

Budget 2006: Procedural Amendments — A Perspective

A careful analysis of the Finance Bill, 2006 showed that the real implications indeed lay in the fine print. There have been certain amendments to sections 142 and sections 148, which show the intent of the Government to unsettle the already

serving a notice, call upon an assessee to file a return of income. Interestingly, the section does provide for a starting point for issuing a notice (i.e. at any time after the time allowed for filing return u/s 139(1)), but is silent upon the time period within

“Therefore the contention of the Assesseees that a period of limitation to issue a notice calling for the return to be u/s 142(1)(i) is in built in the scheme of the Act is sustainable. As per the said scheme, the notice has to be issued after the end of the period in section 139(1), and before the end of the relevant assessment year”

While delivering the above judgment, the Hon’ble ITAT applied CIT v Narsee Nagsee & Co. (40 ITR 307)(SC), approved Dr Vijay Kumar Datla v ACIT (58 ITD 339)(Hyd) and overruled Sheraton International Inc. v DCIT (85 ITD 110) (Del).

The provisions of section 148 calling for a return where income has escaped assessment, are more elaborate and subject to restrictions e.g. before issuing a notice u/s 148, the AO must have reasons to believe that income has “escaped assessment”, which must be based on material and not on the fancies of the AO. The procedure for issuing of notice u/s 142(1), on the other hand, are more straight forward. It is probably with this convenience associated in issuing notice u/s 142(1)(i), that this section is proposed to be amended, so as to provide that the AO may now serve a notice calling for a return of income, even after the end of the relevant assessment year. This amendment

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The Budget 2006 has neither imposed any new taxes, nor has raised any tax rates, which is a welcome change from earlier years. It would, however, not be out of place to mention that the recent trend has been to move towards a “no or minimum exemption tax regime”, consequently roping in maximum income into the tax net. This is evident from the increased rate of Minimum Alternative Tax (MAT) to 10% (excluding surcharge and education cess), and also taxing the exempted long-term capital gains (u/s 10 (38)) by including the same in computing book profits for MAT purposes. [Such a levy on companies which are legitimately not liable to pay any tax, seems to be unjustified, especially with Indian economy slated to grow at nearly 10%.]

settled position of law and are likely to have a far-reaching impact. This article deals with these amendments in these sections, and also lists certain other important ones related to assessment procedures and filing of returns under the IT Act.

Time limit for service of notice calling for returns u/s 142

Section 142 of the Act deals with ‘Inquiry before assessment’. The section currently states that where no return has been filed by the assessee within the time limits prescribed u/s 139(1) of the Act, the AO may, by

which such notice is to be served on the assessee. In a recent ruling of the Delhi Spl. Bench in the case of Motorola Inc. v DCIT (95 ITD 269) (Del) (SB), the hon’ble ITAT ruled that a notice u/s 142(1) calling for a return of income could only be served before the end of the relevant assessment year. Income shown pursuant to a return filed after the end of the assessment year could only be termed as ‘income escaping assessment’, which could be assessed having recourse to specific and detailed provisions provided under the Act, i.e. u/s 147/ 148. The Hon’ble ITAT held:

would be applicable from AY 2006- 2007 onwards, and would apply from financial year beginning 1st April 2005. Incidentally, by this proposed amendment, the legislature has sought to restore the original provision 142(1)(i), as enacted way back in 1987 (w.e.f. 1st April, 1989).

To regularize the action of the AOs where the notices had already been issued beyond 12 months in earlier years, a further proviso has been proposed to be inserted with retrospective effect from 1st April 1990, to provide that wherever a notice calling for a return has been served after the end of the relevant assessment year, such notice would be a valid notice.

The direct consequence of the proposed amendment is, that the AO can now serve a notice calling for a return of income at any time before the time prescribed u/s 153 for completing the assessment. To take an extreme example, the AO would now be empowered to serve notices calling for returns, even up to one day prior to the last date of completion of assessments, though in such circumstances, it would not stand that test of natural justice.

Notices calling for information for making reassessments – valid even if served after 12 months

During reassessments/ assessment proceedings initiated pursuant to notices issued u/s section 148, the revenue authorities need to call for information by issuing notices u/s 143(2) of the Act. As per the existing provisions, such a notice cannot be issued beyond a period of 12 months from the end of the month in which the re-

turn is furnished. In Raj Kumar Chawla and Ors vs ITO (92 TTJ 1245) (94 ITD 1) (Del)(SB), it was held that, a return filed in pursuance of a notice issued u/s 148 would be treated as filed u/s 139, by way of a legal fiction. Once it is so, all subsequent procedures, including issue of notice u/s 143(2) within 12 months from the date of filing of return, would automatically follow.

Under the proposed amendment, the time period for service of notice u/s 143(2) for the purposes of assessment / reassessment u/s 147/ 148 is proposed to be extended beyond 12 months, for returns filed (pursuant to section 148) between October 1, 1991 to September 30th 2005. The amendment will take effect retrospectively from 1st October 1991.

This appears to be an unorthodox and a classic instance, where, the legislature having itself enacted that no notice can be issued beyond 12 months u/s 143(2), is now suggesting that what it said in clear words, was not what it meant. This is all the more baffling, as it appears that the time limit of 12 months would continue to apply to notices u/s 143(2) in respect of all prospective returns filed on or after 1st October 2005.

Reduction of time limits for completion of assessments/ reassessments

With a view to collect the tax demands arising from completion of assessments/ reassessments within the financial year, amendments have been proposed so as to reduce the prescribed time limits for completion of assessments/reassessments in respect income tax, FBT,

search cases and wealth tax by three months i.e. from 31st March to 31st December. To illustrate, this would mean that an assessment u/s 143(3) initiated for AY 2004-2005, which was to be completed by 31st March 2007, are now required to be completed on or before 31st December 2006. These amendments have been proposed to sections 153& 153B of the IT Act, and section 17A of the Wealth tax Act, and would be effective 1st June 2006.

Scheme for furnishing Return of Income through Tax return preparers (TRP)

With a view to simplify the tax procedures, especially the filing of returns by TRPs, a new Scheme is proposed to be introduced (new Section 139B). The scheme is yet to be notified and is to apply to non-corporate assesses (excluding those subject to audit u/s 44AB). TRPs would be individuals authorized to act as such under the Scheme framed under this section. Legal practitioners, accountants and certain scheduled bank officers have been specifically excluded from the definition of TRPs.

Other Proposed Amendments relating to Assessment / Filing of returns

- One by six scheme of filing returns has been omitted from AY 2006-2007
- CBDT has been given wide powers to dispense with any condition leading to defective return for specified class of assesses
- Provision for suo moto issue of PAN has been introduced
- Quoting of PAN has been made mandatory in quarterly TDS/TCS returns. □