Personal and Corporate Taxation Proposals of Budget 2022

This note takes cognizance of certain amendments proposed by Finance Bill 2022 to existing provisions of Income Tax Act particularly those affecting the corporates. It doesn't deal with amendments applicable to corporates who are registered with CIT(Exemption) U/ Sec.12AA/ 12AB of the Income Tax Act. Read on…

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Virtual Digital Assets / Crypto Currency

Sec. 2 deals with definitions of some words referred in Income Tax Act under various sections. A new clause i.e. sub-section **2(47A) has been inserted w.e.f. 1st April 2022,** defining "Virtual Digital Asset" (i.e. VDA), generally known as 'Crypto Currency'. Income from such VDAs is to be taxed at 30% (plus surcharge). Recognition of a some evolving asset is a typical welcome measure. Yet, a separate taxation mechanism leads to some conceptual challenges, stated below.

- ***"Property" is a word of widest import. A VDA is also a form of property only. Was there any real need to provide a complex definition u/s 2(48A) ?***
- ***A separate taxation provided regime now, whether is to be understood as, absence of taxation till yester-years?***
- ***Loss in one VDA deal ought to be eligible as set-off against another VDA (at least in the same year)***

Amendment in Sec.14A

This section restricts the scope of expenditure incurred for earning exempt income i.e. income not subject to charge of tax and which are dealt in Sec.10 of the Income Tax Act which deals with exempt income. Said section is subject to litigation right from its inception. With amendments proposed in the past amending scope of exemption of dividend income, long term capital gains, etc.; scope for restricting the expenses incurred (by triggering section 14A) is reduced substantially as of date. The proposed amendment begins with a non-obstante clause and states that no deduction of expenditure shall be allowed which is incurred with respect to exempt income whether same

is accrued/ arisen/ received or not received during the relevant financial year. It was argued and accepted in many rulings that if exempt income is not earned/ accrued/ arisen then no disallowance can be imposed. Now the said view upheld in various rulings appears to be overruled with the proposed amendment. Further said amendment is proposed to be operative w.e.f. 1st April A.Y.2022-23 onwards. It deviates from the policy of existing government not to make amendments with retrospective effect. Following issue arises in this regard.

- ***Whether this new section is happily applicable for such situations where, there is some (say) miniscule exempt income? In other words, whether the amendment to section 14A is to be restricted only to a situation where, there is no exempt income at all.***

Amendment to Sec.37

Sec.37 (read with Explanations thereto) grants deduction of unspecified expenditures incurred for a business or profession. Some restrictions are also provided therein, i.e.,

- Personal expenses
- Capital expenditure CSR expenses
- Expenses incurred for any purpose which is an offence
- Large controversies arises as regards
- Meaning of offence (as per laws in India)
- Whether only Indian enactments are to be considered for deriving meaning of 'offence'
- Whether infringement of any law, in hands of receiver, leads to infringement in hands of payer
- Whether, legal recourses followed for getting out of some offence, are also to be treated as offence…

All these issues are pending before one or other courts. But, without awaiting the end result, some new provisions have been injected which provide a totally different framework. Now, the ambit of the offence is enlarged. Apart from offences of regulatory laws, some situations are deemed as offences (Pharma companies extending freebies to medical professionals, etc.). Violation of foreign laws are also considered as offences. Propriety and rightness of this amendment is almost certain to face challenges in courts. Be that as it may, some relevant issues which arise are as follows

- ***Whether distinction is required to be made serious breach of law resulting into offence and curable infringements leading to irregularities?***
- ***Can something be deemed as offence for disallowances and penalties, when, such a thing is not an offence as per Regulatory law? Can Pharma companies be punished for extending free samples to medical professionals, when, related laws are silent of the same.***
- ***How can compounding an offence be equated with offence?***

Amendment to Sec.40

Sec.40 specified, amounts which are not deductible while computing business income. Sub-clause (ii) of section 40(a) thereto clarified that, while computing income, any tax / surcharge, etc. will not be deductible. In the last few years, controversy has arisen, whether "education cess" is part of tax and hence deductible while computing income u/s 28. An amendment is proposed in the form of an 'Explanation-3' which states that for the "removal of doubts it is clarified that" 'tax' shall include any surcharge or cess, by whatever name called, on such tax, and the same would not be deductible. Though an effort is made to curb the scope of claiming deduction of 'Education Cess' which is recovered along with tax payable on the income by an assessee, still time will prove whether the purpose is achieved by the said amendment. This amendment is proposed with retrospective effect from 1st April, 2005. Some interesting issues do arise as follows –

- ***As per the main section 40(a)(ii), that tax is not eligible for deduction, which is assessed as a proportion of profits or gain. Now, Education Cess is not having any***

link to the base profit / gain. Then, despite Explanation-3A, is the aimed purpose is really getting served?

- ***What will be the fate of numerous past decisions allowing Education Cess as a deduction till AY 2021-22 considering the clarificatory nature of the amendment?***

Amendment to Section 43B

Sec.43B deals with certain deductions to be claimed only on actual payment (*i.e. irrespective of the method of accounting followed by an assessee*). Explanation 3C,3CA and 3D of Sec.43B provide scope of deduction of interest payable by an assessee w.r.t. money borrowed from entities specified in Sec.43B i.e. from financial institutions (*referred in Sec.43B(d)*), NBFCs (*referred in Sec.43B(da)*) and from Banks/ co-operative banks/ institutions (*referred in Sec.43B(e)*). In view of an amendment proposed now, it is provided that if the due date for payment of interest liability is deferred to a future date by mechanism of "Debenture" or "any other instrument", then the deduction will be allowed only on actual payment thereof. Some interesting issues arise–

- ***Contrary to other limbs of section 43B, in case of "Debenture like instrument", the banks / NBFCs are bound to have offered the related income for taxation. And yet, for the borrower, the interest is being deferred. This leads to imbalance and plausible double deduction.***
- ***Mechanism of claiming of deduction at the time of payment / redemption of such debentures is not specified.***
- ***Complexity may also arise if such "Debentures" are converted into shares and so on.***

Amendment in Section 50

Sec.50 deals with 'Special Provision for Computation of capital gains in case of depreciable assets'. Since A.Y.2021-22 goodwill is not eligible for depreciation U/ Sec.32 while computing income U/Sec.28 of the Income Tax Act. The present amendment proposes to deal with removal of 'Goodwill' from the 'block of assets' in accordance with sub item (B) of item (ii) of sub-clause (c) of clause (6) of section 43, by considering it as a deemed transfer. Since the amendment to the effect that goodwill of a business or profession is not a depreciable asset has been made applicable from assessment year 2021-2022 the above amendment will take effect retrospectively from 1st April 2021 and will accordingly apply in relation to the assessment year 2021-22 and subsequent assessment years.

Amendment to Sec.68

Sec.68 deals with Cash Credits. It provides unexplainable/ or

"In view of an amendment proposed now, it is provided that if the due date for payment of interest liability is deferred to a future date by mechanism of "Debenture" or "any other instrument", then the deduction will be allowed only on actual payment thereof.

credits appearing in books of an assessee on which satisfactory explanation cannot be given by an assessee may be treated as an income of the assessee by the assessing officer. In this regard an assessee was expected to prove the identity and creditworthiness of the creditor and genuineness of such transactions w.r.t. credits appearing in the books of an assessee. Now, with an amendment proposed an assessee is further burdened to prove the source of such credits of the person gainst whom the liability is booked in assessee's books to the satisfaction of the assessing officer. From the rigorous of the amended provisions creditors who are well regulated entities i.e., if it is a Venture Capital Fund, Venture Capital Company registered with SEBI then they are not required to meet the requirements of the amended provisions. The proposed amendment will certainly affect ease of doing business for assessee since assessee is required to become an assessing

officer before recording credit entries in the name of entities with whom assessee executes business transactions to justify genuineness of such credit entries by obtaining details from such person justifying the source of resources based on which such transaction was executed. This amendment will be effective from AY 2023-24 and onwards. Following issues are worth considering –

- ***Can every assessee be capable to discharge such heavy onus of proving the source of a source?***
- ***Will this not lead to double addition, firstly in hands of the receiver of money (since source of source is a failure triggering section 68, and also in the hands of investor (since source of his investment is a failure, triggering Section 69).***

Insertion of a new section i.e. Section 79A

This section is proposed to be inserted. Its heading is 'No set-off of losses consequent to search, requisition and survey'. The object of insertion of this new section appears to prohibit those assesses who are subject to search action initiated pursuant to provisions of Sec.132/ 132A or survey U/Sec.133A (*barring u/ Sec. 133A(2A)*) where additional income is disclosed and assessed. In such case now in view of the proposed amendment set-off of brought forward losses is prohibited against income revealed and assessed (*on whatever count*) as a result of search/ survey. Said amendment will be effective from A.Y.2022-23 and onwards.

> Sec.68 deals with Cash Credits. It provides unexplainable/ or credits appearing in books of an assessee on which satisfactory explanation can't be given by an assessee may be treated as an income of the assessee by the assessing officer.

Amendment in Sec.80-IAC

Section 80-IAC provides deduction of 100% of profits derived by an eligible start-up for three consecutive years out of ten years beginning with the year from incorporation of such start-up (*subject to fulfillment of provisions of said section*).

It comes with a condition that:

(i) the total turnover of business does not exceed one hundred crore rupees,

(ii) it is holding a certificate of eligible business from the Inter-Ministerial Board of Certification, and

(iii) it is incorporated on or after 1st day of April, 2016 but before 1st day of April 2022.

Because of the pandemic there are delays in some cases. An amendment proposed extends the period of incorporation of such start-up by another year and puts a condition by extending the date of incorporation up to 31st March, 2023.

> Sec.115BAB is applicable to new manufacturing domestic companies who are granted concession in tax rate on their manufacturing profits which attracts the tax rate of 15%.

Amendment in Sec.115BAB

Sec.115BAB is applicable to new manufacturing domestic companies who are granted concession in tax rate on their manufacturing profits which attracts the tax rate of 15%. One of the preconditions for it is that such company should be registered as a company on or after 1st October, 2019 and commence manufacture or production of an article or things on or before the 31st Day of March, 2023. Now with an amendment proposed to said section extends the last date by one year and says that it should commence such activity for which such concessional rate of tax is applicable on or before 31st March, 2024.

Amendment to section 94

Sec. 94 deals with 'Avoidance of tax by certain transactions in securities'. This provision is also known as anti-avoidance provision which is applicable to transactions in units and it curbs dividend stripping and bonus stripping in case of Units. Now the bonus stripping

provisions are made applicable to securities which includes shares. It is also clarified that 'Units' will include 'Units' issued by Infrastructure Investment Trust (InvIT) or Real Estate Investment Trust (REIT) or Alternative Investment Funds (AIFs). This amendment will be effective from A.Y. 2023-24 and onwards.

Amendment to section 115BBD

Sec.115BBD deals with tax on dividends received from foreign companies. Sec.115BBD prescribes a concessional tax rate of 15% to dividend income earned by an Indian company from a foreign company where an Indian company holds 26% or more of the nominal of equity shares of a specified foreign company. The concessional tax rate of 15% was in alignment with the rate of dividend distribution tax prescribed U/Sec.115-O of the Income Tax Act. Since Sec.115-O is deleted by Finance Act 2020 thereafter dividend income is made taxable. To bring parity with respect to dividend income earned by companies from foreign companies (*since dividend income is chargeable to tax at the rate applicable to any corporate*) provisions of Sec.115BBD are proposed to be deleted and accordingly dividend income earned from a foreign company will be chargeable to tax at the rate of tax applicable to a corporate.

This amendment will be applicable from A.Y.2023-24 onwards.

Insertion of new section 115BBH

It will deal with 'Tax on Virtual Digital Assets' (*in popular sense called as 'crypto currency'*).

The proposed section seeks to provide that income arising from transfer of such assets shall be taxable at the rate of 30%. This means it comes out of the ambit of rate applicable to 'Long Term Capital Asset' where such asset is held by an assessee as a capital asset and then it will not be governed by provisions of Sec.112 or 112A while meeting the tax obligation on income earned on transfer of such asset/s. Further it is provided that while computing income, no deduction for expenditure will be allowed while taxing such income arising on transfer of such asset. Further. if any loss is incurred on transfer of such an asset then, such loss shall not be available for set-off against any other income. Further such transfer is subject to TDS U/Sec.194S which may bring difficulties if the purchaser is unknown to the seller. The proposed amendment will take effect from 1st July 2022. This amendment creates debates/ controversies about rate of tax, loss incurred, if held as a capital asset then whether indexation is applicable and set-off of losses incurred earlier on said transactions i.e. prior to the date on which the amended provisions get force of law. This amendment will be applicable from A.Y.2023-24 onwards.

Amendment in Sec.132 and 132B

These sections deal with 'Search and Seizure' and 'Power to requisition books of account etc.' respectively. Now since w.e.f. search initiated after 1st April 2021 provisions of

"It is provided that while computing income no deduction for expenditure will be allowed while taxing such income arising on transfer of such asset. Further. if any loss is incurred on transfer of such an asset then, such loss shall not be available for set-off against any other income.

Sec.153A and Sec.153C are applicable an amendment is proposed for holding the books or other documents seized during search or requisitioned U/Sec. 132B. As per the proposed amendment the reference is made for returning the books/ documents based on order of assessment/ reassessment U/Sec.143(3)/ 147 or 144 as the case may be.

This amendment will be effective from 1st April 2022.

Amendment of Sec.139 i.e. insertion of sub-section (8A)

Amendment to Sec.139.

This section deals with 'Return of Income'.

Now new sub-section (8A) is inserted in said section.

The object of inserting said sub-section appears to achieve the purpose of voluntary compliance of reporting correct chargeable income by

an assessee so then it may save him from further litigation, controversies, charge of penalty associated with under-reporting or mis-reporting of income while filing the Return of Income' by an assessee. If an assessee having filed realized errors/ omissions in the income returned then, he gets an opportunity to correct the same in view of the newly inserted sub-section (8A). Besides this option is available to an assessee who has not filed 'Return of Income' earlier.

The amended provisions consist of following peculiar aspects:

a. The 'return' filed cannot reduce the loss returned earlier or it results in reduction of tax liability or it results in increase in refund based on 'Return' filed U/Sec.139(1)/(4)/(5);

b. An assessee will not be eligible to revise the 'Return' sequel to search or survey or ;

c. A notice is issued to an assessee intimating any money, bullion, jewellery or valuable article or thing is seized U/Sec.132 or requisitioned U/Sec.132A where such things belong to such person who is then willing to revise the 'Return';

d. Where a 'Return is already revised U/Sec.139(8A) earlier;

e. Where assessment/ reassessment or revision is pending or completed for concerned assessment year (*needless to say in view of notice issued to an assessee*);

f. In case the A.O. has information in his possession for the concerned assessment year and the assessee is communicated to about it under- Prevention of Money Laundering Act, 2002, Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, Prohibition of Benami Property Transactions Act, 1988, Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976.

g. Where information is received under the exchange of information mechanism in view of Double Taxation Avoidance Agreement or Exchange of Information agreement between India and other country about which there is communication to an assessee earlier then such return cannot be revised.

h. Where prosecution proceedings are initiated in Chapter XXII of the Income Tax Act which covers Sec.275A to Sec.280D of the Income Tax Act prior to such revision.

i. In case survey/ search/ requisition is initiated then such revision cannot happen for two preceding assessment years

j. Assessee is a person or belongs to a class of persons, as maybe notified by the Board in this regard.

This amendment will be effective from 1st April 2022.

Amendment to Sec.139(9)

Said section deals with intimation by the assessing officer to an assessee stating the 'Return of Income' filed by an assessee is defective under certain circumstances stated therein.

Now it is proposed to provide that a return filed under the proposed sub-section (8A) of the said section 139 shall be defective unless such return is accompanied by the proof of payment of tax as required under the proposed section 140B.

This amendment will be effective from 1st April, 2022.

Insertion of new section 140B

Its heading is 'Tax on Updated Return' and it deals with return filed U/Sec. 139(8A) described earlier in this note.

We are aware that the 'Return' filed U/Sec.139(1) can be revised at any time before three months prior to the end of the assessment year or before completion of assessment whichever event happens earlier.

In view of an amended provisions now U/Sec.139(8A) an assessee gets an opportunity to revise the 'Return' filed earlier in the circumstances described above while clarifying said amended provision.

> It is proposed to provide that a return filed under the proposed sub-section (8A) of the said section 139 shall be defective unless such return is accompanied by the proof of payment of tax as required under the proposed section 140B. This amendment will be effective from 1st April, 2022.

Now, such revision of 'Return of Income' comes with additional tax liability for an assessee.

Where the assessee revises the 'Return' after the expiry of time stated U/Sec.139(4) or 139(5) but before the completion of period of 12 months from the end of the relevant assessment year then an assessee is required to pay additional tax of 25% of the aggregate of tax and interest payable on the revised income returned and 50% of the aggregate of tax and interest payable on the revised income returned where the 'Return' is revised after the expiry of 12 months from the end of the relevant assessment year but, before completion of 24 months from the end of the relevant assessment year.

While computing the additional tax liability same shall include surcharge and cess also.

Where no return is furnished earlier then, the tax payable shall be computed after taking into account the following:-

(i) the amount of tax, if any, already paid as advance tax;

(ii) any tax deducted or collected at source;

(iii) any relief of tax claimed under section 89;

(iv) any relief of tax or deduction of tax claimed under section 90 or section 91 on account of tax paid in a country outside India;

(v) any relief of tax claimed under section 90A on account of tax paid in any specified territory outside India referred to in that section; and

(vi) any tax credit claimed to be set off in accordance with the provisions of section 115JAA or section 115JD.

Such updated return shall also be accompanied by proof of payment of such tax, additional tax, interest and fee.

Where a Return of Income is furnished U/Sec. 139(1)/ (4) or (5) earlier by an assessee then, before furnishing the return under sub-section (8A) of section 139, an assessee will be liable to pay the additional tax due i.e., 25% or 50% as the case may be together with interest and fee payable under any provision of this Act for any delay in furnishing the return or any default or delay in payment of advance tax, along with the payment of additional tax, as reduced by the amount of interest paid under the provisions of the Act in the earlier return,. The tax payable shall be computed after taking into account the following:-

(i) the amount of relief or tax, referred to in sub-section (1) of section 140A, the credit for which has been taken in the earlier return;

(ii) tax deducted or collected at source, in accordance with the provisions of Chapter XVII-B, on any income which is subject to such deduction or collection and which is taken into account in computing total income and which has not been claimed in the earlier return;

(iii) any relief of tax or deduction of tax claimed under section 90 or section 91 on account of tax paid in a country outside India on such income which has not been claimed in the earlier return;

> In view of an amended provisions now U/Sec.139(8A) an assessee gets an opportunity to revise the 'Return' filed earlier in the circumstances described above while clarifying said amended provision. Now, such revision of 'Return of Income' comes with additional tax liability for an assessee.

(iv) any relief of tax claimed under section 90A on account of tax paid in any specified territory outside India referred to in that section on such income which has not been claimed in the earlier return;

(v) any tax credit claimed, to be set off in accordance with the provisions of section 115JAA or section 115JD, which has not been claimed in the earlier return.

The aforesaid tax shall be increased by the amount of refund, if any, issued in respect of such earlier return.

The additional tax payable will also attract interest payable U/Sec.234A/B/C as the case may be as stated below:

Interest payable Sec.234A: It shall be computed on the amount of the tax on the total income returned U/Sec. 139(8A).

Interest payable Sec.234B: Interest shall be computed on an amount equal to the assessed tax or, as the case may be, on the amount by which the advance tax paid falls short of the assessed tax, where, "assessed tax" means the tax on the total income as declared in the return to be furnished under sub-section (8A) of section 139, after taking into account the following:

(i) the amount of relief or tax, referred to in sub-section (1) of section 140A, the credit for which has been taken in the earlier return;

(ii) tax deducted or collected at source, in accordance with the provisions of Chapter XVII-B, on any income which is subject to such deduction or collection and which is taken into account in computing such total income and which has not been claimed in the earlier return;

(iii) any relief of tax or deduction of tax claimed under section 90 or section 91 on account of tax paid in a country outside India on such income which has not been claimed in the earlier return;

(iv) any relief of tax claimed under section 90A on account of tax paid in any specified territory outside India referred to in that section on such income which has not been claimed in the earlier return;

(v) any tax credit claimed, to be set off in accordance with the provisions of section 115JAA or section 115JD, which has not been claimed in the earlier return. The aforesaid tax shall be increased by the amount of refund, if any, issued in respect of such earlier return.

This amendment will be effective from 1st April, 2022.

Amendment to section 144B

Sec.144B deals with Faceless Assessment. The existing provision consists of sub-section (9) stated that if the faceless assessment is done by deviating from provisions of said section then the assessment made will be considered as non-est. Difficulties are faced by assessees and by department during the faceless regime.

Now new procedure is prescribed for faceless assessment where it is also stated that the SOP (*standard operating procedure*) will be prescribed by the Board. However, a fair provision which existed earlier i.e. Sec.144B(9) which stated that if an order is passed by deviating from the prescribed procedure then such order shall be held as non-est is omitted under the amended provision. This may result in injustice on assesses where there is deviation and an order is passed. Further, in view of electronic communication at the back end for which assessee has no access it will be difficult as it appears today for an assessee to verify/ examine whether the SOP was followed before completing the faceless assessment.

"Sec.144B deals with Faceless Assessment. The existing provision consists of sub-section (9) stated that if the faceless assessment is done by deviating from provisions of said section then the assessment made will be considered as non-est.

This amendment will be effective from 1st April, 2022.

Amendment to Section 148

Sec. 148 deals with Issue of Notice where income has escaped assessment before making reassessment/ assessment/ recomputation U/ Sec.147.

Now an amendment is proposed by inserting a new proviso to the effect that approval to issue of notice under Section 148 is not required where the proper officer, with the prior approval of the specified authority has passed an order under clause (d) of Section 148A that it is a fit case to issue a notice under the said section.

It is also proposed to amend 'Explanation-1' of Section 148 to increase the scope of the term 'information'.

With effect from 1st April 2022, an order of assessment or reassessment or recomputation under the IT Act in search/ survey cases shall not be passed by an Assessing Officer below the rank of Joint Commissioner, except with the prior approval of the Additional CIT or Additional DIT or Joint Commissioner or Joint Director.

Bill proposes to amend Section 149 to provide that no notice under Section 148 shall be issued for the relevant assessment year after three years but prior to ten years from the end of the relevant assessment year unless the assessing officer is in possession of books of account/ other documents/ evidence which reveals the fact that the income chargeable to tax, represented in the form of an asset, expenditure in respect of a transaction or in relation to an event or occasion, an entry or entries in the books of accounts has escaped assessment and the impact of all these shortcomings amounts to Rs. Fifty lac or more.

This amendment will be effective from 1st April 2021.

Amendment to Section 148A

This section deals with conducting enquiry, providing opportunity before issue of notice U/Sec.148.

Now, in view of an amendment proposed

i. the assessing officer is not required to take approval of specified authority while serving a notice to an assessee a show cause notice why notice U/ Sec.148 should not be issued on the basis of information in his possession which suggests that income chargeable to tax has escaped assessment for relevant assessment year.

Further, where the assessing officer has received any information under the scheme notified U/Sec.135A (*i.e. faceless collection of information*)which reveals that income chargeable to tax has escaped assessment for relevant assessment year then, provisions of Sec.148A shall not apply.

This amendment will be effective from 1st April, 2022.

Insertion of New Section 148B

This section will deal with 'Prior Approval for assessment, reassessment or recomputation in certain cases'.

It is now proposed that no order of assessment or reassessment or re-computation under the Act shall be passed by an assessing officer below the rank of Joint Commissioner, except with the prior approval of the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director, with regard to assessments consequent to search, survey and requisition to reduce avoidable inaccuracies.

This amendment will be effective from 1st April, 2022.

Amendment to Sec.149

Sec. 149 deals with 'Time limit for notice'. It prescribes time limit within which a notice for reopening U/Sec.148 can be issued.

Now proposed amendment to Sec. 149(1))(b) will result in expanding the scope of reassessment where, on the basis of books of account or other documents or evidence it is revealed that the income chargeable to tax amounts to or likely to amount Rs. Fifty Lakhs or more has escaped assessment in view of expenditure in respect of a transaction or in relation to an event or occasion or an entry in the books of account of a sum amounting to Rs. 50 lacs or more.

Further in view of amendment proposed to the first proviso it is said where no notice under section 148/ 153A/ 153C could have been issued on/ before

1st April 2021 since same was then beyond time limit prescribed under the provisions of Sec.153A or 153C then such cases will come under the amended provisions of Sec.148.

Besides above in view of insertion of new sub-clause(1A) in Sec.149 it is proposed that notwithstanding anything contained in 149(1), where the income chargeable to tax represented in the form of an asset or expenditure in relation to an event or occasion of the value referred to in clause 149(1)(b) has escaped assessment and the investment in such asset or expenditure in relation to such event or occasion has been made or incurred, in more than one previous years relevant to the assessment years within the period referred to in clause 149(1)(b), then a notice under section 148 shall be issued for every such assessment year for assessment, reassessment or re-computation, as the case may be.

This amendment will be effective from 1st April, 2022.

Amendment to Section 153

Sec.153 deals with Time limit for completion of assessment, reassessment and recomputation.

In view of insertion of Sec.139(8A) when an assessee submits the Return under said amended provision then, an order may be made at any time before the expiry of nine months from the end of the financial year in which such return is furnished. This amendment gives opportunity to the department to assess the Return filed by an assessee U/Sec.139(8A) beyond the time period otherwise available to assess income in the context of the Return of Income filed U/Sec.139(1). This amendment may have a consequential on Sec.148 and Sec.263 of the Income Tax Act.

Consequential amendments are also proposed in Sec.153(3) & (5) w.r.t. orders to be passed by the Transfer Pricing Officer.

Further, in view of insertion of new sub-section (5A) TPO can give effect to an order/direction in view of an order passed U/Sec.263 which then may be further subject matter of an order to be passed by the assessing officer subject to prescribed time limit of two months from the end of the month in which the TPO's order is received by the assessing officer.

This amendment will be effective from 1st April, 2022.

Amendment to Sec.153B

Sec.153B deals with time limit for completion of assessment U/Sec.153A.

In view of insertion of new sub-section (4) under section 153B which begins with a non-obstante clause now w.e.f. 1st April, 2021 said section will override provisions of Sec.153A sequel to search initiated U/Sec.132 or requisition is made U/Sec.132A. Accordingly suitable amendments are proposed in Explanation to Sec.153B by inserting new clause (xi) therein.

"Sec.153 deals with Time limit for completion of assessment, reassessment and recomputation. In view of insertion of Sec.139(8A) when an assessee submits the Return under said amended provision then, an order may be made at any time before the expiry of nine months from the end of the financial year in which such return is furnished.

This amendment will be effective from 1st April 2021.

Insertion of new section 156A

This section will deal with 'Modification and revision of notice in certain cases'.

This section will deal with notice of demand issued U/Sec.156 where such demand is reduced as a result of an order passed by the adjudicating authority U/Sec.5(1) of the Insolvency & Bankruptcy Code, 2016, or by the National Company Law Appellate Tribunal of Supreme Court then, the assessing officer shall modify such demand accordingly. This amendment will be effective from 1st April, 2022.

Insertion of new section 158AB

This section will deal with 'Procedure where an identical question of law is pending before High Courts or Supreme Court'.

The proposed new section states that if in any appeal decided by

CIT(A) there is a question of law which is decided in favour of an assessee or other assessee for any assessment year by the jurisdictional High Court or where an SLP is awaiting decision of Supreme Court or where an issue is decided by Tribunal by following decision of jurisdictional High Court then, the collegium may communicate to the Pr. CIT not to file further appeal against such order subject to compliance with certain administrative measures which among others include (*impliedly - written*) consent of an assessee. Then within time limit prescribed for filing further appeal without filing an appeal 'Revenue' will file an application stating that an appeal on question of law involved will be filed after the decision of such appellate authority. Then if the question is decided against an assessee in such an event appeal will be filed before appropriate appellate forum by the Revenue within sixty days from the date of jurisdictional high court or Supreme Court's order.

Time will prove whether this provision has achieved the desired object.

In view of insertion of section 158AB, Sec. 158AA(1) is suitably amended by inserting a sunset clause which provides that no direction shall be given under the said sub-section on or after 1st April, 2022.

Sec.170 deals with Succession to business otherwise than on death.

The newly inserted Sec.170A will deal with 'Effect of order of Tribunal or court in respect of business reorganization.'

In view of insertion of sub-section (2A) in Sec.170 where a business is subject to reorganisation (*i.e. amalgamation/ demerger*) then during the pendency of such reorganisation (*means the reorganisation scheme is subjudice before approving or adjudicating authority who is required to approve such reorganisation*) then the predecessor or successor will be governed for any proceedings initiated as per provisions of Income Tax Act during either intervening period or thereafter.

Once the reorganisation is approved as per newly inserted provisions of Sec.170A the successor is required to comply with provisions of Sec.139 within six months from the end of the month the reorganisation order is issued the modified 'Return' for the erstwhile entity. The amendment proposed in Sec.170(2A) is in alignment with the insertion of new Sec.170A.

Amendment in Section 170

Sec.170 deals with Succession to business otherwise than on death. The newly inserted Sec.170A will deal with 'Effect of order of Tribunal or court in respect of business reorganisation.' In view of insertion of sub-section (2A) in Sec.170 where a business is subject to reorganisation (*i.e. amalgamation/ demerger*) then during the pendency of such reorganisation (*means the reorganisation scheme is subjudice before approving or adjudicating authority who is required to approve such reorganisation*) then the predecessor or successor will be governed for any proceedings initiated as per provisions of Income Tax Act during either intervening period or thereafter. Once the reorganisation is approved as per newly inserted provisions of Sec.170A the successor is required to comply with provisions of Sec.139 within six months from the end of the month the reorganisation order is issued the modified 'Return' for the erstwhile entity. The amendment proposed in Sec.170(2A) is in alignment with the insertion of new Sec.170A.

Sec.170 deals with Succession to business otherwise than on death. The newly inserted Sec.170A will deal with 'Effect of order of Tribunal or court in respect of business reorganisation.' In view of insertion of sub-section (2A) in Sec.170 where a business is subject to reorganisation (*i.e. amalgamation/ demerger*) then during the pendency of such reorganisation (*means the reorganisation scheme is subjudice before approving or adjudicating authority who is required to approve such reorganisation*) then the predecessor or successor will be governed for any proceedings initiated as per provisions of Income Tax Act during either intervening period or thereafter. Once the reorganisation is approved as per newly inserted provisions of Sec.170A the successor is required to comply with provisions of Sec.139 within six months from the end of the month the reorganisation order is issued the modified 'Return' for the erstwhile entity. The amendment proposed in Sec.170(2A) is in alignment with the insertion of new Sec.170A.

Amendment in Section 179

This section deals with 'Liability of directors of private company in liquidation.' Said section provides for recovery of tax from such a private company from its directors where the tax cannot be recovered from such private limited company. In view of the misleading word appearing in its heading 'in liquidation' the proposed amendment brings clarity on the object for which said provision exists irrespective of the fact that such private limited company is not under liquidation.

This amendment will be effective from 1st April 2022.

Amendment to Sec. 194-IA

Sec.194-IA which deals with 'Payment on transfer of certain immovable property other than agricultural land'.

Said section prescribes for deduction of TDS @1% on the consideration payable on transfer of immovable property (*other than agricultural land*) if consideration payable exceeds Rs. Fifty Lacs. In view of an amendment proposed now one has to deduct TDS on stamp-duty value if consideration payable is less than the same.

This provision will be effective from 1st April 2022.

Insertion of new section 194R

This section will deal with 'Deduction of tax on benefit of perquisite in respect of business or profession'.

This provision appears to take cognizance of provisions of Sec.28(iv) or Sec.2(24)(iv) of the Income Tax Act. Sometimes these provisions are skipped from TDS perspective by concerned provider of benefit and then the recipient also fails to report such income. Now, the person providing such benefit is required to comply with TDS provisions by deducting TDS on such benefits (*which are cash less advantages or non-monetary personal advantages*). The TDS rate prescribed is 10%. Compliance with TDS provisions is required to be made by a person subject to certain conditions stated therein.

> Sec.170 deals with Succession to business otherwise than on death. The newly inserted Sec.170A will deal with 'Effect of order of Tribunal or court in respect of business reorganization'.

This amendment will be effective from 1st July, 2022.

Amendment of Section 201/206C

These sections deal with consequences of failure to deduct or pay (*impliedly TDS under various sections*) and TCS (*tax collectible at source*) respectively.

According to the proposed amendment now it is provided that an assessee shall be liable to pay interest liability determined by the assessing officer associated with failure to comply with the TDS provisions.

This provision will be effective from 1st April 2022.

Insertion of section 239A

This section will deal with 'Refund for denying liability to deduct tax in certain cases'.

As per provisions of Sec.195 any payment to a non-resident is subject to TDS. Very often a question arises either in view of provisions of Income Tax Act or Double Taxation Avoidance Agreement/ Treaty (*DTAA*) whether payment to be made to a non-resident is subject to TDS/ withholding tax. This question gets importance where the person making payment is required to bear the tax liability on such payment.

If a person is of the opinion that such payment is not attracting TDS/ withholding tax either under the provisions of Income Tax Act or under the DTAA then one option is to make an application U/Sec.195(2) to the assessing officer and ask him to determine the tax payable on such remittance. Invariably the experience is such an application is not processed in time in spite of rigorous follow-up and the concerned assessee is under the time pressure of remitting money in view of contractual obligations. So by passing route of Sec.195(2) assesses had an option to pay tax on such remittance and then file an appeal U/Sec.248 of the Income Tax Act and claim refund in said appeal.

> If a person is of the opinion that such payment is not attracting TDS/ withholding tax either under the provisions of Income Tax Act or under the DTAA then one option is to make an application U/Sec.195(2) to the assessing officer and ask him to determine the tax payable on such remittance.

In view of proposed amendment now where an assessee pays tax on such remittance and claims that same is not deductible then he may file an application before the assessing officer U/Sec.239A within thirty days from the date of payment of such tax. Then, the assessing officer is required to pass an order within six months. If the A.O. denies refund to an assessee then, assessee may file an appeal U/Sec.246A1(ia) of the Income Tax Act is suitably amended to accommodate an order passed U/Sec.239A.

The purpose appears to be avoiding a direct appeal before CIT(A) U/Sec.248 on payment of withholding tax by an assessee.

This amendment will be effective from 1st April, 2022.