Harnessing Talent and Providing Quality Service

Bombay Chartered Accountants' Society
7, Jolly Bhavan 2, Ground Floor, New Marine Lines, Mumbai - 400 020
Tel. : + 91 22 6137 7600 Website : www.bcasonline.org
E-Journal : www.bcajonline.org E-mail : bca@bcasonline.org
www.elearning.bcasonline.org

President
Sunil Gabhawalla
Vice President
Manish Sampat
Hon. Jt. Secretaries
Abhay Mehta
Mihir Sheth
Hon. Treasurer
Suhas Paranjpe

24th May, 2019

To,
The Joint Secretary TPL .
Central Board of Direct Taxes,
Ministry of Finance
North Block,
New Delhi- 110001

Sub: Suggestions for Amendments in the Income Tax Act.

1 **Section 14A:**

This section was inserted in the Income tax Act by the Finance Act 2001 w.e.f. 01.04.1962. The section has been amended from time to time. The section provides for disallowance of expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. Rule 8D provides for the method of computation of the expenditure incurred in relation to such exempt income. It is noticed that during the last two decades since its enactment, a large number of tax disputes have arisen on various issues relating to this section. Various Tribunals and High Courts have expressed contradictory views about interpretation of this section. Rule 8D is so drafted that it seeks to determine expenditure incurred for earning such exempt income on the basis of investments made by the assessee. Often, expenses are disallowed even though there is no exempt income in the relevant year. In order to avoid this litigation and simplify the procedure it is suggested that this Section should be amended to provide that actual direct expenditure and 5% of the income which is exempt or the actual indirect expenditure related to that income, whichever is less, will be disallowed. Further, it should be clearly laid down in the Rule that in the year in which there is no exempt income, there would be no disallowance. Also, the disallowance should, in any case, be restricted to the amount of income claimed to be exempt in a year.

2. **Section 23:**

This section deals with the manner in which Annual Value of a House property owned by the assesse is to be computed. Proviso to section 23(1) provides for deduction of taxes levied by any local authority. It is common knowledge that in many cities the buildings are owned by Co-operative Housing Societies. The members of such societies own flats in such buildings. The society incurs expenditure on maintenance of the building including security charges lift maintenance, cleaning, common lighting and upkeep of the society building. The members who own the flats in the society contribute every month for such expenses. These maintenance charges are not allowed as deduction u/s 23. It is suggested that these maintenance charges actually paid to the Housing Society should be allowed for determining the Annual Value of the Flat owned by the assessee. If this is allowed u/s 23, the standard deduction of 30% which is allowed u/s 24(a) may not be allowed in such cases. The assessee should have option to claim 30% of Annual Value or actual maintenance expenses paid to the society.

Further, there is a raging controversy regarding leave and license income or rental income earned from letting out commercial space by various companies with the intention to earn rental income and not to carry out business. In such cases, the law should be amended to clearly lay down that such income should be taxed under the head ‘Income from House Property’ instead of ‘Profits and Gains of Business or Profession’. Such an amendment will reduce litigation in the matter.

3. **Sections 43CA, 50C, 50CA and 56 (2) (X)**

3.1 The combined effect of these 4 sections is as under:

(i) If a Real Estate Company sells an immovable property to its client at a price below the stamp duty valuation, the difference between the stamp duty valuation and the actual sale price (subject to the margin of 5%) is taxable u/s 43CA in the case of Real Estate Company. The same amount is taxable in the case of the purchaser of the property u/s 56(2)(x).

(ii) Similarly, when a person sells an immovable property to another person at a price below the Stamp Duty Valuation, the difference between the Stamp Duty Valuation and actual sale price (subject to the margin of 5%) is taxable in the case of the seller u/s 50C and in the case of the purchaser u/s 56(2)(x).

(III) If a person sells shares in a company, which are not quoted on the Stock Exchange, at a price below Fair Value determined in the prescribed manner, the difference between the such Fair Value and the actual sale price will be taxable in the hands of the seller u/s 50CA and in the hands of the purchaser u/s 56(2)(x).

3.2 From the above provisions it is evident that the difference between the Fair Market Value / Stamp Duty Valuation and the actual sale / purchase price is only a notional income. Further, under the above provisions, such notional income is taxed in the hands of the seller as well as the purchaser. In other words, in respect of the same notional amount, arising in one transaction, there is double taxation - once in the hands of the purchaser and again in the hands of the seller.

3.3 Further, if such transaction is between two relatives, as defined u/s 56(2)(vii), the seller will have to pay tax u/s 43CA, 50C or 50 CA, whereas the purchaser will be able to claim exemption u/s 56(2)(x).

3.4 It is, therefore, suggested that, in the interest of equity, these provisions be modified as under:

(i) If the transactions covered u/s 43CA, 50C or 50CA are between relatives, the seller should be granted exemption which is available to the purchaser u/s 56(2)(x).

(ii) If the transactions are between non-relatives, it should be provided that only 50% of the difference between the stamp duty valuation / Fair Market Value and the actual sale price (notional income) will be taxable in the hands of the seller and 50% of the notional income will be taxable in the hands of the purchaser of the asset.

4. **Sections 234E and 234F:**

4.1 The above two sections provide or levy of fee for delay in submission of statement of TDS and for delay in filing Return of income as under:

(i) **Section 234E**: Delay in filing Statement of TDS/TCS u/s 200 (3) or 206C (3). The Fee is Rs. 200/- per each day of default.

(ii) **Section 234F**: Delay in filing Return of Income u/s 139(1). The Fee is Rs. 5,000/- if return is filed before 31st December. If filed after that date, the Fee is Rs. 10,000/-.

The above Fee is payable over and above the interest payable u/s 201, 206C, and 234A of the Income-tax Act.

4.2 There is no provision for filing appeal against the order levying fee u/s 234E or 234F. There may be a valid reason for delay in filing statement of TDS / Return of Income. It may be noted that section 246A provides for appeal against levy of interest u/s 201/206C. Therefore, it is suggested that a provision for filing appeal against levy of fee u/s 234E/ 234F should be made u/s 246A.

4.3 Further, it may be noted that section 234F for levy of fine applies to delay u/s 139(1) in filing return of income. There is no justification for levy of such fee when the assessee has paid excess tax and is claiming refund of tax. Therefore, it is suggested that section 234F may be amended to provide that no fee u/s 234F will be payable if the assessee is claiming refund of excess tax paid.

5. **Section 239:**

Section 239(2)(c) provides that an assessee can file a claim for refund of excess tax paid within one year form the last day of the assessment year. As compared to this, section 139(4) provides that the Return of Income can be filed before the end of the assessment year. In actual practice it is noticed that return of income claiming refund as provided u/s 239 is not accepted under the existing E-filing portal after the end of the assessment year although the time limit u/s 239 is upto the end of one year after the end of the assessment year. This technical issue requires to be resolved by modifying the E-filing portal of I.T. Department.

6. **Section 47 Clause (xiiib)**

Section 47 (xiiib) excludes the conversion of private limited companies to LLP from the definition of transfer. However, there are certain conditions prescribed to be complied for being excluded from the definition of 'transfer'. One of the conditions is that the total sales, turnover or gross receipts in the business of the company in any of the three preceding previous year should not exceed Rs. 60 Lakh.

Further a new condition was inserted wherein the total assets during the previous 3 years should not exceed 5 crore. Such small limits are a big hindrance on the conversion of the company into a LLP. FDI restrictions in LLPs have also been relaxed by Central Government. Continuing restriction of turnover is against the concept of ease of doing business in India.

It is suggested that the said limits should be removed or else increased substantially. Turnover limit may be increased to 10 crores and the total assets limit may be increased to 20 crores.

Thanking you,

Yours faithfully,

CA Sunil Gabhawalla,
President

CA Ameet Patel,
Chairman,
Taxation Committee