Budget Sprinklers—Direct Taxes

"Change is what advents development". 28th February, 2015 saw the change by the declaration of the annual union budget for the period of 2015-16. The newly-elected Modi government delivered its interim budget in July' 14 with minor amendments promising a proliferating budget in February which was very clear in the statement of the Hon'ble Finance Minister Mr. Arun Jaitely that "it would not be wise to expect everything that can be done or must be done to be in the first budget presented within forty five days of the formation of this government". The annual budget brought something or the other thing for all, but the people were not fully satisfied as it is a human tendency to ask for more and more. The budget embraced all the issues starting with incentivising corporate and middle class tax payers to curbing black money to promoting domestic manufacturing to improvising investment climate in India to environmental and social issues like Swachh Bharat, Clean Ganga, Beti Bachao etc. Every change has its pros and cons thus, increasing service tax rate may raise concerns of the tax payers but it has a positive side which cannot be ignored, as "Every cloud has a silver lining". The number of amendments brought out by the Finance Bill, 2015 is substantial, thus, only certain important aspects have been analysed and unveiled in this article. The measures to promote ease of doing business/dispute resolution and rationalisation provisions are the salient features of the budget which are elucidated in detail as follows:

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I. Measures to Promote Ease of Doing Business/Dispute Resolution

a) Raising the income limit of the cases that may be decided by single member bench of ITAT—Effective from 01.06.2015–Clause 64

Presently, Section 255(3) provides that the President or any other member of the Appellate Tribunal authorised in this behalf by the Central Government may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member and which

A new sub-Section (2A) to 234B has been inserted so as to provide that where an application under sub-Section (1) of Section 245C for any assessment year has been made, the assessee shall be liable to pay simple interest at the rate of one percent for every month or part of a month compromised in the period commencing on the 1st day of April of such assessment year and ending on the date of making such application, on the additional amount of income tax referred to in that sub-Section.

pertains to an assessee whose total income as computed by the Assessing Officer in the case does not exceed ₹5,00,000. This limit of rupees five lakhs was last revised in 1998, the Finance Bill, 2015 has proposed to increase it to ₹15 lakh by clause 64 of the finance bill w.e.f. 1st day of June 2015.

In view of the limited number of single member benches formed and the increased earning capacity of middle class taxpayers, the proposed amendment will lead to faster dispute resolution and disposal of small cases. The amendment has not clarified that whether all the cases filed prior to 1st day of June 2015 will also be transferred to single member bench.

b) Procedure for appeal by revenue when an identical question of law is pending before Supreme Court—Effective from 01.06.2015-Section 158AA-Clause 39

Section 158A of the Income-tax Act provides that if an assessee wishes to apply the identical question of law pending in his own case before the High Court or Supreme Court for another assessment year and if the Assessing Officer or any appellate authority agrees to apply the final decision on the question of law in that earlier year to the present year, he will not agitate the same question of law once again for the present year before higher appellate authorities, as and when the decision on the question of law becomes final, it will be applied for earlier year's case to the relevant year's case also. However, there is no such similar provision for revenue not to file appeal for subsequent years if the department is already in appeal on the same or identical question of law for an earlier year, and revenue keeps on filing appeals till the case is decided by the Supreme Court thus, leading to multiplicity of litigation for both revenue and assessee.

In order to reduce such avoidable litigations, it is proposed to insert a new Section 158AA by clause 39 so as to provide that where any question of law arising in the case of an assessee for any assessment year is identical with a question of law arising in his case for another assessment year which is pending before the Hon'ble Supreme Court, in an appeal or in a special leave petition under Article 136 of the Constitution filed by the revenue, against the order of the Hon'ble High Court in favour of the assessee, the Commissioner or Principal Commissioner may, instead of directing the Assessing Officer to appeal to the Appellate Tribunal under sub-Section (2) or sub-Section (2A) of Section 253, direct the Assessing Officer to make an application to the Appellate Tribunal in the prescribed form within 60 days from the date of receipt of order of the Commissioner (Appeals) stating that an appeal on the question of law arising in the relevant case may be filed when the decision on the question of law becomes final in the earlier case. This direction is subject to acceptance of assessee. It is pertinent to note that under Section 158A the assessee can use the option for his case pending before the Hon'ble High Court or the Hon'ble Supreme Court, whereas the proposed insertion of Section 158AA can be utilised by the Department only if the SLP or an appeal is lying before Hon'ble Supreme Court only and not both, the Supreme Court or High Court.

Further, sub-Section (3) of Section 158AA proposes to provide that where the order of the Commissioner (Appeals) is not in conformity with the final decision on the question of law in the other case (if the Hon'ble Supreme Court decides the earlier case in favour of the Department), the Commissioner or Principal Commissioner may direct the Assessing Officer to file appeal to the Appellate Tribunal against such order within 60 days from the date on which the order of Hon'ble Supreme Court is communicated to the Commissioner or Principal Commissioner and save as otherwise provided in the said Section 158AA, all other provisions of Part B of Chapter XX shall apply accordingly.

The proposed insertion clearly indicates the government's intention and efforts taken to look into the minute details of the prevailing system which has lead to multiple and never ending avoidable litigations. Hence, this is an appreciable proposal to reduce enormous number of litigations.

II. Rationalisation Measures

A) amendments in the provisions of settlement commission—effective from 01.06.2015-clauses 56, 57, 58, 59, 60, AND 61

(i) Section 234B (2A)–interest for defaults in payment of advance tax in case of re-assessment and where additional income is disclosed before the settlement commission under Section 245C

A new sub-Section (2A) to 234B has been inserted so as to provide that where an application under sub-Section (1) of Section 245C for any assessment year has been made, the assessee shall be liable to pay simple interest at the rate of one percent for every month or part of a month compromised in the period commencing on the 1st day of April of such assessment year and ending on the date of making such application, on the additional amount of income tax referred to in that subsection. Further, where as a result of an order of the settlement commission under sub-Section (4) of Section 245D for any assessment year, the amount of total income disclosed in the application under sub-Section (1) of Section 245C is increased, the assessee shall be liable to pay simple interest at the rate of one percent for every month or part of a month compromised in the period commencing on the 1st day of April of such assessment year and ending on the date of such order, on the amount by which the tax on the total income determined on the basis of such order exceeds the tax on the total income disclosed in the application filed under sub-Section (1) of Section 245C. This amendment is being made to confirm the judicial pronouncements in the cases of *Sahitya Mudranalaya (P) Ltd. (1995)–79 Taxmann 463 (ITSC) & Akbar Travels of India (P) Ltd. vs. ITSC (2010) 332* ITR 572 (Bombay) and also to clarify the dispute regarding period and quantum of

interest under Section 234B in the case of *Brij Lal vs. CIT (2010) 328 ITR 477 (SC).*

(ii) Section 245A (b)—Changes proposed in definition of "case"

The existing provision contained in Section 245A(b) defines a "case" for the purpose of Chapter XIX-A as any proceeding for assessment under this Act, of any person in respect of any assessment year or assessment years which may be pending before an Assessing Officer on the date on which an application under Section 245C(1) is made.

- **Clause (i) of Explanation to Section 245A(b)**
- At present the assessee becomes eligible to approach Settlement Commission only for the assessment year for which notice under Section 148 has been issued. In order to obviate the need for issue of notice in all such assessment years for commencement of pendency, it is proposed to amend clause (i) of the said Explanation to provide that where a notice under Section 148 is issued for any assessment year, the assessee can approach Settlement Commission for other assessment years as well even if notice under Section 148 for such other assessment years has not been issued. However, a return of income for such other assessment years should have been furnished under Section 139 of the Act or in response to notice under Section 142 of the Act. In short , an application under Section 245C (1) can be made for other assessment years which can be opened under Section 148, even if no proceeding is pending in respect of those years.
- **Clause (iv) of Explanation to Section 245A (b)**

The existing provision contained in clause (*iv*) of the *Explanation* provides that a proceeding for any assessment year, other than the proceedings of assessment or reassessment referred to in clause (*i*) or clause (*iii*) or clause (*iiia*), shall be deemed to have commenced from the 1st day of the assessment year and concluded on the date on which the assessment is made.

The Finance Bill, 2015 proposes to amend clause (*iv*) of the *Explanation* to provide that a proceeding for any assessment year, other than the proceedings of assessment or reassessment referred to in clause (*i*) or clause (*iii*) or clause (*iiia*), shall be deemed to have commenced from the date on which a return of income is furnished under Section 139 or in response to notice under Section 142 and concluded on the date on which the assessment is made or on the expiry of two years from the end of relevant assessment year, in a case where no assessment is made. In short, filing of return before Assessing officer is now required.

(iii) Section 245D—Rectification of order passed under Section 245D(4)

The existing provision contained in Section 245D (6B) provides that the Settlement Commission may, at any time within a period of six months from the date of the order, it is proposed to amend sub-Section (6B) of Section 245D to provide that the Settlement Commission may, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-Section (4),

(a) At any time within a period of six months from the end of month in which the order was passed;

(b) on an application made by the Principal Commissioner or Commissioner or by the assessee before the end of period of six months from the end of month in which the order was passed, at any time within a period of six months from the end of month in which such application was made.

There is an inadvertent error in the memoranda explaining the proposals of Finance Bill, which does not mention about the option given to "assessee" to apply for rectification. The Finance Bill, 2015 however provides the same and as such additional time for disposal of rectification petition will be available for both department and assessee's application.

The Settlement Commission by the Finance Bill, 2015 proposes to amend the said sub-Section (1) of Section 245H so as to provide that the Settlement Commission while granting immunity to any person shall record the reasons in writing in the order passed by it as it was found by some of the Courts that the detailed reasoning was not given in the order under Section 245D (4).

(iv) Section 245H—Power of Settlement Commission to grant immunity from prosecution and penalty and section 245HA–Abatement of proceeding before settlement commission

The Settlement Commission by the Finance Bill, 2015 proposes to amend the said sub-Section (1) of Section 245H so as to provide that the Settlement Commission while granting immunity to any person shall record the reasons in writing in the order passed by it as it was found by some of the Courts that the detailed reasoning was not given in the order under Section 245D (4). The Finance Bill, 2015 also proposes the said sub-Section to provide that where in respect of any application made under Section 245C, an order under sub-Section (4) of Section 245D has been passed without providing the terms of settlement the proceedings before the Settlement Commission shall abate on the day on which such order under sub-Section (4) of Section 245D was passed. The amendment is consequential to amendment proposed in Section 245H and has been proposed to make "non-speaking orders" null and void. This amendment will cast a greater responsibility on members of Settlement Commission while passing the final order under Section 245D (4).

(v) Section 245K—Bar on subsequent application for settlement

The present provision of Section 245K provides that where an application of a person has been allowed to be proceeded with under Section 245D(1), then such person shall not be subsequently entitled to make an application before Settlement Commission. It further provides that in certain situations the person shall not be entitled to apply for settlement before Settlement Commission.

The restriction is presently applicable to person/entity specific. Therefore, an individual who has approached the Settlement Commission once can subsequently approach again through an entity controlled by him. This defeats the purpose of restricting the opportunity of approaching the Settlement

To bring simplicity and to avoid challenging the issue of notice under Section 148 by not the appropriate authority the Finance Bill, 2015 proposes to provide that no notice under Section 148 shall be issued by an assessing officer up to four years from the end of relevant assessment year without the approval of Joint Commissioner and beyond four years from the end of relevant assessment year without the approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner. This amendment will simplify the complexity of existing provision *vis-à-vis* assessment under Section 143(3) or otherwise.

Commission only once for any person. Accordingly, the Finance Bill, 2015 proposes to amend Section 245K to provide that any person related to the person who has already approached the Settlement Commission once, also cannot approach the Settlement Commission subsequently. The related person with respect to a person means,-

(i) where such person is an individual, any company in which such person holds more than 50 % of the shares or voting power at any time, or any firm or association of person or body of individual in which such person is entitled to more than 50 % of the profits at any time, or any Hindu undivided family in which such person is a Karta;

(ii) where such person is a company, any individual who held more than 50 % of the shares or voting power in such company at any time before the date of application before the Settlement Commission by such person;

(iii) where such person is a firm or association of person or body of individual, any individual who was entitled to more than 50 % of the profits in such firm, association of person or body of individual, at any time before the date of application before the Settlement Commission by such person;

(iv) where such person is a Hindu undivided family, the Karta of that Hindu undivided family.

These proposed amendments are having far reaching impact and sometimes may result in debarring a person unnecessarily by a person or entity not having a substantial interest in the management and affairs of the entity. Legislative amendments should have also been proposed for not treating an application as a proper application , unless and until the person holding more than 50% interest as provided in the proposed amendment in Section 245K, concurs or approves to file an application before Settlement Commission.

(vi) Section 132B—Application of seized or requisitioned assets

The existing provision contained in Section 132B of the Income-tax Act, does not specifically provides adjustment of cash seized against the liability arising out of application to be filed under Section 245C (1) and the ***cash is seized at the time of search remains in PD account of CIT, for want of clarity. The ICAI had time and again suggested that appropriate instruction be issued to remove this hardship.***

The Finance Bill, 2015 proposes to amend Section 132B to provide that the asset seized under Section 132 or requisitioned under Section 132A may also be adjusted against the amount of liability arising on an application made before the Settlement Commission under Section 245C (1). This amendment will help assessees to utilise the provisions of settlement commission in cases of large cash seizure.

B) Section 153C—Assessment of Income of a Person Other Than the Person in Whose Case Search Has Been Initiated or Books of Account, Other Documents or Assets Have Been Requisitioned—Effective From 01.06.2015- Clause 36

Disputes had arisen in Section 153C, due to the interpretation of the words "belongs to" in respect of a document as for instance when a given document seized from a person is a copy of the original document. Accordingly, the Finance Bill, 2015 proposes to amend the aforesaid section to provide that notwithstanding anything contained in Section 139, Section 147, Section 148, Section 149, Section 151 and Section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing belongs to, or any books of accounts or documents seized or requisitioned pertain to, or any information contained therein, **relates to, any person**, other than the person referred

to in Section 153A, then the books of accounts or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of Section 153A.

The amendment has been proposed to overcome Judgements in *Tanvir Collections (P.) Ltd. vs. Asst. CIT [2015] 54 taxmann.com 379 (Delhi-Trib.), Pepsico India Holdings (P.) Ltd. vs. Asst. CIT [2014] 50 taxmann.com 299 (Delhi), Natural Products Bio Tech Ltd. vs. Dy. CIT [2015] 53 taxmann.com 400 (Delhi-Trib.), Pepsi Foods (P.) Ltd. vs. Asst. CIT [2014] 52 taxmann.com 220 (Delhi), CIT vs. Meghmani Organics Ltd. [2013] 40 taxmann.com 31 (Gujarat) wherein it was held* that recording of satisfaction by the Assessing Officer that articles or documents which are seized or requisitioned belong to a person other than person searched is the precondition for initiating assessment against such other person under Section 153C. One cannot be sure, as to how effective this proposed amendment will be, in resolving the issues being faced by genuine assessees.

C) Section 151—Simplification of Approval Regime for Issue of Notice for Re-Assessment under Section 148—Effective From 01.06.2015-Clause 35

Section 151 provides for sanction before issue of notice for reassessment of income under Section 148. Under certain specified circumstances, the Assessing Officer is required to obtain sanction before issue of notice under Section 148. Section 151 specifies different sanctioning authorities based on-

(i) whether scrutiny under sub-Section (3) of Section 143 or Section 147 has been made earlier or not,

(ii) whether notice is proposed to be issued within or after four years from the end of relevant assessment year, and

(iii) The rank of the Assessing Officer proposing to issue notice.

To bring simplicity and to avoid challenging the issue of notice under Section 148 by not the appropriate authority the Finance Bill, 2015 proposes to provide that no notice under Section 148 shall be issued by an assessing officer upto four years from the end of relevant assessment year without the approval of Joint Commissioner and beyond four years from the end of relevant assessment year without the approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner. This amendment will simplify the complexity of existing provision *vis-à-vis* assessment under Section 143(3) or otherwise.

D) Amount of Tax Sought To Be Evaded For the Purposes of Penalty for Concealment of Income Under Section 271(1)(Iii)—Effective From 01.04.2016- Clause 68

As per Section 271(1) (c) penalty for concealment of income or furnishing inaccurate particulars of income is levied on the "amount of tax sought to be evaded", which has been defined, *inter-alia*, as the difference between the tax due on the income assessed and the tax which would have been chargeable had such total income been reduced by the amount of concealed income.

Problems had arisen in the computation of amount of tax sought to be evaded where the concealment of income or furnishing inaccurate particulars of income occurs in the computation of income under provisions of Section 115JB or 115JC of the Act and also under the provisions other than the provisions of Section 115JB or 115JC of the Act (hereafter referred as general provisions). Further, courts have held that penalty under Section clause (c) of sub-Section (1) of Section 271 cannot be levied in cases where the concealment of income occurs under the income computed under general provisions and the tax is paid under the provisions of Section 115JB or 115JC of the Act.

Tax paid under the provisions of Section 115JB or 115JC over and above the tax liability arising under general provisions is available as credit for set off against future tax liability. Understatement of income and the tax liability thereon under general provisions results in larger amount of such credit becoming available to the assessee for set off in future years. Therefore, where concealment of income, as computed under the general provisions, has taken place, penalty under Section 271(1)(c) should be leviable even if the tax liability of the assessee for the year has been determined under provisions of Section 115JB or 115JC of the Act.

Accordingly, the Finance Bill, 2015 proposes to amend Section 271 of the Act so as to provide that the amount of tax sought to be evaded shall be the summation of tax sought to be evaded under the general provisions and the tax sought to be evaded under the provisions of Section 115JB or 115JC. However, if an amount of concealment of income on any issue is considered both under the general provisions and provisions of Section 115JB or 115JC then such amount shall not be considered in computing tax sought to be evaded under provisions of Section 115JB or 115JC. Further, in a case where the provisions of Section 115JB or 115JC are not applicable, the computation of tax sought to be evaded under the provisions of Section 115JB or 115JC shall be ignored.

The proposed amendment is in the backdrop of the judgements of the Hon'ble High Courts in *CIT vs. Jindal Polyester & Steel Ltd. [2014] 52 taxmann.com 259 (Allahabad) and Unison Hotels Ltd. vs. Dy. CIT [2013] 40 taxmann.com 237 (Delhi)* where it was held that when taxable income is computed on book profits under Section 115JB, there cannot be imposition of

In order to provide effective deterrence against delay in furnishing of both TDS/TCS statement, the Finance Act, 2012 inserted Section 234E in the Act to provide for levy of fee for late furnishing of TDS/TCS statement. The levy of fee under Section 234E of the Act has proved to be an effective tool in improving the compliance in respect of timely submission of TDS/TCS statement by the deductor or collector. The Finance Bill, 2015 proposes to amend the provisions of section 200A of the Act so as to enable computation of fee payable under Section 234E of the Act at the time of processing of TDS statement under Section 200A of the Act which was not there earlier.

penalty under Section 271(1) (c) for additions made under normal provisions.

E) Section 200A, 206C And 206CB– Rationalisation on Provisions Relating To TDS & TCS- Effective From 01.04.2016- Clause 51, 53, 54

In order to provide effective deterrence against delay in furnishing of both TDS/TCS statement, the Finance Act, 2012 inserted Section 234E in the Act to provide for levy of fee for late furnishing of TDS/TCS statement. The levy of fee under Section 234E of the Act has proved to be an effective tool in improving the compliance in respect of timely submission of TDS/TCS statement by the deductor or collector. The Finance Bill, 2015 proposes to amend the provisions of Section 200A of the Act so as to enable computation of fee payable under Section 234E of the Act at the time of processing of TDS statement under Section 200A of the Act which was not there earlier.

Currently, the provisions of sub-Section (3) of Section 200 of the Act enable the deductor to furnish TDS correction statement and consequently, Section 200A of the Act allows processing of the TDS correction statement. Whereas no provision exists for allowing a collector to file correction statement in respect of TCS statement which has been furnished. Section 206C is, therefore, proposed to be amended so as to allow the collector to furnish TCS correction statement. Similarly, the proposed provision shall also incorporate the mechanism for computation of fee payable under Section 234E of the Act.

Conclusion

Concluding the article with the fact that a budget has never been and can never be ideal and flawless for all the stakeholders at the same time as it is the blueprint of government's revenue collection which cannot function without levying taxes. Hence, one cannot blame the budget for the same, because it aims at doing good at large by sheathing all the varied needs of the society. ■