Settlement Guarantee Fund referred to in clause (23EE) and any Board or Authority referred to in clause (29A) of section 10 shall also be mandatorily required to furnish a return of income.**
- This amendment will take effect from 1st April, 2018 and will, accordingly apply in relation to assessment year 2018-19 and subsequent years.

Section 56

Anti abuse Provisions

Legislative background

- Under the existing provisions of section 56(2)(vii), any sum of money or any property which is received without consideration or for inadequate consideration (in excess of the specified limit of Rs. 50,000) by an individual or Hindu undivided family is chargeable to income-tax in the hands of the resident under the head "Income from other sources" subject to certain exceptions. Further, receipt of certain shares by a firm or a company in which the public are not substantially interested is also chargeable to income-tax in case such receipt is in excess of Rs. 50,000 and is received without consideration or for inadequate consideration.
- The existing definition of property for the purpose of this section includes immovable property, jewellery, shares, paintings, etc. **These anti-abuse provisions are currently applicable only in case of individual or HUF and firm or company in certain cases. Therefore, receipt of sum of money or property without consideration or for inadequate consideration does not attract these anti-abuse provisions in cases of other assessees.**

Legislative background

- In order to prevent the practice of receiving the sum of money or the property without consideration or for inadequate consideration, it is proposed to insert a new clause (x) in sub-section (2) of section 56 so as to provide that receipt of the sum of money or the property by any person without consideration or for inadequate consideration in excess of Rs. 50,000 shall be chargeable to tax in the hands of the recipient under the head "Income from other sources". ***It is also proposed to widen the scope of existing exceptions by including the receipt by certain trusts or institutions and receipt by way of certain transfers not regarded as transfer under section 47.***
- Consequential amendment is also proposed in section 49 for determination of cost of acquisition. **These amendments will take effect from 1st April, 2017 and the said receipt of sum of money or property on or after 1st April, 2017 shall be chargeable to tax in accordance with the provisions of proposed clause (x) of sub-section (2) of section 56.**

Section 56: Deemed gift

- 29. In section 56 of the Income-tax Act, in sub-section (2),—
  III) after clause (ix), the following clause shall be inserted, namely:— '(x*) where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017,—*

  (a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;

  (b) any immovable property,—

  (A) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property; (B) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration: Provided that where the date of agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of agreement may be taken for the purposes of this sub-clause: Provided further that the provisions of the first proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account, on or before the date of agreement for transfer of such immovable property:

Section 56: Deemed gift

- Provided also that where the stamp duty value of immovable property is disputed by the assessee on grounds mentioned in sub-section (2) of section 50C, the Assessing Officer may refer the valuation of such property to a Valuation Officer, and the provisions of section 50C and sub-section (15) of section 155 shall, as far as may be, apply in relation to the stamp duty value of such property for the purpose of this sub-clause as they apply for valuation of capital asset under those sections;
- **(c) any property, other than immovable property**,— (A) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property; (B) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration:
- Provided that this clause shall not apply to any sum of money or any property received— (I) from any **relative**; or (II) on the occasion of the **marriage** of the individual; or (III) under a **will or by way of inheritance;** or (IV) in contemplation of **death of the payer or donor, as the case may be**; or (V) from any local authority as defined in the Explanation to clause (20) of section 10; or (VI) from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (23C) of section 10; or (VII) from or by any trust or institution registered under section 12AA; or (VIII) by any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10; or **(IX) by way of transaction not regarded as transfer under clause (i) or clause (vi) or clause (via) or clause (viaa) or clause (vib) or clause (vic) or clause (vica) or clause (vicb) or clause (vid) or clause (vii) of section 47.**

Section 56: Deemed gift

- Explanation.— For the purposes of this clause, the expressions "assessable", "fair market value", "jewellery", "property", "relative" and "stamp duty value" shall have the same meanings respectively assigned to them in the **Explanation to clause (vii).'**

Search Seizure Survey related changes

& Section 197(c) of IDS

Legislative understanding

- The existing provisions of clause (c) of the section 197 of the Finance Act, 2016 provide that where any income has accrued, arisen or been received or any asset has been acquired out of such income prior to commencement of the Income Declaration Scheme, 2016 (the Scheme), and no declaration in respect of such income is made under the Scheme, then, such income shall be deemed to have accrued, arisen or received, as the case may be, in the year in which a notice under sub-section (1) of section 142 or sub-section (2) of section 143 or section 148 or section 153A or section 153C of the Income-tax Act is issued by the Assessing Officer, and provisions of the said Act shall apply accordingly. In view of the various representations received from stakeholders citing genuine hardships if the said provision is made applicable, it is proposed to omit clause (c) of section 197 of the Finance Act, 2016. This amendment will take effect retrospectively from Ist June, 2016.
- **However, in order to protect the interest of the revenue in cases where tangible evidence(s) are found during a search or seizure operation (including 132A cases) and the same is represented in the form of undisclosed investment in any asset, it is proposed that section 153A relating to search assessments be amended to provide that notice under the said section can be issued for an assessment year or years beyond the sixth assessment year already provided upto the tenth assessment year if— (i) the Assessing Officer has in his possession books of accounts or other documents or evidence which reveal that the income which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in one year or in aggregate in the relevant four assessment years(falling beyond the sixth year);**

- (ii) such income escaping assessment is represented in the form of asset;(iii) the income escaping assessment or part thereof relates to such year or years.
- It is however proposed that the amended provisions of section 153A shall apply where search under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April, 2017.
- It is also proposed to consequentially amend section 153C to provide a reference to the relevant assessment year or years as referred to in section 153A.
- These amendments will take effect from Ist April, 2017.

Text of changes in statute

- 59. In section 153A of the Income-tax Act, in sub-section (1),—
- (i) in clause (a), first proviso and the second proviso, after the words "six assessment years" wherever they occur, the words "and for the relevant assessment year or years" shall be inserted; (ii) in clause (b), after the words "requisition is made", the words "and of the relevant assessment year or years" shall be inserted; (iii) in the third proviso, after the words "requisition is made", the words "and for the relevant assessment year or years" shall be inserted; (iv) after the third proviso, the following shall be inserted, namely:— '*Provided also that no notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment year or years unless— (a) the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate in the relevant assessment years; (b) the income referred to in clause (a) or part thereof has escaped assessment for such year or years; and (c) the search under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April, 2017*. **Explanation 1.—For the purposes of this sub-section, the expression "relevant assessment year" shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made. Explanation 2.—For the purposes of the fourth proviso, "asset" shall include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account**.'.

Section 132 related statutory changes

- 50. In section 132 of the Income-tax Act,—
- (i) in sub-section (1), after the fourth proviso, the following Explanation shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 1962, namely:—
- "Explanation.—For the removal of doubts, it is hereby declared that the reason to believe, as recorded by the income-tax authority under this sub-section, shall not be disclosed to any person or any authority or the Appellate Tribunal.";
- (ii) in sub-section (1A), the following Explanation shall be inserted and shall be deemed to have been inserted with effect from the 1st day of October, 1975, namely:—
- "Explanation.—For the removal of doubts, it is hereby declared that the reason to suspect, as recorded by the income-tax authority under this sub-section, shall not be disclosed to any person or any authority or the Appellate Tribunal.";

Section 132 related statutory changes

(iii) after sub-section (9A), the following sub-sections shall be inserted, namely:—

"(9B) Where, during the course of the search or seizure or within a period of sixty days from the date on which the last of the authorisations for search was executed, the authorised officer, for the **reasons to be recorded in writing**, is satisfied that for the purpose of protecting the interest of revenue, it is necessary so to do, he may **with the previous approval of the Principal Director General or Director General or the Principal Director or Director, by order in writing**, attach provisionally any property belonging to the assessee, **and for the said purpose the provisions of the Second Schedule shall, mutatis mutandis, apply.**

(9C) Every provisional attachment made under sub-section (9B) shall cease to have effect after the expiry of a period of six months from the date of the order referred to in sub-section (9B).

(9D) The authorised officer may, during the course of the search or seizure or within a period of sixty days from the date on which the last of the authorisations for search was executed, make a reference to a Valuation Officer referred to in section 142A, who shall estimate the fair market value of the property in the manner provided under that section and submit a report of the estimate to the said officer within a period of sixty days from the date of receipt of such reference

Legislative understanding

- **Reason to believe to conduct a search, etc. not to be disclosed**
- Sub-section (1) and (1A) of section 132 provide that where an authority mentioned therein, based on the information in his possession, has 'reason to believe' or 'reason to suspect' of circumstances referred to in the said sub-sections, he may authorize an authority specified therein to carry out search & seizure. Similarly, sub-section (1) of section 132A provides that the specified income-tax authority based on 'reason to believe' can authorise other income-tax authority mentioned therein to requisition from some other officer or authority to deliver books of account, documents or assets of the assessee to the income-tax authority so authorised. Confidentiality and sensitivity are the hallmarks of proceedings under section 132 and section 132A. *However, certain judicial pronouncements have created ambiguity in respect of the disclosure of 'reason to believe' or 'reason to suspect' recorded by the income-tax authority to conduct a search under section 132 or to make requisition under section 132A. It is therefore proposed to insert an Explanation to sub-section (1) and to sub-section (1A) of section 132 and to sub-section (1) of section 132A to declare that the 'reason to believe' or 'reason to suspect', as the case may be, shall not be disclosed to any person or any authority or the Appellate Tribunal.*
- These amendments will take effect retrospectively from the date of enactment of the said provisions viz. to sub-section (1) of section 132 from 1st day of April, 1962 and to sub-section (1A) of section 132 and to sub-section (1) of section 132A from 1 st day of October, 1975.

Impact on precedents (if any)

- Supreme court recent decision in Ess Dee Aluminum case Held
- **Date : 17/11/2016**

The petitioners have approached this Court on the only ground that under Section 246-A of the Income Tax Act, 1961, the Commissioner of Income Tax(Appeals) has no jurisdiction to examine the validity of the search operations carried on under Section 132 of the said Act. Learned senior counsel appearing for the petitioners has further submitted that the foundation of the assessment made hereunder is the search operations carried on against the petitioners. We are of the considered opinion that if the assessment order which is based on the search operations is under challenge, the validity of the search proceedings can also be gone into by the Commissioner of Income Tax (Appeals).

Impact on precedents (if any)

- Supreme court in Space wood case reported in 2015 (6) SCALE 291/*374 ITR 595). Detailed principles on section 132 explained*

Legislative understanding

- **In order to protect the interest of revenue and safeguard recovery in search cases**, it is proposed to insert sub-section (9B) and (9C) in the said section, to provide that during the course of a search or seizure or within a period of sixty days from the date on which the last of the authorisations for search was executed, the authorised officer on being satisfied that for protecting the interest of revenue it is necessary so to do, may attach provisionally any property belonging to the assessee with the prior approval of Principal Director General or Director General or Principal Director or Director. It has been proposed that such provisional attachment shall cease to have effect after the expiry of six months from the date of order of such attachment.
- In **order to enable correct estimation and quantification of undisclosed income held in the form of investment or property by the assessee by the Investigation wing of the Department**, it is further proposed to insert a new sub-section (9D) in the said section to provide that in a case of search, the authorised officer may, for the purpose of estimation of fair market value of a property, make a reference to a Valuation Officer referred to in section 142A, for valuation in the manner provided under that sub-section It alsoprovides that the Valuation Officer shall furnish the valuation report within sixty days of receipt of such reference.

Section 133 & Sec 133A Changes

- In section 133 of the Income-tax Act,—

  (i) in the first proviso, for the words "and the Principal Commissioner or Commissioner", the words "or the Principal Commissioner or Commissioner or the Joint Director or Deputy Director or Assistant Director" shall be substituted; (ii) in the second proviso, after the words "Director or Principal Commissioner or Commissioner", the words ", other than the Joint Director or Deputy Director or Assistant Director," shall be inserted.

- In section 133A of the Income-tax Act, in sub-section (1),—

  (i) in the long line, for the portion beginning with "at which a business or profession" and ending with "such business or profession—", the following shall be substituted, namely:— "at which a business or profession or an activity for charitable purpose is carried on, whether such place be the principal place or not of such business or profession or of such activity for charitable purpose, and require any proprietor, trustee, employee or any other person who may at that time and place be attending in any manner to, or helping in, the carrying on of such business or profession or such activity for charitable purpose—"; (ii) in the Explanation, after the words "business or profession" wherever they occur, the words "or activity for charitable purpose" shall be inserted.

Section 133C:

- In section 133C of the Income-tax Act, after sub-section (2) and before the Explanation, the following sub-section shall be inserted, namely:— "(3) The Board may make a scheme for centralised issuance of notice and for processing of information or documents and making available the outcome of the processing to the Assessing Officer."
- in order to expedite verification and analysis of the information and documents so received, it is proposed to amend section 133C to empower the Central Board of Direct Taxes to make a scheme for centralised issuance of notice calling for informationand documents for the purpose of verification of information in its possession, processing of such documents and making the outcome thereof available to the Assessing Officer for necessary action, if any..

Return filing Key changes

Section 139

- ii) in sub-section (5) [as substituted by section 67 of the Finance Act, 2016], the words "the expiry of one year from" shall be omitted
- In order to expedite assessments of the Department as proposed above, it is critical that the returns for an assessment year also freeze by the end of the assessment year. It is hence proposed to amend the provisions of sub-section (5) of section 139 to provide that the time for furnishing of revised return shall be available upto the end of the relevant assessment year or before the completion of assessment, whichever is earlier. These amendments will take effect from 1st April, 2018 and will, accordingly apply in relation to assessment year 2018-19 and subsequent years.

Section 234F

- . After section 234E of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 2018, namely:—
- "234F. (1) Without prejudice to the provisions of this Act, where a person required to furnish a return of income **under section 139**, fails to do so within the time prescribed in sub-section (1) of said section, he shall pay, by way of fee, a sum of,— (a) five thousand rupees, if the return is furnished on or before the 31st day of December of the assessment year; (b) ten thousand rupees in any other case: Provided that if the total income of the person does not exceed five lakh rupees, the fee payable under this section shall not exceed one thousand rupees.
- (**2) The provisions of this section shall apply in respect of return of income required to be furnished for the assessment year commencing on or after the 1st day of April, 2018.**".

Section 241A

- After section 241 of the Income-tax Act [as it stood immediately before its omission by section 81 of the Finance Act, 2001], the following section shall be inserted, namely:—
- *"241A. For every assessment year commencing on or after the 1st day of April, 2017, where refund of any amount becomes due to the assessee under the provisions of sub-section (1) of section 143 and the Assessing Officer is of the opinion, having regard to the fact that a notice has been issued under sub-section (2) of section 143 in respect of such return, that the grant of the refund is likely to adversely affect the revenue, he may, for reasons to be recorded in writing and with the previous approval of the Principal Commissioner or Commissioner, as the case may be, withhold the refund up to the date on which the assessment is made.".*

Section 143(1D)

- .....In order to address the grievance of delay in issuance of refund in genuine cases which are routinely selected for scrutiny assessment, it is proposed that provisions of section 143(1D) shall cease to apply in respect of returns furnished for assessment year 2017-18 and onwards.

Budget Speech para 176…

- In order to expand tax net, I also plan to have a simple one-page form to be filed as Income Tax Return for the category of individuals having taxable income upto `5 lakhs other than business income. Also a person of this category who files income tax return for the first time would not be subjected to any scrutiny in the first year unless there is specific information available with the Department regarding his high value transaction. I appeal to all citizens of India to contribute to Nation Building by making a small payment of 5% tax if their income is falling in the lowest slab of `2.5 lakhs to `5 lakhs.

Business Head Key changes

Books maintenance

- In section 44AA of the Income-tax Act, in sub-section (2), the following provisos shall be inserted with effect from the 1st day of April, 2018, namely:—
- 'Provided that in the case of a person being an individual or a Hindu undivided family, the provisions of clause (i) and clause (ii) shall have effect, as if for the words "one lakh twenty thousand rupees",
- the words "two lakh fifty thousand rupees" had been substituted: Provided further that in the case of a person being an individual or a Hindu undivided family, the provisions of clause (i) and clause (ii) shall have effect, as if for the words "ten lakh rupees", the words "twenty-five lakh rupees" had been substituted.'.

Impact in chaste words

- In order to reduce the compliance burden, it is proposed to amend the provisions of section 44AA to increase monetary limits of income and total sales or turn over or gross receipts, etc specified in said clauses for maintenance of books of accounts from one lakh twenty thousand rupees to two lakh fifty thousand rupees and from ten lakh rupees to twenty-five lakh rupees, respectively in the case of Individuals and Hindu undivided family carrying on business or profession.

Advance tax & sec.44ADA

- In respect of such assesses, they are being given further benefit in terms of paying advance tax in one installment instead of four.
- Vide Finance Act 2016, presumptive taxation regime has been extended to professionals also. Hence, it is proposed to amend the said clause (b) to provide that the assessee who declares profits and gains in accordance with presumptive taxation regime provided under section 44ADA shall also be liable to pay advance tax in one instalment on or before the 15th of March. It is also proposed to make consequential amendments in sub-section (1) of section 234C to provide that in respect of an assessee referred to in section 44ADA, interest under the said section shall be levied, if the advance tax paid on or before the 15th March, is less than the tax due on the returned income

Section 43B

- 7. In section 43B of the Income-tax Act, with effect from the 1st day of April, 2018,—
- (i) in clause (e), after the words "scheduled bank", the words "or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank" shall be inserted;
- (ii) in Explanation 4, after clause (c), the following clause shall be inserted, namely:— '(d) "co-operative bank", "primary agricultural credit society" and "primary co-operative agricultural and rural development bank" shall have the meanings respectively assigned to them in the Explanation to sub-section (4) of section 80P.'

Section 36
Increase in deduction limit in respect of provision for bad and doubtful debts

- . In section 36 of the Income-tax Act, in sub-section (1), in clause (viia), in sub-clause (a), for the words "seven and one-half per cent.", the words "eight and one-half per cent." shall be substituted with effect from the 1st day of April, 2018.

Object:In order to strengthen the financial position of the entities specified in the sub-clause (a) of section 36(1) (viia) of the Act, it is proposed to amend the said sub-clause to enhance the present limit from seven and one-half per cent. to eight and one-half per cent of the amount of the total income (computed before making any deduction under that clause and Chapter VIA).

Specified Domestic transaction

- ***41. In section 92BA of the Income-tax Act, clause (i) shall be omitted.***

Object:As a matter of compliance and reporting, taxpayers need to obtain the chartered accountant's certificate in Form 3CEB providing the details such as list of related parties, nature and value of specified domestic transactions (SDTs), method used to determine the arm's length price for SDTs, positions taken with regard to certain transactions not considered as SDTs, etc. This has considerably increased the compliance burden of the taxpayers. In order to reduce the compliance burden of taxpayers, it is proposed to provide that expenditure in respect of which payment has been made by the assessee to a person referred to in under section 40A(2)(b) are to be excluded from the scope of section 92BA of the Act. Accordingly, it is also proposed to make a consequential amendment in section 40(A)(2)(b) of the Act. These amendments will take effect from 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent years.

Carbon credits income

- ‘115 BBG. (1) Where the total income of an assessee includes any income by way of transfer of carbon credits, the income-tax payable shall be the aggregate of—
- (a) the amount of income-tax calculated on the income by way of transfer of carbon credits, at the rate of ten per cent.; and
- (b) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (a).
- (2) Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause (a) of sub-section (1).
- Explanation.—For the purposes of this section “carbon credit” in respect of one unit shall mean reduction of one tonne of carbon dioxide emissions or emissions of its equivalent gases which is validated by the United Nations Framework on Climate Change and which can be traded in market at its prevailing market price.’

Section 94B (OECD BEPS Action Plan 4)

- In view of the above, it is proposed to insert a new section 94B, in line with the recommendations of OECD BEPS Action Plan 4, to provide that interest expenses claimed by an entity to its associated enterprises shall be restricted to 30% of its earnings before interest, taxes, depreciation and amortization (EBITDA) or interest paid or payable to associated enterprise, whichever is less.
- The provision shall be applicable to an Indian company, or a permanent establishment of a foreign company being the borrower who pays interest in respect of any form of debt issued to a non-resident or to a permanent establishment of a non-resident and who is an 'associated enterprise' of the borrower. Further, the debt shall be deemed to be treated as issued by an associated enterprise where it provides an implicit or explicit guarantee to the lender or deposits a corresponding and matching amount of funds with the lender.

DTAA related International taxation changes

- 39. In section 90 of the Income-tax Act, after Explanation 3, the following Explanation shall be inserted with effect from the 1st day of April, 2018, namely:— "Explanation 4.—For the removal of doubts, it is hereby declared that where any term used in an agreement entered into under sub-section (1) is defined under the said agreement, the said term shall have the same meaning as assigned to it in the agreement; and where the term is not defined in the said agreement, but defined in the Act, it shall have the same meaning as assigned to it in the Act and any explanation given to it by the Central Government.".
- 40. In section 90A of the Income-tax Act, after Explanation 3, the following Explanation shall be inserted with effect from the 1st day of April, 2018, namely:—
- "Explanation 4.—For the removal of doubts, it is hereby declared that where any term used in an agreement entered into under sub-section (1) is defined under the said agreement, the said term shall have the same meaning as assigned to it in the agreement; and where the term is not defined in the said agreement, but defined in the Act, it shall have the same meaning as assigned to it in the Act and any explanation given to it by the Central Government."

Secondary adjustment u/s 92CE

- Sum and substance
- In order to align the transfer pricing provisions in line with OECD transfer pricing guidelines and international best practices , it is proposed to insert a new section 92CE to provide that the assessee shall be required to carry out secondary adjustment where the primary adjustment to transfer price, has been made suo motu by the assessee in his return of income; or made by the Assessing Officer has been accepted by the assessee; or is determined by an advance pricing agreement entered into by the assessee under section 92CC; or is made as per the safe harbour rules framed under section 92CB; or is arising as a result of resolution of an assessment by way of the mutual agreement procedure under an agreement entered into under section 90 or 90A.

Secondary adjustment

- Secondary adjustment" means an adjustment in the books of accounts of the assessee and its associated enterprise to reflect that the actual allocation of profits between the assessee and its associated enterprise are consistent with the transfer price determined as a result of primary adjustment, thereby removing the imbalance between cash account and actual profit of the assessee. As per the OECD's Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD transfer pricing guidelines), secondary adjustment may take the form of constructive dividends, constructive equity contributions, or constructive loans.

Misc. changes

Section 115BBDA

- in section 115BBDA of the Income-tax Act [as inserted by section 52 of the Finance Act, 2016], with effect from the 1st day of April, 2018,—

  (i) in sub-section (1), for the words "an assessee, being an individual, a Hindu undivided family or a firm", the words "a specified assessee" shall be substituted; (ii) for sub-section (3), the following Explanation shall be substituted, namely:— 'Explanation.—For the purposes of this section,— (a) "dividend" shall have the meaning assigned to it in clause (22) of section 2 but shall not include sub-clause (e) thereof; (b) "specified assessee" means a person other than,— (i) a domestic company; or (ii) a fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10; or

Section 115BBDA Change object

- With a view to ensure horizontal equity among all categories of tax payers deriving income from dividend, it is proposed to amend section 115BBDA so as to provide that the provisions of said section shall be applicable to all resident assessees except domestic company and certain funds, trusts, institutions, etc.
- This amendment will take effect from 1st April, 2018

Section 79 Legislative understanding

- In order to facilitate ease of doing business and to promote start up India, it is proposed to amend section 79 of the Act to provide that where a change in shareholding has taken place in a previous year in the case of a company, not being a company in which the public are substantially interested and being an eligible start-up as referred to in section 80 -IAC of this Act, loss shall be carried forward and set off against the income of the previous year, if all the shareholders of such company which held shares carrying voting power on the last day of the year or years in which the loss was incurred, being the loss incurred during the period of seven years beginning from the year in which such company is incorporated, continue to hold those shares on the last day of such previous year

Section 79 change

- 79. Notwithstanding anything contained in this Chapter, where a change in shareholding has taken place in a previous year,— (a) in the case of a company not being a company in which the public are substantially interested and other than a company referred to in clause (b), no loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year, unless on the last day of the previous year, the shares of the company carrying not less than fifty-one per cent. of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than fifty-one per cent. of the voting power on the last day of the year or years in which the loss was incurred;
- (b) in the case of a company, not being a company in which the public are substantially interested but being an eligible start-up as referred to in section 80-IAC, the loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year, if, all the shareholders of such company who held shares carrying voting power on the last day of the year or years in which the loss was incurred,— (i) continue to hold those shares on the last day of such previous year; and (ii) such loss has been incurred during the period of seven years beginning from the year in which such company is incorporated:
- Provisos there

Section 80IAC

- In section 80-IAC of the Income-tax Act [as inserted by section 42 of the Finance Act, 2016], in sub-section (2), for the words "five years", the words "seven years" shall be substituted with effect from the 1st day of April, 2018.
- In view the fact that start-ups may take time to derive profit out of their business, it is proposed to provide that deduction under section 80-IAC can be claimed by an eligible start-up for any three consecutive assessment years out of seven years beginning from the year in which such eligible start-up is incorporated

Section 115JAA/115JC

- (b) in sub-section (3A), for the words "tenth assessment year", the words "fifteenth assessment year" shall be substituted
- Currently, the tax credit can be carried forward upto tenth assessment years. With a view to provide relief to the assessees paying MAT, it is proposed to amend section 115JAA to provide that the tax credit determined under this section can be carried forward up to fifteenth assessment years immediately succeeding the assessment years in which such tax credit becomes allowable. Further, similar amendment is proposed in section 115JD so as to allow carry forward of Alternate Minimum Tax (AMT) paid under section 115JC upto fifteenth assessment years in case of non corporate assessee.

Assessment Time Limit

- Section 153: Change Gist
- In the effort to minimise human interface and move towards technology, massive computerisation has been carried out in the Department, which has translated into overall enhanced efficiency in the functioning of the Department. In view of the same, it is proposed to amend sub-section (1) of the said section, to provide that for the assessment year 2018-19, the time limit for making an assessment order under sections 143 or 144 shall be reduced from existing twenty-one months to eighteen months from the end of the assessment year, and for the assessment year 2019-20 and onwards, the said time limit shall be twelve months from the end of the assessment year in which the income was first assessable.

Penalty u/s 271J

- 271J. **Without prejudice to the provisions of this Act**, where the Assessing Officer or the Commissioner (Appeals), in the course of **any proceedings under this Act**, finds that an accountant or a merchant banker or a registered valuer has furnished incorrect information in any report or certificate furnished under any provision of this Act or the rules made thereunder, the Assessing Officer or the Commissioner (Appeals) **may** direct that such accountant or merchant banker or registered valuer, as the case may be, **shall pay, by way of penalty, a sum of ten thousand rupees for each such report or certificate**.
- Explanation.—For the purposes of this section,— (a) "accountant" means an accountant referred to in the Explanation below sub-section (2) of section 288; (b) "merchant banker" means Category I merchant banker registered with the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992; (c) "registered valuer" means a person defined in clause (oaa) of section 2 of the Wealth-tax Act, 1957.'.

MAT & Ind AS Convergence and syncronization

- Detailed provisions made

Thank You

Send Your Feedback at

advocatekapilgoel@gmail.com
kapilnkgoelandco@gmail.com