The Finance Bill, 2012 – Proposed Amendments In Provisions Relating to Various Deductions

In this article, amendments made by the Finance Bill 2012, in the areas of business expenditure and deductions under chapter VI-A of the Income Tax Act, 1961 have been highlighted. The article also analyses all amendments in respect of business expenditure with particular attention to investment-linked incentive u/s 35 AD, new deductions for expenditure on agricultural extension project and skilled development, rationalisation of the provision 40(a)(ia) and the far reaching amendment in Section 40A(2). All the amendments in Chapter VI-A particularly amendments in Sections 80C, 80D and 80-IA and the new provision of Section 80 TTA have also been discussed. Read on…

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The Finance Bill, 2012 presented on 16th March, 2012 contains 112 clauses relating to various direct tax proposals seeking to modify certain existing provisions and insert certain new provisions. In this article an attempt is made to analyse the proposed amendments in provisions relating to various deductions from business income and deductions under Chapter VI-A.

Allowance for Additional Depreciation for Power Sector Under Section 32(1)(iia)

Section 32(1)(iia) provides for additional depreciation @ 20% of cost of new plant and machinery to an assessee engaged in manufacture or production of any article or thing. As an incentive to power sector the benefit of additional depreciation has been proposed to be extended to any assessee engaged in generation or generation and distribution of power with effect from Assessment Year 2013-14.

Extension of Period for Claiming Weighted Deduction of 200% for In-house Scientific Research Expenditure Incurred by a Company engaged in Business of Bio-technology or Manufacturing Any Article Under Section 35(2AB)

As per the existing provision the deduction is available for expenditure incurred upto 31st March, 2012. The said period is proposed to be extended from 31st March, 2012 to 31st March, 2017.

Weighted deduction for capital expenditure on certain specified businesses under Section 35AD and extension of such deduction to new specified businesses

At present investment-linked 100% deduction (i.e. deduction for capital expenditure for business) is

provided under Section 35AD to assessees engaged in eight specified businesses. Initially, three specified businesses were covered by the Finance (No.2) Act, 2009. Thereafter, three more specified businesses were brought within the scope of this section by the Finance Act 2010. The Finance Act, 2011 extended the benefit of this section to two more specified businesses. The Finance Bill, 2012 proposes to bring three more businesses within the scope of Section 35D. These are business of setting up and operating an inland container depot or a container freight station notified/ approved under the Customs Act, 1962, business of bee-keeping and production of honey and beeswax and business of setting up and operating warehousing facilities for storing sugar.

Deduction for capital expenditure (other than cost of land, goodwill and financial instruments) is proposed to be enhanced from 100% to 150% for assessees engaged in the five specified businesses viz. (a) setting up and operating cold chain facility, (b) setting up and operating warehousing facility for storing agricultural produce, (c) building and operating hospital with minimum 100 beds for patients, (d) developing and building affordable housing projects under prescribed scheme and (e) production of fertilizers in India. Weighted deduction will be effective from assessment year 2013-14.

At present 100% of capital expenditure is allowed to assessee engaged in setting up and operating hotel of 2-star and above category. It is proposed that the owner shall be deemed to have been carrying on such specified business even if the operation of such business is transferred to another person. This proposal has been made in recognition of the fact that in hotel industry there is franchise business system where the owner may get the hotel operated by another entity under outsourcing arrangement.

New provision regarding weighted deduction for expenditure on agricultural extension project

For encouraging the business enterprises to provide better and effective agricultural extensive services a new Section 35CCC is proposed to be inserted with effect from assessment year 2013-14 to provide that where an assessee incurs any expenditure on agricultural extension project notified by the CBDT, the assessee shall be entitled to claim weighted deduction at 1.5 times of such expenditure.

New provision regarding weighted deduction for expenditure on skill development for company assessee

In National Manufacturing Policy notified by the Department of Industrial Policy and Promotion it was proposed to provide tax incentive for skill development in manufacturing sector. In terms of such proposal new Section 35CCD is being inserted with effect from assessment year 2013-14 to provide that where a company incurs any expenditure (other than cost of land or building) on any notified skill development project, it will be entitled to claim weighted deduction at 1.5 times of such expenditure. It appears that capital expenditure other than cost of land/building qualifies for such deduction.

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Rationalisation of the provision relating to disallowance of expenditure under Section 40(a)(ia)

The amendment for Rationalisation of the provision relating to disallowance of expenditure under Section 40(a)(ia) is in consequence of the amendment in Section 201. As per the proposed amendment if the payer fails to deduct the whole or any part of the tax as per the provision of Chapter XVII-B on the amount paid to any resident payee, the payer shall not be deemed to an assessee in default in respect of such tax, if the following conditions are satisfied:

(a) The payee has furnished his return of income under Section 139;

(b) He has included such income in the return of income;

(c) He has paid the tax due on the income declared in such return of income

(d) The payer furnishes a certificate of chartered accountant in prescribed form.

The date of payment of taxes by such payee shall be deemed to be the date of filing of his return of income.

Accordingly, as per the proposed amendment in Section 40(a)(ia) where an assessee fails to deduct whole or part of tax at source on any sum but is not deemed to be an assessee in default under Section 201(1), then for the purpose of Section 40(a)(ia) the assessee shall be deemed to have deducted and paid the tax on such sum on the date of filing of the return of income by the resident payee and

therefore, no disallowance under Section 40(a)(ia) shall be made.

Amendment of the provision of Section 40A (2) in respect of payment made to interested persons

This amendment is in consequence of the amendment in the provisions relating to transfer pricing from assessment year 2013-14. As per the amended Section 92 even any income arising from specified domestic transaction shall also be computed having regard to the Arm's length price, where the aggregate amount of such transactions exceeds in the previous year exceeds ₹5 crores. As per the proposed new Section 92BA "specified domestic transaction" shall include any expenditure for which payment has been made to interested persons referred to in Section 40A(2)(b).

Presently, Section 40A(2) provides that where an assessee incurs any expenditure in respect of which payment has been or is made to any person specified in clause (b) therein and if the Assessing Officer is of the opinion that the payment is excessive or unreasonable, having regard to the fair market value of goods or services received, such excess amount shall be disallowed. It is now proposed that disallowance on account of any expenditure, being excessive or unreasonable, having regard to the fair market value shall not be made under Section 40A (2), if such transaction is at arm's length price as defined in Section 92F. Thus, if the payment made to interested person referred to in Section 40A(2) exceeds the arm's length price computed under prescribed method (like comparable uncontrolled price method, cost-plus method, retail price method, etc.), the excess amount shall be liable to be disallowed .

Change in presumptive taxation provision under Section 44AD

As per the existing provision in case of eligible assessee engaged in eligible business a sum equal to 8% of turnover or gross receipts or any higher sum is deemed to be income from such business, where turnover or gross receipts does not exceed Rs. 60 lakhs. The said limit of turnover or gross receipts is proposed to be enhanced to ₹1 crore from assessment year 2013-14.

It is also proposed that this scheme of presumptive taxation shall not apply to a person carrying on profession specified in Section 44AA, a person earning commission or brokerage and a person carrying on business of agency.

Modification of certain provisions in Chapter VI-A

At present deduction under Section 80C is allowed in respect of payment of life insurance premium, if the premium amount does not exceed 20% of the actual capital sum assured. It is now proposed that from assessment year 2013-14 deduction will be allowed, if the premium amount does not exceed 10% of capital sum assured. For this purpose, "capital sum assured" means the minimum amount assured under the insurance policy on happening of the insured event at any time during the term of the policy without considering the value of any premium agreed to be returned or any benefit by way of bonus or otherwise over the sum actually assured.

Benefit of deduction under Section 80D in respect of medical insurance premium is allowable upto maximum amount of ₹15,000 and in case of senior citizen, upto ₹20,000. The effective age of a senior citizen is proposed to be reduced from 65 years to 60 years from assessment year 2013-14. Similar amendment is proposed in Section 80DDB.

Benefit of Section 80D shall also be available in respect of payment for preventive health check up upto maximum amount of ₹5,000. However, this deduction is within the overall limit of ₹15,000/₹20,000. Payment for preventive health check up can be made in cash.

Deduction under Section 80G in respect of donation shall not allowed from assessment year 2013-14 for donation in cash for a sum exceeding ₹10,000.

Similarly, deduction under Section 80GGA in respect of donation for scientific research or rural development shall not be allowed from assessment year 2013-14, if the payment for such donation is made in cash for a sum exceeding ₹10,000.

As per the provision of Section 80-IA profit of eligible undertaking is computed after adjustment of profit of such undertaking in respect of inter-undertaking transfer of goods or services and also transfer of goods or services from/to related party. At present such adjustment is made on the basis of the open market price of such goods or services. It is proposed that from assessment year 2013-14 that adjustment for inter-undertaking transfer of goods and services shall be made on the basis of open market price. or the arm's length price as defined in Section 92F, where the transfer of such goods or services is between related parties.

New provision in Chapter VI-A for deduction in respect of interest on savings account

A new Section 80 TTA is proposed to be inserted from assessment year 2013-14 to provide for deduction to individual and Hindu Undivided Family in respect interest on savings account maintained with bank, a cooperative bank and post office for maximum amount of ₹10,000 from gross total income. ■