

PRE-BUDGET MEMORANDUM

Executive summary

❖ Section 14-A:

Expenditure incurred in relation to income not includible in total income

The rule framed to disallow this expense sometimes gives absurd figure of disallowance. It is suggested that basic limit should be fixed for disallowance of expenses.

❖ Section 40(a)(ia):

It is noticed that department has applied section 40(a)(ia) to raise huge tax demands on assesses, for venial and technical default of late payment of TDS. The time limit for payment of TDS linked with dis-allowing expenses under section 40(a)(ia) should be reviewed and be enhanced to the date of filing of return.

This provision is very harsh and so if may please be deleted.

❖ Section 40A [3]:

Disallowance of Cash Payments Section 40A(3)

Proviso to the section gives discretionary powers to assessing officer, which sometime cause hardship to the tax payer.

The limit of Rs.20000/- should be enhanced. It should be fixed at Rs.50000/-.

Old Rule 6DD [J] may be reintroduced.

❖ Section 50:

Assessment under the head capital gains in case of sale of depreciable asset.

Profit or loss arising on account of sale of depreciable asset should be taxed under the head income from business or professional.

❖ Section 54EC:

Restriction of investment in long term specified asset.

Previously there was no limit for investment in specified asset. This investment is used for the purpose of National Highways, Rural Electrification etc. Limit of Rs.50 lakhs should be removed.

❖ Section 111A :

Taxing of short term capital gains at concessional rate.

As per this section short term capital gain on sale of shares in company or units of equity oriented fund is taxed at 15% with effect from 01-04-09. Previously it was taxed at 10%.

This short term capital gains should be taxed at 10%.

❖ **Removal of chapter XIIIH:**

Taxing of fringe benefits Sections 115W to 115WL.

Against the provisions of this newly introduced chapter, many cases are pending and all the cases have been centralized with Delhi High Court. The clarificatory circular issued by the board has again created confusion and problems

It is suggested that provisions of FBT may be removed from statute book.

❖ **Section 139: Filing of return**

As per section 139 (1), the return is required to be filed before 31st July or in case of audit before 31st September.

The due date of filing of return before 31st July may be fixed to 31st August and in case of audit, It should be fixed to 31st Oct. necessary amendment may be made in company law.

❖ **Section 143: Assessment**

Old limit of 1 year from the end of the month in which the return if filed may be brought back on the statute book.

❖ **Section 147: Income escaping assessment**

The case can be reopened within 2 years if the escapement is less than Rs.1 lakh and in any other case not more than 4 years.

❖ **Section 153A: Assessment in case of search or requisition.**

Due to introduction of section 153A, the litigation is increased and it takes years to settle the dispute. This dispute is settled at the stage of ITAT only.

It is suggested that old provision of taxing the block @ 50% if undisclosed income does not exceed Rs.10 Lakhs and in any other case @ 60% subject to no penal interest is charged or penalty is initiated or prosecution is launched.

❖ **Increase in limit of TDS in Section 193 to 194LA:**

The limits needs substantial increase

❖ **TDS in case of NRI:**

Tax in case of NRI is deductible at 20% but the Indian income is taxed at appropriate rate.

The rate of tax should be reduce to 10%. It is suggested that Section 195 should be liberalized and any payment made should not be subjected to TDS.

❖ **Section 254: Order of appellate tribunal**

Grant of stay should not be linked with disposal of matter by ITAT. The stay should continue till the matter is decided by ITAT.

❖ **Section 269SS / 269T:**

Mode of taking or accepting loans or deposits or repayment of loans or deposits.

This provision should be made applicable in cases of searches as per the intention of legislature.

❖ **Wealth Tax:**

Increase in limit of Wealth tax.

Limit of Rs. 15 lakhs was fixed before many years and it is not changed though the value of immovable property of movable property like Gold increased substantially.

❖ **Deemed Dividend u/s. 2(22)(e):**

It is submitted this provision is harsh and outlived its utility and hence same may please be deleted.

❖ **Set Off & carry forwarded losses u/s. 79:**

This provision is a great bottle neck in the revival of closed held sick company. In the times of fiscal liberalization it is high time that such provision is deleted.

❖ **Section 80 JJA to be amended so as to allow:**

- a. Deduction to any unit / undertaking in respect of whole of the profits and gains from the business of collecting and processing of bio-degradable waste u/s. 80JJA.
- b. Deduction in respect of whole of the profits and gains from the business of collecting and processing of bio-degradable waste to be increased to 10 years from existing 5 years.

❖ **Exemption from MAT in case of industries in Renewable Energy for 10 years after commencement of manufacturing operations.**

we propose to exempt applicability of MAT for a period of 10 years post commencement of manufacturing operations. Else, the income tax depreciation should be allowed as a deduction for the purpose of calculation book profit under MAT.

❖ **Income tax exemption in case of sale of carbon credits.**

Carbon credit is an incentive available to the Industries reducing CO2 emission by investing in energy efficient technologies. This credit should be treated as capital reserve free from any taxes.

❖ **Exemption from service tax in case of taxable services provided to Renewable Energy Industry.**

Since the end product is excise free, the service tax paid on input services is an additional cost to the manufacturer, which in turn will make the end product costlier.

❖ **General Suggestion:**

It is the experience of our members who are in the field of taxation since many years that , the law should be simple and compliance should be easy.

The discretionary powers to the I.T. Authorities should be limited. The assessee are willing to pay legitimate taxes without harassment. The approach of the I.T. department should be friendly and human. There should not be frequent amendments in law or procedure. Amendment in procedure should be brought to the notice of tax payers well in advance. There should not be retrospective amendments when the matter is decided against the department by the supreme court. By putting faith in the assessee and motivating them for voluntary compliance, will increase the revenue of the Government.

PRE-BUDGET MEMORANDUM ON DIRECT TAXES 2009-10

1. Section 14-A:

Expenditure incurred in relation to income not includible in total income

As per this section, any expenditure incurred by the assessee in relation to income which does not form part of total income is disallowable. The rule framed to disallow this expense sometimes gives absurd figure of disallowance.

Suggestion:

It is suggested that basic limit should be fixed for disallowance of expenses. No disallowance should be made if the amount disallowable is less than Rs.1 Lac. In any case, the disallowance should not exceed 20% of exempted income. Rule 8-D needs suitable amendment.

2. Section 40(a)(ia):

Provisions of section 40(a)(ia) has made the law draconian and archaic. The provision of the act is used against the tax deductors in a manner to destroy them. Recent change in section also not provide relief for payments made during financial year except for payments in March 2008.

In transport industry, late payment of TDS of Rs 1000/- (payment to sub-contractor) attract tax of Rs 33000/-. Despite the fact that TDS is paid much before the due date of filing of the return. There is no loss of revenue to treasury!

This could not be the intention of the law.

It is noticed that department has applied section 40(a)(ia) to raise huge tax demands on assesses, for venial and technical default of late payment of TDS.

These huge tax demands would adversely effect financial position and would bring business and business man to an end.

TDS is a very important tool in the hands of the department to prevent leakage of revenue. Major portion of tax is collected through this mode. However the time limit for payment of TDS linked with dis-allowing expenses under section 40(a)(ia) should be reviewed and be enhanced to the date of filing of return.

The reason in favour of the propositions are...

Provisions of the income tax and especially tax deduction are very complex.

Suggestion:

This provision is very harsh and so if may please be deleted.

3. Section 40A [3]:

Disallowance of Cash Payments Section 40A(3)

The section is introduced as a measure to plug revenue leakages. The act is amended in Budget 2007 and in Budget 2008.

The fact remains that usually no businessman would like to make payment by cash or a bearer cheque unless the situation so demands.

In case of transport industry, trucks deployed to carry consignment to deliver at far away places, freight has to be paid in cash only.

Since there is no other option, disallowance of such genuine business expense, may not appear to be correct.

Business community may adopt practice of passing un-real entries in the books of account to overcome language of the section rather than to observe the spirit of the law.

Proviso to the section gives discretionary powers to assessing officer, which sometime cause hardship to the tax payer.

We request to consider following propositions:

Payment of transport charges by one transporter to other transporter, should be covered specifically in rule 6DD exception. Where both the transporter have PAN Numbers or receiver furnishes Form 15I to payer.

As per this section, if the assessee incurs any expenditure exceeding Rs.20000/- otherwise than by an account payee cheque or account payee bank draft, the expenditure will not be allowed as business expenditure.

Suggestion:

1. The limit of Rs.20000/- should be enhanced. It should be fixed at Rs.50000/-.
2. Rule 6DD[J] was inexistence which was cancelled afterwards. As per this rule exceptions were provided, where the payment though exceeding Rs.20000/- was made by cash was not hit as per this rule. This section hits genuine business transactions. If the identity of the payee is established and the payment is made in the course of business, no disallowance should be made.
3. Old Rule 6DD [J] may be reintroduced.

4. Section 50:

Assessment under the head capital gains in case of sale of depreciable asset.

Any asset on which depreciation is claimed is sold out of block of assets, the same is assessable as short term capital gains. Thus the assets which is sold is a business asset but the profit or loss on its sale is assessed as short term capital gains. This invites litigation. Business loss is not allowed to be set of against surplus on sale of depreciable asset. Before amendment profit or loss on sale of depreciable asset was considered to be business income or loss.

Suggestion:

Profit or loss arising on account of sale of depreciable asset should be taxed under the head income from business or professional.

5. Section 54EC:

Restriction of investment in long term specified asset.

As per proviso to section 54EC [I] the assessee is entitled to invest maximum Rs.50 lakhs in specified assets during any financial year. This restriction has been brought on the statute book with effect from 1st April, 2007. Previously there was no limit for investment in specified asset. This investment is used for the purpose of National Highways, Rural Electrification etc.

Suggestion:

Limit of Rs.50 lakhs should be removed.

6. Section 111A :

Taxing of short term capital gains at concessional rate.

As per this section short term capital gain on sale of shares in company or units of equity oriented fund is taxed at 15% with effect from 01-04-09. Previously it was taxed at 10%.

Suggestion:

This short term capital gains should be taxed at 10%.

7. Removal of chapter XIIIH. Taxing of fringe benefits Sections 115W to 115WL.

This is tax on expenditure while tax has to be charged on income.

This chapter was introduced by Finance Act 2005 with effect from 1st April, 2006. The ceiling of genuine business exps. Which was removed has been brought back in the form of provisions of this chapter. Against the provisions of this newly introduced chapter, many cases are pending and all the cases have been centralized with Delhi High Court. The clarificatory circular issued by the board has again created confusion and problems. After considering the representation, certain provisions are amended. No much revenue is generated out of provisions of this chapter. The Estate Duty Act and Gift Tax Act were repealed as it was not yielding much revenue but causing difficulty and harassment to Public.

Suggestion:

It is suggested that provisions of FBT may be removed from statute book.

08.Section 139: Filing of return

As per section 139 (1), the return is required to be filed before 31st July or in case of audit before 31st September.

Suggestion:

The due date of filing of return before 31st July may be fixed to 31st August and in case of audit, It should be fixed to 31st Oct. necessary amendment may be made in company law.

9. Section 143: Assessment

As per section 143 (2) proviso, the notice for scrutiny assessment can be issued within 6 months from the end of the financial year in which the return is furnished. Thus if the return for assessment year 2009-10 is filed on 1st April, 2009, the case can be selected for scrutiny up to 30/09/10 and if the return is filed on 31st March , 2010 for A.Y. 2009-10, the case can be selected for scrutiny up to 30/09/10. Thus if the return is filed early, the limit is 18 months while if the return is filed early, the limit is 18 months while if the return is filed on 31/03/10, the limit is only 6 months.

Suggestion:

Old limit of 1 year from the end of the month in which the return if filed may be brought back on the statute book.

10. Section 147: Income escaping assessment

As per the provisions of this section, the case can be reopened within four or six years as the case may be. Previously there was provision to reopen up to 16 years. This limit was reduced to 10 years and afterwards 4 to 6 years as per present provisions.

Suggestion:

The case can be reopened within 2 years if the escapement is less than Rs.1 lakh and in any other case not more than 4 years.

11. Section 153A: Assessment in case of search or requisition.

As per the amended provisions, introduced with effect from 01/06/03, the returns for the previous 6 years are required to be filed in case of search or requisition and the tax is payable for each year separately. Interest is also payable and penalty is also leviable for each year if liable. Previously as per chapter XIVB sections 158B to section 158BI, the tax was payable at 60% and there was no liability of interest or penalty. Due to introduction of section 153A, the litigation is increased and it takes years to settle the dispute. This dispute is settled at the stage of ITAT only.

Suggestion:

It is suggested that old provision of taxing the block @ 50% if undisclosed income does not exceed Rs.10 Lakhs and in any other case @ 60% subject to no penal interest is charged or penalty is initiated or prosecution is launched.

12. Increase in limit of TDS in Section 193 to 194LA:

As per the various provisions of chapter XVII, the tax is required to deducted if the amount is credited or paid exceeds certain limits. Like limit of Rs.5000 in case of interest u/s.194A, limit of Rs. 5000/- in case of insurance commission u/s. 194D, limit of Rs.2500/- in case of NSS interest u/s. 194EE, limit of Rs.2500/- in case of commission /Dalali u/s.194H, limit of Rs. 20000/- in case of professional services u/s.194 J.

Suggestion:

The above limits needs substantial increase as under:

1. Instead of limit of Rs. 5000/- in case of interest u/s. 194A it should be enhanced to be Rs, 20000/-.
2. Instead of limit of Rs.5000/- in case of insurance commission u/s. 194D it should be enhanced to be Rs. 20000/-.
3. Instead of limit of Rs. 2500/- in case of NSS interest u/s. 194 EE it should be enhanced to be Rs. 20000/-.
4. Instead of limit of Rs. 2500/- in case of commission /Dalali u/s.194H it should be enhanced to be Rs. 20000/-.
5. Instead of limit of Rs. 20000/- in case of professional services u/s. 194J it should be enhanced to be Rs.50000/-.

13.TDS in case of NRI:

Tax in case of NRI is deductible at 20% but the Indian income is taxed at appropriate rate.

Suggestion:

The rate of tax should be reduce to 10%. It is suggested that Section 195 should be liberalized and any payment made should not be subjected to TDS.

14. Section 254: Order of appellate tribunal

As per section 254(2) proviso, where the stay is granted to the assessee and the appeal could not be decided though there is full co-operation from the assessee, still as per amended proviso with effect from 01/10/08 the stay stands vacated. This amendment is very harsh. If the assessee has giving his utmost co-operation and still the matter is not decided by ITAT thus for this reason the assessee is held responsible and the stay is vacated.

Suggestion:

Grant of stay should not be linked with disposal of matter by ITAT. The stay should continue till the matter is decided by ITAT.

15. Section 269SS / 269T:

Mode of taking or accepting loans or deposits or repayment of loans or deposits. Chapter XXB was brought on the statute book to counteract evasion of tax in certain cases. The cases were relating to search etc. This provision hits hard to even genuine business loans accepted or repaid. It is the general trend of courts that, if the transaction is genuine and identity of the payer is proved, no addition should be made on this account.

Suggestion:

This provision should be made applicable in cases of searches as per the intention of legislature.

16. Wealth Tax:

Increase in limit of Wealth tax.

Limit of Rs. 15 lakhs was fixed before many years and it is not changed though the value of immovable property of movable property like Gold increased substantially.

Suggestion:

Limit of wealth tax should be fixed at Rs. 30 lakhs.

Motor cars which is used for the purpose of business should be exempted.

17. Deemed Dividend u/s. 2(22)(e):

Under the section if any loan or advance is granted by closely held company to any shareholder having more than 10% interest in the company or to any concerned where such shareholder has a substantial interest than it is treated as Deemed Dividend.

Suggestion:

It is submitted this provision is harsh and outlived its utility and hence same may please be deleted.

18. Set Off & carry forwarded losses u/s. 79:

When a closely held company incurs loss then 51% of the shareholders are required to be same when such loss is claimed as set off in the year when profit is made.

Suggestion:

This provision is a great bottle neck in the revival of closed held sick company. In the times of fiscal liberalization it is high time that such provision is deleted.

19. Section 80 JJA to be amended so as to allow:

a. Deduction to any unit / undertaking in respect of whole of the profits and gains from the business of collecting and processing of bio-degradable waste u/s. 80JJA.

b. Deduction in respect of whole of the profits and gains from the business of collecting and processing of bio-degradable waste to be increased to 10 years from existing 5 years.

Justification:

The business of collecting and processing of bio-degradable waste is a new and developing concept in India. The cost of capital investment in this sector is high as also getting finance from banks is a tough task. Further, the average break-even period in this sector is 5 to 6 years. Considering the above as also to promote this sector, we seek extension of deduction to 10 years from existing 5 years.

Benefits to the nation:

Developing concept of processing bio-gradable
Promoting clean energy
Benefit to the small & medium scale industries.

20. Exemption from MAT in case of industries in Renewable Energy for 10 years after commencement of manufacturing operations.

Justification: Investment in renewable energy sector connote scale of bulk operations, huge capital investment and vast timing gap in settling down the business. Further, the average time lag in reaching break-even point is 5 to 6 years. Hence, we propose to exempt applicability of MAT for a period of 10 years post commencement of manufacturing operations. Else, the income tax depreciation should be allowed as a deduction for the purpose of calculation book profit under MAT.

Benefits to the nation:

Large scale investment potential
Promote clean Energy
Encouragement to small and Medium Scale Industrialist

21. Income tax exemption in case of sale of carbon credits.

Justification: Carbon credit is an incentive available to the Industries reducing CO₂ emission by investing in energy efficient technologies. In the present day scenario, the cost of putting additional technology for clean development mechanism is relatively high. The incentive is given to relatively offset the additional cost. Further, this credit can be viewed as an incentive, which augments country's foreign exchange earnings. This credit should be treated as capital reserve free from any taxes.

Benefits to the Nation:

increase the number of carbon credit developer
Creating Eco friendly environment
Earning foreign exchange

22.Exemption from service tax in case of taxable services provided to Renewable Energy Industry.

Justification:

Since the end product is excise free, the service tax paid on input services is an additional cost to the manufacturer, which in turn will make the end product costlier.

Benefits to the Nation:

Decrease the product cost
Boost to the Renewable Energy Sector.
Benefits to Manufacturer
Less burden of taxes for service providers

23. General Suggestions:

The trade and industry is going through is economic meltdown, the GCCI appreciate the initiative to grant additional depreciation on commercial vehicle. However it is our humble suggestion to provide similar incentive of higher depreciation to plant and machinery purchase for industrial sector.

It is the experience of our members who are in the field of taxation since many years that , the law should be simple and compliance should be easy. The discretionary powers to the I.T. Authorities should be limited. The assessee are willing to pay legitimate taxes without harassment. The approach of the I.T. department should be friendly and human. There should not be frequent amendments in law or procediture. Amendment in procedure should be bought to the notice of tax payers well in advance. There should not be retrospective amendments when the matter is decided against the department by the supreme court. By putting faith in the assessee and motivating them for voluntary compliance, will increase the revenue of the Government.

**Pre-Budget Memorandum
ON
Issues Relating to Service Tax**

1. Rate of Service Tax Should be Reduced to 8%:

Currently, effective rate of excise duty on most of the excisable goods manufactured in India is 8% and adding Education Cess at total 3% thereon the effective rate of excise duty is 8.24%. As against this, the effective rate of service tax on most of the taxable services is 10.30% (10% plus education cess @ 3% thereon). The rate of the service tax should be brought down to align the same with the rate of excise duty. [Sec. 66 of the Finance Act, 1994]

This would help the business and industry at large towards the growth.

2. Basic exemption limit should be increased to Rs. 15 Lacs from existing limit of Rs. 10 Lacs.

This would help the small service providers and the department will be able to concentrate on big service provider.

3. It is further submitted the Sub-broker who are working under the main brokers like Motilal Oswal, Angel Broking etc. should be made entitled to basic exemption of Rs.10 lacs.

4. The transaction charges are being paid by the Brokers to the exchanges i.e. BSE, NSE. Infact, the basic liability is of exchanges but they are recovering from Brokers. Brokers are recovering transaction charges from their clients. This is nothing but, reimbursement of transaction charges.

It is our humble submission that such reimbursement of transaction charges by the Brokers is not for providing any service. Hence, such service charge should not be charged from the Brokers.

5. In consequence to the recent Delhi High Court judgement, service tax on ``Renting of immovable property`` should be abolished with retrospective aspect.

SL.	ISSUES
1	Amendments Suggested in Finance Act, 1994
1.1	<p>Amendment in Definition of “Management, maintenance or repair”:</p> <p>Definition of ‘commercial or industrial construction service’ given in section 65(25b) specifically excludes repair and other services in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.</p> <p>Similarly, service relating to execution of works excludes from its scope such services in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams as per section 65(105)(zzzza).</p> <p>However, definition of ‘management maintenance or repair’ appearing in section 65(64) does not specifically mention such exclusion leading to unwarranted confusion that can lead to undue litigation.</p> <p>It is suggested that this definition should be amended to exclude from its scope management, maintenance or repair service in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.</p>
1.2	<p>Specific provision should be made to exclude service tax and other taxes from the gross value charged: Section 67 should be specifically amended to exclude from the gross value charged the amount of service tax, sales tax, value added tax or other taxes, if any, actually paid or payable to align the same in line with the provisions of section 4 of the Central Excise Act, 1944.</p>
1.3	<p>Penalty Under Section 77 should be restricted to Rs. 2000:</p> <p>The provisions of section 77 should be amended to provide for penalty not exceeding Rs. 2000 for any contraventions for which no penalty is specified elsewhere.</p> <p>The present provision laying down that “penalty may extend to</p>

	<p>five thousand rupees or two hundred rupees for every day during which such failure continues, whichever is higher” are very harsh on so many people who may have to pay very less tax and so many times of taxes as penalty. Prior to amendment by Finance Act, 2008, this section provided for a maximum penalty of Rs. 1000.</p>
<p>1.4</p>	<p>Penalty under section 78 should be restricted to service tax:</p> <p>Service tax is relatively new legislation and many issues of interpretation of law have arisen. Central Excise Law is very old as compared to service tax law and under Central Excise Act, 1944 also the maximum penalty for suppression is restricted to an amount equal to duty.</p> <p>It is very harsh that section 78 permits imposition of penalty upto twice the amount of service tax. This provision of imposing 200% penalty should be avoided.</p> <p>This section 78 should be amended to restrict the penalty to an amount equal to service tax to align the same with the provisions of Central Excise Act.</p>
<p>1.5</p>	<p>Revision orders by the Commissioner of Central Excise Should be passed within a period of 3 months from the date on which the order sought to be revised has been passed:</p> <p>Section 84(4) of the Finance Act, 1994 permits Commissioner to pass order under section 84 upto the expiry of two years from the date on which the order sought to be revised has been passed. This period should be reduced to three months to align the same with the time allowed to assessee to file appeal against such orders. Such larger period keeps hanging sword on assesses for a longer period of time which is not fair or just.</p>

1.6	Section 87 should be amended to align the same with the provisions of section 11 of the Central Excise Act, 1944 as the present provisions of section 87 appear draconian.
2	Amendments Suggested in Service Tax Rules, 1994
2.1	Definition of 'exempted services' should exclude from its scope the non-taxable services.
2.2	<p>Rule 4 (1) prescribing condition for allowing credit should be suitably amended to provide for allowing credit to service provider for input received either in the premises of the provider of output service or on receipt thereof at the site where the service is provided.</p> <p>In case of so many output services, the inputs are received directly at site which may not be premises of the service provider.</p>
2.3	<p>Rule 4 (2) prescribing condition for allowing credit should be suitably amended to provide for allowing credit to service provider for capital goods received either in the premises of the provider of output service or on receipt thereof at the site where the service is provided. In case of so many output services, the capital goods are received directly at site which may not be premises of the service provider.</p>
3	Administrative / infrastructure related issues
3.1	<p>There should be adequate and comfortable infrastructure at the Service Tax Commissionerates. In most of the offices, the level of infrastructure is pathetic and unorganized.</p> <p>Moreover, there should be separate building for service tax in large assessee base commissionerate like Ahmedabad.</p>