Budget 2010

Finance Bill, 2010: Business income

1. Disallowance on account of non-deduction / non-payment of TDS

(i) Proposed Amendment

In section 40 of the Income-tax Act, in clause (a), in sub-clause (ia),-

(a) for the portion beginning with the words "has not been paid,-" and ending with the words "the last day of the previous year", the words, brackets and figures "has not been paid on or before the due date specified in sub-section (1) of section 139" shall be substituted;

(b) for the proviso, the following proviso shall be substituted, namely:-

"Provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in subsection (1) of section 139, such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.".

(ii) From Notes on Clauses

Clause 12 of the Bill seeks to amend section 40 of the Income-tax Act relating to amounts not deductible.

Under the existing provisions contained in sub-clause (ia) of clause (a) of the aforesaid section, non-deduction of tax or non-

payment of tax after deduction on payment of any sum by way of interest, commission or brokerage, rent, royalty, fees for professional services or fees for technical services payable to a resident or amounts payable to a contractor or sub-contractor, being resident, results in the disallowance of the said sum, in the computation of income of the payer, on which tax is required to be deducted under Chapter XVII-B.

The proviso to the said sub-clause provides that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the last month of the previous year but paid after the due date of filing of return or deducted during any other month of the previous year but paid after the end of the said previous year, such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

It is proposed to amend sub-clause (ia) of clause (a) of the aforesaid section to provide that disallowance under the said sub-clause will be attracted, if, after deduction of tax during the previous year, the same has not been paid on or before the due date of filing of return of income specified in sub-section (1) of section 139.

This amendment will take effect retrospectively from ast April, 2010, and will, accordingly, apply in relation to the assessment year 2010-2011 and subsequent years.

(iii) From Explanatory Memorandum

Disallowance of expenditure on account of non-compliance with TDS provisions:-

A. The existing provisions of section 40(a)(ia) of Income-tax Act provide for the disallowance of expenditure like interest, commission, brokerage, professional fees, etc. if tax on such expenditure was not deducted, or after deduction was not paid during the previous year. However, in case the deduction of tax is made during the last month of the previous year, no disallowance is made if the tax is deposited on or before the due date of filing of return.

It is proposed to amend the said section to provide that no disallowance will be made if after deduction of tax during the previous year, the same has been paid on or before the due date of filing of return of income specified in sub-section (1) of section 139.

This amendment is proposed to take effect retrospectively from 1st April, 2010 and will, accordingly, apply in relation to the assessment year 2010-11 and subsequent years.

B. Under the existing provisions of section 201 (1 A) of the Act, a person is liable to pay simple interest at one per cent for every month or part of month in case of failure to deduct tax or payment of tax after deduction.

With a view to discourage the practice of delaying the deposit of tax after deduction, it is proposed to increase the rate of interest for non-payment of tax after deduction from the present one per cent to one and one-half per cent for every month or part of month.

(iv) Effect of the amendment

- Section 40(a)(ia) covers the following expenses:

	TDS provisions given in the following sections
Interest	193 or 194A
Commission or brokerage	194H
Fees for technical services	194J
Fees for professional services	194J
Payment to contractors/sub-contractors	194C
Rent	194-I

Payment of “royalty” to a resident	194J

- As per existing provisions of Section 40(a)(ia) of the Act, certain payments made to residents were not allowable as deduction where tax was not deducted or after deduction, was not paid before end of the year. In case where the tax was deducted in the last month of the year, then no disallowance u/s. 40(a)(ia) would be made, so long as the tax was deducted during the year and paid before the due date of filing the return of income.

- It is now proposed that so long as the tax is deducted during the year and it is also paid on or before the due date of filing the return of income, then no disallowance will be made u/s. 40(a)(ia) of the Act. However, it must be kept in mind that in any case, the deduction of TDS is required to be made on or before the end of the year. If there is a failure to deduct tax, the disallowance will be made, notwithstanding the fact that the tax has been deducted after end of the year and paid before the due date.

2. Enhancement in Limit for Tax Audit u/s 44AB

(i) Proposed Amendment

In section 44AB of the Income-tax Act, with effect from the 1st day of April, 2011,-

(a) in clause (a), for the words "forty lakh rupees", the words "sixty lakh rupees" shall be substituted;

(b) in clause (b), for the words "ten lakh rupees", the words "fifteen lakh rupees" shall be substituted.

Amendment of section 271B:-

In section 271B of the Income-tax Act, for the words "one hundred thousand rupees", the words "one hundred fifty thousand rupees" shall be substituted with effect from the 1st day of April, 2011.

(ii) From Notes on Clauses

Clause 14 of the Bill seeks to amend section 44AB of the Income-tax Act relating to audit of accounts of certain persons carrying on business or profession.

The existing provisions contained in clause (a) of the aforesaid section make it obligatory for every person carrying on business to get his accounts of any previous year relevant to the assessment year audited by an accountant before the specified date if the total sales, turnover or gross receipts in business for the previous year exceeds forty lakh rupees.

It is proposed to enhance the said limit from forty lakh rupees to sixty lakh rupees.

The existing provisions contained in clause (b) of the aforesaid section make it obligatory for every person carrying on profession

to get his accounts of any previous year relevant to the assessment year audited by an accountant before the said specified date if his gross receipts in profession for the previous year exceed ten lakh rupees.

It is proposed to enhance the said limit from ten lakh rupees to fifteen lakh rupees.

These amendments will take effect from ast April, 2011, and will, accordingly, apply in relation to the assessment year 2011-2012 and subsequent years.

(iii) From Explanatory Memorandum

A. Under the existing provisions of section 44AB, every person carrying on business is required to get his accounts audited if the total sales, turnover or gross receipts in business exceed forty lakh rupees in the previous year. Similarly, a person carrying on a profession is required to get his accounts audited if the gross receipts in profession exceed ten lakh rupees in the previous year.

In order to reduce compliance burden of small businesses and professionals, it is proposed to increase the aforesaid threshold limit from forty lakh rupees to sixty lakh rupees in the case of persons carrying on business and from ten lakh rupees to fifteen lakh rupees in the case of persons carrying on profession.

B. In view of the amendment proposed above, it is also proposed to increase the maximum penalty, leviable under section 271B for failure to get accounts audited under section 44AB or to furnish a report of such audit, from one lakh rupees to one lakh fifty thousand rupees.

(iv) Effect of the amendment

- Persons carrying on business / profession are required to get their accounts audited, if their turnover exceeded the threshold limit of Rs. 40.00 lacs for business and Rs. 10.00 lacs for profession. These limits were fixed w.e.f A.Y. 85-86.
- For giving relief to the small assessees, it is proposed to raise the said threshold to Rs. 60.00 lacs for business and Rs. 15.00 lacs for professionals and accordingly the assesses, who have their receipts below these thresholds will not be required to get their accounts audited under section 44AB.

3. Penalties u/s. 271B for Tax Audit non-compliance

(i) Proposed Amendment

In section 271B of the Income-tax Act, for the words "one hundred thousand rupees", the words "one hundred fifty thousand rupees" shall be substituted with effect from the 1st day of April, 2011.

(ii) From Notes on Clauses

Clause 50 of the Bill seeks to amend section 271B of the Income-tax Act relating to failure to get accounts audited.

The existing provisions contained in the aforesaid section provide that if any person fails to get his accounts audited in respect of any previous year relevant to an assessment year or furnish a report of such audit as required under section 44AB, the Assessing Officer may impose a penalty equal to one-half per cent, of the total sales, turnover or gross receipts, as the case may be, in business, or of the gross receipts in profession, in such previous year or a sum of one lakh rupees, whichever is less.

It is proposed to enhance the said limit from one lakh rupees to one lakh fifty thousand rupees.

This amendment will take effect from ast April, 2011, and will, accordingly, apply in relation to the assessment year 2011-2012 and subsequent years.

(iii) Effect of the amendment

- Presently, if the person fails to get his accounts audited then penalty of ½% of the total sales or Rs. 1,00,000, whichever is less, is imposed. Thereby, maximum penalty of Rs. 1,00,000 is provided.
- Now it is proposed to increase the ceiling to Rs. Rs. 1,50,000 in place of Rs. 1,00,000.

4. Expansion of the Presumptive Tax Scheme u/s. 44AD

(i) Proposed Amendment

In section 44AD of the Income-tax Act [as amended by section 20 of the Finance (No.2) Act, 2009], in the Explanation, in clause (b), in sub-clause (ii), for the words "forty lakh rupees", the words "sixty lakh rupees" shall be substituted with effect from the 1st day of April, 2011.

(ii) From Notes on Clauses

Clause 15 of the Bill seeks to amend section 44AD of the Income-tax Act relating to special provision for computing profits and gains of business on presumptive basis.

The existing sub-clause (ii) of clause (b) of the Explanation to the aforesaid section defines the term "eligible business" to mean any business except the business of plying, hiring or leasing goods carriages referred to in section 44AE and whose total turnover or gross receipts in previous year does not exceed forty lakh rupees for the purpose of computing profits and gains of business on presumptive basis.

It is proposed to enhance the said limit from forty lakh rupees to sixty lakh rupees.

This amendment will take effect from ast April, 2011, and will, accordingly, apply in relation to the assessment year 2011-2012 and subsequent years.

(iii) From Explanatory Memorandum

C. It is also proposed that for the purpose of presumptive taxation under section 44AD, the threshold limit of total turnover or gross receipts would be increased from forty lakh rupees to sixty lakh rupees.

These amendments are proposed to take effect from 1st April, 2011 and will, accordingly, apply in relation to the assessment year 2011-12 and subsequent years.

(iv) Effect of the amendment

- Under the existing provisions of section 44AD of the Act, a person carrying on any business is entitled to opt for a scheme of presumptive tax scheme, provided its turnover or gross receipts do not exceed Rs. 40.00 lacs. In such type of assessees, the assessee is required to presume its income at 8% of the turnover or gross receipts and pay tax accordingly.

- It is proposed to expand the scope of the said presumptive tax scheme to the assessees having its turnover or gross receipts upto Rs. 60.00 lacs. This would help the smaller businessman to reduce their hassles of compliance.