POST-BUDGET MEMORANDUM - 2009

DIRECT TAXES

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

NEW DELHI

POST-BUDGET MEMORANDUM - 2009

INTRODUCTION

1.0 The Council of the Institute of Chartered Accountants of India considers it a privilege to submit this Post-Budget Memorandum to the Government.

1.1 Every year, the Institute organizes a workshop on the Union Budget in which the senior officials from the Central Board of Direct Taxes participate and give appropriate clarifications. Accordingly, a workshop on the Union Budget 2009-10 was organized by the Institute on 17th July, 2009. The Workshop was devoted to discussion of the direct tax proposals. The Chairman of the Central Board of Direct Taxes (CBDT) along with the senior Officials of the Board participated and gave appropriate clarifications on the various issues. In this memorandum, we have suggested certain amendments to the proposals contained in the Finance Bill, 2009 which would help the Government to achieve the desired objectives.

1.2 In this memorandum, firstly an executive summary of our suggestions on the specific clauses of the Finance Bill, 2009 relating to income-tax have been given. The detailed suggestions are given thereafter.

Executive Summary

1. Clause 2 – Rates of Tax

(a) As the proposal to remove surcharge and education cess would practically be effective from the date on which Bill becomes the Act, it is suggested that appropriate press release may be issued in this regard.

(b) Advance FBT paid should be treated as advance income-tax paid, so that the same can be adjusted against income-tax liability in order to avoid the procedural hassles and time involved in claiming refund. Further in case there is no advance tax payable either on account of loss or exempt income appropriate circular be issued to grant refund.

2. Clause 3 – Amendment in section 2(23)

(a) Section 47 may also be amended to clarify that conversion of a proprietory concern, partnership firm, private limited company or an unlisted public limited company into an LLP will not be a transfer.

(b) Further LLP is a larger entity on the model of a body corporate. As such, instead of 100 per cent profit/loss sharing by existing partners, condition of more than 50 per cent profit/loss sharing by the existing partners on the line of sub-clause (d) of clause (xiii) of section 47 may be inserted.

3. Clause 3 – Amendment in section 2(29BA)

(a) The three requirements of different name, character and use being cumulative should be changed to either of the three conditions of different name, character or use. This

can be achieved by substituting the word "and" by the word "or" in sub-clause (a) the proposed sub-section (29BA) of section 2 of the Income-tax Act.

(b) It may also be clarified whether change in physical properties is covered under sub-clause (a) or (b) of the above definition.

4. Clause 6 – Amendment of section 10AA

Since, the amendment in section 10AA(7) is proposed to rectify the discriminatory treatment given to units in SEZs, it is suggested that this amendment be given effect to retrospectively w.e.f. 10.2.2006.

5. Clause 8 – Insertion of section 13B

The tax treatment in respect of anonymous donations received by the electoral trusts be separately prescribed in the Income-tax Act.

6. Clauses 9- Amendment to section 17(2)(vi)

In respect of taxation of ESOPs, the liability may be crystallized at the time of exercise of option, but the recovery of tax may be postponed to the year of actual sale on the line as provided under section 45(2) on conversion of capital asset into stock-in-trade.

7. Clause 13 - Amendment of section 35AD

It may be clarified expenditure incurred before the commencement of business should be allowed in the year of commencement of business.

8. Clause 15 - Amendment of section 40(b)

A proviso may be inserted to permit payment of higher remuneration to partners with retrospective effect from 1.4.2009 so that the benefit of the proposed amendment can be availed of with effect from that date. The proviso may read as under –

"Provided that in relation to any payment under this clause to the partner during the previous year relevant to the assessment year commencing on the 1st day of April, 2009, the terms of the partnership deed may, at any time during the said previous year, provide for such payment."

The rate of Tax Deducted at Source (TDS) on professional fees, which is currently 10%, may be rationalized in view of the amendment in section 40(b).

9. Clause 18, 19 & 20 – Amendment of sections 44AA, 44AB and 44AD

(a) It is suggested that the words "and whose total income exceeds the maximum amount which is not chargeable to income-tax" be deleted from section 44AD(5). Correspondingly, the words "and his income exceeds the maximum amount which is not chargeable to income-tax during such previous year" be deleted from 44AA(2)(iv) and 44AB(d). It may be noted that whereas section 44AD refers to total income, sections 44AA(2)(iv) and 44AB(d) refers to income. This needs to be corrected.

(b) Companies and Limited Liability Partnership be included in the definition of "eligible assessees" so that they forced to compute and declare income of 8%. This will bring good revenue from large number of companies as there is no threshold for companies which, otherwise these companies are not paying. Atleast, some accountability will be there on these companies to justify why income is less than 8 per cent of turnover. This will improve revenue collection from companies which as on date are not paying any tax.

10. Clause 20 – Amendment of section 56(2)(vii)

(a) The definition of income under section 2(24) be amended to include any sum referred to in clause (vii) of sub-section (2) of section 56.

(b) The fair market value of movable property and stamp value of immovable property taken into account for the purpose of section 56(2)(vii) should be considered as cost of acquisition for computation of capital gains on sale of such property.

(c) In case the assessee disputes the fair market value determined in accordance with the method prescribed by the CBDT, there should be a provision enabling reference to the Valuation Officer in such cases also.

(d) The provision of the section 56 would hit trading assets also, which would result in a spate of litigation. Therefore, appropriate amendment may be made.

11. Clause 26 – Amendment of section 56(2)(viii)

The reference should be to clause (b) of section 145A and not sub-section (2) of section 145A. This correction has to be incorporated in page 17 of the Explanatory Memorandum also.

12. Clause 29 – Amendment of section 80A(5)

This provision is inequitable and unfair even to bonafide assesses. As per Circular No.14 dated 11/4/1955 the Assessing Officer is duty bound to allow deduction even if the same has not been claimed by the assessee. Hence, the same may be appropriately amended.

13. Clauses 30 – Amendment of sections 80CCD

The deduction in respect of contribution to the pension scheme of Central Government may be restricted to 10% of gross total income.

14. Clause 32 – Amendment of section 80E

It may be clarified as to whether the benefit for claiming interest on loan is available only for pursuing courses approved by the relevant authorities or for pursuing any course.

15. Clause 37 – Amendment of section 80IB(10)

The benefit can be extended to the works contractor to the extent a certificate has been given to the works contractor by the developer in line with the concept of supporting manufacturer in section 80HHC. In such a case, the developer cannot claim the benefit to the extent it has been passed over to the works contractor.

16. Clause 42 – Amendment of section 115BBC

It is suggested that the exemption should be the higher of 5% of gross receipts (instead of total income) or Rs.1 lakh.

17. Clause 43 & 45 – Amendment of section 115JA/115JB

The amount set aside as provision for diminution in the value of an asset same may not be disallowed for computation of MAT.

18. Clause 45 – Amendment of section 115JB

Interest under section 234C should not be chargeable in respect of shortfall in instalment payable on or before 15th June, 2009 to the extent that it is on account of amendment of this section by Finance (No.2) Act, 2009. This is with a view to avoid litigation on this aspect and unfairness of charging interest on account of retrospective amendment.

19. Clause 55 – Amendment of section 144C

(a) **In case only a part of the variation arises as a consequence of the order of the Transfer Pricing Officer, would the whole assessment order be subject to the provisions of section 144C. This issue needs clarification.**

(b) **As per the proposal, for every small variance in the returned income, the Assessing Officer has to follow the proceeding prescribed. Probably the intention is in respect of transfer price and other major inputs. This may be clarified.**

20. Clause 60 & 16 – Amendment of section 194C & 40A(3)

If the legislative intent is to give benefit of non-deduction of tax at source to payments to transport operators by any person, then the language of sub-section (6) should be modified as under –

"No deduction shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of a transport contractor during the course of engaged in the business of plying, hiring or leasing goods carriages, on furnishing of his permanent account number, to the person paying or crediting such sum.

Similar amendment would be required in the language of section 40A(3) also. Instead of "in case of payment made for plying, hiring or leasing goods carriages…", the language should be "in the case of payment made to a transporter engaged in the business of plying, hiring or leasing goods carriages…"

In view of inflation, there is a need to increase the limit of Rs.20,000 across the board for all payments. Further, similar amendment is required in sections 269SS and 269T.

21. Clause 64 – Amendment of section 200A(1)

The income-tax authority referred to in section 116 should also be empowered to rectify any intimation under this section. This should be provided for by amending section 154.

22. Clause 68 – Insertion of new section 206AA

The requirement to mention the Permanent Account Number need not be extended to all the correspondence. It may be limited to the Bills raised by the deductee on the deductor.

23. Clause 71 – Amendment of section 246A

In the Explanatory memorandum it has been stated that even an order passed under section 154 of such order would be excluded from the orders appealable before Commissioner (Appeals). This has been omitted in the Finance Bill and the same needs to be incorporated.

Further an order passed in pursuance of the directions of the Collegeium of Commissioners should not be subjected to review under sections 263 and 264 of the Act.

24. Clause 76 – Substitution of new section for section 282

This section to be further amended to clarify that such person to whom the notice etc has been delivered in accordance with the section 282 can reply to the same by electronic mail or electronic mail message.

25. Clause 78 – Amendment of section 293C

Order passed under section 293C should be appealable before the Appellate Tribunal under section 253.

POST- BUDGET MEMORANDUM – 2009

1. Clause 2 – Rates of Tax

It is proposed to remove surcharge and education cess on tax deducted on non-salary payments made to resident payers. This amendment is proposed to be made effective from 1.4.09. However, in practice in respect of advance tax already paid and tax deducted at source, it can be effected only from the date on which the Bill becomes an Act.

Suggestion

Therefore, it is suggested that appropriate press release may be issued in this regard.

The Fringe Benefit Tax (FBT) is proposed to be abolished with effect from A.Y.2010-11. However, many companies have already paid the first installment of advance tax on FBT in June, 2009.

Suggestion

It is suggested that such advance FBT paid should be treated as advance income-tax paid, so that the same can be adjusted against income-tax liability in order to avoid the procedural hassles and time involved in claiming refund. Further in case there is no advance tax payable either on account of loss or exempt income appropriate circular be issued to grant refund.

2. Clause 3 – Amendment in section 2(23)

Definition of “firm” is proposed to be amended to include Limited liability Partnerships (LLP). It has been clarified in the Explanatory Memorandum that the conversion from a general partnership to LLP will have no tax implications provided there is no change in the rights and obligations of partners after conversion and there is no transfer of assets or liabilities after conversion. However there is no specific clause in the Bill to give effect to this intention. It may be observed that there will be change in the obligations of the partners consequent to the conversion of a 'firm' into a LLP as the legal rights and obligations of the partners under the LLP Act are much different from the corresponding provisions contained in the Partnership Act, 1932.

Section 47 should also be amended to clarify that conversion of a proprietory concern, partnership firm, private limited company or an unlisted company into an LLP will not be a transfer. The conditions under which such transfer is recognized should be the same as are prescribed under the LLP Act in Schedule II,III and IV for the conversion of a firm, private limited company or an unlisted company respectively.

Further LLP is a larger entity on the model of a body corporate. As such, instead of 100 per cent profit/loss sharing by existing partners, condition of more than 50 per cent profit/loss sharing by the existing partners on the line of sub-clause (d) of clause (xiii) of section 47 may be inserted.

Suggestions

(a) ***Section 47 may also be amended to clarify that conversion of a proprietory concern, partnership firm, private limited company or an unlisted public limited company into an LLP will not be a transfer.***

(b) ***Further LLP is a larger entity on the model of a body corporate. As such, instead of 100 per cent profit/loss sharing by existing partners, condition of more than 50 per cent profit/loss sharing by the existing partners on the line of sub-clause (d) of clause (xiii) of section 47 may be inserted.***

3. Clause 3 – Amedment in section 2(29BA)

It is proposed to insert a definition of the term "manufacture" to mean a change in a non-living physical object or article or thing resulting in transformation of the object or article or thing into a e new and distinct object or article or thing having a different name, character and use.

The requirement for the new and distinct object to have a different name, character and use implies the fulfillment of all the three conditions. Instead, the new and distinct object should have a different name, character or use.

Suggestion

The three requirements of different name, character and use being cumulative should be changed to either of the three conditions of different name, character or use. This can be achieved by substituting the word "and" by the word "or" in sub-clause (a) the proposed sub-section (29BA) of section 2 of the Income Tax Act.

It may also be clarified whether change in physical properties is covered under sub-clause (a) or (b) of the above definition.

4. **Clause 6 – Amendment of section 10AA**

Sub-section (7) is proposed to be amended so that the deduction is computed with reference to the total turnover of the undertaking and not the total turnover of the business of the assessee.

Suggestion

Since this amendment is proposed to rectify the discriminatory treatment given to units in SEZs, it is suggested that this amendment be given effect to retrospectively w.e.f. 10.2.2006.

5. **Clause 8 – Insertion of section 13B**

Section 13B is proposed to be inserted to exempt voluntary contributions received by an electoral trust, if such trust functions in accordance with the prescribed rules and distributes 95% of the aggregate donations received by it to any political party.

Suggestion

It is suggested that the tax treatment in respect of anonymous donations received by the electoral trusts be separately prescribed in the Income-tax Act.

6. **Clauses 9- Amendment to section 17(2)(vi)**

It is proposed to tax ESOPs in the hands of the employee consequent to proposed abolition of FBT in the hands of the employer.

The employees may be put to difficulty since they may not have liquid cash to pay tax on perquisites at the time they exercise the option.

Suggestion

It is suggested that the liability may be crystallized at the time of exercise of option, but the recovery of tax may be postponed to the year of actual sale on the line as provided under section 45(2) on conversion of capital asset into stock-in-trade.

7. Clause 13 - Amendment of section 35AD

100% of the capital expenditure incurred wholly and exclusively for the specified businesses would be allowed as deduction from the business income in the year in which the expenditure is incurred.

A significant portion of the capital expenditure is generally incurred before the commencement of business, and consequently, the assessee may not be able to avail deduction in respect of the same. For example, if capital expenditure is incurred in Feb. 2009 and the assessee commences business in May 2009, he would not be able to avail deduction in respect of the expenditure, since it was not incurred during the P.Y.2009-10.

Suggestion

Therefore, it may be clarified that such expenditure incurred before the commencement of business should be allowed in the year of commencement of business.

8. Clause 15 - Amendment of section 40(b)

This section is proposed to be substituted w.e.f. 1.4.2009 revising limits specified therein to permit deduction of higher remuneration paid to partners. Section 40(b)(v) permits deduction of remuneration which is authorized by partnership deed and relates to a period falling after the date of such partnership deed. Due to this provision, it would not be possible for the firms to take the benefit of the proposed amendment even though the same has been made effective from 1.4.2009.

Suggestion

A proviso may be inserted to permit payment of higher remuneration to partners with retrospective effect from 1.4.2009 so that the benefit of the proposed amendment can be availed of with effect from that date. The proviso may read as under –

"Provided that in relation to any payment under this clause to the partner during the previous year relevant to the assessment year commencing on the 1st day of April, 2009, the terms of the partnership deed may, at any time during the said previous year, provide for such payment."

The rate of Tax Deducted at Source (TDS) on professional fees, which is currently 10%, may be rationalized in view of the amendment in section 40(b).

9. Clause 18, 19 & 20 – Amendment of section 44AA,44AB and 44AD

Sub-section (5) of new section 44AD permits the assessees to claim lower profits than the presumptive rate of 8% provided they maintain books of account under section 44AA and get the same audited under section 44AB. However, this is to be made applicable only for assessees whose total income exceeds the maximum amount which is not chargeable to tax.

There would be considerable scope for assessees to escape the tax net by claiming that their income is lower than the basic exemption limit. In that case, neither would the presumptive provisions of section 44AD get attracted nor would they be required to maintain books of account under section 44AA and get them audited under section 44AB.

Further, since the "eligible assessees" means only resident individuals, HUF's and partnership firm (excluding LLP's), the, LLPs and Companies who are not paying any tax can be brought into tax net.

Suggestion

(a) ***It is suggested that the words "and whose total income exceeds the maximum amount which is not chargeable to income-tax" be deleted from section 44AD(5). Correspondingly, the words "and his income exceeds the maximum amount which is not chargeable to income-tax during such previous year" be deleted from 44AA(2)(iv) and 44AB(d). It may be noted that whereas section 44AD refers to total income, sections 44AA(2)(iv) and 44AB(d) refers to income. This needs to be corrected.***

(b) ***Companies and Limited Liability Partnership be included in the definition of "eligible assessees" so that they forced to compute and declare income of 8%. This will bring good revenue from large number of companies as there is no threshold for companies which, otherwise these companies are not paying. Atleast, some accountability will be there on these companies to justify why income is less than 8 per cent of turnover. This will improve revenue collection from companies which as on date are not paying any tax.***

10. Clause 20 – Amendment of section 56(2)(vii)

It is proposed to bring gifts-in-kind, whose value exceeds Rs.50,000, also within the purview of section 56 with effect from 1st October, 2009. Accordingly, it has been provided that the value of the property received without consideration or for inadequate consideration, would be included in the computation of the total income of the recipient.

If movable property is received without consideration, the aggregate fair market value of such property on the date of receipt would be taxed as the income of the recipient if it exceeds Rs.50,000. In case movable property is received for inadequate consideration, and the difference between the aggregate fair market value and such consideration exceeds Rs.50,000, such difference would be taxed as the income of the recipient.

If an immovable property is received without consideration, the stamp duty value of such property would be taxed as the income of the recipient if it exceeds Rs.50,000. In case the immovable property is received for inadequate consideration, and the difference between the stamp duty value and such consideration exceeds Rs.50,000, such difference would be taxed as the income of the recipient.

This provision goes against the real income theory. This provision appears to be too harsh as it treats all honest tax payers at the same footing with dishonest tax payers.

There can always be a good bargain and bonafide transaction entered into at a value which may be different from the fair market value. To tax these tax payers will not be justified. Further, this will open a floodgate for litigation since fair market value is open to dispute. Without prejudice, instead of keeping a fixed margin of Rs.50,000, there is need to keep a margin of 25% or Rs.50,000, whichever is higher, to reduce litigation.

Suggestion

It is suggested that -

(a) ***The definition of income under section 2(24) be amended to include any sum referred to in clause (vii) of sub-section (2) of section 56.***

(b) ***The fair market value of movable property and stamp value of immovable property taken into account for the purpose of section 56(2)(vii) should be considered as cost of acquisition for computation of capital gains on sale of such property.***

(c) ***In case the assessee disputes the fair market value determined in accordance with the method prescribed by the CBDT, there should be a provision enabling reference to the Valuation Officer in such cases also.***

(d) ***The provision of the section 56 would hit trading assets also, which would result in a spate of litigation. Therefore, appropriate amendment may be made.***

11. Clause 26 – Amendment of section 56(2)(viii)

Clause (viii) is proposed to be inserted in section 56(2) to include income by way of interest received on compensation or enhanced compensation referred to in sub-section (2) of section 145A, within its scope.

Suggestions

The reference should be to clause (b) of section 145A and not sub-section (2) of section 145A. This correction has to be incorporated in page 17 of the Explanatory Memorandum also.

12. Clause 29 – Amendment of section 80A(5)

Sub-section (5) is proposed to be inserted in section 80A to deny deduction to an assessee, in case he has failed to make a claim in his return of income for any deduction under sections 10A, 10AA, 10B, 10BA or under any provision of Chapter VI-A under the heading "C- Deductions in respect of certain incomes".

Suggestions

This provision is inequitable and unfair even to bonafide assesses. As per Circular No.14 dated 11/4/1955 the Assessing Officer is duty bound to allow deduction even if the same has not been claimed by the assessee. Hence, the same may be appropriately amended.

13. Clauses 30 – Amendment of sections 80CCD

The benefit of deduction under this section in respect of contribution to pension scheme of the Central Government has been extended to self employed individuals also.

However, the deduction in all cases is restricted to 10% of salary. There is no salary income for a self employed person.

Suggestion

Therefore, it is suggested that in such cases, the deduction may be restricted to 10% of gross total income.

14. Clause 32 – Amendment of section 80E

Deduction is proposed to be extended to interest on loan taken for pursuing any course after Class XII or its equivalent from any school, board, university recognized by the Central Government etc.

Suggestion

It may be clarified as to whether the benefit is available only for pursuing courses approved by the relevant authorities or for pursuing any course.

15. Clause 37 – Amendment of section 80IB(10)

Explanation is proposed to be inserted to deny the benefit of exemption to an undertaking which executes the housing project as a works contract awarded by any person (including the Central or State Government).

Suggestion

It is suggested that benefit can be extended to the works contractor to the extent a certificate has been given to the works contractor by the developer in line with the concept of supporting manufacturer in section 80HHC. In such a case, the developer cannot claim the benefit to the extent it has been passed over to the works contractor.

16. Clause 42 – Amendment of section 115BBC

An exemption is proposed to be given in respect of anonymous donations taxable under section 115BBC. The exemption would be the higher of 5% of total income or Rs.1 lakh.

Suggestion

It is suggested that the exemption should be the higher of 5% of gross receipts (instead of total income) or Rs.1 lakh.

17. Clause 43 & 45 – Amendment of section 115JA/115JB

Explanation to these sections is proposed to be amended retrospectively to provide that the amount set aside as provision for diminution in the value of an asset should be added back for computing book profit for levy of MAT.

The amendment goes against the concept of MAT which is applicable on book profit as declared by the company itself. Diminution in value of asset such as provision for bad and doubtful debt, value of stores and spares is an accepted accounting policy and approved by the auditor. Addition of the same to the net profit will artificially increase the book profit which is against a very concept of levying MAT.

Further, provision is required to be made in the books of account as per AS-28 on impairment of assets. Such provision is necessary to ensure compliance with accounting standards. Therefore, the same should not be disallowed for computation of MAT.

Suggestion

Therefore, the same may not be disallowed for computation of MAT.

18. Clause 45 – Amendment of section 115JB

The rate of MAT is proposed to be increased from 10% to 15% w.e.f. A.Y.2010-11.

The date for payment of first installment of advance-tax is already over. This proposed amendment would attract liability to interest under section 234C on account of retrospective amendment in section 115JB w.e.f. 1.4.2010.

Suggestions

Interest under section 234C should not be chargeable in respect of shortfall in instalment payable on or before 15th June, 2009 to the extent that it is on account of amendment of this section by Finance (No.2) Act, 2009. This is with a view to avoid litigation on this aspect and unfairness of charging interest on account of retrospective amendment.

19. Clause 55 – Amendment of section 144C

This section requires the Assessing Officer to forward a draft of the proposed order (draft order) to the eligible assessee if he proposes to make any variation in the income or loss returned by the assessee, which is prejudicial to the interest of such assessee. Eligible assessee means a foreign company or any other person in whose case the variation arises as a consequence of the order of the Transfer Pricing Officer. The eligible assessee has to file his acceptance of the variations to the Assessing Officer or his objections to such variations with the Dispute Resolution Panel and the Assessing Officer within 30 days of receipt of the draft order.

Suggestion

(a) In case only a part of the variation arises as a consequence of the order of the Transfer Pricing Officer, would the whole assessment order be subject to the provisions of section 144C. This issue needs clarification.

(b) ***As per the proposal, for every small variance in the returned income, the Assessing Officer has to follow the proceeding prescribed. Probably the intention is in respect of transfer price and other major inputs. This may be clarified.***

20. Clause 60 & 16 – Amendment of section 194C & 40A(3)

Sub-section (6) of section 194C provides that no deduction shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of a contractor during the course of business of plying, hiring or leasing goods carriages, on furnishing of his permanent account number, to the person paying or crediting such sum.

The present language apparently seems to suggest that the benefit of non-deduction of tax at source would be available only in respect of transactions between two transport operators. However, this does not seem to be the legislative intent. This has to be clarified.

Suggestion

If the legislative intent is to give benefit of non-deduction of tax at source to payments to transport operators by any person, then the language of sub-section (6) should be modified as under –

"No deduction shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of a transport contractor during the course of engaged in the business of plying, hiring or leasing goods carriages, on furnishing of his permanent account number, to the person paying or crediting such sum.

Similar amendment would be required in the language of section 40A(3) also. Instead of "in case of payment made for plying, hiring or leasing goods carriages…", the language should be "in the case of payment made to a transporter engaged in the business of plying, hiring or leasing goods carriages…"

In view of inflation, there is a need to increase the limit of Rs.20,000 across the board for all payments. Further, similar amendment is required in sections 269SS and 269T.

21. Clause 64 – Amendment of section 200A(1)

New section 200A(1) is proposed to be inserted to provide for processing of statements of tax deducted at source.

Suggestion

The income-tax authority referred to in section 116 should also be empowered to rectify any intimation under this section. This should be provided for by amending section 154.

22. Clause 68 – Insertion of new section 206AA

The proposed new section 206AA is with respect to Requirement to furnish Permanent Account Number. Sub-section (5) of the said section requires the deductee to furnish his Permanent Account Number to the Deductor and both shall indicate the same in all the correspondence, bills, vouchers and other documents which are sent to each other.

It is submitted that the requirement to state the Permanent Account Number in all the correspondence and documents is not required.

To illustrate, the new provisions will require the Statutory Auditor issuing the audit report to the shareholders of the company to state the Permanent Account Number in his Audit Report also.

Suggestion

The requirement to mention the Permanent Account Number need not be extended to all the correspondence. It may be limited to the Bills raised by the deductee on the deductor.

23. Clause 71 – Amendment of section 246A

Clause (a) of sub-section (1) of section 246 is proposed to be amended to exclude the order of assessment passed under sub-section (3) of section 143 in pursuance of directions of "Dispute Resolution Panel" from the orders appealable before Commissioner (Appeals).

Suggestion

However, in the Explanatory memorandum it has been stated that even an order passed under section 154 of such order would be excluded from the orders appealable before Commissioner (Appeals). This has been omitted in the Finance Bill and the same needs to be incorporated.

Further an order passed in pursuance of the directions of the Collegeium of Commissioners should not be subjected to review under section 263 and 264 of the Act.

24. Clause 76 – Substitution of new section for section 282

Section 282 is proposed to be substituted to provide that the service of a notice, summon or requisition or order or any other communication under this Act, may be made by delivering or transmitting a copy thereof to the person named therein interalia in any form of electronic record provided in Chapter IV of the Information Technology Act, 2000.

The CBDT is to be empowered to make rules providing for the addresses, including the addresses for electronic mail or electronic mail message to which such communication may be delivered or transmitted.

Suggestion

This section to be further amended to clarify that such person to whom the notice etc has been delivered in accordance with the section 282 can reply to the same by electronic mail or electronic mail message.

25. Clause 78 – Amendment of section 293C

New section 293C is proposed to be inserted to empower an income-tax authority to withdraw any approval granted by him, even though the power to withdraw has not been specifically conferred under that section.

Suggestion

Such an order should be appealable before the Appellate Tribunal under section 253.