CALCULTTA CHAMBER OF COMMERCE

PRE-BUDGET MEMORANDUM
ON

UNION BUDGET

2007-2008

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PRE-BUDGET MEMORANDUM ON UNION BUDGET 2007-2008

I. DIRECT TAX

Income Tax

A) SIMPLIFICATION OF TAX LAWS

1. Investment in shares and securities, income arising out of sale of the same and taxability thereof, requires simplification. At present the law is complex as to whether a person in the given transaction is treated as trader in stocks or investor in stock. A draft circular was issued sometime in May 2006 by CBDT, which caused revolt and repercussion in stock market. Later Hon'ble Finance Minister had to comment in the media on this issue. In the era of simplification, it is, therefore, suggested that a clear-cut law should be enacted in the Income Tax Act itself, whereby there would not be any doubt either in the mind of tax payers or the tax collectors.

2. **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 has no connection with perks provided by the employer to employee.

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

29. DEFINITION OF TERM "MANUFACTURE"

The Income Tax Act 1961 does not provide any definition for the term "manufacture". 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 of any article or thing. There are a large number of cases which centers around the meaning of the term manufacture. The tax payers consider **processing** as part of manufacture and the tax gatherers 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 through out 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.

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

30. **TIME LIMITS**

There are several provisions of Income Tax Act wherein no time limit has been prescribed, so it is suggested 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.

- Order 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 any in many cases even beyond above referred period. Since there is time limit for completion of income tax and wealth tax assessment, which is 2 years from the end of relevant assessment year, similar time limit should be fixed for completion of assessment of TDS Return also.

31. E-FILING OF IT RETURNS (CORPORATE ASSESSEES)

The Chamber compliments the government's policy for successfully implementing the scheme of E-Filing of IT Returns by corporate assessees. There exists conflict between the Form No.1 – instructions and legal provision of Income Tax Act as summarized hereunder, which require amendment in the Act:

(i) Section 44AB for Tax Audit Report specified that every person has to furnish by the due date Tax Audit Report. But the instruction of Form No. 1 has stated otherwise. Moreover, Circular 9/2006 dated 10/10/2006 had clarified that no penal action u/s 271B of the Income Tax Act shall be initiated or levied for not furnishing Tax Audit Report on or before the due date, where e-Return had been filed without such Tax Audit Report within due date.

(ii) Section 139(9) provide for **Defective Returns** and for the purpose the Defective Return has been explained to include- Return not accompanied by Tax Audit Report.

(iii) Provision of **Section 139(1B)** and 199 are also required to be suitably modified to be in line with the e-Return filing procedure.

Such anomalies between the provisions of the Act and the new Scheme of e-Return should be removed immediately with retrospective effect.

B. NEW PROPOSALS

1. INCOME HEAD SALARY

Standard Deduction used to allow for competition of 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 lac to Rs.2.5 lacs.

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

2. ACCOUNTABILITY OF THE ASSESSING OFFICER

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 that 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 enjoin upon Assessing Officers to communicate the nature and quantum of additions/disallowances to the assessees. The Finance Act 2002 has 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 this 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.

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.

4. SETTLEMENT COMMISSION (245D)

At present the settlement commission has no power to reduce or waive interest statutorily payable u/s. 234A, 234B and 234C except relief granted by CBDT by way of circular u/s.119 of the Act. It is suggested that Section 245D should be suitably amended to empower the Settlement Commission to waive interest payable under the provision wherever the particular case is fit for the same.

1. 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) and rejection of application for certificate u/s. 80G.

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. TDS LIMITS

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 then 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 which is not more than 9% in the current scenario. Obtaining a certificate from the Assessing Officer for no or lower TDS and getting final return and getting thereafter both have become cumbersome process to be followed by the taxpayers.

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

Surcharge levy of 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 of taxable income exceeds Rs.10 lacs on 30% slab is 33.66% (considering surcharge @ 10% and EC @ 2%), whereas such surcharge is levied @ 2.5% on non-domestic companies.

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 being additional surcharge requires re-consideration in view of the buoyancy in indirect tax collection in the shape of excise, customs and service tax.

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

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% 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 economy, employment and overall tax collection which will give new economic scenario to the country.

4. **DIVIDEND DISTRIBUTION TAX**

Dividend Distribution Tax at present is taxed @12.5%. 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 at all, or alternatively it should be slashed to 7.5%.

5. **AGE LIMIT AND NIL TAX SLAB ETC. FOR SENIOR CITIZENS**

The Government had provided tax advantages to senior citizens. Following with 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 in threshold senior citizens would be able to avail of large tax benefits on instrument like the Senior Citizens Savings Schemes on the bank deposits.

It is proposed 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 deduction U/s 80D for Medical Insurance Premium, the limit should be increased from Rs.15,000/- to Rs.25,000/-.

6. SECTION 30 & 31

Amendment has been made to Sections 30 & 31 by Finance Act, 2003, which governs allowance of current repairs to 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 of which the amendment has been proposed. None of the courts have held that the expenditure allowed under these 2 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 the purposes of this section Capital Expenditure shall mean to include "any expenditure" incurred enhancing substantially the life of 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

- Given 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 need modernization of their plant where there may not be substantial of installed capacity. Under this consideration, our Chamber feels that benefit of this tax 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

a) The Finance Act 2002 inserted Sub Section (iia) in Section 32(1) which provides further depreciation at 15% of the cost of plant and machinery installed after 31st March 2002 by a) a new industrial undertaking during any previous year in which such undertaking begins to manufacture or propose any article or thing on or after 1st day of April 2002.

b) Any industrial undertaking existing before 1st April 2002, during previous year in which it achieves the substantial explanation by way of increased installed capacity by not less than 25%. The requirement of increase in installed capacity by 25% has been reduced to 10% by Finance (No.2) Act 2004 w.e.f. 1-4-2005. The explanation of this Sub Section provides that the installed capacity of production as existing on 31st March day 2002.

This Sub Section allows additional depreciation at 15% to either new industrial undertakings, which commence production on or after 1st April 2002 or the industrial undertakings which were in existence before the 1st April 2002 and achieves a explanation of 25% (10% w.e.f. 1-4-2005) of the installed capacity as on 31st March 2002. Apparently, this Sub Section allows additional depreciation to new undertakings only in the first year when they commence production but no benefit is allowed for substantial explanation in the subsequent years, as these undertakings were not in existence before The 1st April 2002. This seems to be inadvertent omission as there is no reason to deny the benefit of additional depreciation to such undertakings on subsequent years.

Further Second proviso of Section 32(1) restricts the depreciation to 50% in case the plant and machinery is put use for a period of less than 180 days, during the previous year. This proviso applies to the depreciation rate allowable in Sub Section (iia) of Section 32 also. Therefore, the benefit of additional depreciation which is stipulated at 15% in Sub Section (iia) is reduced to half i.e. 7.5% due to operation of second proviso to Sec 32(1) in case the plant and machinery is put to use for less than 180 days in the explanation of the undertakings to half the depreciation otherwise allowable. The whole purpose of giving incentive for setting up/expanding industrial undertakings which require huge investment is defeated reducing the rate of additional depreciation to half. Furthermore there is no provision to allow the balance amount of additional depreciation under Sub Section (iia) of Sec. 32 (1) in the subsequent years. In the absence of any specific provisions, the benefit of additional depreciation under Sub Section (iia) of Section 32 (1) is virtually restricted to half i.e. 7.5% in case plant machinery is put to use for 180 days or less and balance amount is not allowed to all.

Suggestions:

♦ The benefit of additional depreciation should be extended to substantial expansion of new undertakings coming into existence after 1st April 2002.

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

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 in 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)

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 amended 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 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 an 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 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 arise on the applicability of Section 40A(3). In any event, to take care of the unintended hardships which the assessee 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.

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, propose 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 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 all 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. 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 to be audited accounts of certain persons carrying on business or profession is 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. 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. It is suggested that the rate of reduced to 3% of the turnover.

14. CAPITAL GAINS (SEC.50C)

Section 50C provides that the consideration amount of sale in land or building or both shall be deemed to be the value of 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 proviso, 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.

Values fixed more than 5 years back have not been brought down even when the real estate prices have fallen in prime areas by 20 or 30% in four Metropolitan and other big cities. 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.

[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 Judgement 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 nationality and simplification in the administration of the tax laws. It is suggested that Section 50C be repealed forthwith with retrospective effect.]

15. 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 a 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.

16. 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 of 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. 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.

Suggestions

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.

17. 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.

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

18 RESTRUCTURE OF SECTION 80G

- ♦ The needs of the country for philanthropic help, where nearly 30% population lives below poverty line, are vast. It is, therefore, necessary that the process of getting tax benefit for donors is rationalised and simplified.

- ♦ Presently for entitlement for 100% deduction, the section 80G has to be amended. Some institutions, in whose cases 100% deduction is allowed, are of relevance only for some time, after which they lose relevance, as no contributions are made to these, but their names continue to remain in section 80G because of amendments made. The instances are:

(i) Prime Minister's Armenia Earthquake Relief Fund;
(ii) The Africa (Public Contributions' – India) Fund;
(iii) The Maharashtra Chief Minister's Relief Fund during the period October 1, 1993 and ending on October 6, 1993 or to the Chief Minister's Earthquake Relief Fund of Maharashtra.
(iv) The Andhra Pradesh Chief Minister's Cyclone Relief Fund.

No contributions are made to such funds after some time, when the need for relief vanishes, but their names continue to figure in section 80G making the section look long-winding and complex.

To avoid situations of the above nature, the government should delegate power for notifying, with FM's approval, institutions entitled to donations for which taxpayers can claim 100% deduction (whose names now have to be incorporated in section 80G by amendments through annual Finance Acts) to the CBDT.

The list of these can be incorporated in the I.T. Rules, 1962. A copy of the notification, containing such names, can be placed in both the Houses of Parliament. The names can be deleted by notifications by the CBDT, if the institutions need for funds vanishes because of efflux of time or on other grounds. This would be a more convenient and time saving method for giving tax relief for contributions in deserving causes.

. The 10% limit for getting tax benefits needs to be removed. There seems to be no justification for curtailing one's desire to contribute to noble causes.

. Benefit presently available for cash donations should be extended to donations in kind also.

19. BANKING CASH TRANSACTION

i) The basic concept proposed under chapter 17 of the Finance Bill as an anti evasion tax measure and mopping up the black money is totally wrong, because withdrawals from the bank are taxed money and no bank money can be treated as black money.

ii) Black money is not kept in bank account. There are a number of cash withdrawals for legitimate business expenditure such as workers wages, day to day expenditure of factories, officers etc., procurement of cash, payment to transporters and so on.

iii) Levy of cash transactions tax will encourage the depositors too not to put legitimate tax paid money into the bank accounts.

iv) The existing mechanism of cash withdrawal or deposit in excess of Rs.50,000, or in some cases in excess of Rs.10 lac in the banking system, takes care of audit trial for the purpose of anti tax evasion measure. Therefore, there is no necessary of levying another tax in the form of mopping up the black money.

If at all, the government does not consider withdrawal of BCTT, at least limit should be enhanced as under:

Category	Present limit	Proposed limit
Individual	25,000	1 lac
Other than individual	1 lac	10 lacs

20. 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 assessee during the course of survey.

Section 133A provides for impounding and relating in custody of Books of Accounts & papers in course of survey operations for such period as s the 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 assess and he/it 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 ion 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.

21. SECTION 147, 148, 149

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 therefore no change in facts and circumstances of 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. The necessary amendment to this effect may be made by inserting second provision to Section 147 of the Act. 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.

22. SECTION 154 (RECTIFICATION OF MISTAKES)

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

23. MAT CREDIT AND INTEREST UNDER SECTIONS 234A, 234B, 234C

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 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.

24. INTEREST UNDER SECTION 234A

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

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

25. INTEREST PAYABLE ON SHORTFALL IN LAST INSTALLMENT OF ADVANCE TAX. - SECTION 234C

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. As a 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.

26. INCOME TAX REFUND (SECTION 244 & 245)

a) Accountability: 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 effect 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 cause harassment to 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. 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 or 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 be saved a lot from running to the Income Tax Department a number of for getting the refund but also the works relating to the collections and recoveries required to be performed by the Income Tax Authorities would be reduced substantially.

27. SECTION 244A

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 the way of self-assessment tax or in pursuance of a notice of demand. The explanation below 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 f self-assessment tax paid by the assessees although it is not intention of the legislature to do so.

Suggestions

- Explanation below clause (b) of Section 244A(1) be deleted since as much, 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 is 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

28. INTEREST ON DEMANDS & REFUNDS

On refunds the assessee becomes 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.

29 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, it 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 are genuinely caused on account of lack of information on the part of charitable organizations that 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.

30. DUE DATE FOR FILING OF RETURN OF INCOME

The due date for filing of Return of Income for audit case/Non-corporate assessee and corporate assessee is at present 31st October. This date clash with festival like Dewali, Durga Puja, Chhat Puja etc. Which is widely celebrated by a large part of taxpayers. It is, therefore, suggested that such due date should be amended to 30th November.

31. 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 foe 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 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 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 a lot of problem 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 provision 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 the 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 that is to say if paid in the month of June in next year, as such deductions or expenses claimed will not be allowed.

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 delays the payment he will be deprived of disallowance.

FOR EXAMPLE

A Lorry Contractor takes the lorry from the market regularly and carries on the business of transport. He is to deduct Tax @ 1% from the sub - contractor and on which he is being TDS @ 2% as main contractor. Yearly turnover is Rs.20 Cr of which during the month of March 2005 is Rs.5 Cr on which TDS has been deducted @ 1% from sub-contractor i.e. Rs.5,00,000/- TDS has to be paid latest by 31st May 2005, but for Financial stringency or illness of proprietor/Accountants the Tax could not be deposited on or before 31st May but paid in June 2005. In such case if the expenditure of Rs.5 Cr is added to the total income it will be hardship to the assessee and the tax payable will be heavy and as much as Rs. 1.68 Crores. This provision is therefore harsh & heavy and need to be rectified. In such cases as in Section 43B time for payment should be allowed for payment on or before the date of filling for Income Tax Return.

Suggestion

The amendment made to section 40 be dropped as enough deterrent provisions already exists to ensure compliance with TDS provisions hence there is no justification for denial of deduction of genuine business expenditure fir failure to deduct or deposit TDS.

32. <u>INFRASTRUCTURE FINANCING ISSUES</u>

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

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 that you have already set in for the country.

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. <u>Capital Gains Tax</u>

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. <u>External Commercial Borrowing (ECB)</u>

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 has to pay a TDS rate of 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. <u>Asset Recovery</u> :

Sir, we would like to draw your attention to the fact that 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, we appeal to you to bring NBFIs under the purview of the SARFAESI Act and NBFIs should also be allowed to take recourse to debt recovery tribunals (DRTs).

F. <u>Minimum Alternate Tax (MAT):</u>

Raising MAT on 'book profits' from 7.5% to 10% translates into an effective increase from 8.415% to 11.22% (inclusive of 10% surcharge & 2% education cess) and this will have a greater impact on company bottomlines. Since infrastructure creation is now a national priority, we request you to maintain a status quo on MAT at least for such companies which are into financing of infrastructure projects and equipment.

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

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.

D. NEW LEGISLATION

(i) Through the Press Media we understand that the government is in process of drafting a new Income Tax Act instead of making amendments to the existing Act. Besides the Hon'ble Finance Minister had already announced through his budget speech while announcing the budget for the year 2006-07 on the floor of Parliament that Goods and Service Tax (GST) shall be introduced w.e.f. 1st April, 2010.

Our Chamber suggest that the Centre should set up an Empowered Committee to finalise and issue draft of the proposed legislation and invite suggestions/comments and provide opportunity for discussions among taxpayers, tax gatherers, Chambers of Commerce, Industrial Associations, Trade Unions and Govt. Officials. The aim should be that there should be no room for any ambiguity and the law should be crystal clear and should not lead to litigation either from the tax administration side or from the side of taxpayers.

E. 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 given any sizeable revenue. Sometime back the Gift Tax was abolished. Sometime back the Planning Commission in its draft plan approved paper has advocated that taxes should not be imposed unless revenue therefrom justified its administrative and collective costs. 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. SERVICE TAX.

(i) **RATE OF SERVICE TAX:** 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) **THRESHOLD EXEMPTION UPTO Rs.4 LACS** provided by Notification No.6/2005-ST dated 1st April, 2005 for Rs.4 lacs in a financial year is very low and meager amount. In order to provide a proper relief to general masses from maintaining records, furnishing returns, a number of procedural formalities, it is suggested that the threshold limit should be enhanced to a minimum Rs.10 lacs in a financial year.

(iii) (a) Merchant exporters of goods are presently liable to make payment of Service Tax on various input services used by them to carry out merchant export activities. Since merchant exporters are rendering any services, they are not liable to make payment of Service Tax and result of it, they are unable to claim CENVAT Credit. There is no provision to allowing refund of Service Tax to the merchant exporters. It is, therefore, suggested that likewise Duty Drawback Scheme, a similar may be introduced under the Service Tax Law for grant of refund of service tax paid by merchant exporters on input services utilized by them for the purpose of carrying out activities of merchant exports.

(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.

(iv) CLUB OR ASSOCIATION SERVICES

The statutory definition provided in Section 65(25a) of the Act is allowing differential treatment for same category of Services Providers between the Employers Association (Chamber of Commerce, Federation etc) and Employees Association (Trade Union). Employers and Employees both are contributing equally to the growth of the nation and GDP of the country. Then why there is differential treatment given to two Sections.

There is no Justification in giving exemption to body of persons, which are associated with Press or Media from inclusion within the term Club or Association and **charging service tax from Chamber of Commerce and Federation of Chambers etc.**

Chambers of Commerce does not render any specific service to its members, unlike a club or an association of the like kind nor its members enjoy any facilities or advantages for the subscription they pay. On the other hand, it is the members of Chamber who provide services to the Chamber by voluntary contributing their expertise to various activities undertaken by the same and attending its meetings at their own expenses. Chamber or Federation is a body constituted to protect and promote the interest of trade and industry and not to provide any specific service, advantages or facilities to its individual members. It is in the nature of a Trade Union of business entrepreneurs, industrialists and professionals, formed to protect and promote their common interests thus coming within the preview of exclusion provided for trade unions. It is already accepted as a charitable institution and enjoys tax exemption under the I.T. law. It may also be mentioned that the exclusions also include "services rendered by any person or body of persons engaged in any activity having objectives which are in the nature of public service and are of a charitable, religious or political nature". The various activities undertaken by the Chambers of Commerce such as promotion of trade and industry, promotion of international trade, timely dissemination of data/information on latest national and international policies, government legislations and technical developments, generating awareness regarding specific aspects of national economy and business and organizing seminars, workshops and meetings on various economic issues, are all in the nature of public service. In this view of the matter, Chambers should not be required to pay service tax under Section 65(25a) of the Finance Act, 1994, as it does not provide any advantage, facility and any specific service to its members.

Since the Chambers of Commerce perform a positive role and provide social services and bridge the gap between Government, law enforcement agencies and trade, industries & commerce. And therefore, the Chamber of Commerce should be exempted from the levy of service tax under this head from social justification point of view, like Trade Union, Press or Media associated body of persons.

(v) 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 distortionately 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 to not to levy sales tax for telecommunication boom in the country.

Another example of this point is taxation of contractors and sub-contractors, lease (hire purchase agreement) financial leasing (including equipment leasing and hire purchase). The international transaction 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.

(vi) <u>CENVAT CREDIT RULES</u> : Under the CENVAT Credit Rules provide for maintenance of separate books of accounts where manufacturers manufacture both dutiable and exempted services, which is not at all practical in any cases. The further provide that where the manufacturers or service providers does not maintain separate records for input services used for taxable and exempted category of goods/services the input credit shall be restricted to 20% is not fair of the output service tax paid/payable during the period. Such ad hoc restriction of 20% is not fair and not justified. We, therefore, suggest that the input credit should be allowed on proportionate basis of manufacture of goods service provided both taxable and exempted and such provisions should be very specific and unambiguous so that there is no room for any confusion or misinterpretation at field level.

vii. <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 in this year's budget. 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.

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

viii. Recently 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'.

It is proposed 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).

B. CENTRAL SALES TAX

(i) Amendment vide the CST (Registration and Turnover) 3rd Amendment Rules, 2005 (Notification dated 16th September, 2005): Erstwhile practice of furnishing of one single declaration from for all transactions which took place in one financial year between the two same dealers has been changed to all transactions took place in one quarter of a financial year. It means it would the work load four times and what results would be achieved by the State Financial Ministry at four time's administrative burden and cost of the dealer is not known to the members of Chamber. It is strongly objected that the present rule of one declaration form and production of such declaration form at the time of assessment should continue, as the amendment sought through 3rd Amendment Rules are draconian in nature and leads to additional administrative paper work and burden on the shoulder of Sales Tax Dealers.

ii) Central Sales Tax (CST) Act Rates were scheduled to be reduced to 2% from the existing 4% level but due to continued disagreement between the Central and State Governments for compensation package has led to its postponement several times. Moreover from the Press news, the Chamber understands that the proposal is therefore to reduce it from 4% to 3% and not 2%. Such trends put up a misleading image of government proposals in the minds of taxpayers.

It is, therefore, suggested that although there had been delay in implementing the original proposal for reducing CST Tax Rate to 2%, the government should not change the rate from 2% to 3%, rather it should be strict to reduction of tax to 2% w.e.f. 1st April, 2007 and further it should be reduced to nil as originally promised after one year from the implementation of reduced rate.

C. EXCISE AND CUSTOMS

1. SPECIAL DUTY & CENVAT

a) During last budget i.e. for 2006-07 a distortion was created by introduction of "Special Duty 4%" practical effect 7.8% or Rs.1600/- pmt and it was stated that it was cenvatable from excise.

Against this existing excise of Rs.1000/- pmt was removed, thus levy of Special Duty as being "cenvatable" became infructuous.

New levy did not only render "Cenvatability" infructuous, but in hands of consumers made additional burden of Rs.1600 p. mt. additionally the service tax.

b) In respect of above if we take plight of the Traders / or Trading Importers, in that situation it will be seen that Traders who want to develop their brands by entering into packaging & marketing through job work are at a loss since excise paid on the packing material having impact of near Rs.500 pmt of the oil is also not cenvatable, over & above burden of "Special Duty".

c) Thus as redressal for effect of a & b "Excise Needs" to be restored at near Rs.1500 to Rs.2000 pmt.

It may be mentioned that imposition of the excise neither would be counter productive, nor would add inflation, rather it would help reduction in prices in the hands of consumers, as Industry will get back the "cenvat" and competition will make industry to pass on the benefit to the consumers.

2. If industrial production is general is seen Cenvat is also not allowed against diesel in industrial use similarly vide State Vat.

Cenvat & Vat both needs to be made full circle and industry needs to be allowed to receive claimable tax benefit for the input tax, not on the selective basis i.e. one State allowing Vat on Diesel, other not allowing.

One State allowing on Furnace Oil, West Bengal State doesn't allow, etc.

It may be mentioned that once Cenvat or Vat both is on Value Addition, thus Govt. at Centre and State both need not have unfounded apprehensions as in the last budget on the sale price they are going to get the Vat or Cenvat, thus in any event credit, on input tax cannot exceed on the final output, if not both State Govt. & Central Govt. realign tax on the output so as to make both Cenvat & Vat full circle.

3 CONCEPTUAL ISSUES ON EXCISE

Earlier SSI units used to get Excise Exemption up to Turnover of Rs.4.00 Crores. In this Rs.4.00 Crores, the sale of exempted item was not included. But with effect from 01.04.2003 even sale value of exempted items is considered in the Turnover of Rs.4.00 Crores, due to which many of the SSI units, who are making both the exempted and dutiable goods are unable to avail this facility, making their products un-remunerative and non-competitive. Due to this, many SSI units have become non-viable and are on the verge of closure, threatening the employment of thousands of workers in the SSI sector.

4 LEVY OF EDUCATION CESS

Levy of Education Cess is fully exempted on DEPB imports. Where there is no import duty under DEPB Scheme, the Education Cess should also be nil. But the department has clarified through Notification upon Tribunal Rulings that in the case of imports under DEPB Scheme, the Education Cess @2% would be debited. The law should be cleared and such clarity should avoid litigation from all the sides.

Ref: Reference DEPB scheme, Exemption Notification No. 45/2002 Customs dated 22.4.2002, C.C. Mumbai Vs. Reliance Industries Ltd. reported in 2005 (188) ELT 449 had held that full exemption from customs duty is being provided to imports under DEPB scheme and therefore, no debits from DEPB scrip is required. Essar Steel Ltd., Visakhapatnam – 2004 (173) ELT 239 (Tri-LB). Circular No. 5/2005 – Cos. dated 31.1.2005.

The Chamber, therefore, urges the government to clarify and simplify the law and issue notifications for suomoto refund of such EC money illegally collected by the Department.

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Ref. No. CCC-5H/07 Date: 05-02-2007

Dr. Asim Kr.Dasgupta
Hon'ble Minister for Finance
Govt. of West Bengal
Writers' Buildings
Kolkata - 700 001

Respected Sir,

PRE-BUDGET MEMORANDUM FOR WEST BENGAL: 2007-08

On behalf of Calcutta Chamber of Commerce, we have pleasure in forwarding for your kind consideration a Memorandum giving our suggestions and comments on various fiscal & financial issues, which may be considered while the preparing the State Budget 2007-08.

Thanking you,

Yours faithfully,

H. V. PATODIA
PRESIDENT

Encl. As above.

Copy forwarded to:

1. The Secretary, Ministry of Finance, West Bengal

2. The Commissioner, Commercial Taxes, 14, Beliaghata Road, Kolkata – 700 015

Ref.No.CCC-3N/07 February 5, 2007

The Commissioner
Directorate of Commercial Taxes, West Bengal
14, Beliaghata Road
Kolkata-700 015

Dear Sir,

PRE-BUDGET MEMORANDUM FOR WEST BENGAL: 2007-08

On behalf of Calcutta Chamber of Commerce, we have pleasure in forwarding for your kind consideration a Memorandum giving our suggestions and comments on various fiscal & financial issues, which may be of help in the preparation of the State Budget 2007-08.

Thanking you,

Yours faithfully,

H. V. PATODIA

Encl. As above.

CALCUTTA CHAMBER OF COMMERCE

MEMORANDUM ON STATE BUDGET: 2007-08

The Calcutta Chamber of Commerce is pleased to submit a Memorandum on State Budget 2007-08 highlighting the points and suggestions for your kind consideration.

1. **VALUE ADDED TAX – RATES OF TAX**

i) General rate of tax has been fixed at 12.5%, which includes commodities, which were taxed under WB Sales Tax 1994 Act at rates between 6% & 10%. Two financial years after introduction of VAT have shown substantial increase in revenue collection compared to collection under earlier Sales Tax Law. In Direct Taxes collection, it has been noticed that wherever the rate of tax had decreased, the revenue collection had increased. Following the same analogy, it can be estimated that if the general rate of tax is brought down from 12.5% to 10%, revenue will increase, besides business, trade and industry community would welcome the same

ii) In West Bengal, the rates of sales tax are the highest for Petroleum Products. It should be noted that LPG, Kerosene are mass consumption items and hence sales tax rates should be low. All the petroleum products are excluded from the VAT.

iii) Input Tax Credit or Input Tax Rebate is not allowable to a registered dealer for use of goods, which are purchased for marketing of commodity. Marketing of products is backbone for success of trade and industry. Besides, input tax credit for a manufacturer registered dealer is not available under present law for use of goods in power and fuel, for example coal, furnace oil etc. used for manufacturing of taxable goods intended for sale in West Bengal. (Sec.22 (4) of WB VAT Act 2003).

iv) **Refund of input VAT tax to exporters and 100% Export Oriented Units (EOUs**):

In absence of clear cut and time bound policy in the VAT Law, the procedure of refund arising out of input tax credit to the exporters and 100% EOU registered dealers had become cumbersome. In spite of repeated representation and visits, Sales Tax Officer delayed the refund on one or other pretexts. While introducing VAT in the State, the Commissioner had announced in various meetings organised in the State for introduction of VAT Law to general public, it was assured that exporters would get refund of input tax credit within 3 months of filing the claim through return of sales.

We strongly suggest that in line with provisions under Central Excise Law of furnishing the bond by the exporter, under the VAT law all purchases by the exporters should be exempted on execution of a bond by the exporter before the appropriate authority and such exporter shall furnish a certificate against their purchasing invoice to the selling dealers as may be prescribed by the government. If the particulars of bonds executed and the purchase invoice match with certificate (as proposed herein before), no tax should be charged from the exporter dealer and there would be no cause of concern for such exporter dealers that their working capital will be blocked for payment of input VAT tax and claiming of refund.

It is further suggested that just as EOUs and SEZs units have been placed under zero rated tax category (Schedule AA) 100% exporter dealers other than EOUs and SEZs should also be placed under the same category on fulfillment of aforesaid suggested condition.

v) **Rationalisation of classification of product used for Information Technology**:

At present, Schedule C Part II (Sl. No. 42 of Part I) prescribes items under the category of IT products. In the organised sector where voluminous activities are carried on, computer systems are installed under Local Area Networking (LAN). For data transmission between the computer server(s) and different computer terminals (nodes), two types of cables are laid in the premises. First is a copper cable and the second is optical fibre cables. While optical fibre cables have been inserted in Part II of Schedule C vide Sl. No. 27, copper cables do not find any place in the said Schedule C or in any part thereof. Therefore, it attracts general rate of tax i.e. 12.5%.

It is suggested that in order to bring level playing field, parity and rationalisation, products and commodities generally used for computer systems and peripherals should be included in Schedule C for levying of concessional rate of tax 4% including copper LAN cables.

2. WAY BILL

Under the new VAT regime all the registered dealers have a unique Registration No. on all India basis. As per the law, the registered dealers are required to mention the ST Registration No. on invoice. Transaction of a particular invoice can be tracked down through the help of computer as to under whose jurisdiction the same dealer is being assessed.

Under these circumstances, it is suggested that the requirement of Way Bill at the entry point of every State may not be required, as no transaction backed by invoice of registered dealer will be untraceable. Moreover, inter-state sales transaction is being computerized on all India basis whereby all inter-state movement of goods would be under control and the purpose of way bill would be achieved by this computerization itself.

3. **WIDE DISPARITY OF TAX RATES**

Wide disparity of tax rates between different states under the VAT Law is found which is in the knowledge of government. It is strongly suggested that there should be uniform rate of tax of all commodities through out India. For this purpose, the forum of Empowered Committee should be utilised and all State Governments should be pursued for maintenance of uniform rate of tax.

4. The Return Form under VAT Law runs into several pages. On the other hand, the Return Forms under Income Tax Law and Service Tax Law are very simple and consist of only one page.

It is therefore suggested that a very simple single page return form like SARAL under IT Law Act should be introduced under VAT. However, different types of annexures may be prescribed for different condition where only few of them will be applicable to a particular dealer. This measure will simplify the compliance part as well as its administrative part.

5. **OPTIONAL ELECTRONIC FILING SYSTEM**

We are in the age of e-governance. It is suggested that optional electronic filing system should be introduced for submission and filing of return like system followed presently under excise, customs, service tax and income tax laws.

6. **NEED FOR RATIONALIZATION**

Definition of sale price under VAT Act includes delivery, freight, installation and insurance charge. These were not included in the term sale price under earlier act, i.e. W.B.S.T. 1994. All this charges are presently suffering levy of service tax. Thus, there is a double taxation on such charges - (i) under Service Tax and other (ii) under VAT Law.

7. **WORKS CONTRACT**

Works Contract are executed by small dealers. Often they cannot maintain regular books of accounts. Rate of tax prescribed is very high for small dealers up to a prescribed limit of total turnover during the year, should be in the range of 1 – 4%.

8. **OTHER LOCAL LEVIES**

It was proposed in the White Paper that on introduction of VAT, other local levies will be withdrawn, but at the present moment luxury tax and consumption tax are still continuing. It is, therefore, suggested that such local levies should be abolished.

9. **PENAL PROVISIONS**

It was suggested in the White Paper that penal provision under VAT Act should not be more stringent than the existing State Sales Tax Act.

But the provisions under VAT Act for levy of penalty include the term for imprisonment which is much more stringent than the provision under W.B.S.T. Act, 1994. Although our Chamber does not support any tax evader, it definitely would like to ensure proper justice to all the dealers in terms of the promises made by the Empowered Committee to Indian citizens through White Paper.

Therefore, it is strongly suggested that the provision for imprisonment, (Sec. 93 etc) should be deleted from offences like maintenance of accounts, (Sec.63), reversal of input tax credit (Sec.22). Non payment of security (Sec.26), Payment of tax & interest, way bill provisions (73) apart from seizure & levy of penalty), and from so on and it should contain only payment of fine to a prescribed sum. For example Imprisonment provisions under FERA had no place in FEMA (Foreign Exchange Management Act).

10. **GRIEVANCES**

It is suggested that a Grievance Cell should operate in the office of the Commissioner of Commercial Taxes to be headed by a separate officer for redressal of any grievance of dealers like Grievance Cell operating at Income Tax Department.

11. **CENTRAL SALES TAX (CST)**

(i) While the White Paper on state level VAT has accepted in principle the need of phasing out of CST. But on implementation part, it is silent for one or other reasons. At the same time the Government is citing examples of different countries where VAT has been successfully implemented, but on the point of implementation of VAT, we are dividing the whole concept into different parts. Some of the vital parts are left out and CST is one such vital part.

It is suggested that CST should be reduced to 2% immediately and should be reduced to nil in the very next year against declaration forms as the same was proposed by the earlier Union Finance Minister.

12. ENTERTAINMENT TAX- MULTIPLEX VS AMUSEMENT PARKS

The Govt. of West Bengal is encouraging the construction of multiplexes and has provided exemption and initiatives to new multiplexes. On the other hand, the amusement parks have been placed under negative list for the purpose of West Bengal Incentive Scheme for development of tourist centre. Further, the entertainment tax is levied @20% on the amusement parks, which is of substantial amount. The comparison of present rate of entertainment tax in various States is as under:

West Bengal	**20%**
Uttar Pradesh	Nil
Bihar	Nil
Orissa	Nil
Goa	Nil
Himachal Pradesh	No tax for first 10 years
Rajasthan	No tax for first 5 years
Uttaranchal	No tax for first 5 years
Karnataka	No tax for entry up to Rs.250
Maharashtra	No tax for 5 years, thereafter 10%
Gujarat	Entertainment and Electricity Tax holiday for 5-10 years
Kerala	Entertainment and Electricity Tax holiday

We are enclosing a note submitted to Shri Buddhadeb Bhattacharjee, Hon'ble Chief Minister, Govt. of West Bengal dated 27.12.2006 by a member of our Chamber which highlights various points for granting exemption from entertainment tax and to extend various incentives to **Amusement Parks**. (Annexure)