Finance Bill 2024 (2): Critical Comments

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Abstract

*On July 23, 2024, the Hon'ble Union Finance Minister placed the Budget before the Parliament. The Finance Bill has proposed several amendments for Direct and Indirect taxes. This article is aimed at analysing some of the important proposed amendments to the Income-tax Act, 1961 (**Act**)*

1. Introduction

The full budget for 2024, has raised a lot of flags, both, green and red. There are 99 amendments proposed in the Finance Bill, 2024 (2) (**Bill**). **(2024) 465 ITR 55 (St)** and Memorandum Explaining the provisions in the Finance Bill No. 2, 2024 **(2024) 465 ITR 213 (St)**. However, the widely rumoured amendment/deferral of section 43B(f) of the Act could not find a place in the Bill. This article will deal with some of the important amendments proposed in the Bill and their possible implications.

Shri N.A. Palkhivala, Senior Advocate in his article titled "**The maddening instability of Income-tax law**" which was published in the Golden Jubilee Souvenir of ITAT stated "***Today the Income-tax Act, 1961, is a national disgrace. There are no other instances in Indian jurisprudence of an Act mutilated by more than 3300 amendments in less than thirty years. Simple provisions like Sections 11 to 13 (which deal with the exemption of the income of the charitable trusts) have suffered no less than fifty amendments.".*** **I**t seems more than 5000 amendments have taken place since 1961 till date (63 years). If one desires to make the amendments it may be desirable to make them once in five years in consultation with taxpayers, which can bring certainty in tax law. The provision introduced in this year's Finance Bill will lead to unintended

litigation due to the interpretation of various provisions. For the benefit of readers, we have made an attempt to discuss a few important provisions.

2. Proposed Amendments

2.1. Buyback of shares [Clauses 3, 4, 18, 24, 39 & 52]: It is proposed to introduce a new provision viz. section 2(22)(f) of the Act, wherein any sum paid by a company to the shareholder on buyback of shares will be treated as Deemed dividend. It is pertinent to note that the proposed provision aims at taxing the gross sum in the hands of the shareholder, including the cost of shares as a corresponding amendment is made to section 57 of the Act denying the cost of acquisition in the hands of the shareholder. This 'cost' is allowed as a capital loss in the hands of the shareholder.

An issue may arise on the Constitutional validity of taxing the cost which by no means can be considered as an income. Further, this provision is only attracted when a buyback of shares is done as per section 68 of the Companies Act, 2013 and is silent about the other modes of buyback eg. Section 230 to 232 of the Companies Act under a scheme of compromise or an arrangement.

The proposed amendment will be effective for buybacks that take place on or after October 01, 2024. Until then the erstwhile scheme will continue and the company will be taxed under section 115QA of the Act.

2.2. Capital Gains

2.2.1. Rates [Clauses 3, 20, 21, 29, 30, 31, 33, 34, 35, 36, 38, 63 & 64]: The taxation of capital gains is proposed to be

rationalized and simplified. *Firstly*, it is proposed that there will only be two holding periods, 12 months and 24 months, for determining whether the capital gains are short-term capital gains or long-term capital gains. For all listed securities, the holding period is proposed to be 12 months and for all other assets, it shall be 24 months. The holding period for bonds, debentures, and gold will reduce from 36 months to 24 months. For unlisted shares and immovable property, it shall remain at 24 months.

Secondly, the rate for short-term capital gain under provisions of section 111A of the Act on STT-paid equity shares, units of equity-oriented mutual fund and units of a business trust is proposed to be increased to 20 per cent from the present rate of 15 per cent.

Thirdly, it was proposed that indexation be removed. However, in the second week of August, it has been proposed that indexation benefits will be provided to grandfather assets purchased before July 23, 2024. This is applicable only to individuals and HUF. This is a welcome move by the Government.

2.2.2. Gift [Clause 19]: Section 47 of the Act provides exclusion to certain transactions not regarded as transfer for the purposes of chargeability under 'Capital Gains' under section 45 of the Act. Section 47(iii) of the Act provided that transfers by way of Gift, Will and Irrevocable trust will not be considered as a transfer for the purpose of Capital Gains. It is proposed that a gift is given out of natural love and affection and accordingly, this provision is made applicable only to Individuals and Hindu Undivided Families.

Comments: This restriction doesn't seem to find a place in the Transfer of Property Act, 1882, wherein section 122 of Transfer of Property Act, 1882 which deals with 'Gifts', states that the transfer of property should be voluntary, without consideration and accepted by the donee.

Further, in case of transfer of intellectual properties without consideration, there is no machinery to find out the Fair Market Value of the property and the computation mechanism might fail.

2.3. Charitable institutions

2.3.1. Condonation of delay in filing application for registration by trusts or institutions [Clause 6]: It is proposed that the Principal Commissioner/ Commissioner may be enabled to condone the delay in filing an application seeking registration under section 12AB of the Act which is required to be made within timelines specified in section 12A (1)(ac) of the Act.

Comments: This is a welcoming amendment and will reduce unnecessary litigation.

2.3.2. Merger of Section 10(23C)(iv)/(v)/(vi)/(via) into Section 12A/12AB of the Act [Clause 4, 6, 9]: As both the regimes i.e. section 10(23C) and section 12 of the Act were granting similar benefits, it is proposed to simplify the regimes and continue with the section 12 regime only.

Comments: This is a welcoming amendment and it will reduce the complications under the Act.

2.3.3. Merger of Trusts: certain circumstances have been prescribed, when a trust or institution which is approved/registered under the first or second regime merges with another approved/registered entity under either regime, the said merger shall not attract provisions of Chapter XII-EB i.e., Section 115TD of the Act or empirically known as 'Exit Tax'.

Comments: According to the Memorandum Explaining the Provisions of the Finance Bill, 2024, it is stated that this provision is introduced to provide clarity to taxpayers. It raises issues such as instances where the objects of the amalgamating trusts are not identical. For example, a Trust which runs a school and hospital intends to merge with a Trust that runs only a school

2.4. Angel tax [Clause 23]: Section 56(2)(viib) of the Act, popularly known as angel tax was levied when a company issued shares higher than its Fair Market Value; the difference between the issue price and Fair market value was treated as income from other sources in the hands of the issuer. This was introduced vide Finance Act, 2012 and was extended to shares issued to non-residents vide Finance Act, 2023 is not abolished vide Finance Bill, 2024.

Comments: This is a good move to boost start-ups and the complications they face while raising funds by issuance of shares. It is pertinent to note that the genuineness of the transaction can still be doubted under section 68 of the Act. Therefore, accommodation entries where shares are issued at a premium and other such transactions can still be taxed under section 68 of the Act where a tax rate of 60 per cent as per section 115BBE of the Act is attracted.

The amendment is retrospective and made applicable from AY 2025-26 onwards.

2.5. Reassessment [Clauses 44, 45, 46 & 47]: The newly introduced Reassessment regime vide Finance Act, 2021 is proposed to undergo changes. The search and search-related cases which were brought within the ambit of reassessment are proposed to be removed. Further, it is clarified that a survey would result in "information" and not "deemed information". Further, the period of 10 years up to which Reassessment can be made is shortened to 5 years.

Comments: As mentioned by the Hon'ble Finance Minister and other speakers on the budget a new Income-tax Act is on its way where there are no provisos and the Act is fairly simplified. On a bare perusal of proposed Section 148A, it can be seen that the proviso excluding the application of section 148A in the case of section 135A of the Act, has been incorporated into the section. Further, the shortening of the period of reassessment is a welcoming amendment. Sanction provision should have been continued with higher Officers so that the sanction should not be misused. It may be desirable to provide certain guidelines while giving sanctions. Whether or not the sanction is proper can be a subject matter of litigation before the court.

2.6. Block Assessment [Clauses 32, 43, 49, 76 & 85]: The regime of block assessment was introduced on July 01, 1995, until Finance Act, 2003 when it was substituted section 153A to 153D of the Act. This was further merged into the reassessment regime vide Finance Act, 2021. Now it is proposed to revive the erstwhile regime of block assessment. Wherein 6 years prior to the year of search and the year of search will be compulsorily scrutinized. The tax rate on additional income will be 60 per cent and the penalty

will be 50 per cent of tax i.e., 30 per cent. Further, interest and penalty will be given a waiver.

Comments: This appears to be an amendment to overcome the decision of the Hon'ble Supreme Court in the case of **PCIT v. Abhisar Buildwell (P.) Ltd. [2023] 454 ITR 212 (SC)** wherein it was held that in respect of completed assessments/unabated assessments, no addition can be made by the Assessing Officer in the absence of any incriminating material found during the course of a search under section 132 of the Act or the requisition under section 132A of the Act. The review petition sought by the revenue against the above decision was dismissed in the case of **PCIT v. Abhisar Buildwell (P.) Ltd. [2023] 150 taxmann.com 257 (SC).**

Secondly, the tax rate on additions which have no nexus with the search initiated is also litigative. Some of the proposed provisions are with good intent that when a person makes a disclosure and pays the tax the tax will be charged at 60 per cent and there will not be any interest penalty or prosecution. The issue may arise certain debatable issues may be allowed in the original assessment proceedings, and the Assessing Officer in the course of block assessment proceedings may take a contrary view, whether such addition will be taxed at a higher rate is a controversy. This may lead to litigation.

2.7. Partnership Firms [Clause 14 & 62]:

2.7.1. Increase in limit of remuneration: The rate of remuneration was fixed in AY 2010-11 and is now increased and adjusted for inflation.

Comments: This proposed amendment is welcomed.

2.7.2. TDS on payment of salary, remuneration, interest, bonus or commission by partnership firm to partners: It is proposed that a new TDS viz. section 194T of the Act may be inserted to bring payments such as salary, remuneration, commission, bonus and interest to any account (including capital account) of the partner of the firm under the purview of TDS for aggregate amounts more than Rs 20,000 in the financial year at the rate of 10 per cent.

The provisions of section 194T of the Act will take effect from April 01, 2025

Comments: It will be difficult to explain to the Assessing Officer the difference between, monthly withdrawals and monthly remuneration. It may be desirable that the CBDT may relax the provision by issuing circulars.

2.8. Vivad Se Vishwas Scheme [Clause 88 to 99]: Similar to the Direct Tax Vivad Se Vishwas Act of 2020, it is proposed to bring a Direct Tax Vivas Se Vishwas Act, 2024 on similar lines. There are prescribed cut-off dates for eligibility for an appeal.

Comments: It is hoped that similar to the earlier Act, clarifications will be issued in the form of an FAQ. We hope the CBDT will clarify the issues based on the earlier circulars and decided case laws.

2.9. Power to remand with the First Appellate Authority: Considering the number of best judgment assessments due to not checking the portal, non-delivery of Notices et cetera, it is proposed that the cases where an assessment order was passed as best judgment cases under section 144 of the Act, Commissioner (Appeals) shall be empowered to set aside the assessment and

refer the case back to the Assessing Officer for making a fresh assessment.

Comments: This is a welcoming proposal, it is seen that in some cases where best judgement assessment is made, the additions are usually high pitched and an exorbitant demand is raised. This will help assessees in such situations. It is desirable to prescribe the time limit for the Assessing Officers to forward the remand report to the CIT(A)

2.10. Increase in the monetary limit for filing appeals before the Tribunal, High Court and Supreme Court.

This is a welcome move to reduce the pendency. It is desired that the CBDT clarify that all appeals pending before various forums may be withdrawn. It is not necessary to get confirmation from the Assessing Officer. It has been observed that in the matters before the Court, the matters are adjourned from time to time that the Assessing Officer or the Commissioner has not given permission. In the process, the precious time of the Court is lost. Each adjournment costs the taxpayers more than Rs 25000/-. It is desired that the CBDT should bring out a comprehensive circular explaining the provision

3. Conclusion: Proposed simplified Income-tax law.

It has been observed that the Govt had constituted many committees earlier and most of the suggestions which are in favour of the Revenue are accepted and implemented.

Dr. Raja J. Chelliah in his committee report (**1992) 197 ITR 99 (St) (112)** on accountability had recommended that "*the Assessing Officers should be made accountable for their actions. If the percentage of demands not upheld by the Tribunals is higher than a reasonable figure, say 50 per cent, the officer should be given a blank mark and reprimanded. On the other hand, an Assessing Officer should be*

protected and defended if he has obeyed instructions of the Board and followed case laws even though audit might raise about his actions".

The Honourable Bombay High Court has passed many orders for not granting the rightful refunds to the taxpayers, the copies of the orders are sent to the office of the Honourable Finance Minister and also the chairman of CBDT. In a recent judgment, the Honourable Bombay High Court in the case of **Samp Furniture Pvt. Ltd. v. ITO WP 3290 of 2024 dated August 05, 2024 (Bom)(HC)** levied a cost of Rs 50,000/- each on the Commissioner and the Assessing Officer for not following the ratio of Jurisdictional High Court

Unless the tax administration is made accountable honest taxpayers will have difficulty in getting refunds, order giving effect etc. Major changes are required in respect of procedure and law relating to Prosecution proceedings under direct tax laws. Matters are pending for disposal for more than three decades. Ease of doing business cannot be achieved unless drastic changes are made in the justice delivery system of tax matters. Honourable Revenue Secretary Shri Sanjay Malhotra in a press conference on July 25, 2024, stated that the first draft of a new simplified income tax law, as proposed in the Budget, will be prepared by an internal committee of the tax department and will undertake stakeholder consultation before finalising the legislation will be completed in six months. Referring to the Speech of the Honourable Finance Ministry He stated "**The purpose is to make the Act concise, lucid and understandable. This will reduce disputes and litigation, thereby providing tax certainty to the taxpayers. It will also bring down the demand embroiled in tax litigation."** The intention of the Honourable Finance Minister is laudable and praiseworthy.

In October 2015 the Government has Constituted the Justice R.V. Easwar Committee with the task of suggesting measures to simplify the Income tax laws in India. The Committee submitted its first report to

the government on January 18, 2016. This report included recommendations to simplify tax procedures, reduce litigation and improve taxpayer services. The Committee's suggestions were aimed at making the tax system more transparent and less burdensome for taxpayers. In the year 2017, the task of rewriting the Income-tax Act, 10961 in India was entrusted to the "Task Force for Drafting a New Direct Tax Legislation" The Committee was set by the Indian Government in 2017 and was chaired by Mr Arbind Modi a former Member of the Central Board of Direct Taxes (CBDT). The committee was later Chaired by Mr. Akhilesh Ranjan after Modi's retirement. The purpose of this committee was to overhaul the Income -Tax Act and simplify tax laws in line with the economic needs of the country. The committee submitted its draft report to the Ministry of Finance, which included recommendations for a new Direct Tax Code to replace the existing Income-tax Act, 1961. It is unfortunate that the committee report is not put before the citizens for their comments. It is desirable that the said report may be made available to the public.

There can be no doubt that tax officials are well-equipped to draft the law. If the intention of the Government is to draft the law for the citizens of the Country it is desirable to have a committee headed by a Retired Judge of the Supreme Court or High Court who has dealt with tax cases, similar to Honourale Justice R.V Easwar who is a qualified Chartered Accountant, Lawyer, practised in tax law, rendered service as a judicial member and President of the ITAT and also served as Judge of the High Court. The Committee also should have representatives from the various political parties. The committee should have representatives from the Legal and Accountancy profession who are well-versed with the taxation law and tax litigation and also representatives of the Trade and Industry. The committee also should have representatives from a few important professional organisations. The committee should reach out to the small towns and interact with the professionals and trade representatives to understand the

taxpayer's grievances. After the presentation, the report may be made public domain for their opinion. After getting the suggestions the committee should prepare a comprehensive Act, in consultation with the law commission. Afterwards, the bill may be presented before the Government and thereafter the bill may be presented before the select committee of the Government. By following these processes we can present new Income tax laws which will meet the requirement of the Vision of the Honourable Prime Minister of India Shri Narendra Modi to see India as a developed nation when we celebrate our centenary in the year, 2047.

What we observe is there is a trust deficit between the taxpayers and tax demonstration it is the tax professional who can suggest objectively for better tax law and tax administration. We hope the Government will interact with the Tax Professionals before drafting of New Income tax law for our Country.

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