



## Rationalization of Provisions of Audit, Presumptive Taxation, Issue of Notice and Assessment, Safe Harbour Arising from Budget-2021

CA. Kishor Phadke

In the historic Budget-2021, the Honourable Finance Minister has addressed number of issues which loom large from a very detailed narrative Memorandum of 79 pages. Here is an attempt to deal with some of the provisions assigned to me.

### Section-43CA – Clause-10 of the Finance Bill, 2021 (relating to safe harbour)

As per proposed amendment to section 43CA, safe-harbour limit of 10% of consideration is proposed to be raised to 20% of the transfer consideration. In the Press-release (part of Aatma Nirbhar Bharat Package 3.0 dated 13th Nov 2020), CBDT has declared intent to make legislative amendment to this effect. The said promise has been given effect to now. The increased limit of 20% is extended for providing boost to pursuit of liquidating unsold inventory of the developers. Clear intent is to give a impetus to quick sale / transfer of flats from the unsold inventory. This is indeed a welcome measure considering the slow-down in the realty sector at present. It is relevant to note, no parallel amendment in made in section 50-C of the ITA, 1961. Further, four cumulative conditions are injected i.e.

- Eligibility to only “residential unit”
- Period of transfer is between 12th Nov 2020 till 30th June 2021
- Coverage of only “first time allotment” and

- Consideration being less than ₹ 2 CR

As such, intent is clear that, the said safe-harbour limit of 20% is only for developers or those assesses for whom, sale of residential units is a business. Though a welcome provisions, some issues of concern also creep in.

Issue-1 – A buyer may book the flat today, but transfer may happen after 30th June 2021 (due to say, loan getting delayed or legal compliances result into consumption of crucial time, etc.). In such cases, though, intent of the amendment gets fulfilled, procedure of satisfaction of all conditions in a cumulative manner remains unfulfilled. uncertainty remains at the end, as to availability of the safe-harbour limit of 20%.

Issue-2 – Though not expressly retrospective, whether, this amendment will act retroactive. For example, assume a case where, a residential unit was allotted in (say) year 2018 where, difference between stamp duty value and consideration was (say) 18% and the said residential unit gets transferred in the above referred period (i.e. between Nov-20 to June-21). In such cases, conditions will get fulfilled, though the intent not, to which, a tax officer may object.

Issue-3 – If intent of the Government is to extend boost to liquidation of inventory of unsold residential units, can such endeavour be assumed to be expressly not existing in the legislative thinking at all? One can note the

relaxation given in taxation of notional income on unsold residential units in section 23 of the ITA, 1961. Initially, this relaxation was for one year from getting completion certificate, which was extended to two years. The said relaxation was considering business exigencies. A business exigency is to be understood as some hardship / constraint, etc. As such, Legislature appears compassionate to the cases of unsold inventory of developers. Assuming that the intents of removal of hardship of realty developers exists, present amendment, though effective for transfers between 12th Nov 2020 to 30th June 2021; could be argued to be going retrospective in cases, where, present conditions match on a cumulative basis.

#### **Section 44AB – Clause 11 of Finance Bill 2021 (relating to tax audit)**

As per the proposed amendment, the tax audit threshold limit of “sales / turnover / receipts” is extended from ₹ 5 Cr to ₹ 10 CR of annual sales / turnover. Vide Budget-2020, the threshold tax audit was extended from ₹ 1 Cr to ₹ 5 Cr. It is relevant to note the thinking behind i.e. giving of a fillip to non-cash transactions. As tax audit is dispensed with in all such cases, burden will start mounting on the assesses as regards accuracy or otherwise of the mentions in tax Returns, since, audit typically aims to settle inaccuracies and mistakes. If an assessee, having eligible turnover of ₹ 8 Cr for AY 2021-22, and having availed tax audit compliance already, will find himself in some uncomfortable situation. Some other cases of relaxation may also emerge for present AY 2021-22. Despite resolve of the present Government not to endeavour in retrospective amendment, present amendment is retrospective of present year.

#### **Section 44ADA Clause 12 of Finance Bill 2021 (presumptive taxation)**

From the list of eligible professional assesses, who can opt for presumptive taxation scheme, LLPs have been conspicuously omitted from AY 2021-22. Earlier, any assessee, engaged into any prescribed profession was eligible for

claiming benefit of presumptive taxation. It is learnt, some LLPs and other juridical persons have also claimed this benefit in past. This position is now clarified explicitly by permitting only individuals, HUFs and firms who can claim presumptive taxation regime under this section. LLPs have been removed from the said list of eligible assesses. For Income-tax purpose, an “LLP” is considered as a “firm”. This general analogy is changed for the purpose of this section. Reason for the same is stated as mandate under the respective LLP Act as regards maintenance of books of account. It appears, the endeavour of strict regulatory compliance with no adverse leverage under any other enactment is increasing. Indeed, we are entering into digital environment.

#### **Section 142 – Clause 33 of Finance Bill 2021 (authority of enquiry)**

As per present section 142, only the jurisdictional Assessing Officer can issue notice u/s 142 for making enquiries of any issue such AO deems appropriate. Considering the virtual dynamic faceless environment, this authority is to be assumed by various officers at the same time. Once the situation changes to faceless era, relevance of any particular AO is as it is lost. Above provision is only consequential.

#### **Section 139 – Clause 32 of Finance Bill 2021 (due dates of returns)**

In a lucidly explained Memorandum, the extended dates of filing of returns for such assesses, whose computation of income depends on some other assessee, are provided. At the same time, and despite COVID pandemic, resolve of the law-makers to enter the high-tech and speedy compliance era is clearly discerning from amendments made to section 139(4) for belated returns and 139(5) for revised returns. Earlier, time limits for both these actions were reduced to 12 months from end of the relevant previous year. Now, it is proposed to shorten this period of 12 months to 9 months. This is a welcome provision, though, likely to increase work-load at an early stage.

**Section 153 – Clause 41 of Finance Bill 2021 (time limit to AO)**

In the same spirit of shrinking the time periods for filing of belated returns / revised returns, the time available to the Assessing authorities has also been steadily reduced. As of present date, scrutiny selection notices for AY 2019-20 are yet to be received in many cases as the time limits stand extended due to COVID issues and related declarations. However, due date is 31/3/2021. Now, we are told that, assessments will be concluded within 9 months from end of assessment year. Earlier, the time available for assessments was 21 months, which was scaled down to 18 months and then to 12 months; and now, to 9 months. Next 2 years period is going to be extremely challenging for assesseees and for the counsels and professionals. Consider the following last dates chart –

- a) AY 2018-19 - Last date for scrutiny assessment was 30/9/2020 (18 months rule)  
(Now, extended to 31/3/2021 due to COVID)
- b) AY 2019-20 - Last date for scrutiny assessment is 31/3/2021 (12 month rule)
- c) AY 2020-21 - Last date for scrutiny assessment will be 31/3/2022 (12 months rule)
- d) AY 2021-22 - Last date for scrutiny assessment will be 31/12/2022 (9 months rule)

Further, issues of regular returns, belated returns and revised returns are also certain to co-exist. Indeed, next 19-20 months are going to test the real metal of the professionals.

**Section 194P – Clause 47 of Finance Bill 2021 (senior citizen)**

An altogether new regime is promised to the senior citizen as regards filing of their returns. If conditions stipulated are satisfied, then, the specified bank of the specified senior citizen is to compute taxable income of such senior citizen and such senior citizens need not file tax return. This is indeed a welcome provision since, all efforts and responsibilities of compliances for the senior citizen, gets shifted to their specified banks. It appears, outsourcing of work in has reached the provisions of scrutiny assessment related sections too. Manner of declaration of information to be made by assesseees is to be prescribed in the days to come. Once such compliances get concluded, the computation of income is to be the mandate of the specified bank. Albeit, specified banks may charge for the same as a service cost, etc.; but a new era is unfolding. Days are not too far, when, slowly, routine returns may also get outsourced to reputed entities and so on. Department officials can certainly focus their energies on serious aspects instead of getting vexed in passing routine scrutiny orders in large number of cases. For sake of completeness, procedure for challenges to such income computations needs to be provided, which is presently not available per se.



Never stop fighting until you arrive at your destined place – that is, the unique you. Have an aim in life, continuously acquire knowledge, work hard, and have the perseverance to realize the great life.

*Dr. A. P. J. Abdul Kalam*