PRE-BUDGET MEMORANDUM ON UNION BUDGET 2009-2010

I. INDIAN ECONOMY: GLOBAL MELTDOWN TROUBLE SHOOTING PACKAGE

The overall growth of Indian economy during the last few years had suffered great set back due to global financial crisis which is likely to have an impact on growth of manufacturing and services sector in India. Since fundamentals of Indian economy are very strong and due to inherent production base and demand of purchasing power in hands of the Indian population, Indian economy is expected to overcome the impact of global financial crisis. But, there is urgent need of fundamental supports from Union Government through its budgetary exercise apart from short-term measures prior to budget as proposed hereunder:

(i) Budgetary allocation for infrastructure projects like roads, power, seaport and airport, industrial parks etc. should be given high priority in order to boost the demand for basic inputs like steel, cement, employment generation and so on. Government spending on infrastructure projects through budgetary support will improve liquidity position in the market and it will have the positive effect on the GDP and growth of Indian economy.

(ii) Where the industry had employed same or more number of employees in the current year (F.Y. 2008-09) as compared to previous year (F.Y. 2007-08), a fiscal incentive should be provided to industry. This measure will improve the employment scenario of economy and it will lead to check against lay off, production slowdown etc.

(iii) Reserve Bank Reverse Repo Rate should be brought down to 0% so as to provide disincentive to banks to keep its fund with Reserve Bank rather than making it available for lending to Indian industries, trade organizations and individuals and so on.

It has been observed that after the measures taken by Reserve Bank of India sometime in October 2008 for making available more than Rs.90,000 crores liquidity in the Indian economy, major portion of the fund were deposited by banks into RBI. Since the reverse repo rate was at a high level that was comparable to rate of interest on loans of priority sector.

(iv) Fiscal incentive is required to be provided to the industry, which plough back its profit for the development and modernization.

(v) Government should further give tax rate relaxation in respect of service tax and customs duty to follow the CENVAT duty cut by 4% across the board.

(vi) A lot of focus has been provided on inflation cut down in recent past. Since the present inflation rate has been noticed at around 8% and expected to be around 5% in near future, now the focus should be shifted from lowering inflation to the overall growth of Indian economy. And to safeguard the exports from India, which is hard-hit post global meltdown, subsidy should be re-introduced in various forms and shapes to boost the exports.

(vii) Fringe Benefit Tax under Income Tax Law in the form of deemed fringe benefit should be removed altogether. Surcharge on direct and indirect taxes should either be removed altogether or removed drastically. Corporate Dividend Distribution Tax should be brought down to 5% level. (discussed in detail later in this memorandum).

(viii) To improve liquidity in the market, banks prime lending rate requires further pruning to provide a safety valve to Indian trade, industry and commerce.

(ix) Petroleum products attract duties more than 40% including State VAT. Customs and excise duty on petroleum products requires adequate rationalization and State VAT should be brought to 4% by bringing an amendment in the CST law in Sec. 14 and petroleum product should be included as a scheduled goods in Sec 14 of the said CST Act, whereby no State Government would be able to charge more than 4% sales tax on sale and purchase of petroleum products as per the existing provisions of CST law.

(x) The economic reforms are yet to touch the distributive trade. The distributive trade still remains covered by the archaic, obsolete and redundant laws. Surprisingly the industry enjoys the freedom while the distributive trade remains under fetters. It is time that the distributive trade be also allowed to enjoy the benefits of economic reforms. This can be done when all the obsolete and redundant laws such as Essential Commodities Act, Weight & Measures Act, Minimum Wages Act, Shop & Establishments Act and several other such laws are taken out of the statute books and in turn one comprehensive new legislation is framed.

(ix) Large industries mostly governed under corporate sector enjoy the backing of BIFR (Board for Industrial & Financial Reconstruction) under specified circumstances. Commercial banks and lending agencies enjoy the benefits of the SARFESI Act (securitisation) whereby it enjoy unfettered powers to attach the property of defaulters and recovery of their money. On the other hand, small and medium enterprises, traders and individuals have no such backing for recover of its outstanding from debtors.

There is a need for a uniform law governing the default of payments irrespective of the fact that whether it is an individual, firm, corporate company, organization, government agencies and or the government itself. Preferential treatments should be withdrawn and a law be framed for all without any discrimination and differentiation.

(x) Lessons need to be learnt from the sub prime crisis and the financial melt down taken place in the United States. Interests of millions of bank depositors could have been in jeopardy had not there been provisions in the United States financial systems to protect the depositors interest.

There is a need for a similar provision in the country such as FDIC (Federal Deposit Insurance Corporation) in the United States, which provides protection to the tune of US$ 100,000 per account. A recent amendment by the US lawmakers has increased the amount to US$ 250,000 per account.

The EU Finance Ministers have also agreed to increase the minimum level of bank deposit insurance across 27 EU countries to 50,000 euros up from the floor level of 20,000 euros.

The Government of India needs to create such an organization to protect the depositors saving. A maximum limit of Rs 50,00,000 (Fifty lakhs) per account should be fixed for payment in case of any default by a bank or a financial company, irrespective of the fact that he/she has a savings, recurring, current, fixed deposit and or other deposits. This will go a long way in providing security and building confidence in the minds of public at large in the banking and financial sector.

The cost of such a scheme should be borne by the banking and financial sector and should not be passed on to the depositor directly and or indirectly.

II. DIRECT TAX

Income Tax

1.a) RATIONALISATION OF PROVISION NO. 1 OF SECTION 14A OF THE INCOME TAX ACT - Method for determining amount of expenditure in relation to income not includable in total income.

The principle of disallowing the expenditure incurred by the assessee in relation to exempt income is acceptable. But the mode of its implementation and bringing indirect expenditure into the network of disallowance is clearly contrary to the main principle for which this provision was enacted. The Central Board of Direct Taxes had provided Rule 8D in exercise of its power given U/s 14A(2) of the Act.

This rule is very harsh on the assessee and defies any logic. By applying the formulas prescribed under the rule, in most cases expenditure that has no connection with the earning of exempt income will get disallowed. Even an exempt income of Rs.100/- may result in disallowance of crores of rupees. Moreover, as prescribed under the rule, disallowance of an amount equal to ½% of the average value of investment, income from which does not or shall not form part of the total income, results in an artificial disallowance. In case of an assessee who has invested in quoted equity shares not yielding any dividend and carries on the same investment without any change from year to year for say 10 years will have to bear with an artificial disallowance of ½% of the average value of investment in each year in spite of the fact that the assessee has neither incurred any expenditure year after year on the said investment nor earned any exempt income.

Therefore, Rule 8D requires a total overhaul.

1.b) CAPITAL GAINS

Income arising out of sale of shares and securities requires simplification.

Till 30th September, 2004 the income assessed under the head capital gains relating to quoted shares of Indian Companies were charged to income tax at normal rates of tax if the same was short term (held for a period of less than twelve months) and nil if the said shares had been acquired on or after 1st March, 2003 and held for a minimum period of twelve months provided that such shares were included in BSE 500. In case of shares held for a minimum period of twelve months, if such shares were outside the BSE 500 shares, then such shares were charged to income tax @ 10 %. There was no STT payable by the investor.

Because the short term capital gains were taxed at normal rates of income tax, Instruction No. 1827 dated 31.08.1989 was being resorted to in a very limited way by the Assessing Officers.

After 30th September, 2004 the income assessed under the head capital gains relating to quoted shares of Indian Companies were charged to income tax at 10% if the same was short term (held for a period of less than twelve months) and STT has been paid by the investor and nil if the said shares had been held for a minimum period of twelve months and STT has been paid by the investor.

Now since short term capital gains are chargeable to income tax at special rate of 10 %, and long term capital gains are not chargeable to tax, an issue is being raised as to whether the transactions of buying and selling of shares are assessable as capital gains or assessable under the head profits and gains from business or profession. This has created a lot of confusion among the Assessing Officers, the investors, the assessee and the tax advisors. This has also given a lot of discretionary power to the Assessing Officers and because of such discretionary power, the assessees as well as the tax advisers strongly feel that the Assessing Officers may unjustly interpret the said Instruction No. 1827 and frame whimsical and arbitrary assessment orders which would result in a lot of litigation and complicate the issue further instead of simplifying the same. Circular No. 4 of 2007 issued by the CBDT has instead of clarifying the issue further complicated the issue.

Therefore, it is felt by all concerned that a clear cut instruction which is judicious and within the four corners of law is required on this count in order to avoid unnecessary litigation and arbitrary assessments and promote transparency, faith of the tax payer towards the intent of the Hon'ble Finance Minister and the harmonious relationship between the assessee and the income tax department.

Suggestion

- Where an assessee has regularly been treating its buying and selling of shares together with delivery as investing activity and also classifying the shares in hand at the year end as investments, the assessing officer should accept the profit or loss on such transactions as profit or loss under the head capital gains.
- In case of non corporate assessee, where the annual accounts are not drawn as per schedule VI of the Companies Act, 1956, if in the past the assessee has been treating any profit or loss arising out of purchase/sale of shares as capital gains/loss, any profit/loss arising out of pending assessments should be assessed under the head capital gains.
- For fresh purchases to be made, it should be made mandatory on the part of the assessee to declare at the time of purchase whether such purchase has been made for investment purpose or trading purpose to his share broker. An additional column should be added to the contract note issued by the broker which should mention either **I** (investment) or **T** (trading) and such contract note declaration should be treated as final for deciding whether any profit on sale of such shares is assessable under the head capital gains or under the head business or profession.

1.c) <u>CAPITAL GAINS (SEC.50C)</u>

Section 50C provides that the consideration amount of sale in land or building or both shall be deemed to be the value on which the stamp duty is charged by the state government for the purposes of transfer. This amendment is made as a prelude of deletion of Chapter XXA, regarding acquisition by Government, in case of understatement of consideration by more than 15%. Similar provision proposed by Finance Bill of 1998 clause 25 providing amendment to Section 48 by insertion of a provision, by which the transfer consideration shall be deemed to be the value on which the Stamp Duty is paid. These proposed provisions were in view of the facts that the state government fixes the Stamp Duty Value at a high pitch devoid from market value for registration on the basis of Local Authorities demarcated blocks/wards and not on the basis of Prime Property, Secondary Property, Residual Property etc. The Stamp Value fixed for a property at 120ft. wide road is the same as that for 80ft. or 40ft. wide road in the block/ward. Likewise, the Stamp Duty Value for the corner plot is the same as that for a plot with small opening on the road or a tandem plot or a large road facing the plot. The value for a vacant property and an old tenanted property is also the same and no consideration is made of any restrictive rent laws or the amount of rent. At present, the valuation of Stamp Duty is illogical, irrational and unscientific.

The middle class is badly hit, who sell off properties as a last resort in case of unavoidable need. Real Estate dealers are out of the purview of the provision as in their case it is business profit and section 50C is not applicable to them as it is applicable only for calculating Capital Gains.

Suggestion

The newly inserted provisions of Section 50C for taxation of capital gains on transfer of immovable property on 'Notional basis' are draconian in nature. Earlier, Section 52 was on similar line and after the Supreme Court Judgment in K.P. Verghese v. ITO (1980) 131 ITR597, 612 (SC), the Govt. had rightly repeated the same by Finance Act, 1987. Reintroduction of an illogical concept has unleashed the era of irrationality and there is necessity to restore rationality and simplification in the administration of the tax laws. It is suggested that Section 50C be repealed forthwith with retrospective effect.

2. (a) TDS – SECTION 194C

Every assessee who deducts TDS under section 194C is required to furnish a quarterly return through computer media as required by section 206. The deductor is required to give the PAN of all the deductees while furnishing the quarterly returns. It may so happen that a number of deductees are not assessed to income tax for the simple reason that their total income is below the taxable limit and therefore do not have any PAN.

The Income tax department is not accepting TDS quarterly statements for payment other than salary with less than 90 per cent of PAN data.

There is no provision in the Income Tax Act whereby the deductor can avoid TDS u/s 194C in cases where the deductees have income below the taxable limits. In such cases, the deductor is in a very piquant situation as because such deductee cannot provide PAN and therefore the TDS returns of the deductor is not accepted.

Suggestion

- The Chamber suggests that the provision of no deduction at source or deduction of lower rate of tax at source under Section 197 A should be amended to cover deduction under Section 194C along with existing provisions.

- A self-declaration like Form 15G, 15H, 60 and 61 should be introduced where the deductee is having income below taxable limit and he is not required to obtain PAN under the provision of the Act. It will reduce maximum grievances of tax deductors at large.

b) CBDT had clarified TDS on payment of rent that service tax charged by the landlord from the tenant on rent is not an income of the landlord. Therefore, TDS should not be made on service tax component for part of the rent bill. Similarly in respect of payment of professional or technical service fees, commission or brokerage and others also include service tax component. A universal provision is proposed in the chapter for tax deduction at source whereby no TDS is required to be made on service tax component or any payment wherever service tax component is included in the bill of the payee.

3. **FRINGE BENEFIT TAX**:

The Chamber feels that the tax payers are not basically against taxation of perquisite or Fringe Benefit provided by an employer to its employee. But the charge of Fringe Benefit Tax on deemed Fringe Benefit, 16 items of expenditure listed U/S 115(WB)(2) Act, is a root cause of grievances from Trade, Industry and Commerce, where the expenditures are taxed under Fringe Benefit Tax which have no connection with perks provided by the employer to employee.

Suggestion

It is, therefore, suggested that the government should abolish Fringe Benefit Tax on deemed basis.

4. DEFINITION OF TERM "MANUFACTURE"

The Income Tax Act 1961 does not provide any definition of the term "manufacture" or "produce". But to provide incentives to various industries under different sections of the Act, exemption has been granted from date of commencement of production to the industrial units for manufacture or production of any article or thing. There are a large number of cases, which centers around the meaning of the term manufacture or produce. The taxpayers consider **processing** as part of manufacture and the tax collectors do not consider the activity of processing as included in the term manufacture. But there are various provisions in the Income Tax Act itself where vide explanation the term manufacture has been explained which include processing. There is no uniformity of application of this definition throughout the Act. Moreover, the intention of the Parliament is evident from the new Special Economic Zone Act where the term manufacture has been defined which includes processing besides other activities.

Suggestion

It is, therefore, suggested that the term manufacture, produce or production should be defined in the Income Tax Act as well following the latest enactment of Special Economic Zone Act by the Parliament.

5. TIME LIMITS

There are several provisions of Income Tax Act wherein no time limit has been prescribed, so it is suggested that the law should prescribe the time limit for passing orders under the Income Tax Act. The examples of such provisions are –

- **S. 171**: Claiming partition of a Hindu Undivided Family**.**

- **S.179**: Dealing with recovery of taxes from directors of a private company – period should be linked to the date of order determining the company's tax liability.

- **S.195**: order for deducting no tax or tax at a lower rate than prescribed. In our opinion, the law should prescribe a maximum period of 30 – thirty days, within which the application should be disposed of and in case the application is rejected, the Assessing Officer should pass a speaking order after providing a reasonable opportunity.

- **S.281**: Issue of clearance certificate, if an assessee applies for the same.

- **S.80-G:** Issue of certificate on receipt of the application for grant of a certificate in favour of Charitable Trusts.

Suggestion

- For giving effect to the order of an Appellate Authority i.e. CIT(A), Tribunal, High Court or the Supreme Court, the assessee has to continuously keep knocking at the door of the Assessing Officer. The law, in our opinion, should make it obligatory on the Assessing Officer to pass an order within three months of the receipt of the order, either from the Appellate Authority or the assessee whichever is earlier.

- At present, no time limit has been prescribed for assessment of TDS Return submitted by the assessee. Accordingly, such return is taken up for scrutiny after expiry of 6-8 years period and in many cases even beyond the above referred period. Since there is time limit for completion of income tax and wealth tax assessment, which is 21 months from the end of relevant assessment year, similar time limit should be fixed for completion of assessment of TDS Return / statements also.

B. NEW PROPOSALS

1. INCOME HEAD SALARY

Standard Deduction was used for computation of income under the head 'salary' till the implementation of the Finance Act 2005. It had caused hardship to the large number of tax payers, especially in the income range of Rs. 1.5 lac to Rs.5 lacs.

Suggestion

It is, therefore, suggested that the law of Standard Deduction should be re-introduced for computation of income under the head salary.

2. ACCOUNTABILITY OF THE ASSESSING OFFICER

Suggestion

It is suggested that the Assessing Officer should be made accountable for delay in granting refunds, giving effect to Appellate Orders, carrying out rectification, issue of certificates for lower deduction of tax, preparation of survey reports.

3. SECTION 143

In practice the Assessing Officers make unwarranted, uncalled for additions to the returned income or disallow claims made in the return of income. On many occasions the assessees have had no opportunity to make proper representation. This results into unnecessary litigation.

Suggestions:

- It is, therefore, suggested to enjoin upon the Assessing Officers to communicate the nature and quantum of additions/disallowances to the assessees, Finance Act 2002 had introduced a concept of limited scrutiny in which, the Assessing Officer, if has reason to believe that an assessee has made a claim of any loss, exemption, deduction, allowance or relief which is inadmissible, is empowered to issue notice specifying claims and calling upon the assessee to produce evidence and particulars in support thereof and making an assessment of total income of loss limiting himself to the claims set out to verify.

The Assessing Officer has enough power to verify the correctness of the claims made by the assessee in the return of income. Further, such additional discretionary powers to the

Assessing Officer are unwarranted and cause unnecessary harassment to the assessees. It would also open doors for unhealthy practices and protracted litigation.

- It is, therefore, suggested that provision introducing the concept of limited scrutiny be dropped by a further amendment to Section 143.

4. **INCOME TAX APPEALS (SEC.246A)**

- As per existing rule, appeal filing fees is based on the assessed income. It is suggested that appeal filing fees should be determined on the basis of the difference between Returned income and Assessed income. The appeal fees incase of penalty orders should be linked with income figures. The time limit is prescribed for disposal of appeals but if the appeals are not disposed of within the time allowed, then what course is to be taken is not clear.

Suggestion

It is suggested that specific period should be given for disposal of appeals.

- Section 246A introduced with effect from 01.10.98 has denied right of appeal against order under Section 201 and also does not provide right to appeal against levy of interest under Section 234A, 234B, 234C and 220(2).

Suggestion

It is suggested that the right of appeal should be granted against all orders passed under the Act whereby the right to levy or refusal is challenged.

C. AMENDMENTS IN THE EXISTING PROPOSALS

1. MAXIMUM TAX RATE SHOULD BE 25% FOR CORPORATE AND NON-CORPORATE

Suggestion

In the other Asian countries the prevailing maximum tax rate is 25%. It is, therefore, suggested that the tax rate should be brought down to 25%. Since the government had already reduced pre-custom tariff from 15% to 12.5% par with prevailing tariff rates of other Asian countries in the Budget 2006-07, we propose to reduce maximum tax rate from 30% to 25% to boost the economy, employment and overall tax collection which will give new economic scenario to the country.

2. AGE LIMIT AND NIL TAX SLAB ETC. FOR SENIOR CITIZENS

The Government had provided tax advantages to senior citizens. Following the government retirement age and retirement age prevailing in professionally managed corporate sector, it is proposed to reduce the threshold age for tax exemption purposes from 65 years to 60 years. With the proposed reduction, senior citizens would be able to avail of large tax benefits on instruments like the Senior Citizens Savings Schemes on the bank deposits.

Suggestion

It is suggested that, considering the increase in cost of living and medical treatment, the basic limit of exemption for senior citizens should be increased from Rs.1,85,000/- to Rs.2,50,000/- and for deduction U/s 80D for Medical Insurance Premium, the limit should be increased from Rs.15,000/- to Rs.25,000/-.

3. TDS LIMITS

Suggestion

Threshold limit for Tax Deduction at Source (TDS) for payment of interest should be increased from the current level of Rs.5000/- to Rs.15000/- and a special limit should be provided especially to benefit Sr. citizens to Rs.30,000/-. The Chamber feels that if the threshold limit is raised, people would have the option to receive the entire interest amount without TDS and pay to the revenue department at their convenience. It would specially benefits Sr. citizens whose maximum income is dependent upon return on investment. Obtaining a certificate from the Assessing Officer for no or lower TDS and getting final return thereafter both have become cumbersome process to be followed by the taxpayers.

4. **LEVY OF SURCHARGE AT 10%**

Surcharge levy on corporate and non-corporate assessees has reduced the impact of 30% tax rates imposed in Finance Act. The effective tax rate for the corporate and for non-corporate, where aggregate taxable income exceeds Rs.10 lacs on 30% slab, is 33.99 % (considering surcharge @ 10% and EC @ 3%), whereas such surcharge is levied @ 2.5% on non-domestic companies.

Suggestion

It is, therefore, suggested that this surcharge should be abolished in all the cases or alternatively it should be levied uniformly on all class of assessees. Levy of education cess and Higher Secondary Education Cess being additional surcharge requires re-consideration.

5. **DIVIDEND DISTRIBUTION TAX**

Suggestion

Dividend Distribution at present is taxed @15%. In order to boost investment scenario and industrialisation and corporatisation of business entities, it is suggested that stage has come where Dividend Distribution Tax should be abolished, or alternatively it should be slashed to 5%.

6. SECTION 30 & 31

Amendment has been made to Sections 30 & 31 by Finance Act, 2003, which governs allowance of current repairs of buildings, machinery, plant and furniture etc. The amendment of adding the words "shall not include any expenditure in the nature of capital expenditure" is not going to serve the purpose for which the amendment has been proposed. None of the courts have held that the expenditure allowed under these two Sections, although in the nature of Capital Expenditure, are still allowable rather they have held it to be a revenue expenditure. The amendment in the present form will be generating lot of litigation.

Suggestion:

Hence the amendment should be re-worded in a manner that the intent for which the amendments have been made could be achieved. The following is suggested to be added as an Explanation. "For this section, Capital Expenditure shall mean to include "any expenditure "incurred for enhancing substantially the life or the capacity or the performance of the building, plant, machinery and Furniture in respect of which such expenditure has been incurred".

7. SECTION 32: ADDITIONAL DEPRECIATION

Suggestion

- Since the Depreciation rates have recently been streamlined, no further changes are called for to these rates.

- A provision for additional depreciation is always welcome. However, in order for the amendment to achieve its objective of accelerating economic growth of the capital goods industry, it is necessary that it is allowed as truly additional and not just as an advance deduction.

Additional depreciation, in true sense, will be allowed to new entrepreneurs & entrepreneurs going for expansion only when such additional depreciation does not reduce closing written down value (WDV).

Otherwise, it will not amount to additional depreciation rather it will be preponment/acceleration of depreciation claim. In the era of globalization and age of competitiveness, Indian Industry needs modernization of their plant where there may not be substantial of installed capacity. Under this consideration, our Chamber feels that benefit of this additional depreciation should be extended to modernization in order to accelerate industrial growth & growth of GDP. In line with the earlier provision of investment allowances, the benefit of additional depreciation should be granted to second hand imported machinery to first user in India.

8. DEPRECIATION ALLOWABLE U/S 32 (1) (iia) OF THE ACT

Sub Section (iia) in Section 32(1) which provides further depreciation at 20% of the cost of plant and machinery installed after 31st March 2005 by an assessee engaged in business of manufacture or production of any article or thing. Such additional (further) depreciation is allowed as deduction under clause (ii) of Sec. 32(1).

Suggestions

- The rate of additional depreciation under Sub Sec. (iia) of Sec. 32 (1) should not be reduced to half, where the Plant & Machinery are put to use under substantial expansion for less than 180 days. Alternatively, it should be specifically provided that balance amount of additional depreciation should be allowed in immediately subsequent year.

- The rate of depreciation as per Income Tax Rules should be amended at per with schedule of depreciation under the Company Act 1956 in respect of depreciation charge on written down value (WDV).

9. SECTION 36(1)(III)

A provision has been added under the existing provision to disallow interest paid on capital borrowed for acquisition of new assets for expansion of existing business or profession. In other words, the said amendment is discouraging capacity expansion and extension of services by the persons who are in business. Under the existing law as interpreted by several decisions of Hon'ble Supreme Court & High Courts, interest is allowable in respect of capital borrowed for new assets for expansion of existing business.

10. EXPENDITURE IN CASH IN EXCESS OF RS.20000 - SECTION 40A(3) AND RULE 6DD(J)

A. The Finance Act 1995, amended the provisions of Section 40A with effect from A.Y. 1996-97. According to the amended provisions, disallowances in respect of expenditure incurred by the assessee otherwise than through the banking channel is to be made to the extent of 20%. The justification for this amendment was to reduce the harshness of the law, which would automatically also reduce the litigation. By Income Tax Fourteenth Amendment Rules, 1995 erstwhile Rule 6DD(j) has been omitted with effect from 25-7-1995. On account of this, in all genuine cases also, the Assessing Officer would be under an obligation to make disallowance, once the payment in excess of Rs.20,000/- is not made by crossed account payee cheque/draft and if the case is not covered within the exception provided in Rule 6DD(a) to (m). This would cause unavoidable hardships and sometimes, unbearable & unfair financial burden to the assessee. For example, if the assessee has gone, say from Mumbai to Delhi, and has to pay his hotels bills, say to ITDC Hotel, which is in excess of Rs.20,000/- and if, he has no option except to transaction is beyond doubt and the identity of the payee can never be questioned. If the assessee makes payment for air tickets, say to Air India, in cash in excess of Rs.20,000/-, the same would also suffer 20% disallowance. In view of the above, if the object is to reduce the discretion of the Assessing Officer, the same could be achieved by reintroduction of the erstwhile Rule 6DD(j) so that the harshness of the provisions can be reduced and the possible amount of disallowance will become insignificant which will automatically reduce the litigation arose on the applicability of Section 40A(3). In any event, to take care of the unintended hardships which the assessees are likely to face on account of the omission of the said Rule, it would be imperative to reintroduce the erstwhile Rule 6DD(j) in a modified form so that genuine and deserving cases as mentioned above are not hit by the above provisions for disallowance.

B It is proposed that this allowance of any expenditure incurred in respect of cheque payment is made by a sum exceeding Rs.20,000/- otherwise than by an A/c payee cheque or bank draft should provide specific explanation in Rule 6D of the Income Tax Rules as under where the identity of the payee is established and due to circumstances beyond the control of the payer. It is not possible to make payment by an A/c payee cheque or draft. The Assessing Officer should be empowered to consider and allow such demands without any disallowance of expenditure as per Sec. 40A(3) of the Act.

For example, payments are made to truck drivers towards transportation charges exceeding Rs.20,000/- and the truck drivers have to buy fuel and lubricants and pay for their truck maintenance for long trip journey at the originating station. Similarly, where a previously issued A/c payee cheque is dishonored, and the payer wants to avail service or make payment of purchase of goods, assessee has no alternative than to pay by cash. There may be similar various other situations which may be considered by the Assessing Officer as per specific provision which may be inserted in Rule 6D.

Suggestions

A limit of Rs.20,000/- in respect of expenditure, U/S 40A(3), loan/deposit receipts and re-payment U/S 269SS and 269T respectively were fixed long back. According to current price index and trend of business, trading and industry, a re-look is required for the said unit. We, therefore, suggest this limit should be enhanced to Rs.50,000/-.

11. **RESTRICTION ON REMUNERATION AND INTEREST TO WORKING PARTNERS IN ASSESSMENT OF PARTNERSHIP FIRMS (SECTION 40(B))**

A ceiling has been placed on interest payable to partners but no such conditions or ceiling appears in case of company assessee. While on payment of interest by a company assessee, the company need not pay any tax but the partnership firm is liable to tax at 30%+surcharge, where rate of interest is more than 12% p.a. and at the same time receiving partners pay tax thereon in their personal taxation. Remuneration payable to working partners is subject to restriction as provided under Section 40(b) of the Act.

Suggestions

It is suggested that such restriction should be modified as per company law as is applicable to remuneration to Directors in case of closely held company which is far more than the existing provision of Section 40(b) of the Act.

12. SECTION 44AB

Increase of limit in turnover / gross receipt in case of audit of accounts u/s.44AB: At present, audited accounts of persons carrying on business or profession are required u/s.44AB if the gross turnover/gross receipts exceed Rs.40 Lakh in case of business and Rs.10 Lakh in case of profession.

Suggestions

These limits have become outmoded and considering the effect of inflation it is suggested that these limits may be enhanced as per cost inflation Index.

13. SECTION 44AF

Reduction of estimating income from current business in goods or merchants u/s.44AF: At present, the income from such business is estimated at 5% of the total turnover below Rs.40 Lakh, which is very high.

Suggestions

It is suggested that the rate be reduced to 3% of the turnover.

14. SECTION 72

At present under the provisions of section 72 of the Act, carried forward business loss can be set off against profits and gains of business or profession carried on by an assessee in subsequent assessment years upto 8 years. Where the capital asset forming part of block assets in respect of which depreciation has been allowed is sold and there is any surplus (either because the block of assets ceases to exist or because the consideration received exceeds the value of block), such surplus is at present regarded as "short-term capital gain".

Suggestions:

- ♦ It is suggested that the carried forward business loss should be set off against such short-term capital gain in subsequent assessment years.

15. EXCLUSION FOR LONG-TERM CAPITAL GAINS AND DEDUCTION U/S 80IA/80IB WHILE COMPUTING BOOK PROFIT UNDER MAT

MAT is payable by companies even on long term capital gain, though the same might not be taxable because of indexation or investment in approved securities in accordance with the provisions of sections 54EC/54ED of the Act. Earlier, profits and gains derived by an industrial undertaking from the generation/distribution of electricity was excluded in arriving at the income liable to minimum alternative tax u/s 115JA of Income Tax Act. As a result of the new provisions contained in Sec.115 JB of the Act, Companies operating windmills and deriving income from generation/distribution of electricity are affected adversely.

Suggestions

- ♦ It is therefore suggested that profits derived by an industrial undertaking from the generation/distribution of electricity and other infrastructural development project be excluded from the computation of **"book profit"** as defined u/s 115 JB of the Income Tax Act.

- Section 115JB should be amended to provide for exclusion of long term capital gains and deduction allowable under section 80-IA/80-IB in computing Book Profit for the purposes of levying MAT.

- Effect of long term Capital Gain MAT calculation should be removed, since it is discriminatory between corporate and non-corporate assessees.

16. DEDUCTION ALLOWED U/S 80C OF INCOME TAX ACT TO BOOST INVESTMENT

At present a limit of Rs.1 lac has been prescribed u/s 80CCE of the Income Tax Act for allowing deductions to the tax payers u/s 80C, 80CCC, 80CCD of Income Tax Act.

Suggestions

In order to boost investment and savings, it is suggested that the existing limit of Rs.1 lac should be increased to a minimum of Rs.2 lacs.

17. POWER TO INCOME-TAX AUTHORITY TO IMPOUND THE BOOKS AND OTHER DOCUMENTS AND RETAIN THE SAME IN HIS CUSTODY - SECTION 133A

Section 133A has been amended to allow the income-tax authorities during the course of survey, to impound the books and other documents and retain the same in his custody. Such provision is unwarranted and may lead to harassment of the assessees during the course of survey.

Section 133A provides for impounding and retaining in custody of Books of Accounts & papers in course of survey operations for such period, as they may think fit. This provision will again bring back Inspector Raj, harassment and corruption. This provision tantamount to a mini search operation u/s. 132 limited only to the books of accounts and other documents. Such impounding of the books of accounts including current books of accounts will be hampering the business of assessee and he may put to great loss monetarily as well as in goodwill as he will not be able to pursue his debtors and pay his creditors in time. Impounding of the current books of accounts means a temporary closure or set back to the business of the assessee. It is a very harsh measure.

Suggestions:

- It is, therefore suggested, that the survey should be conducted only after obtaining the approval of the Chief Commissioner of the Income-tax. For the purpose of Section 133A, the term 'income-tax authority' also includes Inspector of Income-tax whereas under Section 131 of the Act, the Inspector of Income-tax does not have same powers as are vested in a court under the Code of Civil Procedure, 1908 and powers to impound books of accounts and other documents under section 131 of the Act are not vested upon him. Hence, conferring these powers to the Inspector of Income-tax under section 133A would be incorrect and unlawful.

- This explanation to Section 133A be amended to exclude Inspectors of Income-tax from the term 'income-tax authority'.

- It is suggested that instead of impounding and retaining in custody the books of accounts, the officer may sign each page of the books of accounts and or take Xerox copies of such books of accounts and ask the assessee to sign the Xerox copies. Alternatively, before removing the books of accounts, the Officer should allow the assessee to get the books of accounts & other papers impounded xeroxed so that the assessee can continue his business with the help of the xerox copies.

18. <u>SECTION 147, 148, 149</u>

Under the existing provisions of Section 147 of the Act, an Assessing Officer can reopen the assessment at any time within a period of 4 years from the end of the relevant assessment year, even where the assessment u/s 143(3) or u/s 147 of the Act has been for the relevant assessment year. If the assessee has made full and true disclosure of all material facts necessary for the purpose of assessment of his income, the Assessing Officer should not be allowed to reopen the assessment u/s 147 of the Act without bringing on record any fresh facts, evidences or reasoning in support.

Suggestions

- If there is no change in facts and circumstances in the case and it is the case of mere change of opinion, the Assessing Officer should not be allowed to reopen the assessment u/s 147 of the Act after expiry of one year from the end of the assessment year. Inserting second proviso to Section 147 of the Act may make the amendment to this effect. Section 148 has been amendment doing away with the minimum period of 30 days within which an assessee is required to submit his return of income for the purpose of reassessment. With this amendment the period within which an assessee is required to submit his return of income for the purpose of reassessment will be left to the discretion of the assessing officer.

- Time limit of not less than 30 days should be provided for filing return of income. Printed form of notice under Section 148 should be amendment in line with this section.

19. <u>SECTION 154 (RECTIFICATION OF MISTAKES)</u>

Section 154 has made it obligatory for the concerned income-tax authority to pass an order within a period of six months from the end of the month in which an application for rectification is filed by assessee. Nothing has been stated about what is the remedy available to the assessee if such authority does not pass any such order within the stipulated time. It may create lot of problems and confusion if nothing is spelt out about the fate of the application in such circumstances.

Suggestions

It is suggested that suitable explanation/clarification to section 154 may be provided in the Act to remove the doubt/confusion about the fate of the petition under Section 154 which remains indisposed beyond six months.

20. <u>MAT CREDIT AND INTEREST UNDER SECTIONS 234A, 234B, 234C</u>

a) The Department is not taking into account the tax credit available to companies under section 115JAA, while calculating interest payable under sections 234A, 234B and 234C of the Act. The tax credit allowed under section 115JAA is certainly in the nature of advance tax and due credit should be given for the same while calculating interest payable under sections 234A, 234B, and 234C for alleged shortfall in payment of advance tax. In the alternative, MAT credit should go to reduce the 'tax payable on total income' or the 'assessed tax' and only thereafter the calculation of interest should be made. Although the Assessing Officers are adjusting the MAT Credit to determine the tax payable or refund due, they are not adjusting the same for calculation of interest. This has lead to avoidable litigation.

Suggestions

- The credit of MAT paid in earlier years and allowable for setoff u/s 115JAA should be allowed as advance tax paid for computing interest payable u/s 234A, 234B, 234C of the Act. Alternatively the amount of MAT credit should be reduced from tax payable to determine assessed tax for levying interest under aforesaid sections.

- Where a corporate assessee is not required to pay tax under normal computation but tax liability is established under MAT provision, no interest under Section 234B and 234C should be levied. It is, therefore, suggested that the charging provision should be amended accordingly.

21. <u>INTEREST UNDER SECTION 234A</u>

Under section 140A of the Act, an assessee is liable to pay tax on self-assessment and proof of payment of such tax is required to accompany the return of income. If there is any delay in furnishing the return of income, interest is payable on the amount of tax. In cases where the tax on self-assessment is paid under Section 140A before the due date for filing return on income but return has been filed after the due date, such tax on self-assessment is not considered as item of deduction for the levy of interest under Section 234A. Advance tax and TDS are not subject to this levy of interest under Section 234A. As tax on self-assessment is also similar to the advance-tax and

TDS as far as revenue is concerned, interest under Section 234A should not be levied on tax on self-assessment paid within the due date.

Suggestions
Section 234A of the Act should be amended to give credit for the tax paid under section 140A while calculating the interest payable by the assessee.

22. <u>INTEREST PAYABLE ON SHORTFALL IN LAST INSTALLMENT OF ADVANCE TAX. - SECTION 234C</u>

By an amendment to sub-section (1) of Section 234C made by the Finance Act, 1994 it is now provided that interest shall be payable if the aggregate advance-tax paid by 15th March, of the financial year falls short of the full amount of the assessed tax. In consequence of the new amendment, assuming that an assessee is late in payment by one day, he would have to pay additional 1.25% of the shortfall as interest under Section 234C. In other words, he would be paying 1.25% for a day's delay, which works out to an interest rate of 456.25% per annum. This could not have been the intention of the legislature.

In contrast to the above, it may be pointed out that for purposes of Section 234B, the assessee is allowed a tolerance margin of 10% and time upto the end of the year since the interest under this section is charged only from the following 1st April.

Suggestions
In the circumstances, it is suggested that this provision be amended by providing that interest shall be payable for shortfall in the 15th March installment only if the last installment is not paid within the end of the Financial Year and only if the advance tax paid before the financial year falls short of 90% of the assessed tax.

23. <u>INCOME TAX REFUND (SECTION 244 & 245</u>)

a) Accountability:
Suggestions

While introducing the accountability of IT officers, it is necessary to introduce a code of ethics for the IT administration apart from the code of conduct laid down in civil service conduct rules. This will improve the quality of administration.

b) Income Tax Refund (Section 244 & 245)

i) The chamber welcomes direct credit of refunds in the bank of the assessees. It is suggested that IT refunds should automatically accompany the assessment order. In specific cases, where refunds are not accompanied with assessment order, there must be a speaking order stating the reason for withholding the refund and such order should be appeallable. On appeal, the refund is allowed then. ITO passing such order should be made accountable to the government for loss of interest due to delayed payment of refund or for negligence with an intention to harass the assessee. Unless concerned ITOs are made accountable for their lapses, it may breed corrupt practices and affect the confidence of the public, which is contrary to the government desire to promote voluntary compliance.

It is a common experience of an assessee that in many cases refunds due for 8 to 10 years are not refunded by the IT department on some pretext or other and this is not only causing harassment to the assessee but also encouraging corruption and loss of interest to the exchequer because of neglect and lethargy of the officers concerned.

ii) Though Section 245 empowers the Income Tax authorities to set off any Refund due to an assessee against any sum payable by the concerned assessee under the Income Tax Act, an assessee does have any authority to adjust any refund due to him against any tax payable by him.

Suggestions

Hence, it is suggested that in Section 245, a new sub Section provision may be made by which an assessee, who is entitled to get a refund from the Income Tax Department either on the basis of any order/intimation passed by any Income Tax authority or on the basis of any Appeal Effect to be given by an Income Tax Authority or on the basis of Return filed by him in respect of which the prescribed time limit under Section 143(2) has already been over, to reduce any of his income tax liabilities whether by way of regular demand or advance tax or self assessment tax, by the due Refund. For this purpose a suitable Form may be prescribed in which the necessary details should be filed by the assessee concerned at the time of adjustment or refund by him. To prevent any misuse of the proposed provisions, levying of interest and/or penalty at a rate higher than the others already existing in the Act may be prescribed in the proposed sub-Section of Section 245 itself. It is felt that if such a new provision is brought, then not only the assessee would save time from running to the Income Tax Department repeatedly for getting the refund but also the job relating to the collection and recoveries required to be performed by the Income Tax Authorities would be reduced substantially.

24. <u>SECTION 244A</u>

Under Section 244A (1)(a), an assessee is entitled to receive interest on refund out of any tax collected at source, tax deducted at source or advance tax paid from the 1st day of April of the assessment year to the date on which the refund is granted. Clause (b) of Section 244A(1) provides that in case the refund is out of any other amount, interest shall be calculated for the period from the date of payment of the tax or penalty to the date on which the refund is granted. Accordingly, the assessee is entitled to receive interest on amounts paid either by way of self-assessment tax or in pursuance of a notice of demand. The explanation below of the above clause reads as under:

'Explanation - For the purpose of this clause, "date of payment of tax penalty" means the date on and from which the amount of tax or penalty specified in the notice of demand issued under section 156 is paid excess of such demand.' The aforesaid Explanation instead of clarifying the meaning of 'date of payment' speaks of the amount being paid in excess of the amount demanded. Further, this Explanation creates an impression that only a tax or penalty paid in pursuance of a notice of demand, if paid in excess of the demand, is entitled to interest under Section 244A and no other payment is eligible to the said interest. However, as the intention of the legislature is to grant interest to assessee for money remaining with the Government as is clarified in the aforesaid circular, there is no reason why such a restricted meaning should be taken especially since clause (b) grants interest on refunds of any other amount due to assessee. The aforesaid Explanation is being used by many Assessing Officers to deny interest on refunds out of self-assessment tax paid by the assessees although it is not the intention of the legislature to do so.

Suggestions

- Explanation below clause (b) of Section 244A(1) be deleted since no clarification is required for the date of payment of the tax or penalty. Provision to clause (a) of sub section (1) of Section 244A provides that no interest to be payable if the amount of return is less than 10% of the tax as determined. However, in certain circumstances the amount of tax determined may be very high and even 10% of such amount would result in a high figure. The refund is normally granted after an assessment is completed or intimation is issued, which is normally issued just before the expiry of one year from the end of the financial year. The assessee in such cases would lose interest of almost a year, which otherwise he could have earned by making investment.

- Aforesaid proviso to section 244A be deleted.

25. INTEREST ON DEMANDS & REFUNDS

On refunds the assessee is entitled to interest at the rate of 0.75% per month whereas the Government charges interest on @ 1.25% per month.

Suggestions

Principles of equality and natural justice require that the rate of interest on demands and refunds should be uniform.

26. PENALTY UNDER SECTION 272A(2) AS APPLICABLE TO CHARITABLE ORGANIZATION.

In case of a Charitable or religious trust, a return of income is required to be furnished under section 139(4A) if the total income of the trust exceeds the maximum amount which is not chargeable to income-tax. For this purpose, the total income is required to be computed without giving effect to the provisions of Sections 11 & 12. Therefore, practically, in most of the cases, the gross donation and other receipts will become the base and if the same exceeds the maximum amount which is not chargeable to income-tax, such trust becomes liable to furnish return of income, though, actually such trust may not have taxable income. If the return of income, in such cases, is not furnished within the prescribed time limit, then, the trust becomes liable to pay penalty under Section 272A(2). The amount of such penalty is not linked with the taxable income of the trust. Accordingly, even if the trust does not have taxable income, it will be liable to pay penalty under this section. Defaults covered by the provisions of Section 272A(2) are of technical nature. These happen genuinely due to lack of information on the part of charitable organizations, as they do not normally have access to professional assistance. Penalties prescribed under Section 272A(2) are extremely harsh. Such penalties for technical defaults cause tremendous hardships to charitable organization.

Suggestions

It is, therefore, suggested that the provisions of Section 272A(2) should not apply charitable organizations. In any event, penalty should be nominal for technical defaults, having no significant revenue impact.

27. DISALLOWANCE OF EXPENDITURE IF TAX NOT DEDUCTED/PAID AT SOURCE

The Finance (No.2) Act, 2004 has extended the scope of provisions of section 40(ia) whereby any i) Interest ii) Commission & Brokerage iii) Fee for Professional Services or Fee for Technical Services iv) Amount paid to contractor or sub-contractor which is payable to a resident on which tax has not been deducted or after deduction it has not been paid within the time prescribed under section 200(1) in accordance with the provisions of Schedule XVIIB, the same shall not be allowed as deduction while computing income under the head 'Profit and Gains of Business or Profession'. This provision is already there in respect of payment to non-residents. However, this provision has been extended in respect of payment to residents also. It has been further provided that in any subsequent year if tax is deducted and paid on such sum, the same shall be allowed as deduction in computing income of the year in which such tax has been paid. The objective stated for introducing this provision is to enforce compliance of provision of TDS. However, this provision is too harsh and going to cause lot of problems to the tax deductor.

Firstly, there are enough provisions under the Act to enforce compliance of the provision of TDS. (i) Under Section 201(1) on failure to deduct or failure to pay after deduction the person is treated as an assessee in default and the amount is recoverable from him. (ii) Under Section 201(1A), such person is liable to pay interest for the period of the default. (iii) Under Section 271C such person is liable for penalty which can be equal to the amount of tax involved. (iv) Section 28 to Section 44D are meant to compute the profit of the business or profession and should not be used to enforce compliance in respect of tax liability of other persons. The applicability of Section 40(a) in respect of payment to a non-resident may be justified because such non-resident are not easily traceable and as such the tax liability of such persons get compensated by denial of the benefit to the deductor. In case of residents, the traceability is not a problem. Moreover, there can be a practical problem where the deductor has failed to deduct tax and in such a situation and the deductee has paid tax on such income either by way of advance tax or by way of self assessment tax and in such a situation the deductor cannot deduct tax again from the deductee and the benefit of deduction of such expenditure shall be lost forever as the condition of the proviso of claiming the deduction in the subsequent year when tax is deducted and paid shall never be fulfilled.

It has been further stated that if the tax has been deducted and not paid in time or within financial year or for the year end, if the payment has not been made on for before 31st May, the last date for payment of Taxes for the year ended 31st March or if paid in the month of June in next year, such deductions or expenses claimed will not be allowed.

Last amendment on this account include relaxation for deposit of TDS amount of March only within return filing due date.

This provision is very harsh to the assessee. He is deemed to be an agent for and on behalf of the government for collection of Tax and if there is delay in payment, he will be deprived of disallowance.

Suggestion

The amendment made to section 40 be dropped as enough deterrent provisions already exist to ensure compliance with TDS provisions. Hence, there is no justification for denial of deduction of genuine business expenditure for failure to deduct or deposit TDS. Or alternatively amount of TDS deposited within return filing due date for full previous year should not be subject to disallowance.

28. INFRASTRUCTURE FINANCING ISSUES

A. Tax breaks u/s 10(23G) of Income Tax Act, 1961

Under section 10 clause 23G of IT Act, for companies engaged in infrastructure projects by way of equity or debt or both, their income from such investments is exempt from tax. The withdrawal of this exemption will have adverse impact on the growth momentum.

The worst hit would be institutions who have already made substantial investment in infrastructure projects. The removal of this exemption makes such investments unviable and will act as an impediment for future investments.

The tax benefit also enabled project developers to bring down their borrowing cost. Removal of such a cushion is bound to adversely affect that. In a scenario where interest rates have started hardening, additional upward pressure on rates will only severely impede growth of infrastructure.

According to various estimates, in the next 5 years investment worth USD 150-190 billion is needed only for infrastructure. In today's scenario, where there is a paucity of long-term funds and where Government is expected to incentivise private investments, removal of the exemption sends out a very negative signal. In this backdrop, we appeal to you to urgently review this matter and re-instate the exemptions.

B. Capital Gains Tax

Some companies have made investments in infrastructure bonds and equity. Withdrawal of the exemption available to long-term capital gains will adversely affect such companies by pushing up costs. As a result NBFIs, who are active in this space, would be forced to increase their lending rates thus pushing up the cost of infrastructure.

C. External Commercial Borrowing (ECB)

NBFIs are largely dependent on ECBs for raising long-term resources. However, keeping in mind that availability of long-term funding is extremely scarce now, the Chamber request the Government for immediate intervention in relaxing the ECB norms. Otherwise the tight liquidity situation will severely impede the infrastructure building process.

D. TDS :

While banks and financial institutions (Fis) are exempt from the **purview of section 194A of I.T. Act**, NBFIs do not enjoy any such benefit and thus have to pay a TDS @ 22.44% (including surcharge of 10% and the educational cess of 2%) on the interest payment made by any borrower. NBFIs should be treated at par with banks and FIs.

If we analyse a typical loan transaction of an NBFI, we may find lending say at 10% and borrowing say at 8%, giving a gross margin of 2%. The interest income of the NBFI will be subject to TDS of 22.44%, implying 2.24% out of 10% will go for TDS deduction, and net inflow post TDS would be 7.76% whereas outflow in respect of borrowing cost would be 8%, thereby implying a negative cash flow of 0.24%.

E. Asset Recovery

While NBFIs are complementing the banks' efforts in credit delivery, they are still not at par with banks and FIs in terms of access to asset recovery facilities. NBFIs must equip themselves adequately so that they can minimise their non-performing assets (NPAs). In this regard, NBFIs should be brought under the purview of the SARFAESI Act and NBFIs should also be allowed to take recourse to debt recovery tribunals (DRTs).

29. SEZs and 100% EOUs – Extension of IT Exemption:

Suggestion

Extension of time limit u/s 10A and 10B of the Act beyond 31st March 2009 is suggested for EOUs worth Rs.37,657 crores last year. In the era of globalisation and modernisation, it is appropriate time to announce such extension in the budget proposals.

30. TAX PROPOSALS

(i) DEFINITION OF "CHARITABLE PURPOSE"

It has been proposed to amend the definition of the term Charitable Purpose u/s 2(15) of Income Tax Act so as to provide that "the definition of any other object of general public utility" shall not be a charitable purpose if the definition is carrying on (A) any activities in the nature of trade, commerce or business and or (B) any activities of rendering of any service in relation to trade, commerce and business.

This proposal will affect adversely genuine charitable activities of different trusts, Chambers of Commerce etc. Refer following examples:

(A) Medicine shops in Charitable hospitals.
(B) Seminar, conference organised by chambers of commerce or federation for a fee from delegates.
(C) Renting of meeting halls by chambers of commerce to other organisations.
(D) Trust providing marketing facility to villagers for their handicrafts products.

In respect of the above a long list will go on. It is not the intention of the Parliament to tax the activities like above, but the proposal in its form in the Finance Bill shall definitely affect all above and similar other activities. Therefore, the proposal should be reviewed, reconsidered and redrafted to limit the intent of the amendment.

31. **STAY OF DEMAND BY ITAT**

It has been proposed that even if the appellant assessee had cooperated in appeal proceedings before ITAT, the power to grant stay by the ITAT for a period exceeding 365 days in aggregate had been withdrawn. It is most unfair for the appellant assessee. It is, therefore, suggested that where the appellant assessee has not cooperated with the ITAT for disposal of appeal, the ITAT should not extend the period of stay grant against the disputed demand exceeding 365 days. But, where the appellant assessee has cooperated in the appeal proceedings before the ITAT, no such restriction of 365 days should be imposed or extending the stay of demand.

32. SHORT TERM CAPITAL GAIN TAX – INCREASE IN THE TAX RATE –MARGINAL RELIEF REQUIRED.

In order to promote the capital market and the investment community at large, the proposal of increase the rate of tax from 10% to 15% should be withdrawn.

If at all, such suggestion is not accepted, at least a provision of marginal relief should be added where the taxable income of an assessee including short term capital gain exceeds Rs.1.5 lacks / Rs.1.80 lacs for women assessee / Rs. 2.25 lacs for senior citizens. In other words, where the tax slab rate for other income is 10%, the assessee should not be asked to pay tax @15% on short term capital gain.

33. Tax Deducted at Source (TDS)

Various monetary limits have been provided in different provisions of Tax Deduction at Source (TDS) where no TDS is required to be made. We propose that the limits should be enhanced. The following table explains the same:

Section	Present Limit	Proposed Limit
194BB/194EE/194H	Rs. 2500	Rs. 10000
194A/194B/194D	Rs. 5000	Rs. 15000
194C (Single Contract)	Rs.20000	Rs. 50000
194C (Yearly aggregate)	Rs.50000	Rs.150000
194I	Rs.120000	Rs.210000
194 J	Rs.20000	Rs. 50000

Alternatively it should be linked with an index notification similar to next notification issued year to year in respect of capital gain tax.

34. Security Transaction Tax (STT)

It has been proposed to allow as administrative expenditure by removing the same from tax rebate. This proposal will cause great hardship to assessees who are entering into security purchase and sale transaction and not as an investor. The provision of tax rebate should not be disturbed and the proposal of transfer the same from tax rebate to allowable reduction should be withdrawn for upliftment of the capital market.

D. WEALTH-TAX ACT, 1957

Abolition of Wealth Tax

Considering the amount of revenue generated by levy of Wealth-tax and the efforts involved in its collection it is suggested that Wealth-tax levied under the Wealth-tax Act may please be abolished. In any event in view of the inflation and the fall in the real value of rupee, the exemption limit for the purposes of Wealth-tax be increased from Rs.15 lakhs to Rs.45 lakhs. It is time to phase out Wealth Tax that has not generated any sizeable revenue. Sometime back the Gift Tax was abolished. In addition, the Planning Commission in its draft plan approved paper that has advocated that tax should not be imposed unless revenue there from justify its administrative and collective costs.

Suggestion

On this count itself there is no justification for existence of Wealth Tax levy. With no social security and inflation eroding the value of money year by hear people's savings are the only safeguard for their future security, which is already diminishing in value with inflation, should not be further taxed with Wealth-tax. It would also simplify the tax laws eliminating time consuming litigation on valuation of properties, which does not end till it reaches the Apex Court. If cross-check on income and wealth is required the same can be provided in the Income Tax Return Form itself with an additional column for disclosing opening and closing net wealth of the assessees.

II. **INDIRECT TAX**

A. <u>SERVICE TAX.</u>

(i) **<u>RATE OF SERVICE TAX:</u>** The levy of 12% service tax rate is too high more particularly for trading community of service users who are not eligible to claim any input credit under CENVAT Credit Rules. It should be reduced to 5%, the rate at which the service tax was originally introduced.

(ii)(a) In view of firm rupee position in foreign exchange market & continued suffering of heavy financial loss by exporters, the Government has come out with notification for refund of Service Tax on selected categories of service received by exporters. It is felt by our Chamber that the step taken by Government is half hearted. Service Tax paid by the exporters on entire service used directly for the purpose of exports should be refunded.

(b) Service tax is payable under the category of '*Port Services'* even on export consignment. But under the category of 'Cargo Handling Services', service tax is exempt on handling on export cargo or passenger package under Sec. 65(23) of the Act. This anomaly appears under two different categories of services in respect of export cargos.

(iii) <u>CLUB OR ASSOCIATION SERVICES</u>

We have noted that services provided by a Club or Association have been brought under the ambit of Service Tax w.e.f. 16.6.2005. The expression ***'Club or Association'*** has been defined to mean ***'any person or body or persons providing services, facilities or advantages for a subscription or any other amount to its members'***.

The definition, however, has ***exempted the following categories of Associations from the levy of Service Tax***. These are :

a. any Association established or set up under any law for the time being in force;

b. any Association engaged in the activity of Trade Unions, promotion of agriculture, horticulture or animal husbandry;

c. any Association engaged in activities which are in the nature of public service, charity, religions or political activities; and

d. any Association of Press or Media persons, We feel that Chambers of Commerce & Industries do not really fall within the definition of ***'Club or Association'*** as aforesaid, **as their activities are** different, their role and functions in the economy are different, and unlike a Club or Association they do not render any specific services or facilities to its members against subscription, except general services for the promotion of trade and industry, economic growth and exports and de-bottlenecking of procedures, and ensuring a fair deal for the business and all stakeholders of the community in general.

Of course, the ***Chambers authorised to issue Certificates of Origin and Visa recommendations***, do so against Fees at the instance of the Union Government for the purpose of promoting India's foreign trade and investment, sourcing of industrial raw materials and inputs, technology and JVs etc. ***These are by no means commercial activities of any Chamber of Commerce & Industry***. As such, ***Membership subscription and Fees from COOs & Visa Recommendations are revenues essential for carrying on the basic functions of a Chamber of Commerce and not revenues from commercial activities. Hence Service Tax should not be levied on them.***

However, some resourceful Chambers may have other sources of income from renting of building and Conference Halls, organizing Conference/Summits and charging Delegate Fees, organizing Trade Fairs in India and Overseas, taking Business Delegations abroad to participate in International Fairs etc. These activities also are mostly in the nature of trade and industry promotion, and creation of goodwill for India in the comity of nations which add up to the efforts of the government also in building up good friendly relations with all countries.

As such, all these activities also are in the nature of ***'public service'*** or ***'national service'*** which the government also is encouraging, and the Chambers are charging fees to finance them and cover costs without depending on the government. Now, ***if the Finance Ministry wants to curb such activities by levying Service Tax on them, it can do so. But we are sure that the cost to the nation would be disproportionate to the revenue collection therefrom, and economic growth environment will suffer a serious set-back***.

It has been appreciated, time and again, by the government that the Chambers of Commerce play a vital role in the growth of the economy. Their activities go far beyond their members and they act as an indispensable linkage between the business community and the government in furthering economic growth and making paradigm shift in economic policy and procedures to keep up with the global changes. ***Over the last few years, many Chambers have extended their activities to achieve the following social objectives also***, albeit on a limited scale –

- Development of select villages in the States, to seek improvement in literacy, employment & livelihood and productive activities;

- Management of Environment through awareness compaign in educational institutions, and collaboration with State Governments and PCBs to abate pollution in industry, transport, and Municipal Bodies;

- Opening of Tax Clinics/Tax Assistance Desks, in association with the tax-authorities to facilitate implementation of new Acts/Forms by offering guidance and advice to the assessees, as at the time of introducing VAT;

- Setting up MSME wings in the Chambers to act as a catalyst for the promotion of medium and small enterprises, in particular, so that they can become efficient and globally competitive;

- Adoption of City Beautification and Maintenance Programmes.

The argument put forward by the CBEC in its circular dated 04 June 2008 to the Commissioners for levying Service Tax on the Chambers of Commerce ***seems to be neither correct nor comprehensive***. The Circular states ***'they collect membership fees and other charges from their members and they work for the interest of trade and industries. Therefore, they do not have objectives which could be categorised as public service'.*** This is too narrow, outdated and simplistic a view of the role and purpose of having a Chamber of Commerce in the country.

A Chamber of Commerce naturally ***'works for the interest of trade and industries', CBEC writes in the said circular'***. How then the benefits are limited to the members only, and not enjoyed by the whole country as well as the government, both Central and State, in terms of production, revenues, income and employment ? We fail to appreciate the logic behind such a conclusion. Sir, ***you have rightly clarified with reference to the amendment of Sec.2(15) of the I.T. Act while rounding up the debate on the Finance Act, 2008 that 'Chambers' activities would continue to be regarded as advancement of any other object of general public utility'***.

Even from a legal view-point, ***any object of 'general public utility' is treated as a 'charitable purpose' and exempted from tax***. In the case of CIT –vs-- Bar council of Maharashtra reported in AIR 1981 SC 1462, it was held that the purpose of State Bar Council was to ensure quality services of competent lawyers to spread legal literacy, promote legal reforms and provide legal assistance to the poor. Such purpose is the advancement of the object of the general public utility, and it will be a charitable purpose.

Sir, we believe that you will kindly appreciate all these various considerations as explained above and agree that Chambers of Commerce & Industry cannot be put under the same category of institutions as ***'Clubs and Associations'***. ***They belong to a clearly different category, with***

distinct features, objects and activities which are in the nature of 'general public utility' and not limited to the promotion of interests of their members

only. Appropriately, Chambers of Commerce & Industry could be placed under Serial 'C' of the exempted category.

The Chambers, therefore, strongly suggest to abolish such levy against the Chambers of Commerce & Industry for realising service tax with retrospective effect from the day of inception.

(iv) Levy of State Sales Tax and Central Service Tax on the same category of receipts by an enterprise, prevalent at present in India, can be palpably punitive and distortionery. The tax turns out to be particularly burdensome and acute when the same transaction is treated as sales of goods by the other. Taxation of telecommunication (on pre-paid chargeable cards sold by telecom operators is subject to service tax and now again subject to sales tax, because of a Supreme Court's Verdict). On the other hand, the Ministry of Telecommunication had urged different States not to levy sales tax for telecommunication boom in the country.

Another example is taxation of contractors and sub-contractors, lease (hire purchase agreement), financial leasing (including equipment leasing and hire purchase). The international transactions consider this either as goods (in Canada) or as service (in Europe), and not both. In all its fairness the Central should treat them as sales of goods and remove it from the levy of Services.

v. <u>INFRASTRUCTURE EQUIPMENT FINANCING ISSUES</u>

The problem of service tax on lease and hire-purchase transactions has been a long standing issue for the NBFI sector. We are thankful that you have addressed this issue. However, levying service tax on 10% of the interest component would render the whole effort futile as this does not provide the much needed push required for lease and hire purchase transactions. It is worth highlighting that worldwide lease & hire-purchase have been the most potent forms of capital creation whereas in India, lease & hire-purchase transactions form a very minuscule segment of asset financing.

If we analyse a typical loan transaction of an NBFI, we may find lending say at 10% on a principal amount of say, Rs.100. The interest income would be Rs.10 of which 10% would be subject to an effective service tax rate of 12.24% (inclusive of education cess) i.e. 12.24% of Rs. 1 = Rs.0.124, practically 12 paise only. Thus, the revenue generation from such a levy would be quite insignificant, especially keeping in mind that today in India lease & hire-purchase transactions account for a very small part of all asset-financing cases. Majority of asset-financing is through loans.

Further, value added tax (VAT) of 12.5% is also applicable on the interest component of lease & hire-purchase transactions. Multiple levies will only stifle their growth.

Suggestion
Thus, we would appeal to create a more conducive policy framework for lease and hire purchase to foster in India. They can immensely contribute in expediting infrastructure creation.

vii. Recently, the Board has clarified issues relating to Authorized Motor Vehicle Dealers and Service Stations whereby the automobile dealers would provide facilities to customers for obtaining automobile finance and Non Banking Financial Companies (NBFC) and to give initiatives to their customers, part of the initiatives to the customers. In the clarification the Board has mentioned that the gross amount received from Bank/NBFC will chargeable to service tax under the head 'business auxiliary services'.

Suggestion
It is suggested that following the CENVAT Rule, where output tax is deposited with input tax, commissions received in such case should be allowed to be deducted from commissions passed on to the customers (who are buyers of such import vehicle against availing such financial credits).

viii) The levy of Service Tax on goods transportation by roads is acceptable by the service receivers. But for the purpose of enforcement of levy, the service receivers have been notified to get registration and pay tax and submit return.

Suggestion
This procedural aspect is strongly opposed by our Chamber and we feel that the procedural aspect on this category of service should be executed by Service Providers and not by the Service Receivers.

B. <u>CENTRAL SALES TAX</u>

i) Issuing C Forms under Central Sales Tax Act

(a) The above subject has caused lot of difficulties, trouble and harassment to the honest dealers. For better understanding of the problem, we would like to bring to your kind attention some of the facts before making any suggestions.

The Central Sales Tax Act, 1958 provides for concessional rate of tax in respect of inter-state sales between two registered dealers for specified purposes of business. In order to ascertain that the transaction is with registered dealer in another state for specified business purposes, Central Sales Tax Act and Rules have provided a mechanism of issuing of C form. C forms are to be obtained by the purchasing dealer from State Government. As per the provisions of Section 13 (4) (e) of the said Act, State Governments have been authorised to make rules for issuing C forms. Most State Governments in order to avoid misuse of C forms have prescribed many

conditions. The conditions are to be fulfilled by the purchasing dealer and if for any reason he fails to do so then the sufferer is the seller of goods in other states. So the mechanism as it operates today has resulted into punishment to the innocent persons.

Cause of grievance

Though it is mentioned in the Act that Rules shall be consistent with the Act, most of State Governments have placed unreasonable conditions like heavy deposit/bank guarantee, restriction on number of forms per dealer at a time to the purchasing dealer for obtaining C forms. State Governments have failed even to print adequate number of C forms. Having assumed the responsibility of issuing C forms, the State Government ought to issue these forms as per the needs of the individual dealer.

In any case the seller who has to bear the burden of extra demand on account of failure to obtain C form is helpless to do anything. In fact, he is not aware of the rules and conditions in other states. This position needs urgent correction.

Suggestions

It is, therefore, suggested that the CST Act shall provide for full mechanism for issuing C forms and it shall be made mandatory on the State Governments to ensure supply of sufficient quantity of C forms considering the national policy on C forms.

(b) Previously, one C form for all the transactions between two dealers in one financial year was allowable. But due to amendment to CST Act, now C form is required to be obtained per quarter i.e. every three month. Hardships to honest tax payers on account of non-availability of C forms have therefore compounded.

We suggest alternative method / mechanism for issue of 'C' Form.

1) Dealer to submit quarterly statement of purchases against C forms
2) State Governments shall be duty bound to issue within 10 days as many no. of C forms as is required by the purchasing dealer on the basis of interstate purchases made by him against C forms.

Sales Tax Department of the Government of Maharashtra has already put in place the mechanism to issue adequate C forms and dealers making application are getting C forms within a reasonable time. The procedure is cumbersome and has scope for improvement nevertheless better than not getting forms.

The position of other forms under CST Act like E1/E2/F/H is similar to that of C Form as described above. Hence, the National Policy also should cover these forms.

ii) Issuing Forms in respect of periods intervening two quarters

Another point of contention and concern for the dealers relates to transactions during the period of changeover from one quarter to another. Example: 'A' a seller from Andhra Pradesh sends goods from Hyderabad to 'B' of West Bengal on 29th March with an invoice dated 29th March. The Goods are received by B on 5th April. B records the purchases on 5th April. Based on his records B will issue C form after end of the quarter i.e. in July for quarter April to June. A will require C form for his assessment for the period ending on 31st March. This may and is causing lot of avoidable difficulties to genuine / honest dealers for no fault on their part. Clear cut guidelines should be given to allow C form in case of the seller on the basis of invoices included in C form for one quarter or another. The sellers who have no control over the accounts of the purchaser or the rules in other states suffer in absence of clear provision or guidelines.

Suggestions

The amendment in the Rules may take time. However, it is suggested that this matter may be thoroughly discussed at the Empowered Committee meeting and State Government may suitably be advised to make available all types of forms in sufficient quantity and to prescribe the procedure for obtaining various forms simple. We at the Chamber are ready to elaborate the points to the Empowered Committee if you consider it appropriate.

iii) Central Sales Tax (CST) Act Rates were scheduled to be reduced to nil from 4% level but the continued disagreement between the Central and State Governments for compensation package has led to its postponement several times. The rate of CST was brought from 4% to 3% and lastly to 2% that record from 1st June 2008. As per the White Paper on introduction of VAT it was announced that the rate of CST will be ultimately brought down to Nil.

Suggestions

It is, therefore, suggested CST Tax Rate should be reduced to nil w.e.f. 1st April, 2009.

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