

CALCUTTA CHAMBER OF COMMERCE

POST-BUDGET MEMORANDUM

ON

UNION BUDGET

2017 - 18

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Post Budget Memorandum on Union Budget : 2017-18

Direct Tax

1. Levy of Surcharge on Individuals, HUF, AOP etc.

In case of Individual, HUF, AOP, body of individuals etc. the Finance Bill 2017 had proposed that the taxpayers who are earning between Rs.50 lakhs to Rs.1.00 crore have to pay an additional surcharge of **10%** on their total income which was not the case earlier. However, no change has been proposed in the surcharge which is additionally levied at 15% whose income is above Rs.1.00 crore.

In case of Domestic Company, or company other than domestic company no change has been proposed where the rate of surcharge was and will continue to be as follows –

	<u>Domestic Company</u>	<u>Company other than Domestic</u>
- Total income exceeding Rs.1.00 crore - But not exceeding 10 crores	7%	2%
- Total income exceeding Rs.10.00 crores -	12%	5%

In case of Tax Payer being co-operative Society, Firm, local authorities the levy of surcharge has been continued @12% in case of total income exceeds Rs.1.00 crores.

The additional surcharge @10% or 15% as the case may be, on individual/ HUF etc is not comparable with levy of surcharge on the domestic company or company other than the domestic company. It amounts to denial of level playing field. Such high rate of surcharge will have extra burden of high income group tax payers especially the salaried class compare to other class of tax payers.

In order to rationalize the impact of surcharge of high income tax payers with other tax payers also to enforce right to equality (in respect of payment of tax on same income group), it is suggested that the rate of surcharge should be reduced to 5% from 10% on tax payers on the income between Rs.50.00 lakhs and Rs.1.00 crores.

2. Restriction on set off of Loss from House Property

Sec. 71 of the Act relates to set-off of loss from one head against income from another. In line with the international best practices it is proposed to insert sub-section (3A) in the said section to provide that set-off of loss under the head “Income from house property” against any other head on income shall be restricted to two lakh rupees for any assessment year. However, the

unabsorbed loss shall be allowed to be carried forward for set-off in subsequent years in accordance with the existing provisions of the Act.

The limit of Rs.2.00 lakhs is very small considering the quantum of loans available to the tax payers and the cost of housing in many parts of the country. On the one hand, the Government is extending its support to construction industry by offering tax benefits for affordable housing and giving sops to construction houses, on the other hand taking away the benefit from the person intending to acquire high end houses on loans by way of restricting the loss for the purpose of set off against other income.

It is therefore suggested that the limit of Rs.2.00 lakhs be removed or at least be increased to Rs.10.00 lakhs.

3. Concessional rate of Tax @ 25% in some Companies

The Finance Bill 2017 had proposed a concessional rate of tax @ 25% in case of domestic companies whose “Total Turn Over” or “Gross Receipts” does not exceed Rs.50 crores in the previous year 2015-16.

The inclusion of word “Gross Receipt” for the purpose of calculating the limit of Rs.50 crores restricts the eligibility of the domestic companies availing the benefit of reduction of rate to 25% especially SME Companies having high receipts from other sources other than operational activities.

Further, there is no reason to restrict the benefit of concessional rate of tax @ 25% to small companies. The Firms and LLPs also cater to the SMEs and have substantial contribution to SME section. It is therefore suggested that :

- (1) The word “Gross Receipts” should be removed for the purpose of calculating the limit of Rs.50.00 crores.**
- (2) The Concessional rate of tax of 25% be extended to other taxpayers like Firms, LLPs, proprietorship firms etc.**
- (3) The domestic companies not in existence in the previous year 2015-16 i.e. companies incorporated after 01.04.2016 should be given benefit of concessional rate of tax of 25%.**
- (4) The Firms / LLPs / Proprietorship firms having turn over below Rs.50.00 crores in the previous year 2015-16 and which is converted into a company on or after 01.04.2016 and companies coming into existence by way of demerger having turn over below Rs.50.00 crores before demerger should also be eligible for concessional rate of tax.**

4. Computation of Capital Gains in case of JDA–

Finance Act 2017 had proposed a new sub-section (5A) in Sec. 45 which provides that in case of individual or HUF who enters into a Joint Development Agreement (JDA), the Capital gains will be chargeable in the year in which the completion certificate for the whole or in part is issued by the competent authorities.

There are instances, where the plot of land is jointly owned by individuals / HUFs with companies or trusts and jointly the owners enters into JDA for development of the property. Further, number of individuals join hand together for development of property enters into JDA and assessed as AOP.

There is no reason for excluding other forms of organizations like companies AOP, Trust etc. who hold land as investments & who also enters into JDA from the applicability of the proposed new sub-section (5A).

It is, therefore, suggested that the provisions should also include companies, AOP, Trust etc. who hold land as investment. A clarification should also be made of applicability of provisions in cases of JDA on revenue sharing basis.

5. No notional income for house property held as Stock-in-trade

Finance Bill 2017 had proposed to insert sub clause (5) in section 23 to provide for amendment in those cases where the house property consisting of any building and land appurtenant thereto is held as stock-in-trade and the property or any part of the property is not let during the whole or any part of the previous year, the annual value of such property or part of the property, for the period up to one year from the end of the financial year in which the certificate of completion of construction of the property is obtained from the competent authority, shall be taken to be nil.

By inserting the amendment, the notional income on a house property held as stock-in-trade is sought to be charged under the head “Income from House Property” whereas the real estate developer carrying on business of development and income from such development activities charged under the head “Income from Business or Profession: and by virtue of section 22 income from this kind of property is taxable only under the head “Income from Business or Profession”.

Any proposal to tax notional income may have negative impact on the Real Estate industries and against the intention of the government to give boost to the industry.

It is therefore, suggested that the provision be omitted or alternatively amended suitably to assess such notional income under the head “Income from Business or Profession”.

6. Presumptive Tax u/s.44AD

Finance Bill 2017 had proposed to amend section 44AD of the Act to reduce the existing rate of deemed total income of 8% to 6% in respect of the amount of such total turnover or gross receipts received by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account during the previous year or before the due date specified in sub-section (1) of section 139 in respect of that previous year. However, the existing rate of deemed profit of 8% referred to in section 44AD of the Act, shall continue to apply in respect of total turnover or gross receipts received in any other mode.

A clarification is required in respect of tax payers eligible to avail presumptive tax benefit u/s.44AD but have part turnover in cash and part in other mode like account payee cheque or ECS etc. whether the respective rates of 8% or 6% as the case may be should be applied for the respective cash and non cash turnover.

7. Restriction on Cash Transactions

Finance Bill 2017 had proposed to insert 269 ST in the Act to provide that no person shall receive an amount of Rs.3.00 lakhs or more a) in aggregate from a person in a day b) in respect of single transactions or c) in respect of transactions relating to one event or occasion from a person. Otherwise than by account payee cheque, ECS etc. The provision u/s 206C provide for collection of tax at source @1% of sale consideration on cash sale exceeding Rs.2.00 lakhs (In case of sale of Jewellery Rs.5.00 lakhs). The provisions of Sec.206C is proposed to be amended to omit the provisions relating to TCS in case of sale of Jewellery only.

It is, therefore, suggested that the provisions relating to TCS@1% on cash transaction other than jewellery should also be omitted. It is also suggested that the limit of Rs.3.00 Lakhs be increased to Rs.5.00 lakhs and the term 'event' and 'occasions' be defined to ensure the misinterpretation and consequent face litigation.

8. Deduction of Tax at Source in case of certain Individuals and HUF

Finance Bill 2017 had proposed to insert a new section 194-1B in the Act to provide that individuals or a HUF (other than those covered under 44AB of the Act), responsible for paying to a resident any income by way of rent exceeding Rs.50,000/- for a month or part of month during the previous year, shall deduct an amount equal to 5% per cent of such income as income-tax thereon.

The object of inserting the new section is to widen the scope of TDS by individuals / HUF who are otherwise not falling in the ambit of TDS (other than those covered u/s. 44AB of the Act).

There may be instances where the amount of total rent payable by individual /HUF exceeds Rs.50,000/- but which is paid to co-owners separately and the individual co-owner gets share of rent below Rs.50,000/- or the rent for the entire tenancy period is paid in advance or at what stage the TDS should be deducted in cases of adjustable advances in case of total rent per month exceeds Rs.50,000/- but the amount actually paid every month is below Rs.50,000/- (due to adjustment of advances).

In order to clear the confusions, it is suggested to amend the provisions of section suitably and ensure that the deductee get credit of TDS in the year of deduction of tax.

It is also suggested that the discrimination of rate of TDS on transaction of rent between the proposed amendment @5% and existing provision u/s. 194 I @10% be reconsidered and brought to same level.

9. Rationalisation Measures

a) Reasons to believe to conduct search etc. not to be disclosed –

Finance bill 2017 had proposed amendments effective retrospectively by inserting Explanation to sub-section (1) and sub-section (1A) of section 132 and sub section (1) of section 132A to declare that the “reasons to believe” or “reasons to suspect” as the case may be shall not be disclosed to any person or any authority or the Appellate Tribunal.

Sub-Section (1) to Sec.132 will be effective from 01.04.1962 and sub-section (1A) to Sec.132 or Sub-section (1) to Sec.132A w.e.f. 01.10.1975.

b) Power of provisional attachment and make reference to valuation officer to authorized officer.

In order to protect the interest of revenue and safeguard recovery in search cases, it is proposed to insert sub-section (9B) and (9C) in the said section, to provide that during the course of a search or seizure or within a period of sixty days from the date on which the last of the authorizations for search was executed, the authorized officer on being satisfied that for protecting the interest of revenue it is necessary so to do, may attach provisionally any property belonging to the assessee with the prior approval of Principal Director General or Director General or Principal Director or Director. It has been proposed that such provisional attachment shall cease to have effect after the expiry of six months from the date order of such attachment.

c) **Rationalisation of the provision in respect of power to call for information**

Under the existing provisions, the section 133 (6) empower certain income tax authorities to call for information for the purpose of any enquiry only during the course of pendency of any proceedings. In case where no proceedings is pending, the income tax authority below the rank of the Principal Director or Director or Principal Commissioner or Commissioner shall not exercise the power to call for information without the prior approval of such authorities.

The proposed amendment empowers the authorities in the rank of Joint Director, Deputy Director and the Assistant Director to call for information in cases where no proceedings are pending.

All these proposed amendments will give vast powers to the authorities in the lower rank and there are possibilities that such extra ordinary powers may be misutilised in order to put pressure on the tax payers and may cause undue hardship and harassment.

It is therefore, suggested that abundant precaution should be taken before enactment of the proposed amendment so that such vast powers are not misutilised.

10. **Incentive for promoting investment in immovable property**

Finance Bill 2017 had proposed to reduce the holding period to qualify for a Long Term Capital assets in case of Land, Building or both from 36 months to 24 months w.e.f. A.Y. 2018-19.

Rights in an immovable property are also Capital assets which are capable of transferred as held in number of judicial pronouncements.

It is therefore, suggested that the clarification should be made whether the period of holding has also been reduced in case of right in an immovable property.
