IPRE-BUDGET MEMORANDUM OF REPRESENTATIONS – 2023 – 2024 : CORPORATE TAXES – PROCEDURAL ISSUES

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
1	**Time limit for disposal of appeals by Commissioner of Income Tax (Appeals) [CIT(A)].** **Time limit for disposal of remand report sought by CIT(A) by the Assessing Officer (AO)**	Section 250(6A) of the Income Tax Act, 1961 provides that CIT(A), where possible, decide an appeal within 1 year from the end of the financial year in which such appeal is filed. However, appeals to CIT(A) are not being disposed for a long time resulting in prolonged litigation for settling disputes arising from assessments. In many cases, either there are no hearings, or even after hearing the appeal, CIT(A) does not pass the order and the appeal remains pending without any fault of the assessees, since there are no statutory timelines to pass an order. Further, no time limit has been specified in the Act for disposal of remand report by the AO. Due to non-disposal of remand report, the appeal procedure gets stalled.	Lack of specific timelines for disposal of appeals by CIT(A) as well as disposal of remand report of CIT(A) by the AO result in undue hardship to the assessees since large tax refunds are stuck due to such pending appeals.	Delay in disposal of appeal and resulting pending litigation is against the professed policy of “Ease of Doing Business” of the Government. It is therefore recommended that **statutory time lines be prescribed for disposal of the appeals by CIT(A**). Further, **timelines should also be specified for disposal of remand report by the AO**. On expiry of the specified timeline, there should be a provision for deemed disposal. Appropriate measures should be specified in the law to ensure the implementation of the prescribed timelines.

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2	**Reassessment - section 147/section 148 of the Act:**	Reopening of assessments under section 147/148 of the Act has become a very common occurrence and such notices are being served in large nos. all over the country. It appears that there is no consideration in following the principles on the subject laid down by the Hon'ble Supreme Court and High Courts over the years. Simple audit observations, even on points of law, are frequently being used as grounds for re-opening assessments is leading to extreme harassment to all assessees. Absence of any value limit for reopening cases within 3 years, may lead to reopening of cases even for petty amounts resulting into undue harassment and litigation. This is particularly relevant in case of very large taxpayers. Proviso to section 147 has been inserted to provide that the Assessing Officer may assess or reassess other than matters which are the subject matter of any appeal, reference or revision. However, in respect of matters which have already been examined at the time of original assessment, the current law as laid down by the various courts categorically stipulates that reassessment of the same cannot be done since it will result in '**change of opinion'**. Moreover, it does not make sense to keep on assessing/reassessing the same matter again and again. The annual income tax assessment/reassessment procedure should be a routine process and this proviso cannot be treated as excessive powers in the hands of AO to harass assesses **Value limit for Reassessment** The new section 149(1) prescribes the value limit (income escaped Rs. 50 lakhs or more) for reopening assessments beyond 3 years. However, no value limit has been prescribed for reopening of cases within 3 years. **Re-opening merely based on statements made by third parties** There has been plethora of cases wherein, the income tax department has reopened cases based on unsubstantiated statements made by third parties to the investigation wing of the income tax department. The assessing officers have been blatantly reopening cases based on such information without any application of mind and without any evidence.	In the context of the changing scenario, it is imperative that reassessments should be restricted to only exceptional cases since the normal assessment process is undergoing a very major change at the current juncture. Mechanical reopening of cases based on unsubstantiated third party statements made to the investigation wing of the income tax department have been repeatedly quashed by various judicial authorities including by Hon'ble Supreme Court. Reopening such cases leads to severe harassment of taxpayers and avoidable litigation costs since majority of these cases are quashed at appellate levels. This provision will become draconian for large Corporate Assessee as the time limit for reopening of assessment has been enhanced to 10 years vis a vis the earlier time limit of 6 years in almost all cases, since the value limit of Rs.50 lakhs is likely to be exceeded in such cases. Further , most of the Corporate Assessee would not have documents to fight for their case since the Company Act requires companies to maintain documents and financial records only for 8 years.	It is suggested that 'change of opinion' of the AO cannot be a ground for re-opening assessment under the garb of 'income having escaped assessment'. The new proviso to section 147 should also state that all matters which have been examined in the original assessment should not be reassessed. Even for reopening of cases within 3 years, there should be some value limit (say, value exceeding Rs.25 lakhs). Reopening should be allowed only based on some credible evidence rather than on the basis of unsubstantiated information or based on mere statements, that too uncorroborated statements (without offering any opportunity to the assessee for cross examination), by third parties. Further, in case of large Corporate Assessees, (i.e. paying tax more than Rs.1000 Crs), Rs.50 Lacs of tax impact is relatively small. For such large Assessees, the financial threshold for reopening beyond 3 years should be a percentage of tax or a fairly significant value limit of say Rs.10 Crs. instead of the current Rs.50 lakhs limit. Further, the maximum time limit for reopening should be restricted to 7 years after the end of assessment year in line with the requirement for maintenance of books of account under the Companies Act.

3	**Tax on Income from Transfer of Carbon Credits**	Finance Act 2017 inserted section 115BBG of the Act to provide concessional tax @ 10% on income from transfer from carbon credits. The Memorandum stated as under: *"Carbon credits is an incentive given to an industrial undertaking for reduction of the emission of GHGs (Green House gases), including carbon dioxide which is done through several ways such as by switching over to wind and solar energy, forest regeneration, installation of energy-efficient machinery, landfill methane capture, etc……. to encourage measures to protect the environment, it is proposed to insert a new section 115BBG".* However, the concessional rate of 10% would be allowed only if they are validated by United Nations Framework on Climate Change (UNFCC), which has made it challenging to claim the deduction.	The market for carbon credits is no longer an active market and so obtaining UNFCC validation is not feasible. Alternative initiatives on similar lines as UNFCC have been developed under Indian regulations viz. Renewable Energy Certificates, Energy Saving Certificate which are governed by Central Electricity Regulatory Commission, Bureau of Energy Efficiency and other statutory Indian regulations, since the objective is to encourage environment protection.	It is suggested that suitable amendments be made in Section 115BBG of the Act to ensure that the benefit is not restricted only to carbon credit units validated by the United Nations Framework on Climate Change. It must be extended to all the instruments issued under the Indian regulations, which meet the desired objectives of environment protection as envisaged in the Memorandum.
4	**Processing of Return of Income by CPC – Section 143(1) of the Act**	Section 143(1) of the Act provides for processing of return by computation of income/loss after making certain adjustments as prescribed, which, inter-alia, includes disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return. Debatable issues cannot be the subject matter	CPC unit of the Income Tax department is making additions on issues which are debatable such as disallowance of club expenditure, TDS/TCS credits etc.	Appropriate changes must be brought in the Act to ensure no additions on debatable issues are done by CPC u/s 143(1) of the Act.

		of adjustment in 143(1) order.		
5	**Rectification of Mistakes Apparent From Record-Section 154 of the Act**	Section 154(8) of the Act stipulates that where application for amendment is made by assessee for rectifying any mistake apparent from record, the income-tax authority shall pass an order, **within a period of *six months from the end of the month* in which such an application is received**, by either making amendment or refusing to allow the claim. In fact, CBDT tried to address the issue of delays in disposal of rectification application/petition vide instruction No. 01 of 2016 dated 15.02.2016 directing that the time-limit of six months mentioned in section 154(8) of the Act is to be strictly followed by the assessing officer while disposing off the rectification application filed by the assessee.	However, it may be noted that time limit of six months is not being observed in deciding the applications. In many cases, the assessee has to file repeated applications because an application on which order has not been passed within six months is considered by authorities as lapsed or no longer valid.	It is therefore suggested that suitable provision should be introduced in the Act to the effect that if the application for rectification is not rejected within the prescribed time, it would be deemed that the application has been allowed and the AO should be bound to rectify the mistake;

6	**Order Giving Effect to the Order of Appellate Authorities**	Section 153(5) of the Act stipulates that AO is required to pass the order giving effect to the order of appellate authorities ***within 3 months from the end of the month in which the order is received***. Further, section 244A(1A) of the Act provides that if the AO does not pass the order giving effect within the time limit of 3 months, the assessee shall be eligible for an additional interest on the refund amount @3% per annum from the period after the expiry of 3 months to the date of refund. In fact, CBDT had issued a direction to its subordinate authorities vide Instruction No. 8 of 2011 which directs the AO to give effect to the order of the CIT(A) in a timely manner.	The letters filed with the Assessing Officer for passing order giving effect to the order of appellate authorities are not discharged by the assessing officer within the time frame and there are delays while passing order giving effect. In many cases, the Assessee has to file repeated reminder letters and constantly follow up with the AO to pass the order giving effect to the order of CIT(A). It has also been observed that once the appeal effect order is delayed beyond the time stipulated u/s 153(5) of the Act, the income tax officers are hesitant to pass the order giving effect at all since they do not want to show interest u/s 244A(1A) of the Act in the orders which will show the delay on their part in issuing the order giving effect. This is resulting in severe financial distress to the assessees.	It is therefore suggested that- i. the rate of additional interest be increased from 3% to 6% per annum for the time period from the expiry of 3 months till the date of refund; and ii. there should also be stricter consequences in case of delay in passing the order giving effect within the time limit specified u/s. 153 of the Act.

7	**TDS under section 194J of the Act**	Prior to Finance Act 2020, TDS @ 10% was applicable on Fees for professional or technical services. To reduce litigation between the applicability of 194C and 194J of the Act, Finance Act 2020 reduced the rate for TDS u/s 194J in case of fees for technical services (other than professional services) to 2% from the existing 10%. Whereas, the TDS rate for professional services remains @ 10%.	TDS on technical services is 2%, whereas TDS on professional services remains 10%. However, the list of professions notified also includes the profession of technical consultancy. Therefore, in case the assessee deducts 2% TDS on technical services, the same can be disputed by the income tax department as a professional service and therefore liable for TDS @ 10%. In absence of clear guidelines, there can be a lot of litigations on this issue.	It is recommended that appropriate amendment be made in the Act to remove the ambiguity in classification of professional services and technical services.
8	**Incorrect processing of Income Tax Returns**	The provisions of MAT under section 115JB of the Act are not applicable to companies opting for the tax regime under section 115BAA of the Act.	It has been observed that the while processing the returns u/s 143(1), for assessees who have opted for section 115BAA, MAT liability is being computed and demand raised.	Systems should be put in place to process the returns correctly to ensure that such fictitious demands are not raised resulting in hardship to the assessees.
9	**Finance Act - Form 1 (Yearly Statement of Equalisation Levy)**	Equalization Levy (EL) is payable at the rate of 6% on payments made to non-residents for online advertising. The annual return Form 1 is to be filed by the residents deducting the EL; the return seeks details of liability and challan details of how such liability has been discharged.	The Form 1 is thereafter processed by CPC. There is no order issued to the assessee on such processing of the Form 1. In case any demand is raised on such processing, it shows online as pending demand under the assessee's PAN. There is no way for assessee to file an appeal against such demands or file a rectification against the demand. Also, there is no method specified in the online portal for paying the demand generated through a Challan.	It is therefore recommended that the Income Tax Website should introduce a module for correction/revision of Form 1 and discharging of liability through payment in case a demand is raised on processing of Form 1.

10	**Form 27EQ (Quarterly Statement of Tax Collection u/s. 206C of the Act)**	On a conjoint reading of Section 206C(1H) and Section 194Q of the Income Tax Act, there would be no obligation on a Seller of Goods to collect tax at source from the Buyer on the sale consideration, where the underlying transaction is subject to TDS under Section 194Q of the Act. However, if the Buyer fails to comply with Section 194Q, then the Seller would have an obligation to collect taxes at source. A TCS collector is required to report the transactions on which TCS has been collected. Additionally, the collector is also required to report transactions wherein TCS is not collected on account of TDS being done by the payer. In such a case, the TCS return also requires the TDS challan number and the date of remittance of TDS by the payer.	Columns 680 to 681C of revised Form 27EQ requires a TCS collector to report transactions wherein TCS is not collected on account of TDS being done by the payer. The requirement to disclose TDS challan and TDS remittance date by the payer creates significant challenges to comply with. Further, it also involves significant time and effort despite which an assessee cannot ensure full compliance, as enumerated under: (a) The charge of TDS is on accrual/payment basis (earlier of the two), whereas the TCS obligation is at the time of realisation of sale consideration. Therefore, the very basis of these two transactional taxes is different. So, it is very difficult to track and reconcile the same for reporting purposes (especially in cases of voluminous sale invoices / bulk payments/ timing differences). (b) Secondly, Buyers cannot immediately furnish TDS challan and remittance date – reason being, the obligation to remit TDS falls in the subsequent month and therefore it is difficult for a Seller to immediately collect this	Pursuant to introduction of Section 194Q by the Finance Act, 2021, the Government would already have the data of sale of goods on which TDS is supposed to be deducted. Therefore, reporting such transactions again in the TCS returns makes the process redundant, in addition to the impossibility of compliance as highlighted herein. Therefore, columns 680 to 681C of revised Form 27EQ (TCS Form) should be done away with, atleast for purchase/sale of goods which attract provisions of Section 194Q & 206C(1H) of the Act.

			information. (c) Additionally, the obligation to file a TCS return (obligation of the Seller) precedes the date by which the Buyer has to file TDS return and furnish the TDS certificates thereafter. Therefore, the above reporting in Column 680 to 681C in the revised Form 27EQ creates practical challenges in collating the details since tracking and mapping the transactions with challans specifically where the volume of transactions are high, is impossible to comply with.	
11	**CPC Portal Issues**:	1. Intimation orders/ communications u/s 143(1) not displaying in Income tax portal 2. Substantial Refund arising from finalization of summary assessment u/s 143(1) of A.Y.2021-22 being held up for more than five months without any cogent reason inspite of repeated follow up with the CPC- Help Desk. Serious hit to working capital requirement although being a diligent tax payer.	1. Intimation orders/ communications issued u/s 143(1) of the Act should be displayed in Income tax portal. 2. Refund of income tax should be credited immediately after intimation order when there is no cogent reason to hold it	1. Intimation orders/ communications issued u/s 143(1) of the Act should be displayed in Income tax portal. 2. Refund of income tax should be credited immediately after intimation order when there is no cogent reason to hold it

12	Deduction of in-house R&D expenditure incurred by a company u/s 35(2AB) of the Act engaged in manufacturing should be reintroduced.	Deduction of in-house R&D expenditure incurred by a company u/s 35(2AB) of the Act engaged in manufacturing should be reintroduced.	Deduction under this section should be reintroduced in line with the Central Government’s moto of “Make in India” by manufacturing indigenously and reduce dependency on imports.	Deduction under this section should be reintroduced in line with the Central Government’s moto of “Make in India” by manufacturing indigenously and reduce dependency on imports.