03rd January, 2024

The Finance Minister,
Ministry of Finance,
Department of Revenue, North Block,
New Delhi – 110 001

Sir,

Sub:-Submission of Pre-Budget Memorandum in response to Union Budget, 2024'.

Respectfully Showeth,

We would like to bring into your kind notice that Income Tax Bar, Jalandhar is a registered body representing Chartered Accountants, Company Secretaries, Advocates, Income Tax Practitioners etc. engaged in representation and filing work of Income Tax Returns from Jalandhar, Hoshiarpur, Kapurthala, Nawanshahar, Phagwara etc. The Income Tax Bar consists of substantial members who represent major chunk of tax payers in the above mentioned cities. The Income Tax Bar is always working for the knowledge updation, technological changes and strive for knowledge sharing and excellence in the field of taxation. The Income Tax Bar believe in maintaining good cordial relations with the Income Tax and GST Authorities and keep them informed about the difficulties faced by the general public on day to day matters. It is understood that the Union Budget, 2024 is likely to be tabled in the Parliament by your goodself, the prestigious Income Tax Bar, Jalandhar would like to give few recommendations/suggestions by way of Memorandum as called for by your office for considering them while framing and tabling the budget in the Lok Sabha. The said recommendation/suggestions are given below for your kind consideration and perusal of the matter:-

S.NO.	PARTICULARS	RELEVANT PROVISION LAW	ASPECT REQUIRING AMENDMENTS
1.	Deductions from Salaries	Section 16 Clause (ia) inserted by the Finance Act, 2018 applicable with effect from 01st April, 2019	Provisions of section 16 Clause (ia) of the Income Tax Act, 1961 provides a deduction of Rs.50,000/- (substituted for forty thousand by the Finance Act, 2019 with effect from 01st April, 2020) or the amount of the salary, whichever is less. The quantum of deduction available to the salaried class is only to the extent of Rs.50,000/- or the amount of salary (whichever is less). The quantum was last enhanced from Rs.40,000/- to Rs.50,000/- by the Finance Act, 2019 with effect from 01st April, 2020. Since then no amendment has been introduced to raise quantum of deduction available under section 16 Clause (ia) of the Income Tax Act, 1961. Suitable amendment be made to the quantum available for deduction in view of enhanced/rising cost of living which has also been scaled many times due to rising cost of living owing to many factors prevalent on a domestic and international front including the Russia-Ukraine besides Israel-Hamas area of conflict. Since the said deduction will also be available under the new regime of tax wherein the scope of deductions have almost totally been eliminated.

			Therefore, quantum of deduction be enhanced to **1,50,000/-** or the amount of salary (whichever is less) instead of presently available deduction base of Rs.50,000/- inserted by the Finance Act, 2019.
2.	Compensation received on account of termination of employment vis-à-vis salary	Section 56 sub-section (2) Clause (xi) inserted by the Finance Act, 2018 with effect from 01st April, 2019	Section 56 sub-section 2 Clause (xi) was inserted by the Finance Act, 2018 with effect from 01st April, 2019 which provides that any compensation or other payment, due to or received by any person, by whatever name called, in connection with the termination of his employment or modification of the terms and conditions relating thereto would be liable for taxation under the Act. Compensation(s) are mostly to be understood in context of capital receipt wherein extended benefits are allowed to employees in connection with termination of their employment pursuits. However modification of such pursuits does not severe the relationship of employer and employee which continues to hold good in light of prevalent circumstances. Termination of employment however severe/ends relationship falling in nature of employer and employee with the employee no more entitled and obligated to serve interest of employer any longer.

			Suitable amendments be made to the provisions of Clause (xi) sub-section 2 and section 56 of the Income Tax Act, 1961 to provide that compensation received only in connection with the modifications of terms of employment be further taxed in view of objective sought to be achieved by this provision and not otherwise. Compensation received on termination of employment be treated as capital receipt and henceforth be not taxed under the law.
3.	Expenditure incurred in relation of income not includible in total income	Explanation appended to section 14A inserted by the Finance Act, 2022 with effect from 01st April, 2022.	Section 14A stands with a non-obstante clause which further provides for the purpose of computing the total income, no deduction shall be allowed in respect of expenditure incurred by assessee in relation to income which does not form part of the total income. Explanation inserted by the Finance Act, 2022 applicable with effect from 01st April, 2022 clarifies that for the removal of doubt, provisions of this section shall apply and shall be deemed to have always applied in a case where the income, not forming part of the total income under the Act, has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the

			expenditure has been incurred during the said previous year in relation to such income not forming part of total income. Section in principle disallows deduction of any expenditure incurred in relation to income which does not form part of the total income. Explanation states that provisions of section 14A shall be deemed to have always applied even in those cases where such exempted income has not been earned or arisen or received for the year under reference. Anomaly has since arisen as many courts including the Hon'ble Supreme Court has settled that in absence of any exempted income earned by the assessee during the previous year, any expenditure alleged to be attributed to such income cannot be disallowed since identification of exempted income is a condition precedent for disallowing any such expense. In order to sync the impact of decisions of various courts with the provisions of section 14A and so as to fall within the ambit of sub-section (1), amendment be made the Explanation inserted with effect from 01st April, 2022 to provide that only such expenditure which has a bearing on existence of income i.e. exempted receipts

			not forming part of total income will be considered for disallowance for the purpose of computing total income under section 14A. In absence of any exempted income earned by the assessee, no expenditure will be disallowed as the same finds foul of the basis essence on the provision on the basis of which the computation methodology is derived.
4.	Subsidies/grants received from Government	Section 2, sub-section 24 clause (xviii) inserted with effect from 01st April, 2016	Clause (xviii) sub-section 24 of section 2 of the Income Tax Act, 1961 provides that expression income includes `*assistance in the form of a subsidy or grant or case incentive or duty drawback or waiver or concession or reimbursement by whatever name called by the Central Government or a State Government or any other authority or body or agency in cash or kind to the assessee other than….* The above noted extract provides for inclusion in income of any subsidy, grant, incentive, assistance etc. of whatsoever nature received from the Central Government of State Government or of its instrumentalities to be included within the tax purview other than assistance received for the purpose of determination of actual cost of an asset or subsidy received for the purpose of a trust or institution established by Central Government of a State

			Government. Recently the Hon'ble Himachal Pradesh High Court in ***H.P.Nursing Registration Council vs. Principal Commissioner of Income Tax (2022) 220 DTR (HP) 129*** was dealing with taxation of a proposition wherein grant in aid received from government for specific purpose of upgradation and strengthening of the institution itself would fall for taxation under the Income Tax Act, 1961 and will be qualified as a revenue receipt. Though assessment year 2010-11 was in question that is much prior to the year in which amendment was introduced however Hon'ble High Court by relying upon the pronouncement of the **Hon'ble Supreme Court in *CIT vs. Ponni Sugars & Chemicals Ltd & Others (2008) 219 CTR (SC) 105*** observed that in the facts of the case, it is nowhere discernible that grant in aid received suggested scope of profit generation or revenue for the assessee more specifically when it is to be spent for a specified purpose. Presently only those grants which are received for the purpose of corpus of a trust or institution established by the Central or State Government are exempted from being included within the expression

			income. The said clause in principle causes widespread discrimination in case of those institutions which are claiming various exemption benefits under the law. It is thereby proposed to extend concession of exemption to all institutions which receive subsidy or assistance from any instrumentalities of the government (*Whether Central or State Government)* and which are validly enjoining exemption from taxation on account of being registered under section 12AA/12AB of the Act as the case may be so that disparity emerging out of the situation can be put to rest at the earliest.
5.	Power of Revision to be exercised by designated authorities under section 263 of the Income Tax Act, 1961.	Explanation (2) inserted with effect from 01st June, 2015 deems an order passed to be erroneous and prejudicial to the interest of revenue if….	Clause (a) of Explanation No.2 inserted with effect from 01st June, 2015 provides deeming fiction to disallow an order passed by subordinate authorities in the circumstances cited in Explanation i.e. Clause (a) to (d). Recently Hon'ble Income Tax Appellate Tribunal, Amritsar Bench, Amritsar in ***Amritpal Singh vs. Principal Commissioner of Income Tax (2023) 37 NYPTTJ 1334 (Asr)*** in respect of Assessment Year 2014-15 had observed that Explanation 2 appended to section 263 of the Income Tax Act, 1961 is applicable for the period much

			prior to insertion of Explanation with effect from 01st June, 2015. The said observation was in direct conflict with various decisions available for subjective guidance including decision of the coordinate Amritsar bench to cite a few as under:- ***a)Sthapathya Buildcon Private Limited vs. DCIT, ITA No.814/Ahd/2018*** ***b)Shri Narayn Tatu Rane vs. ITO, ITA No.2690/Mum/2016*** ***c)Shri Satish Kumar vs. PCIT, ITA No.258/Asr/2019*** ***d)Karimtharuvi Tea Estate Limited vs. State of Kerala (1966) AIR 1385 : (1966) SCR (3) 93 (SC).*** ***e)M/s Amira Pure Foods Private Limited vs. PCIT, ITA No.3205/Del/2017.*** ***f)AV Industries vs. ACIT (ITA No.3469/Mum/2010)*** ***g)Metacaps Engineering and Mahendra Constructions Co (JV) vs. CIT (ITA No.2895/Mum/2014)*** ***h)Reliance Money Infrastructure Ltd vs. PCIT (ITA No.3259/Mum/2017)*** ***i)Shantikrupa Estate Private Limited (ITA No.1252/Ahd/2015)*** Resultantly in order to confirm to the legislative spirit, due clarification be extended to the extent that impact of Explanation 2 inserted in the statute with effect from 01st June, 2015 will not have any retrospective application and will be applied prospectively

			i.e. with effect from 01st June, 2015 and not prior to that. The said clarification would inspire confidence building measure and certainly be a repository of benevolent law set in motion.
6.	Rising anomaly with respect to clause (a) of Explanation (2) appended to section 263	Clause (a) of Explanation 2 inserted in section 263 of the Income Tax Act, 1961 deems an order to be erroneous and prejudicial to the interest of revenue (a) the order is passed without making inquiries or verification which should have been made…	Clause (a) explicitly provides that where an order has been passed without making inquiries or verification which should have been made, order passed would be deemed to be erroneous and prejudicial to the interest of revenue. Several undernoted decisions available for the subjective guidance throw immense light on the object of clause (a) of Explanation (2). ***a)CIT vs. Sunbeam Auto Limited (2009) 227 CTR 133 : (2010) 189 Taxman 436*** ***b)Torrent Pharmaceuticals vs. DCIT (2018) 196 TTJ (Ahd) 318*** **c)*Mandeep Singh Dhillon vs. PCIT (2020) 207 TTJ (ASR)(UO) 9*** ***d)M/s Arun Kumar Garg HUF vs. PCIT (ITA No.3391/Del/2019*** The ratio of the above noted decisions in principle point out that there is a difference between lack of inquiry and inadequate inquiry and it is for the assessing officer to decide the extent of inquiry to be made and it is his satisfaction which is required under law. Although the law is amended

			with effect from 01st June, 2015 by way of Explanation but the same does not give unfettered powers to the Commissioner to assume jurisdiction under section 263 to revise every order of the assessing officer to re-examine the issues already examined during the course of assessment. Keeping the ratio of above cited decisions in view, it must be clarified that it is only in the event that an order passed without making inquiries can be deemed to be erroneous and prejudicial to the interest of revenue as per spirit of clause (a) of Explanation (2) inserted from 01st June, 2015. Otherwise it will be foul of the legislative mandate and CIT will try to charge every order as erroneous in case it has not been passed as per his mandate or inquiry has not been conducted to the best of his whims and fancies.
7.	Compliance of orders passed by Hon'ble Central Information Commission (CIC) under the RTI Act, 2005	Instruction issued by CBDT under section 119(1) of the Income Tax Act, 1961 bearing No.FTS-300294447/2016 dated 17th May, 2016 read with section 19(7) of the RTI Act, 2005	The apex body for regulating direct taxes in India `Central Board of Direct Taxes' in short CBDT over the period of time issues instructions, circulars, press-notes etc. for the guidance of field officers. The CBDT has passed an Instruction bearing No. FTS-300294447/2016 dated 17th May, 2016 in which it is categorically provided that any order passed by the Central Information Commission shall

			be binding under the RTI Act, 2005. Various instance have been reported on a pan India basis wherein the authorities responsible for execution of work on the administrative side openly flout, disobey, discard and negate the decisions of the Hon'ble Central Information Commission and are disposing of the applications filed under the RTI Act, 2005 as a general office file with absolutely no relief for the information seeker. In other cases, under the garb of their malafide intentions and ulterior motives, the filed officers intend to usurp the decisions rendered by the Hon'ble Central Information Commission by creating strong obstacles thereby creating a big dent in the way applications are adjudicated under the RTI Act, 2005. The Hon'ble Central Information Commission in many cases has taken a stern and stringent view of the pathetic situation prevalent on country wide basis wherein the field officers deputed for actual execution of work turn a blind eye to the decisions thereby relegating the information seeker to invoke writ jurisdiction of the Hon'ble High Courts/Supreme Court. Hon'ble Central Information

			Commission in many cases has observed that field officers be sensitized and familiarized with the provisions of RTI Act, 2005 and in many recent cases, directives have been passed with a copy to CBDT for further perusal and information. Despite CBDT Instruction on record, field officers are adopting pick and choose policy and are rejecting applications under the RTI Act, 2005 even in those cases wherein apt directions were passed by Hon'ble Central Information Commission with respect to disclosure of information to the information seeker. In many cases, it is also seen that field officers are extending their own interpretation to the expression `Income' which is in utter conflict with the law making power of the state beseeched under the constitution. It is settled law that instructions issued under section 119(1) of the Income Tax Act, 1961 acquire the proposition of being a law duly entitled to be enforced as if it was a binding law. Hon'ble Supreme Court in a number of decisions undernoted has pointed out that instructions issued by the CBDT are binding on the filed officers. ***1.Navnit Lal C.Javeri vs. K.K.Sen (1965) 56 ITR 198 (SC)*** ***2.Y.P.Chawla vs. M.P.Tiwari (1992) 195 ITR 607 (SC)***

			3.Union of India vs. Azadi Bachao Andolan (2003) 263 ITR 706 (SC) ***4.BOI Finance Limited vs. Custodian AIR 1997 SC 1952*** ***5.K.P.Varghese vs. Income Tax Officer (1981) 131 ITR 597 (SC)*** ***6.Continental Construction Limited vs. Commissioner of Income Tax (1992) 195 ITR 81 (SC).*** Suitable amendment(s) be incorporated in the Income Tax Act, 1961 so as to give legislative backing to the CBDT Instruction issued vide No.FTS-300294447/2016 dated 17th May, 2016 so that orders passed by the Hon'ble Central Information Commission are not reduced to paper justice being extended to information seekers under the RTI Act, 2005.
8.	Hearing and disposal of appeals by NFAC or Joint (CIT's) in a time bound manner under the Act.	Section 246A of the Income Tax Act, 1961.	It is not only hearing of a matter but its timely disposal which inspires confidence in the minds of taxpayers besides stakeholders at large. Recently a new authority has been constituted to hear appeals under the Income Tax Act, 1961 i.e.Joint Commission (Appeals)/Additional Commissioner (Appeals) depending upon the quantum earmarked for due decision making process. The assessees are forced to invoke the writ jurisdiction on

			the solitary footing that disposal of appeals at the first stage becomes a challenging issue and such appeals continue to remain pending for years together despite the fact that written submissions have been filed by the asseseee long ago. Recently an issue arose before the **Hon'ble Delhi High Court in *Priti Nanda vs. Commissioner of Income Tax (Appeals), W.P.(C) 10329/2022*** wherein the assessee had to move Hon'ble High Court on account of inordinate delay in disposal of her appeal filed with appellate authorities. The High Court coming to the rescue of the assessee ordered the department to decide the appeal within a period of four weeks from the date of filing application for expeditious disposal by the assessee with NFAC which in any case was to be preferred within two weeks. Such an exercise on the part of assessee to invoke writ jurisdiction on account of delay in decision making process waste precious time and resources which can be productively utilized. The CBDT has also issued a direction vide No.F.No.279/Misc/53/2003/ITJ dated 19th June, 2015 to provide that appellate orders will be issued within fifteen

			days of the last hearing by Commissioner (Appeals). However in the event of any failure on the part of Commissioner (Appeals) to issue appellate orders, no punitive action has been recommended at the outset. In a scenario where decision on appeals remain pending for years and years together, the government must seriously consider extending a legislative backing to the above said CBDT instruction F.No.279/Misc/53/2003/ITJ dated 19th June, 2015 so that in the event of any persistent failure on the part of Commissioner (Appeals) to issue appellate orders within fifteen days from the last hearing, the appeal be decided in favour of assessee without inferring any second thought on the issue.
9.	273B of the Income Tax Act, 1961	Section 273B of the Income Tax Act, 1961 provides for non-imposition of penalty in section specific violations as mentioned therein in the event of a reasonable cause shown to the satisfaction of authority. The expression reasonable cause as mentioned therein is capable of stretchy meanings / interpretations with one set of cause meeting the ends of reasonability while the	It is suggested that since the expression `Reasonable Cause' has per se not been defined in the statute and is at the mercy of the authority concerned, its abuse cannot be wholly ruled out. In addition, technical glitches/snags in the internet at the time of uploading / efiling the reports / documents required to be electronically uploaded on the portals also be considered to be a reasonable cause for the purpose of levying penalty under the section specific

		other may not. In view of discretion based concession and in view of different meanings accorded to the expression `Reasonable Cause', a need arises as to what constitute `Reasonable Cause' in different set of facts.	violations expressed for in provisions of section 273B of the Act. In an order, ***Hon'ble ITAT Jodhpur Bench in ITA No.567/Jd/2018 dated 06th May, 2019 in Kankaria Industries vs. ITO***, categorically dealt with the levy of penalty under section 271BA accompanied by deciding the moot question as whether technical glitches in internet connectivity constitutes reasonable cause for the purpose of section 273B. Hon'ble Bench duly considered technical glitches in internet connectivity as a `Reasonable Cause' embedded in section 273B thereby deleting the penalty levied.  ***Hon'ble Supreme Court in Hindustan Steel Limited vs. State of Orissa 1970 SCR (1) 753*** also settled in context of penalty as `An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so.

			Accordingly, the provisions be streamlined and the technical glitches be imported in the statue as a reasonable cause for the purpose of section 273B of the Act.
10.	Section 115BBE of the Income Tax Act, 1961	Section 115BBE ever since its introduction has been the subject matter of debates, dialogues and argumentation. In addition, the section 115BBE received systematic revamp vide its substitution by the Taxation Laws (Second Amendment) Act, 2016 w.e.f. 01st April, 2017. Further embedding an exorbitant, excessive and unreasonably high rate of taxation which roughly touches 86 percent (Including recourse to section 271AAC) appears not less than a big nightmare & a source of inherent distress. In addition, Clause (a) appended to 115BBE(1) has also been made applicable to cases where the assessees on their own motion include any income referred to in section(s) 68 to 69D of the Income Tax Act, 1961 in their total income accompanied by reflecting the same while filing their returns under section 139 of the Income Tax Act, 1961.	It is suggested that since Clause (a) particularly recognizes the fact that the assessee on its own motion/voluntarily includes any income referred to in section 68 to 69D and the same is reflected in the ROI filed with the department, the applicability of exorbitant rate of taxation in such a case which roughly touches 86% will discourage and deter voluntary compliance. In addition, enforcing concessional rate of tax equivalent to 30% of such income as falling within the bracket of sections 68 – 69D and clause (a) appended to section 115BBE(1) will inspire confidence and conviction in the non-adversarial tax regime especially for those who believe in voluntary compliance. Furthermore, in the event and in case, the assessee as per provisions of Clause (a) is able to explain the source/origin of the income falling within 68-69D bracket, the benefit of preponderance of probability be extended and there should not be any question of treating the same as deemed income under section 68-69D liable to

			be assessed at the unreasonably high pitched rate of taxation. This goes in rhyme with pronouncement of the Income Tax Appellate Tribunal, Chandigarh Bench in ITA No.1494/Chd/2017.
11.	Section 119(2)(b) of the Income Tax Act, 1961	Section 119(1) of the Income Tax Act, 1961 deals with the Instructions to subordinate Authorities. In furtherance, Sub-Section (2) categorically provides that `Without prejudice to the generality of the foregoing power, (b) the Board may, if it considers desirable or expedient so to do for avoiding genuine hardship in any case or cases by general or special order authorize [any income tax authority not being a Commissioner (Appeals)] to admit an application or claim for any exemption, deduction, refund or any other relief under this Act after the time/period stipulated for by or under this Act for making such application or claim and deal with the same on merits in accordance with law.	It is suggested that in the event of any rejection / non-acceptance, refusal / dismissal of assessee's claim/prayer before the competent authority, the action of the authority be made specifically challengeable before the Income Tax Appellate Tribunal under the relevant provisions of the Act. Since, in the event, appeal is not maintainable owing to the deficient provisions and the assessee will have to approach the writ courts by way of Writ Petition for redressal of its grievance, therefore an additional appellate forum may please be designated and specified wherein the claims arbitrarily rejected can be raised for the just decision of the case.

In view of the above, it is humbly prayed that the above recommendations//suggestions may kindly be considered and taken on record in the formation of the Union Budget, 2024 in so far as the direct taxes proposals are concerned. The said recommendations//suggestions have been drafted keeping the view the judicial precedents and genuine hardship faced by the tax payers at large in the present scenario.

Thanking you,

Yours truly,

CA.Jatinder Bhatia (President)	**Adv.Gulshan Kataria** (Secretary)	**Adv.Sameer Bhatia** (Member, Academic Committee) (Income Tax Bar, Jalandhar)
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Copy to :-

1. *The Hon'ble Prime Minister of India,*
2. *The Revenue Secretary, Department of Revenue, Ministry of Finance, Govt. of India, New Delhi.*
3. *The Chairman, Central Board of Direct Taxes, New Delhi.*
4. *The Chief Commissioner of Income Tax, Amritsar.*
5. *The Principal Commissioner of Income Tax, Jalandhar – 1, Jalandhar.*
6. *The Principal Commissioner of Income Tax, AU, Jalandha*
7. *The Print and electronic media.*
8. *Tax portals/engines.*