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Pre-Budget 2024-25 Wishlist of 15 Critical Grey Areas in Direct Tax Domain

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Friends, as the final countdown to the Interim Union Budget 2024-25 begins, so does the customary ritual of penning down pre-budget wish lists. But for me, this writing exercise is not merely a customary ritual but instead an opportunity to highlight some critical and relevant grey areas and gaps currently being experienced by all of us in the direct tax domain, and which require timely redressal by the Legislature in the upcoming Interim Union Budget 2024.

Based on my practical experience, the 15 basic yet critical issues are being discussed below, and I sincerely hope that all of you will relate to these real and ground-level problematic areas.

1. Resolve of the DIN Controversy by Re-insertion of Section 282B in the Income Tax Act

With a view to bring greater transparency in the functioning of the tax-administration and improvement in service delivery and to maintain proper audit trail of all communication, the CBDT in pursuance of the hon'ble FM announcement, has, vide Circular No.19/2019 dated 14.08.2019, laid down parameters specifying the manner in which any communication issued by any income- tax authority relating to assessment, appeals, orders, statutory or otherwise, exemptions, enquiry, investigation, verification of information, penalty, prosecution, rectification, approval etc. to the assessee or any other person will be dealt with. All such communication issued on or after the 1st of October, 2019 shall carry a computer-generated Document Identification Number (DIN) duly quoted in the body of such communication.

The CBDT Circular, in clear and unambiguous terms, mandates that any communication which is not in conformity with the prescribed guidelines shall be treated as invalid and shall be deemed to have never been issued.

Relying upon this CBDT Circular, the hon'ble Delhi High Court in the case of *CIT (International Taxation)* v. *Brandix Mauritius Holdings Ltd.* [2023] 149 taxmann.com 238/293 Taxman 385/456 ITR 34, has quashed the DIN- less assessment order. However, the revenue had challenged this order before the hon'ble Supreme Court and the learned ASG representing the revenue had argued before the SC that the said DIN Circular is merely an internal circular and can't be used against the Parliament's mandate. The hon'ble SC has granted an interim stay on the said Delhi High Court judgement in the Brandix case observing that non mentioning of DIN in the order, may be an irregularity but not an illegality *CIT* v. *Brandix Mauritius Holdings Ltd.* [2024] 158 taxmann.com 247 (SC).

It is pertinent to mention here that the hon'ble FM had earlier gone on record and stated that any Income tax or GST communication, notice or order issued on or after 1.10.2019, without mentioning DIN, is invalid and can be thrown in the dustbin, as if it never existed. The respected Revenue Secretary has also reiterated the said formal stand of the CBDT w.r.t. the invalidity of any DIN-less communication from the Income tax department.

However, the learned ASG representing the revenue before the hon'ble SC has undermined such assurance of our hon'ble FM and the respected Revenue Secretary and also the binding nature and sanctity of the said CBDT Circular No. 19/2019 dated 14.8.2019, u/s 119 of the Income Tax Act. The learned ASG has argued before the hon'ble SC that the Delhi HC judgment has ramifications on assessments conducted in past 3 years or so and spreads into GST regime also. Its impact has already exceeded Rs. One Lac Crore of revenue. The CBDT Circular enforced by the ITAT and Delhi HC is an administrative circular which cannot override the statute and the judgments. The impugned judgment is spreading like a pandemic and deserves to be stayed.

It is interesting to note that the objective and the language of the said CBDT Circular No. 19/2019 mandating mentioning of DIN in all income tax communications, has been adopted and replicated from the erstwhile Section 282B of the Income Tax Act, which was omitted by the Finance Act 2011 w.e.f. 1.4.2011. The said section 282B contained the exact same language as has been used in the said CBDT Circular No. 19/2019, and mandated that any DIN-less order, notice or any communication from the Income Tax department shall be treated as invalid and shall be deemed never to have been issued.

Therefore, in order to sanctify the legislative intent of the Ministry of Finance in bringing the said DIN mandate and the binding nature of the said CBDT Circular No 19/2019, in real and effective terms and not just as a mere lip service, it is desirable that the erstwhile section 282B, is being re-inserted in the Income Tax Act, with retrospective effect from 1.10.2019, and the CBDT own Circulars are not being undermined, contested and challenged by the learned standing counsels of the CBDT in the Courts.

2. Doing Away with the Automated Refund Withholding Intimations generated by AI used by CPC under the pretext of refund withholding by the AO in section 241A can go a long way in ensuring speedy refunds and can produce better results to inject liquidity in the economy than the fiscal packages.

It has been practically witnessed, that in many cases of the corporates returns being processed by CPC for the AY 2023-24, refunds have been processed u/s 143(1) but at the same time have been withheld, by a mere online communication issued by the CPC, that the refund is withheld by AO not on account of any discrepancy, but due to the pendency of assessment proceedings of earlier assessment year u/s 241A of the Act. The ironical fact is that when such taxpayers approach their jurisdictional AOs, they simply claim their ignorance of any such withholding of refunds by them. Thus, ironically the jurisdictional AOs themselves are ignorant that they have withheld the refunds of their assessees and as such, the assessees have nowhere to go to seek their refunds as the CPC is faceless and the AOs claim ignorance. Indeed, the AI and ML tools of the CPC have become smart enough to withheld refunds on the pretext of section 241A of the Act.

3. Clarity needed in respect of Coverage of Trading Enterprises in section 43B(h) of the Income Tax Act and Inclusion of delayed payment to medium and small enterprises before the due date

of return filing, in the proviso to section 43B of the Act

In order to promote timely payments to micro and small enterprises, the Finance Act 2023 has inserted a new clause (h) in section 43B of the Act to provide that any sum payable by the Businesses to a micro or small enterprise registered as such in the Micro, Small and Medium Enterprises Development (MSMED) Act, beyond the time limit specified in section 15 of the MSMED Act 2006, shall be allowed as deduction, only on actual payment.

Section 15 of the MSMED Act mandates payments to micro and small enterprises within the time as per the written agreement, which cannot be more than 45 days. If there is no such written agreement, the section mandates that the payment shall be made within 15 days.

A suitable clarification by CBDT, with regard to the coverage or otherwise of the trading entities, under this provision, is very much desirable and essential, as currently only manufacturing and service entities are covered under the MSMED Act and the trading entities are not included in the definition of covered 'enterprise' under the MSMED Act.

Also, the inclusion of delayed payment to medium and small enterprises before the due date of return filing, in the proviso to section 43B of the Income tax Act is desirable and needed so as to bring parity in the allowability of such expenditure vis-à-vis other expenditures.

4. Allowing Deductions in respect of House Rent Allowance (HRA) & Interest on Home Loan in New Personal Taxation Regime in Section 115BAC

Currently, the individuals and HUFs opting for the new personal taxation regime u/s 115BAC of reduced personal tax slabs, are required to forgo a plethora of otherwise available specified deductions, including deduction in respect of House Rent Allowance (HRA) u/s 10(13A) available to salaried individuals and the deduction in respect of Interest paid on home loan taken for self-occupied house property u/s 24(b).

The specified deductions under various sections like 80C/80CCC/80CCD/80D, involves a conscious decision of actual earmarking and blocking of funds in making the specified investments, by the individual taxpayers, and so, such individuals are still inclined to forego these deductions, and opt for the new regime of reduced taxes with a view to avoid blockage of their funds.

However, the deductions like HRA u/s 10(13A) and the Interest paid on self-occupied house property u/s 24(b), per se, don't involve any conscious decision of making tax saving investments but infact are the result of the basic necessity of ensuring roof for one's living and survival.

Thus, the restriction pertaining to the mandatory requirement of forgoing of HRA deduction u/s 10(13A) by the salaried individuals and the deduction u/s 24(b) in respect of interest paid on home loan taken for self-occupied property, for availing the benefit of reduced personal tax rates in section 115BAC, is acting as the main deterrent for such individual taxpayers, to switch to the new personal taxation regime.

The Government also wants more and more assessees to switch to the new regime, to reduce the complexities in return filing and assessments arising out of the plethora of deduction claims of the assessees applicable in the old regime.

Therefore, an appropriate amendment in section 115BAC is desirable to be considered by the Law Makers in the upcoming Union Budget 2024, so as to provide for the allowability of HRA Deduction u/s 10(13A) and Interest paid u/s 24(b) for home loan taken in respect of self-occupied property, in the new personal taxation regime.

5. Increase in the Child Education Allowance & Hostel Expenditure Allowances Exemption Limits & Allowability of the same in New Tax Regime:

The current exemption limits in respect of Child Education Allowance is Rs 100 per child per month and in respect of Children Hostel Expenditure Allowance is Rs 300 per child per month , for a maximum of two children in a nuclear family. These exemption limits in respect of the basic necessity of primary education of the child, have not been revised since a very long-long time(the limits were same even during my CA exam days and it has been 17 years since I qualified as a CA). Whereas, I don't think that even in Govt. Schools the fees is Rs 100 per month, leave aside the private schools where the fees is not less than Rs 5-6k per month. Thus, there is a dire need to revise these exemption limits in respect of Children Education Allowance and Hostel Expenditure Allowance, in line with the realistic and currently prevailing cost inflation index pertaining to education in primary schools and hostels.

Further, like the house rent, the child education expenditure is a basic necessity, and as such must also be allowed in the new personal tax regime of reduced tax rates.

6. Enabling Provision u/s 246 of the act to make the Order u/s 148A(d) of the Act, Appealable

The Finance Act 2021, has substituted the old re-assessment regime with a new re-assessment regime, w.e.f. 1.4.2021, by substituting the then existing sections 147-151, containing the legislative provisions for income-escaping assessments, with the corresponding new sections. The Memorandum explaining the provisions of the Finance Bill 2021, provides the undermentioned rationale and objective of such substitution:

> *"The Bill proposes a completely new procedure of assessment of such cases. It is expected that the new system would result in less litigation and would provide ease of doing business to taxpayers as there is a reduction in time limit by which a notice for assessment or reassessment or re-computation can be issued."*

In the new reassessment regime, the procedure to be completed by the assessing authority, before issuing Notice u/s 148, as mandated in the landmark decision of the Hon'ble Supreme Court in the case of *GKN Driveshafts (India) Ltd.* v. *ITO* [2002] 125 Taxman 963/[2003] 259 ITR 19, has been included in the statute, itself, by way of insertion of a new section 148A, w.e.f. 1.4.20201.

Under section 148A, before issuing Notice u/s 148, the AO is required to carry out enquiries, after taking the prior approval of the competent income tax authority, and issue a show cause notice to the assessee u/s 148A(b). The AO is then required to pass a speaking order, within one month, with the approval of the competent income tax authority u/s 148A(d), that it is a fit case to issue Notice u/s 148.

The above safeguards inserted in section 148A appear to be adequate, atleast on papers, but practically, at the ground level implementation, almost in all cases, the SCN issued u/s 148A(b), ends up in the Order passed u/s 148A(d), no matter, how meritorious or effective the submissions of the assessee, in response to such SCN may be.

Further, the Order passed u/s 148A(d), has not been included and specified in the list of appealable orders before the first appellate authority u/s 246 of the Act. Therefore, even on being aggrieved by such an Order u/s 148A(d), the assessee has no real and effective appellate remedy available and the assessee has to eventually litigate the reassessment notice u/s 148 and the resultant reassessment order passed u/s 147 of the Act, even if there are very strong meritorious grounds suggesting the non-fulfillment of the prescribed mandatory condition of possession of information in possession suggesting escapement of income u/s 148, or the non-adherence to the compulsory conducting of enquiry, granting of suitable opportunity of being heard to the assessee and giving due cognizance to the assessee's reply under the provisions of section 148A(a), 148A(b) and 148A(c) of the Act.

Thus, in order to ensure that the otherwise well-intended provision of section 148A(d) actually serves its practical purpose and is not reduced merely to an empty formality, it is desirable and essential that an Order passed u/s 148A(d) of the Act, is also made an appealable order u/s 246 of the Act.

7. Restoring of the Domestic Withholding Tax Rate on Royalty & Fees for Technical Services (FTS) of 10% from the increased rate of 20%.

The rate of domestic withholding tax rate on Royalty and FTS payments has increased from 10% to 20% plus applicable surcharge and cess w.e.f. 1.4.2023. Practically at the ground level, the domestic Indian entities are bearing this increased burden, due to the grossing up of withholding tax liability clause in their agreements with the foreign parties. It is noteworthy to understand here that the Finance Act 2015 had reduced the domestic withholding tax rate on royalty and FTS from 25% to 10% in order to reduce the hardship faced by small entities. The then Finance Minister late Sh. Arun Jaitley in his budget speech had justified the said reduction to facilitate technology inflow to small businesses at low costs. The said justification for the reduced withholding tax rate of 10% still holds good. Also, the increased withholding tax rate of 20% is infact acting as a deterrent in revenue collection, as foreign entities are now more inclined to avail DTAA benefits, which in turn is increasing litigations and tussles. Hence, it is practical and desirable that the domestic withholding tax rate to be restored to 10%.

8. Fixing Time Limit for Passing of Appeal Orders by CIT/JCIT(Appeals) & Ensuring Meritorious Adjudication & Disposal of Appeals

Our hon'ble PM has announced the launching of the Scheme for Faceless Appeals, way back on 25.9.2020, and subsequently all the pending appeals before the jurisdictional CIT(Appeals) as well as the new appeals have been transferred to the National Faceless Appeal Centre, for adjudication and disposal.

However, even after the lapse of three and a half long years, such appeals are still lying pending undisposed off by the National Faceless Appeal Centre. The Finance Act 2023 has enabled the creation of an additional first appellate authority/cadre of JCIT (Appeals) to ensure faster disposal of small value appeals. But practically the quality of the appeal orders being passed by this new cadre/appellate authority has been found not to be of the expected standards of proficiency and are more or less pro-revenue. In many cases, even the mandatory opportunity of being heard through video conferencing (VC) is not being granted to the appellants. In other cases, where the VC has been granted, but even after the elapse of substantial time period after the VC hearing, no orders have been passed by the first appellate authority. The appellants have even filed and uploaded their appeal submissions multiple times in the appeal response window of E-Proceedings, but with no response from the concerned appellate authorities. Even the link for mandatory virtual hearing has also not been made available yet in many such pending appeals, in the appeal response window. This is resulting in undue financial hardships to the appellants, because there are many cases of high-pitched assessments, wherein atleast 20% of the demand has been coercively recovered, but the appellate relief is still not coming.

The existing subsection (6A) of section 250, provides the discretion to the CIT(Appeals) that he/she may hear and decide the appeal, within a period of one year from the end of the financial year in which such appeal has been filed by the appellant.

Thus, there is an urgent need to make suitable amendment in subsection (6A) of section 250 of the Income tax Act, and to replace the word 'may' with 'shall' so as to convert this discretionary requirement of adjudicating the appeal within a period of one year, to the mandatory requirement of Law.

9. Reconsideration of the Inclusion of Inventory Valuation at the behest of the AO during assessments u/s 142(2A) of the Income Tax Act, as this provision is amenable to be misused and will increase tussles and litigations and thereby will hamper ease of doing business.

10. Reconsideration of the taxability of income from Debt Mutual Funds as Short-term Capital gains irrespective of the period of holding, as even the common man, small retail investors and many MSME's entities invest significant portion of their temporarily available surplus funds in debt-based securities to avoid exposure to equity market risks and reduce volatility of returns.

11. Resolve of Contradictory Share Valuation Rules for Investor & Investee: Currently, the prescribed valuation criteria in section 56(2)(viib) read with Rule 11UA(2) applicable for the investee company and in section 56(2)(x)(c) read with Rule 11UA(1)(c)(b), for the investor, are contradictory to each other.

While section 56(2)(x)(c) requires the Investors to acquire shares at a value equal to or higher than the Fair Market Value (FMV) of such shares, section 56(2)(viib) requires the Investee Company to ensure that the shares are not issued at a price higher than the FMV. Both sections provide for an opposite approach for investors and investee company respectively, and the valuation mechanism are also different.

For the purpose of section 56(2)(x), in the hands of investors, the shares are to be valued as per adjusted Net Assets Value (NAV) based on the circle rates of the underlying land & building, as per Rule 11UA(1)(c)(b) and for the purpose of section 56(2)(viib), in the hands of investee company issuing shares, there is a choice between absolute NAV based on historical acquisition costs of land & building and DCF method of valuation, as per Rule 11UA(2).

On account of the said different and contradictory prescribed valuation criteria for the investee company in section 56(2)(viib) and for the investor in section 56(2)(x)(c), practically, the investee company is left with no other option but to adopt DCF method of valuation, in order to ensure that the issue price of shares is higher than or equal to the FMV based on adjusted NAV (circle rate of land & building), computed as per Rule 11UA(1)(c)(b) to ensure simultaneous compliance with section 56(2)(x) of the Act, in the hands of investors.

And when the investee company adopts such DCF method of valuation, the revenue authorities tend to look upon such valuation with suspicion and doubt and more often than not, such cases are picked up for elaborate scrutiny and often end up in costly, time-consuming and cumbersome litigations.

Thus, there is an urgent need to make suitable amendments in the existing different and contradictory share valuation rules for the investor and investee. In the existing Rule 11UA(2) for the investee company issuing shares, u/s 56(2)(x), instead of stipulating the share valuation based on the historical costs of underlying land and building, the uniform rule of allowing valuation based on the circle rates of the underlying land and building in the NAV method should be prescribed.

12. Rationalisation of the Reporting Clause 44 in Tax Audit Report (TAR)

The reporting clause 44 in the Tax Audit Report mandates breaking up of total expenditure incurred by the auditee company into GST and Non-GST expenditure and further GST expenditure into GST Registered/Unregistered & Composite Dealers.

Such voluminous and cumbersome mandated reporting in Clause 44 of TAR, has no effect on the allowability or disallowability of such expenditure in the computation of income, and is only acting as a serious compliance burden without any consequential benefit.

Therefore, this unwanted and undesirable reporting burden in clause 44 of TAR needs to be withdrawn, to ensure ease of compliance and ease of doing business.

13. Reduction in Allowable Time Period for Issuing Notice for TDS Verification and Passing Order considering Assessee as an Assessee in Default u/s 201/201(1A)

Currently, the allowable time-period for issuance of Notice and passing of TDS verification Order u/s 201(1)/201(1A), continues to be seven long years from the end of the financial year in which the corresponding expenditure has been booked by the assessee, or two years from the end of the financial year, in which rectified TDS return has been filed, whichever is later, by virtue of section 201(3) of the Act.

This allowable window of seven long years of available time period with the income tax authorities in the TDS charge, is clearly in contradiction to the well-intended and sincere efforts of the law-makers in bringing in the much-needed stability and certainty in the taxation regime.

Practically, this TDS verification window under section 201/201(1A) is turning out to be nightmare for the businesses by asking the assessees to furnish the plethora of records and documents and the bulky and cumbersome reconciliations, after the elapse of seven long years, even when the regular assessment for that particular financial year has been concluded long ago.

Further, this TDS verification exercise u/s 201/201(1A) is still being conducted in manual mode, and not in the faceless manner, and even the DIN Nos are mentioned manually on Notices u/s 201/201(1A) and the authentication of same in the Income tax portal often brings no effective results.

So, its high time that the Law Makers actually 'See this Big Elephant (TDS verification) roaming freely in the Room', and take due cognizance of the undue hardships being faced by the taxpayers and fix the time period for issuance of TDS verification Notice u/s 201/201(1A) to be three months from the end of the financial year to which the corresponding expenditure pertains, and the time period for completion of such TDS verification and passing of Orders u/s 201/201(1A) within a period of 9 months from the issuance of corresponding Notices, in line with the time period for completion of regular assessments.

14. Measures to Boost Real Estate Sector:

Increasing 'safe harbour limit' from the present 10% to 20% permanently in sections 50C, 43CA & 56(2)(x) can help a lot in boosting the real-estate sector.

15. Measures for increasing Disposable Income such as rationalizing the advance tax instalments mandating the payments of 25%-50%-75% instead of the existing 60%-75%-90%, extension of similar benefits of reduced tax rates u/s 115BAA & 115BAB to firms and LLPs, extending the benefit of presumptive taxation u/s 44ADA to partners of firms and LLPs, can result in increased disposable income for consumption, both in the hands of individuals and corporates and thereby augmenting the demand for the revival of the economy.

Friends, I am confident that with your support, this writing piece on the 'Pre-Budget 2024-25 Wishlist', will reach the right eyes and ears for timely and much needed redressal of the above discussed critical gaps and grey areas in the Direct Tax domain. Looking forward to write more on Tax proposals in the upcoming Interim Budget 2024-25 and continuing with my Tax Empowerment endeavour.

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