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LMR PART A – SUPPLEMENT 2

NOTES ON AMENDMENT FOR THE ASSESSMENT YEAR 2009-2010
FINANCE ACT 2008

SEC. 2 CHARITABLE PURPOSES

Section 2 defines "charitable purpose" to include relief of the poor, education, medical relief, and the advancement of any other object of general public utility.
It exclude from "advancement of any other object of general public utility"—
(i) any activity in the nature of trade, commerce or business, or
(ii) any activity of rendering any service in relation to any trade, commerce or business,
for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from any such activity.

SEC 35 CONTRIBUTION TO APPROVED COMPANIES, DEDUCTION 125 %

Section 35 allows deduction of an amount equal to one and one-fourth times of any sum paid to a scientific research association which has as its object the undertaking of scientific research or to a university, college or other institution to be used by it for scientific research. The provision also requires such scientific research association, university, college or other institution to be approved and notified.
Further, 35 (2AB) of the said section allows deduction of an amount equal to one and one-half times of the expenditure incurred on scientific re-search, not being expenditure in the nature of cost of any land or building, on approved in-house research and development facility. This deduction is available to a company engaged in the specified business.

The clause 35 (iia) allow deduction of an amount equal to one and one-fourth times of any sum paid to a company for scientific research, provided such company—
(A) is registered in India;
(B) has as its main object the scientific research and development;
(C) is, for the purposes of this clause, for the time being approved by the prescribed authority in the prescribed manner; and
(D) fulfils such other conditions as may be prescribed.

35 (2AB) provide that no deduction shall be allowed to such a company approved under sub-clause (C) of clause (iia) in respect of the expenditure referred to in clause 35(2AB) which is incurred after 31st March, 2008.

SEC 35D PRELIMINARY EXPENSES

The amendment substitute the words "industrial undertaking" with the word "undertaking" and the words "industrial unit" with the word "unit", wherever they occur in the said section. This is intended to provide benefit of amortisation of specified post commencement preliminary expenses to all sectors for the extention of an undertaking or the setting up of a new unit.

SEC 36 (1)(XV) AND (XVI) STT AND CTT

Section 36 provide that any amount of securities transaction tax paid by the assessee during the previous year in respect of taxable securities transactions / commodities transaction tax entered into in the course of his business during the previous year shall be allowed as a deduction, if the income arising from such taxable securities transactions is included in the income computed under the head "Profits and gains of business or profession".

SEC 40A(3) AGGREGATE CASH PAYMENT PER DAY > 20,000

where the assessee incurs any expenditure in respect of which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, exceeds twenty thousand rupees, no deduction shall be allowed in respect of such expenditure.
Where an allowance has been made in the assessment for any year in respect of any liability incurred by the assessee for any expenditure and subsequently during any previous year (hereinafter referred to as subsequent year) the assessee makes payment in respect thereof, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, the payment so made shall be deemed to be the profits and gains of business or profession and accordingly chargeable to income-tax as income of the subsequent year if the payment or aggregate of payments made to a person in a day, exceeds twenty thousand rupees.

No disallowance shall be made and no payment shall be deemed to be the profits and gains of business or profession where a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, exceeds twenty thousand rupees, in such cases and under such circumstances as may be prescribed, having regard to the nature and extent of banking facilities available, considerations of business expediency and other relevant factors.

SEC 43 DEPRECIATION NOT ALLOWED ON THE ELEMENT OF REVALUATION.

43 (6) explanation provide that where an assessee was not required to compute his total income for the purposes of Income-tax Act for any previous year or years preceding the previous year relevant to the assessment year under consideration,-

(a) the actual cost of an asset shall be adjusted by the amount attributable to the revaluation of such asset, if any, in the books of account;

(b) the total amount of depreciation on such asset provided in the books of account of the assessee in respect of such previous year or years preceding the previous year relevant to the assessment year under consideration shall be deemed to be the depreciation actually allowed

(c) the depreciation actually allowed as above shall be adjusted by the amount of depreciation attributable to such revaluation.

SEC 47, 49 NOT REGARDED AS TRANSFER.

Any transfer by way of conversion of bonds referred to in clause 115AC into shares or debentures of any company shall not be considered as transfer. (47 (x) or (xa))

It is proposed to substitute the said sub-section to provide that where the capital asset, being a share or debenture of a company, became the property of the assessee in consideration of a transfer referred to in 47 (x) or (xa), the cost of acquisition of the asset to the assessee shall be deemed to be that part of the cost of debenture, debenture-stock, bond or deposit certificates in relation to which such asset is acquired by the assessee.

Format of computation.

RESI STATUS IN THE YEAR OF SALE OF SHARES	NR	NR	R	R
HOLDING	ST	LT	ST	LT
115 AC (when bonds are converted to shares and then sold (1st sale) it shall be within the scope of 115 AC)	**N**	**Y**	**N**	**N**
RATE	R	10%	R	R
PROV 1	Y	N	N	N
PROV 2	N	N	N	Y
FVC	**1680/45**	**1680**	**1680**	**1680**
COST (is the cost of the bonds or debentures, market value on the date of conversion is not to be considered relevant.)	**1000/43 (computation is indicated to have been done as per prov. 1 to 48.)**	**1000 (if the shares are listed and subject to STT then can be claimed as exempt.)**	**1000**	**1000**

New clause (xvi) any transfer of a capital asset in a transaction of reverse mortgage under a scheme made and notified by the Central Government will not be regarded as transfer.

SEC 111A / 115AD TAX RATE CHANGE.

Under the existing provisions of section 111A and 115AD, a special rate of tax of ten per cent. is provided on short-term capital gain arising from the transfer of a short-term capital asset, being an equity share in a company or a unit of an equity oriented fund, where such transaction is chargeable to securities transaction tax.

Now rate of tax on such short-term capital gain to fifteen per cent.

SEC 115JB MAT SOME ADJUSTMENTS.

115JB *Explanation 1* and insert a new clause so as to provide that the book profit shall be increased by the amount of deferred tax and the provision therefor, if debited to profit and loss account.
The amount of income-tax (add) shall include,—
(i) tax on distributed profits or on distributed income under section 115-O or section 115R, respectively ;
(ii) any interest charged under this Act ;
(iii) surcharge, if any, as levied by the Central Acts from time to time ;
(iv) Education Cess on income-tax, if any, levied by the Central Acts from time to time ; and
(v) Secondary and Higher Education Cess on income-tax, if any, levied by the Central Acts from time to time.

SEC 115-O DIVIDEND ADJUSTMENT

Amalgamation of one or more public sector company or companies engaged in the business of operation of aircraft with one or more public sector company or companies engaged in similar business also.

SEC 115WB FBT

In the said section, the expression "specified security" has been defined, which, inter alia, includes employees' stock option. It is proposed to amend this definition so as to include securities offered under an employees' stock option plan or scheme, where the employees' stock option has been granted.

Now exclude certain expenditure from the hospitality expenditure for calculation of fringe benefit tax. Any expenditure on or payment through non-transferable pre-paid electronic meal card usable only at eating joints or outlets and which fulfils such other conditions as may be prescribed, shall also be excluded from the hospitality expenditure for calculation of fringe benefit tax.

Now excludes certain expenses from the employees' welfare expenses for calculation of fringe benefit tax. It is proposed to enlarge the scope of the exclusion in this *Explanation* by providing that the expenditure incurred or payment made to—
(i) provide creche facility for the children of the employee ; or
(ii) sponsor a sportsman, being an employee ; or
(iii) organise sports events for employees,
shall also be not considered as expenditure on employees' welfare for calculation of fringe benefit tax.

Expenditure on maintenance of any accommodation in the nature of guest house, other than accommodation used for training purposes, as fringe benefit. It is proposed to omit this clause so as not to subject this expenditure to fringe benefit tax.

Only 20 per cent. of the expenditure on festival celebrations shall be deemed to be the value of fringe benefit and not 50 per cent.

Due date for filing return of fringe benefits shall be 30th September of the assessment year.

Recovery of FBT from employee on ESOPs.
Where an employer has paid any fringe benefit tax with respect to allotment or transfer of specified security or sweat equity shares, and has recovered such tax subsequently from the employee, it shall be deemed that the fringe benefit tax so recovered is the tax paid by such employee in relation to the value of the fringe benefit provided to him only to the extent to which the amount thereof relates to the value of the fringe benefits provided to such employee,

Such employee shall not be entitled, under this Act, to claim any refund out of such payment of tax or any credit of such payment of tax against tax liability on other income or against any other tax liability.

SEC. 44AB / 139

Due date for filing such return of income shall be 30th September of the assessment year.

SEC 142(2A TO 2D) SPECIAL AUDIT

Assessing Officer may, suo motu, on an application made in this behalf by the assessee, and for any good and sufficient reason, extend the said period by such further period or periods as he thinks fit.

SEC 143(1) CERTAIN ADJUSTMENT IN INTIMATION.

Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:—
(a) the total income or loss shall be computed after making the following adjustments, namely :—
(i) any arithmetical error in the return ; or

(ii) an incorrect claim, if such incorrect claim is apparent from any information in the return ;

(b) the tax and interest, if any, shall be computed on the basis of the total income computed under clause (a) ;
(c) the sum payable by, or the amount of refund due to, the assessee shall be determined after adjustment of the tax and interest, if any, computed under clause (b) by any tax deducted at source, any tax collected at source, any advance tax paid, any relief allowable under an agreement under section 90 or section 90A, or any relief allowable under section 91, any rebate allowable under Part A of Chapter VIII, any tax paid on self-assessment and any amount paid otherwise by way of tax or interest ;
(d) an intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable by, or the amount of refund due to, the assessee under clause (c) ; and
(e) the amount of refund due to the assessee in pursuance of the determination under clause (c) shall be granted to the assessee:

It is further proposed to provide that an intimation shall also be sent to the assessee in a case where the loss declared in the return by the assessee is reduced but no tax or interest is payable by, or no refund is due to, him:

It is also proposed to provide further that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the return was made.

Further, the expression "an incorrect claim apparent from any information in the return" in the said sub-section has been defined. It is also clarified that the acknowledgment of the return shall be deemed to be the intimation in a case where no sum is payable by, or refundable to, the assessee under clause (c), and where no adjustment has been made under clause (a).

It is also proposed to insert new sub-sections (1A), (1B) and (1C) to the said section. Sub-section (1A) provides that for the purpose of processing of returns under sub-section (1), the Board may make a Scheme for centralised processing of returns with a view to expeditiously determining the tax payable by, or refund due to, the assessee as required under that sub-section. Sub-section (1B) proposes that for the purpose of giving effect to the Scheme made under sub-section (1A), the Central Government may, by notification in the Official Gazette, direct that any of the provisions of the Act relating to processing of returns shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in that notification so, however, that no direction shall be issued after 31st March, 2009. Sub-section (1C) provides that every notification, along with the Scheme, issued under sub-section (1B) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

NOTICE FOR SCRUTINY ASSESSMENT

no notice shall be served on the assessee after the expiry of six months from the end of the financial year in which the return is furnished.

SECTION 147

Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject-matter of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.

SECTION 143(1) AND 156

Any sum is determined to be payable by the assessee under 143(1), the intimation shall be deemed to be a notice of demand for the purposes of this section.

ASSESSEE IN DEFAULT.

Section 200 in turn refers to a person deducting any sum in accordance with the provisions of Chapter XVII-B and who is required to pay within the prescribed time the sum so deducted to the credit of Central Government. Thus, this provision leaves room for an interpretation that a person required to deduct tax at source but not deducting the same will not be deemed an assessee in default under section 201. Such an interpretation is contrary to legislative intent.

Now where a person is required to deduct tax at source but fails to do so, he shall also be deemed to be an assessee in default under section 201.

AMENDMENT TO TDS

193	Exempt from deduction of tax at source, any interest payable on any security issued by a company, where such security is in dematerialised form and is listed on a recognised stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 and the rules made thereunder.
194C	Every association of persons or body of individuals, whether incorporated or not, shall be liable to deduct income-tax at source under the said sub-section.

SEC. 206C TCS CREDIT

The method of allowing credit to the assessee for tax collected at source needs a certain degree of flexibility considering the ongoing technological and business process changes. Therefore, the proposed amendment seeks to substitute the said sub-section (4) to provide that any amount collected in accordance with the provisions of this section and paid to the credit of the Central Government shall be deemed to be a payment of tax on behalf of the person from whom the amount has been collected and credit shall be given to such person for the amount so collected in a particular assessment year in accordance with the rules as may be prescribed by the Board from time to time.

SEC. 254 STAY BY APPELLATE TRIBUNAL

The intention behind these provisions have been very clear that the Appellate Tribunal cannot grant stay either under the original order or under any subsequent order, beyond the period of 365 days in aggregate.
To make this intention clear, it is proposed to amend section 254 of the Income-tax Act and further provide that the aggregate of the period originally allowed and the period or periods so extended or allowed shall not, in any case, exceed three hundred and sixty-five days, even if the delay in disposing of the appeal is not attributable to the assessee.

SEC. 268A APPEAL BY INCOME TAX AUTHORITIES

The Board may, from time to time, issue orders, instructions or directions to other income-tax authorities, fixing such monetary limits as it may deem fit, for the purpose of regulating filing of appeal or application for reference by any income-tax authority under the provisions of Chapter XX.
In pursuance of the orders, instructions or directions issued under sub-section (1), an income-tax authority has not filed any appeal or application for reference on any issue in the case of an assessee for any assessment year, it shall not preclude such authority from filing an appeal or application for reference on the same issue in the case of–
(a) the same assessee for any other assessment year; or
(b) any other assessee for the same or any other assessment year.
It is also proposed to provide that notwithstanding that no appeal or application for reference has been filed by an income-tax authority pursuant to the orders, instructions or directions issued under sub-section (1), it shall not be lawful for an assessee, being a party in any appeal or reference, to contend that the income-tax authority has acquiesced in the decision on the disputed issue by not filing an appeal or application for reference in any case.

Appellate Tribunal or Court, hearing any appeal or reference filed under this Chapter, shall have regard to the orders, instructions or directions issued by the Board from time to time either before or after the insertion of this section and the circumstances in which such appeal or application for reference was filed or was not filed in any case; and accordingly the Tribunal or Court shall decide the appeal or the reference on the merits of the issue under consideration.

Every order or instruction or direction which has been issued by the Board fixing monetary limits for filing an appeal or application for reference shall be deemed to have been issued under sub-section (1) and the provisions of sub-sections (2), (3) and (4) shall apply accordingly.

SECTION 271 INITIATION OF PENALTY

Under the existing provisions contained in Chapter XXI the Assessing Officer is required to be satisfied during the course of penalty proceedings. Legislative intent was that such a satisfaction was required to be recorded only at the time of levy of penalty and not at the time of initiation of penalty. However, some of the judicial interpretations on this issue are favouring the view that satisfaction has to be recorded at the time of initiation of penalty proceedings also.
It is therefore proposed to insert a new sub-section (1B) in section 271 of the Income-tax Act so as to provide that where any amount is added or disallowed in computing the total income or loss of an assessee in any order of assessment or reassessment and if such order contains a direction for initiation of penalty proceedings under sub-section (1), such an order of assessment or reassessment shall be deemed to constitute satisfaction of the Assessing Officer for initiation of the penalty proceedings under sub-section (1).

273AA. POWER OF COMMISSIONER TO GRANT IMMUNITY FROM PENALTY

Refer to our class room notes / discussion.

SEC. 282A AUTHENTICATION OF CERTAIN NOTICES.

Where this Act requires a notice or other document to be issued, served or given by any income-tax authority, such notice or other document shall be signed in manuscript by that authority.

Every notice or other document to be issued, served or given, for the purposes of this Act by any income-tax authority, shall be deemed to be authenticated if the name and office of a designated income-tax authority is printed, stamped or otherwise written thereon.
For the purposes of this section, a designated income-tax authority shall mean any income-tax authority authorised by the Board to issue, serve or give such notice or other document by authenticating it in the manner provided.

SEC. 292BB NOTICE TO BE VALID IN CERTAIN CASES.

Where an assessee has appeared in any proceeding or cooperated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of the Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was, (a) not served upon him; or (b) not served upon him in time; or (c) served upon him in an improper manner.

SEC. 292C CERTAIN PRESUMPTIONS.

Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search under section 132, it may, in any proceeding under this Act, be presumed that—
(i) such books of account, other document, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;
(ii) the contents of such books of account and other documents are true; and
(iii) the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.
It shall extend the above mentioned presumptions also to books of account, other documents, etc., found in the possession or control of any person in the course of a survey operation.

It shall extend the above-mentioned presumption also to books of account, other documents or assets which have been delivered to the requisitioning officer in accordance with the provisions of section 132A.