



Analysis of Finance Bill 2022 Salient aspects

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Charitable Trusts/institutions -12A

- Stringent penalty for misuse of funds by trustees 13(1)(c)- 271AAE provides for penalty. To the extent of income applied for the first-time offence and twice the income if such misuse is repeated
- At present 12AB(4) authorizes CIT to cancel registration if the activities are not genuine or are not in accordance with its objectives. New (4) authorizes CIT to cancel the registration if there is any specified violation, as under:
 - application other than for its objectives
 - separate books not maintained for its business which is incidental to its charitable activities
 - spending by religious Trusts for private religious purpose which does not enure for benefit of the public
 - charitable trust spending for religious purpose
 - activity not genuine or not being carried on in accordance with all or any of the conditions
 - not complied with any other law which non-compliance has not been disputed or has attained finality
- Order cancelling registration to be passed within 6 months from the first notice by CIT

Charitable Trusts/institutions -10(23C)

- Stringent penalty for misuse of funds by trustees 21st proviso- 271AAE provides for penalty. To the extent of income applied for the first-time offence and twice the income if such misuse is repeated
- New Explanation 2 to the 15th proviso to 10(23C) authorizes CIT to cancel the registration if there is any specified violation, as under:
 - application other than for its objectives
 - separate books not maintained for its business which is incidental to its activities
 - activity not genuine or not being carried on in accordance with all or any of the conditions
 - not complied with any other law which non-compliance has not been disputed or is confirmed
- Order cancelling registration to be passed within 6 months from the first notice by CIT

Consistency in two exemptions 10(23C)/11

- Accumulation of income >15% - Like 10(23C) unspent amount of 12AB Trusts will henceforth be taxed in the 5th year and not 6th year.
- Statement of accumulation >15% - Like in 11(2) specified statement to be filed and amount to be invested in 11(5) modes and if any non-compliance occurs within 5 years will be treated as income of that year. AO can authorize spending for a cause not mentioned in the statement. Cannot be paid to another Trust or institution.
- Application for personal benefit- Like in section 13, institutions under 10(23C) using income for personal benefit will be added to its income of the relevant previous year
- Exit tax- Chapter XII-EB provisions made applicable to 10(23C) also
- Return of income- Like in the case of sec 11, institutions under 10(23C) also to file Returns on due date itself to avail exemption for that year

Consistency in two exemptions 10(23C)/11

- Where commercial activity is undertaken for general public activity- sec 2(15) proviso, income to be computed after allowing revenue expenditure (other than depreciation on assets which is claimed as application) which is not spent from corpus or loans or donations after applying 40A(3) and 40(a)(ia) ----why not 40(a)(i)??? No set-off is allowed
- Similarly, 10(23C) institutions liable tax under its 10th, 12th or 18th proviso. To compute its income accordingly
- For unreasonable benefit given to sec 13(3) persons, now provides for denial of entire exemption irrespective of actual benefit. It is proposed to restrict to such part of income so applied. Similar provision in 10(23C) also proposed. Similarly for investment in modes other than 11(5).
- Such income (called specified income) to be taxed at 30% under the new 115BBI without any deduction or set-off
- Application will henceforth be allowed only when paid and not shown as payable .
Applicable from AY 22-23

Specified income- Defined in 115BBI

- Accumulation > 15% not spent within five years
- Deemed income- (i)outside objects application or ceases to be accumulated, not invested in 11(5) modes (ii) not utilised for the purpose for which accumulated (iii) paid out of accumulation to another charitable entity
- Not exempt income- if invested in prohibited investments specified in 3rd Proviso to 10(23C) or 13(1)(d)
- Not excluded from exemption- such income or property which is used by trustees or associates as defined under 13(3)
- Spent outside India- which is not exempted under 11(1)(c)

Voluntary contribution for renovation of the precincts of religious intuitions

- Similar amendments in 10(23C) and 11(1)
- Voluntary contribution for repair or renovation can be treated as Corpus to be used specifically for that purpose
 - not to be used for making contribution to another person,
 - to maintain as separately identifiable funds,
 - to invest in 11(5) modes
- If subsequently violates these conditions to be treated as income of that year (it appears that it is not specified income..hence can be applied)
- Retrospectively from AY 21-22

Litigation management on an identical question

Section 158AB

- Identical question of law should be pending before the jurisdictional HC or SC, in the case of the same assessee or another assessee
- Collegium (of 2 or more CITs) to decide and inform the CIT not to file appeal at this stage before the ITAT or HC
- CIT to file prescribed application before ITAT(within 60 days) or HC (within 120 days)that appeal may be filed when the decision on such question of law attains finality in the other case
- Assessee to file an acceptance letter regarding question of law
- If the question of law is in favor of department AO to file appeal before ITAT or HC, within 60 days from communication of the order of HC or SC in the other case in accordance with the procedure specified by CBDT

Retrospective amendment effecting tax liability

- Cess will not be allowed as a deduction from AY 05-06. It is tax u/s 40(a)(ii) since it is levied by central government
 - Two High Courts and various Tribunal decisions overruled
 - Reliance is placed heavily on ITAT Kolkata decision in favor of Dept
- Disallowance u/s 14A to be made even if exempt income has not been earned. Clarificatory and hence retrospective in operation. Also, 14A to apply notwithstanding anything to the contrary contained in the Act
- Expenses incurred for any purpose which is an offence or prohibited by law will not be allowed under section 37. Clarificatory Explanation added to disallow if it is illegal in respect of the recipient (like Doctors' freebies) or if it is not permitted outside India or any expenditure for compounding an offence

Promoting Voluntary Tax Compliance and reducing litigation

- Updated Return under section 139(8A) within 24 months from the end of the relevant Asst Year
- It cannot be filed for the benefit of the assessee, to claim loss or reducing tax liability or increasing refund due to the assessee
- Ineligible assessee are- where search, requisition or survey is already initiated. That year and two preceding Asst years not possible
- Eligible but prohibited from filing- Once filed an updated Return, assessment proceedings initiated, AO has information relating to money laundering, benami, FEMA etc which is communicated to the assessee, information under 90 or 90A treaty is received and communicated, prosecution initiated
- Additional tax to be paid- Tax, interest or fee, as applicable, on such income additionally disclosed + 25% before completion of 12 months from the end of the relevant AY or 50% after completion of 12 months.

Faceless Assessment- Section 144B

- NaFAC to assign the case selected for faceless assessment to AU and to intimate the assessee
- AU to serve the notice on the a' through NaFAC and the reply received to be forwarded to NaFAC
- AU can make request through NaFAC for enquiry or verification by VU or determination of ALP/valuation by TU
- Show cause notice regarding income/loss variation proposal to be sent to the a' and his reply to be considered
- Thereafter AU to sent the income/loss determining proposal to NaFAC
- NaFAC can either accept it or sent to a RU for their review report
- AU can either accept or reject the review report of RU and prepare a draft report

Faceless Assessment- Section 144B

- TP or foreign company cases draft order should be sent to the a' for him to approach DRP u/s 144C, if he has objection to variations made
- In other cases, AU to prepare the final assessment order
- NaFAC to serve the final assessment order, penalty/demand notice
- NaFAC to transfer all electronic files to the jurisdictional AO
- Faceless assessment shall be made in respect of persons/class of persons, incomes/class of incomes, cases/class of cases or territorial area as may be specified by CBDT
- Process of electronic communication detailed in the section
- Personal hearing, if requested by a' to be permitted through video. No such option to AU
- 142(2) audit can be initiated by the AU by the CIT in charge of NaFAC
- To take effect from 1/4/22.
- Sub-section 144B (9) making the proceedings void deleted from 1/4/21

Set-off of loss or depreciation against undisclosed income

- At present no set-off of loss or depreciation is allowed against income added under sections 68, 69, 69B etc whereas it is allowed against undisclosed income detected in search, survey or requisition
- New section 79A inserted to provide that no such set-off shall be permitted against income detected as a result of search initiated under 132, requisition made under 132A or survey initiated conducted under 133A(other than 133A(2A)-TDS)
- Undisclosed income defined to include money or valuable asset or entry in the books of account/other documents/transactions as also false expenses claim which would have remained undetected but for such proceedings

Business reorganization

- Section 170 provides that in respect of succession in business predecessor should be assessed for the period after succession
- Where HC, NCLT or IBC decides on succession with retrospective date new section 170(2A) provides that assessment done on the successor will be deemed to have been done on the predecessor
- New section 170A allows the successor to file a modified Return in the specified form, relating to the period between the date of effectivity of the order and the date of issuance of final order of the competent authority, within 6 months of the order

Relaxation for commencement of production and AMT/Surcharge

- 115BAB- Reduced 15% tax for new manufacturing companies incorporated after 1-10-2019 extended to 31-3-2024 from 31-3-2023
- 80IAC- Eligible startups - Deduction of 100% of profit for any three consecutive years out of 10 years. extended to 31-3-2023 from 31-3-2022
- Surcharge on LTCG on transfer of all assets reduced to 15%
- AMT payable by co-operative societies reduced to 15% from 18.5%

Benefits to employees and individuals

- Limit of NPS contribution for 80CCD, payable by central government employees is 14% whereas it is 10% for state government employees. From AY 20-21 state government employees can also go up to 14%
- 80DD deduction allowed for depositing with LIC etc to get annuity for disabled dependents, will not be added to the income of the guardian/parent during their lifetime if withdrawn on the dependent attaining the age of 60 and further deposit is stopped
- Receipt by an employee: Any sum paid by the employer for Covid treatment of the employee or any family member will not be treated as perq under 17(2)
- Receipt by any person: Sum of money received for his Covid treatment or for any family member from any person will not be taxed under other sources
- Receipt by a family member of a deceased person: Sum of money received by a family member of a deceased person will not be taxed under other sources, if received within 12 months of the death. No limit for receipt from the employer of the deceased and 10 lacs in other cases

Amendments relating to TDS/TCS

- 206AB and 206CCA requiring double deduction for non-filers of Returns reduced to one year from two years
 - TDS on sale of immovable property has to be of the higher of sale value or stamp duty value under section 194IA.
 - From 1/7/22 TDS to be affected on perquisite of business or profession exceeding Rs 20,000 under section 194R at 10%. Applies to payment in kind also. If payer has TO < 1 cr, TDS not required.
- Whether money payment covered? (No255 Taman 355 SC M&M)
Whether travel expenses of family members covered? (No 5 SOT 311 David Dhawan – director of a movie) If not deducted, disallowance under section 40(a)(ia) will attract

Taxation of virtual digital assets

- Definition added in section 2(47A)
- 30% on the income on its transfer without any allowance, deduction or set-off other than cost of acquisition
- Loss cannot be set-off against any other income or cannot be carried forward
- TDS at 1% of such sum (not on income) on transfer, from 1/7/22
- Gift of virtual digital asset is taxable u/s 56(2)(X)
- Not answered: whether switching between currencies attract tax, whether loss of earlier years can be set-off in AY 23-24

Refund of Tax wrongly paid in respect of a non-resident

- At present section 248 requires the person who paid the tax wrongly to approach the CIT(A)
- New section 239A requires the person who paid the tax and claiming that it was wrong, should approach the AO for refund. If rejected can appeal before CIT(A) u/s 246A.

Unexplained cash credit

- At present source of credit in the books of the assessee relating to share capital requires to be proved by the assessee. When the credit is towards loan or borrowing assessee is not required to prove the source. Identity, credit worthiness and genuineness only requires to be proved
- Section 68 is proposed to be amended to align the requirement with share capital.
- Such credits in the names of well regulated entities such as VCF or similar entities registered with SEBI

Rationalization of (re)assessment provisions

- Proviso inserted in 148 to provide that requirement for approval to issue notice under 148 is not required. 148A already provides for conditions before the issue of 148 notice including approval 148A(d)
- Information for issue of 148 notice to include audit objection regarding assessment completed, information received under 90/90A, information received under 135A (being faceless collection of information) any information which require action consequence to the order of Tribunal or court
- A few other amendments made to make the legislative intention clear

Proposals under CGST

- Two-way communication relating to ITC done away
- ITC can be availed if it is not restricted by the Supplier. Hence recipient has to take up with the matter with the Supplier to obtain credit
- ITC can be claimed upto 30th of Nov of the next fiscal
- Credit note can also be issued upto 30th of Nov
- ITC claim on provisional basis done away. ITC can be availed on self assessment basis subject to such conditions as may be prescribed

Restrictions reg claim of ITC

- Section 49 of the CGST Act is being amended so as to:
 - provide for prescribing restrictions for utilizing the amount available in the electronic credit ledger;
 - allow transfer of amount available in electronic cash ledger under the CGST Act of a registered person to the electronic cash ledger under the said Act or the IGST Act of a distinct person;
 - provide for prescribing the maximum proportion of output tax liability which may be discharged through the electronic credit ledger.

Restrictions regarding Refund

Section 54 of the CGST Act is being amended so as to:

- explicitly provide that refund claim of any balance in the electronic cash ledger shall be made in such form and manner as may be prescribed;
- provide the time limit for claiming refund of tax paid on inward supplies of goods or services or both under section 55 as two years from the last day of the quarter in which the said supply was received;
- extend the scope of withholding of or recovery from refunds in respect of all types of refund;
- provide clarity regarding the relevant date for filing refund claim in respect of supplies made to a Special Economic Zone developer or a Special Economic Zone unit by way of insertion of a new sub-clause (ba) in clause (2) of Explanation thereto.



Thank you