INCOME TAX SIMPLIFICATION COMMITTEE

REPORT
(CONTAINING FIRST BATCH OF RECOMMENDATIONS TO BE PUT UP IN PUBLIC DOMAIN)

Submitted by
Chairman, Justice R.V. Easwar, Former Judge,
Delhi High Court and former President, ITAT

COMPOSITION OF THE COMMITTEE

(i)	Justice R.V. Easwar, Former Judge, Delhi High Court and former President, ITAT	Chairman
(ii)	Shri V.K. Bhasin, former Law Secretary (Legislative Department)	Member
(iii)	Shri Vinod Jain, Chartered Accountant	Member
(iv)	Shri Rajiv Memani, Consultant	Member
(v)	Dr. Ravi Gupta, Academician	Member
(vi)	Shri Mukesh Patel, Advocate	Member
(vii)	Shri Ajay Bahl, Consultant	Member
(viii)	Shri Pradip P. Shah, Investment Adviser	Member
(ix)	Shri Arbind Modi, IRS (IT:81009)	Member
(x)	Dr. Vinay Kumar Singh, IRS (IT:95006)	Member

INTRODUCTORY REMARKS

The Central Government issued Notification NoA.50050/112/2015-Ad.I dated 27th October, 2015 constituting a 10-Member Committee under the chairmanship of Justice R.V. Easwar, Former Judge of the Delhi High Court and Former President of the Income Tax Appellate Tribunal with the following broad objectives:

(i) to study and identify the provisions/phrases in the Income Tax Act which have given rise to litigation on account of interpretative differences;

(ii) to study and identify the provisions which impact the ease of doing business;

(iii) to study and identify the provisions of the Act for simplification in light of the existing jurisprudence, and

(iv) to suggest alternatives or modifications with a view to ensuring certainty and predictability in tax laws without substantially impacting the tax base or revenue collections.

The Committee has been given a term of one year from the date of its constitution. The first batch of recommendations is to be submitted by 31st January, 2016.

The Committee met on several occasions and after an involved debate in light of the objectives sought to be achieved listed in the Notification, has prepared the following set of recommendations to be placed in the public domain with a view to seeking the response of the stakeholders.

In the course of the discussions and deliberations of the Committee several suggestions, not necessarily similar or consensual, were discussed and the recommendations represent a synthesis of all of them. The recommendations made herein therefore represent the collective views of the Members of the Committee and need not necessarily reflect the individual views of the Members on every issue. Wherever any Member expressed his desire that his view on the issue be brought out, an attempt has been made to do so.

The Committee has, throughout its deliberations, kept the mandate given to it constantly in view.

Income-tax is a vast subject and the Income Tax Act, 1961 (hereinafter referred to as "the Act") has been in existence for more than 50 years. Its provisions have come in for interpretation before the High

Courts and Supreme Court. Both the revenue department and the tax payers have acted on the basis of such interpretation. Within the time frame given to the Committee to submit its first batch of recommendations, it would have been a stupendous task for the Committee to embark upon an examination of some of the more complex issues even within the mandate. The Committee therefore decided that in the first batch of recommendations only the simpler issues and issues which, in addition to being simple, need immediate attention in light of the mandate given to the Committee may be taken up. It is in this background that the Committee proceeds to make the first batch of recommendations.

The Committee wishes to clarify three things. First, as already stated, the more complex issues which require a more exhaustive and deeper review (within the parameters of the mandate) will be dealt with in the next batch of recommendations. Second, the first batch of the recommendations is not necessarily exhaustive in relation to a particular provision of the Act. In other words, even though in relation to a particular section of the Act the Committee may have touched upon certain aspects and made recommendations, it does not preclude the Committee from examining other aspects of the same section and make suitable recommendations in future. Third, the Committee has thought it fit to divide its recommendations into two broad parts: (1) those requiring amendments to the Act and (2) those which can be implemented through the issue of Circulars/administrative instructions, etc.

The committee has prepared the following draft report which is to be put up in the public domain for consideration of the stake holders.

In the following pages and before the commencement of the draft recommendations, the Committee has placed an “Executive Summary” which gives a bird’s-eye view of the recommendations.

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EXECUTIVE SUMMARY

Recommendations to check or curb litigation/facilitate speedier disposal

(a) Amendments to provide that in cases where shares are shown as capital assets and held for one year or less, the Assessing Officer will not re-characterise the surplus on sale as business income, provided the surplus in a year is rupees five lakhs or less; in case they are held for a period more than one year, and shown as capital assets (and not as stock-in-trade), surplus to be taxed as long-term capital gains.

(b) Amendments to Section 14A to provide that (i) dividend received after suffering dividend-distribution tax and share income from firm suffering tax in the firm's hands will not be treated as exempt income and no expenditure will be disallowed as relatable to them; (ii) expenditure disallowed shall not exceed the amount claimed. Recommendation for issue of executive instructions that no interest be disallowed if source of investment is directly relatable to taxable income.

(c) Amendments to Section 50C to bring it in line with Section 43C so far as it relates to agreements for sale of property executed prior to the date of registration of sale deed, fixing the sale price.

(d) Amendment to Section 56(2)(viib)(ii) to eliminate taxation of the purchaser of the property on the amount of difference between the sale price and the stamp-duty value.

(e) No re-opening or revision of assessments under sections 147 and 263 respectively merely on the basis of audit objections.

(f) Amendment to Section 255(3) to enhance the monetary limit for SMC cases before the Tribunal to rupees one crore from the present rupees 15 lakhs.

(g) Amendment to Section 254(2) to reduce the time-limit for rectification of orders of the Tribunal from the present four years to 120 days.

(h) No penalty for concealment (i) if assessee has taken a *bona fide* view of a provision enabling a claim etc. or on the basis of any judicial ruling of any Tribunal, High Courts or Supreme Court and (ii) if any addition or disallowance is made *ad hoc* on assumptions or without evidence.

(i) Deletion of section 143(1D) – Avoiding undesirable delay in issue of refunds

(j) Making of fresh claim during assessment proceedings
(k) Stay of disputed demand under certain circumstances
(l) Prescribing time limit for disposal of petitions for waiver of penalty and interest under sections 273A, 273AA and 220(2A)

Recommendations to promote ease of doing business and simplify procedures-

(a) Enhancement and rationalisation of the threshold limits and reduction of the rates of TDS. TDS rates for individuals & HUFs to be reduced to 5% as against the present 10%.
(b) Simplification & rationalisation of the provisions of Section 197 and Rules for lower or non-deduction of TDS, aimed to improve ease of doing business.
(c) Proposal for certain amendments in rules 28, 28AA and 28AB to resolve practical difficulties faced by persons granted certificates for lower deduction under section 197
(d) Proposal for certain amendments in rule 37BA to obviate hardships arising in relation to claiming of credit for tax deducted under section 199
(e) Proposal for certain amendments in rule 30 and 31 in relation to time and mode of payment of TDS and filing of statement of TDS under the provisions of section 200
(f) Rationalisation of the provisions for maintenance of books of account and tax audit.
(g) A presumptive income scheme for professionals
(h) Deferment of ICDS
(i) Exemption to non-residents not having Permanent Account Number (PAN), but who furnish their Tax Identification Number (TIN) in their country of residence from the applicability of TDS at a higher rate under section 206AA
(j) Amendment to section 234C to provide relief where a new business is started during the financial year
(k) Grant of timely refund with interest and also providing for payment of higher interest in case of delayed refund
(l) Rationalization of the provisions relating to set off of refunds due to an assessee
(m) Release of property attached under section 281B on submission of bank guarantee

PART 1

RECOMMENDATIONS REQUIRING STATUTORY AMENDMENTS

1.1 AMENDMENT RECOMMENDED TO SECTION 2(14) TO PROVIDE CLARITY REGARDING TAXABILITY OF SURPLUS ON SALE OF SHARES & SECURITIES – CAPITAL GAINS OR BUSINESS INCOME

Section 2(14) of the Act defines the term "capital asset" to include property of any kind held by an assessee, whether or not connected with his business or profession, but does not include any stock-in-trade or personal assets subject to certain exceptions.

As regards shares and other securities, the same can be held either as capital asset or stock-in-trade / trading asset or both. However, the Act does not contain any specific guidelines as to the characterisation of any particular investment as capital asset or stock-in-trade / trading asset. While this characterisation is essentially a facts-specific determination, the absence of legislative guidance has resulted in a lot of uncertainty and avoidable litigation.

Over the years, the courts have laid down various tests and factors to distinguish shares held as investments from shares held as stock-in-trade. The Central Board of Direct Taxes (CBDT) has also, through Instruction No. 1827, dated August 31, 1989 and Circular No. 4 of 2007, dated June 15, 2007, summarized the said principles for guidance of the field formations. Disputes, however, continue on the application of the principles to the facts of each case. Very often the tax payers experience difficulty in proving the intention in acquiring the shares and this is particularly pronounced in the case of individual tax payers who are not well-versed in keeping accounts, particularly pensioners or home-makers who invest their savings in shares and securities.

In that background, while recognising that it is extremely difficult to make changes that will address every situation, the Committee recommends that some clarity should be provided in the Act that will bring in certainty if certain objective criteria are met. This is expected to reduce litigation on this issue.

In this background the Committee recommends that the Act be amended to specifically provide in a new clause (aa) of section 2(14) that a capital asset shall include shares and securities held by an assessee for a period exceeding 12 months from the date of acquisition (other than those declared as stock-in-trade/trading asset in the return of income

furnished under section 139 of the Act) and the profits or gains arising from transfer of the same shall be taxable under the head "capital gains". Shares and securities which are held for a period not exceeding twelve months will continue to be capital assets as per the existing clause (a) of section 2(14).

The result of the amendments recommended will be that:

(i) surplus arising on transfer of shares and securities held for a period exceeding twelve months will be, in all cases, chargeable as capital gains if they are not held as stock-in-trade.

(ii) surplus arising on transfer of shares and securities held for a period less than twelve months, upto a sum of rupees five lakhs, will be chargeable as capital gains if they are not held as stock-in-trade.

It is further proposed to provide that where the profits or gains arising to an assessee from transfer of shares or securities held by him for a period which is less than twelve months and which have been offered to tax under the head "capital gains", do not exceed rupees five lakhs during the previous year, the Assessing Officer shall not treat such profits and gains as business income, provided the shares were not held as stock-in-trade.

Cases which are not covered by the above proposed amendment shall continue to be assessed on the basis of existing principles laid down by the courts and summarised by the CBDT.

The recommendations are aimed at reducing, if not altogether eliminating, a substantial chunk of litigation.

The proposed amendment will take effect from 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent years.

1.2 EXISTING DEFINITION OF CAPITAL ASSET

(14) "capital asset" means—

(a) property of any kind held by an assessee, whether or not connected with his business or profession;

(b) any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992 (15 of 1992),

but does not include—

(i) any stock-in-trade other than the securities referred to in sub-clause (b), consumable stores or raw materials held for the purposes of his business or profession;

(ii) personal effects, that is to say, movable property (including wearing apparel and furniture) held for personal use by the assessee or any member of his family dependent on him, but excludes—

(a) jewellery;

(b) archaeological collections;

(c) drawings;

(d) paintings;

(e) sculptures; or

(f) any work of art.

Explanation 1.—For the purposes of this sub-clause, "jewellery" includes—

(a) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stone, and whether or not worked or sewn into any wearing apparel;

(b) precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel.

Explanation 2.—For the purposes of this clause—

(a) the expression "Foreign Institutional Investor" shall have the meaning assigned to it in clause (a) of the Explanation to section 115AD;

(b) the expression "securities" shall have the meaning assigned to it in clause (h) of section 2 of the Securities Contracts(Regulation) Act, 1956 (42 of 1956);

……”

1.3 RECOMMENDED AMENDMENTS

Section 2(14) of the Act, which contains the definition of a “capital asset”, may be amended as under:

"(14) "capital asset" means—

(a) property of any kind held by an assessee, other than shares and securities referred to in clause (aa), whether or not connected with his business or profession;

(aa) shares and securities held by an assessee for a period exceeding twelve months from the date of acquisition, other than shares and securities held and disclosed by him as stock-in-trade;"

No amendment is required to the other provisions of section 2(14)

A new section 45A, appropriately titled, may be inserted after section 45 as follows:

"45A (1) Where the profits or gains arise from the transfer of shares or securities referred to clause (aa) of sub-section (14) of Section 2 and the case is one to which the provisions of sub-section (2) of Section 45 are not applicable, such profits or gains shall be chargeable under the head "capital gains".

(2) In any other case where the profits or gains arising from transfer of shares or securities held for a period not exceeding twelve months from the date of acquisition and declared in the return of income under the head "capital gains" from such shares or securities do not exceed the sum of rupees five lakhs as computed under section 48, such profits or gains shall be chargeable under the head "capital gains".

2.1 AMENDMENTS RECOMMENDED TO SECTION 14A REGARDING DISALLOWANCE OF EXPENDITURE INCURRED IN RELATION TO INCOME NOT INCLUDIBLE IN TOTAL INCOME

Section 14A was inserted by the Finance Act, 2001 with retrospective effect from 1-4-1962. The section provided for a disallowance of all expenditure incurred to earn exempt income, that is, income not includible in the total income of a tax payer. The Assessing Officer was to determine the amount of such expenditure in accordance with the method prescribed by Rule 8-D if he, having regard to the accounts maintained by the assessee, is not satisfied that the claim of the assessee with regard to the expenditure incurred in relation to the exempt income is correct. The section further provides that the Assessing Officer can also make the disallowance in a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act. A proviso to the section was inserted by the Finance Act, 2002 to provide that though the section operated retrospectively from 1-4-1092 (the commencement of the Act) no action

will be taken to apply the section for any assessment year prior to the assessment 1-4-2002.

Rule 8-D provides for the mechanism to quantify the amount of disallowance. The amount to be disallowed shall be the aggregate of (i) expenditure directly incurred to earn exempt income, (ii) interest expense worked out on the basis of a prescribed formula even though the interest is not directly attributable to any income or receipt and (iii) ½% of the average value of the investment the income from which is exempt from tax.

There has been a spate of litigation on the application of the section. The Committee is informed that around 15% of the tax litigation is attributed to the determination of expenditure relating to exempt income. The Committee therefore felt that there is an urgent need to clarify and simplify some of the provisions of the section and the rule.

The Committee recommends that suitable instructions may be administratively issued by the CBDT to the Assessing Officers that they should adequately record their satisfaction or otherwise in the assessment order while dealing with the applicability of the section.

Another issue relates to the quantification of the amount of expenditure attributable to exempt income. Under the existing provisions, the application of Rule 8-D sometimes results in an unintended outcome whereby the amount of such expenditure exceeds the total amount otherwise claimed as expenditure; obviously, the disallowance cannot exceed the amount claimed. Sometimes the disallowance under the Rule also results in the disallowance exceeding the exempt income. The Committee recommends that the law should be amended appropriately.

A further dispute which arises in the application of the section is what constitutes exempt income. In terms of the existing provisions, an income is treated as exempt if the said income is not includible in the total income of the assessee regardless of the fact that it has suffered economic taxation. In other words, legal taxation is the basis at present for determining whether an income is exempt or not. As a matter of principle, tax provisions must be designed on the basis of the economics of taxation and a deviation, if any, should be only on consideration of externalities, ease of compliance and administration and anti-abuse. Income like dividend suffers economic taxation by way of dividend distribution tax ("DDT") and therefore in an economic sense cannot be construed to be exempt income. Such income, in the view of the

Committee, having suffered DDT in the hands of the payer-company, should be treated as having been taxed in the hands of the recipient.

In view of the above, the Committee recommends that the provisions of Section 14A should be designed to appropriately reflect the principle of economic taxation. Accordingly, income which has been subject to dividend distribution tax (DDT) should be deemed to form part of the total income of the assessee for the purpose of the section. Other similar income, such as share of profit from a partnership firm should also be deemed to be part of the total income for the purposes of section 14A.

2.2 The Committee accordingly recommends the following amendments to Section 14A of the Act:

In the section—

(A) After sub-section (3), the following sub-section may be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 2001, namely:-

"(4) The amount of expenditure determined under sub-section (2) shall not exceed the aggregate of the amount of expenditure claimed under any provisions of the Act (other than the provisions of sections 32 to 35E) in respect of any income forming part of the total income".

(B) After sub-section (4) so inserted, the following sub-section shall be inserted with effect from the 1st day of April, 2017, namely:-

"(5) For the purposes of this section, income referred to in clause (2A), or clause (34) or clause (34A) or clause (35) or clause (35A) of section 10 shall be deemed to form part of the total income of the assessee".

2.3 These amendments are recommended to simplify section 14A and also reduce litigation on account of interpretative differences between the assesses and the income-tax department.

The Committee is aware that in some cases disallowance of interest is made on the ground that the borrowings are made in relation to exempt income even where the assessee on the basis of the books of account and other records is able to demonstrate that the borrowings were not used to make investments earning tax-free income. This situation can be taken care of by the CBDT by issuing suitable instructions to the Assessing Officers and no statutory amendment is necessary.

3.1 RATIONALISATION OF THE PROVISIONS FOR MAINTENANCE OF BOOKS OF ACCOUNT AND TAX AUDIT

Under the existing provisions of section 44AA of the Income-tax Act, 1961, a person carrying on business or profession is required to maintain books of accounts if, inter alia, the total turnover of the assessee in any of the three years prior to the previous year is more than Rs 10 lakhs or the total income is more than Rs 1.2 lakh. Further, an assessee who claims his income to be lower than the amount determined under the various provisions relating to presumptive income are also required to maintain books of accounts.

In addition, section 44AB of the Income-tax Act, 1961 mandates a person to get his books of accounts audited if he is carrying on a business and his total turnover exceeds one crore rupees. However, in the case of a professional, he is required to get his books of accounts audited if his total receipts exceed twenty five lakh rupees. Further, a person who claims his income to be lower than the amount determined under the various provisions relating to presumptive income is also required to get his books of accounts audited.

As would be noted, the provisions relating to maintenance of books of account and audit are not fully aligned; there is a category of persons who are required to maintain books of account but not get them audited. Accordingly, the Committee recommends the alignment of the two provisions.

The Committee also felt that the threshold limits for getting the books of account audited, both in the case of business and profession, need upward revision. Accordingly it is recommended that the threshold limit may be revised from the present one crore rupees to two crore rupees for assessees carrying on business and from the present twenty-five lakhs rupees to rupees one crore for assessees exercising a profession.

3.2 Based on the aforesaid recommendation, section 44AA and section 44AB of the Income-tax Act, 1961 should be merged into the following new section:-

Substitution of sections 44AA and 44AB

In the Income-tax Act, for sections 44AA and 44AB, the following section shall be substituted with effect from the 1st day of April, 2017, namely:-

"44AA (1) Every specified person shall keep and maintain such books of account and other documents as may enable the Assessing

Officer to compute his total income in accordance with the provisions of this Act.

(2) The specified person referred to in sub-section (1) shall get the books of account and other documents referred therein audited by an accountant before the specified date.

(3) The specified person shall, after completion of the audit, furnish by the specified date, the following statements and reports, namely:-

(i) the statement of assets and liabilities of the specified person as on the last day of the previous year;

(ii) the profit and loss statement or the income and expenditure statement, as the case may be, for the previous year; and

(iii) the report of tax audit.

(4) The person referred to in sub-section (1) shall be deemed to have complied with the provisions of this section, if -

(i) the person keeps and maintains the books of account and documents and gets such accounts and documents audited, as required by or under any other law;

(ii) the person obtains by the specified date the report of the audit as required under such other law; and

(iii) the person furnishes, by the specified date, the statements and report referred to in sub-section (3).

(5) The Board may, subject to the provisions of sub-section (4), prescribe the following in respect of keeping, maintaining, auditing of accounts and documents and furnishing of statements and reports:-

(i) the books of account and documents to be kept and maintained;

(ii) the particulars to be contained in the books of accounts and documents;

(iii) the form and the manner in, and the place at, which the books of account and other documents shall be kept and maintained;

(iv) the period for which the books of account and documents should be retained;

(v) the form of the statement and reports and the manner of verification; and

(vi) the medium in which the statements and reports is to be delivered;

(vii) the income-tax authority, or any other person, authorized to receive the statements and reports; and

(viii) any other matter connected therewith.

(6) For the purposes of this section,-

(i) "accountant" shall have the same meaning as in the *Explanation* below sub-section (2) of section 288;

(ii) "profession" shall mean the legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other profession as may be prescribed;

(iii) "specified date" means the due date for furnishing the return of income under sub-section (1) of section 139;

(iv) "specified person" shall mean a person carrying on business or profession in the previous year and who fulfils the following conditions, namely:-

"(a) the total sales or turnover in the business exceed or exceeds two crore rupees or the gross receipts in the profession exceed one crore rupees in any one of the three years immediately preceding the previous year;

(b) the person is carrying on business or profession which is newly set up in any previous year and the total sales, turnover or gross receipts, as the case may be, in business or profession are or is likely to exceed one crore rupees in the previous year; or

(c) the profits and gains from the business or profession are deemed to be the profits and gains of such person under section 44AD or section 44AE or section 44AF or section 44AG or section 44BB or section 44BBB, as the case may be, and he has claimed such profits and gains of the business to be lower than the profits and gains so deemed in the said previous year.".

4.1 RECOMMEDNATION TO INCREASE THE ELEGIBILITY UNDER THE PRESUMPTIVE SCHEME FOR SMALL BUSINESSES FROM THE EXISTING RUPEES ONE CRORE TO RUPEES TWO CRORE

The existing presumptive income scheme under section 44AD of the Income Tax Act is applicable to an individual, Hindu undivided family or a partnership firm (not to limited liability partnership). This scheme is quite popular amongst small businessmen who declare their income at 8% of the total turnover or gross receipts of the previous year. The limit was raised from rupees sixty lakh to rupees one crore by the Finance Act,

2012, w.e.f. assessment year 2013-14. Keeping in view the popularity of the scheme and its impact on ease of doing business the committee recommends that the existing limit of rupees one crore be increased to rupees two crore. Consequential amendments in section 44AA have already been recommended.

It was also brought to the notice of the Committee that small tax payers who are not declaring income as per the presumptive income scheme find it difficult and cumbersome to maintain accounts. It is therefore recommended that a de minimus provision should be made exempting small businessmen and professionals from the mandatory requirement of maintaining books of accounts and getting them audited. These cases would involve a tax liability of maximum rupees seven thousand as the income expected to be declared by them @ 8% on the turnover of rupees forty lakhs is rupees three lakh twenty thousand and in any case rupees two lakh and fifty thousand is not chargeable to tax. The difference of rupees seventy thousand attracts tax of rupees seven thousand only at the existing rates.

4.2 AMENDMENTS RECOMMENDED

Based on the aforesaid recommendations the following amendments should be made in section 44AD of the Income-tax Act, 1961:-

A. The existing sub-section (5) should be substituted by the following sub-section

"(5) Notwithstanding anything contained in the foregoing provisions of this section, an eligible assessee who claims that his profits and gains from the eligible business are lower than the profits and gains specified in sub-section (1), shall be required to keep and maintain such books of account and other documents as required under sub-section (5) of section 44AA and get them audited and furnish a report of such audit as required under sub-section (2) of section 44AA provided the total turnover or gross receipts from such business exceed rupees forty lakhs.

B. The existing definition of eligible business given in clause (b) to the Explanation to section 44AD is to be amended as follows:

(*b*) "eligible business" means,—

(*i*) any business except the business of plying, hiring or leasing goods carriages referred to in section 44AE; and

(*ii*) whose total turnover or gross receipts in the previous year does not exceed an amount of two crore rupees.

5.1 A PRESUMPTIVE INCOME SCHEME FOR PROFESSIONALS

The existing scheme of taxation provides for a simplified presumptive income scheme for persons engaged in business. The Committee was of the view that this scheme is quite popular amongst small traders. It was felt that there is a strong case for introducing a similar simplified presumptive income scheme for professionals. Accordingly, the Committee recommends the introduction of a presumptive income scheme whereby the income from profession will be estimated to be thirty three and one-third (33 $^{1}/_{3}$%) of the total receipts in the previous year. The benefit of this scheme will be restricted to professionals whose total receipts do not exceed one crore rupees during the financial year.

5.2 AMENDMENTS RECOMMENDED

Based on the aforesaid recommendation, the following amendment should be made in the Income-tax Act, 1961:-

Special provision for computing profits and gains of profession on presumptive basis [Section 44AG]

In the Income-tax Act, after section 44AF, the following section shall be inserted with effect from the 1st day of April, 2017,-

"44AG. (1) Notwithstanding anything to the contrary contained in sections 28 to 43C, in the case of an eligible assessee engaged in an eligible profession, the profits and gains of such profession chargeable to tax under the head "Profits and gains of business or profession" shall be deemed to be –

(i) a sum equal to thirty three and one-third per cent of the gross receipts of the assessee in the previous year on account of such profession; or

(ii) a sum higher than the aforesaid sum claimed to have been earned by the eligible assessee.

(2) Any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of sub-section (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed:

Provided that where the eligible assessee is a firm, the salary and interest paid to its partners shall be deducted from the income computed under sub-section (1) subject to the conditions and limits specified in clause (*b*) of section 40.

(3) The written down value of any asset of an eligible profession shall be deemed to have been calculated as if the eligible assessee had

claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant assessment years.

(4) Notwithstanding anything contained in the foregoing provisions of this section, an eligible assessee who claims that his profits and gains from the eligible profession are lower than the profits and gains specified in sub-section (1), shall be required to keep and maintain such books of account and other documents as required under sub-section (5) of section 44AA and get them audited and furnish a report of such audit as required under sub-section (2) of section 44AA provided the gross receipts from such profession exceed rupees twenty lakhs.

Explanation.—For the purposes of this section,—

(*a*) "eligible assessee" means,—

(*i*) an individual, Hindu undivided family or a partnership firm, who is a resident, but not a limited liability partnership firm as defined under clause (*n*) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009); and

(*ii*) who has not claimed deduction under any of the sections 10A, 10AA, 10B, 10BA or deduction under any provisions of Chapter VIA under the heading *"C. - Deductions in respect of certain incomes"* in the relevant assessment year;

(*b*) "eligible profession" means,—

(*i*) the legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other profession as may be prescribed; and

(*ii*) whose total gross receipts in the previous year does not exceed an amount of one crore rupees.".

6.1 RATIONALISATION OF SECTION 50C TO PROVIDE RELIEF WHERE SALE CONSIDERATION FIXED UNDER AGREEMENT TO SELL

Section 50C makes a special provision for determining the full value of consideration in cases of transfer of immovable property. It provides that where the consideration declared to be received or accruing as a result of the transfer of land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (i.e. "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable

shall be deemed to be the full value of the consideration, and capital gains shall be computed on the basis of such consideration under section 48 of the Income-tax Act.

The scope of section 50C was extended w.e.f. A.Y. 2010-11 to the transaction which were executed through agreement to sell or power of attorney by inserting the word "assessable" alongwith words "the value so adopted or assessed". Hence, section 50C is now also applicable in case of such transfers.

The present provisions of section 50C do not provide any relief where the seller has entered into an agreement to sell the asset much before the actual date of transfer of the immovable property and the sale consideration has been fixed in such agreement. A later similar provision inserted by way of section 43CA does take care of such a situation.

6.2 It is therefore proposed to insert the following provisions in section 50C:

(4) Where the date of an agreement fixing the value of consideration for the transfer of the asset and the date of registration of the transfer of the asset are not same, the value referred to in sub-section (1) may be taken as the value assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer on the date of the agreement.

(5) The provisions of sub-section (4) shall apply only in a case where the amount of consideration or a part thereof has been received by any mode other than cash on or before a date of agreement for transfer of the asset.

7.1 DELETION OF SECTION 56(2)(vii)(b)(ii)

The existing provisions of section 56(2)(vii)(b)(ii) provide that where any immovable property is received for a consideration which is less than the stamp duty value of the property by an amount exceeding 50,000, the stamp duty value of such property as exceeds such consideration, shall be chargeable to tax in the hands of the individual or HUF as income from other sources. This provision works on the assumption that the buyer of the property would have paid consideration more than the stated consideration. This presumption is not in accordance with judicial interpretation and therefore deserves to be deleted.

7.2 Hence, it is proposed that section 56(2)(vii)(b)(ii) be deleted w.e.f. 1.4.2017.

8.1 PROPOSED DELETION OF SECTION 143(1D) – AVOIDING UNDESIRABLE DELAY IN ISSUE OF REFUNDS

It is desirable that any refund due to an assessee, under the Income-tax Return filed by him comes to be processed and issued to him within a stipulated time frame of maximum six months from the end of the month in which the tax return is filed. Infact, in the recent past, it has been the endeavour of the Income-tax Department to issue prompt and timely refunds within this time frame, which is keeping in line with its commitment made under the Citizen's Charter.

However, the provision as introduced under Section 143(1D), with effect from 1-7-2012, providing that the processing of a return shall not be necessary, where a notice has been issued to the assessee under Section 143(2), has proved to be a bottle-neck in the commitment of the Department to issue timely tax refunds. It needs to be appreciated that the time limit for finalization of assessment in a case, where notice for scrutiny has been issued under Section 143(2), could extend upto 32 months or even 40 months (in a case of International Transfer Pricing) from the date of filing tax return. In such cases, it is grossly unfair to the assessee that the refund due to him under his tax return and payable within six months is withheld on the pretext that no processing of the tax return has taken place.

8.2 It is, therefore, recommended that Section 143(1D) should be deleted with effect from 1-7-2016.

9.1 MAKING OF FRESH CLAIM DURING ASSESSMENT PROCEEDINGS

It has been observed that in many cases an assessee may wish to make a claim which was not made in the return of income filed under section 139. Where the assessee makes a claim of any expenditure or a deduction during the assessment proceedings which had not been made in the return of income filed the Assessing Officer does not entertain the claim.

The judicial interpretation in Goetze (India) Ltd. Vs. CIT (2006) 284 ITR 323 (SC) is that a fresh claim may be entertained by the appellate authorities but cannot be entertained by the Assessing Officer except by way of a revised return.

This interpretation has resulted in some practical difficulties and is perceived to go against the practice adopted by the income tax department itself. Taking a pragmatic and non-technical view, what is required to be determined is the taxable income of the assessee in

accordance with the law. In this sense assessment proceedings are not adversarial in nature. It is therefore, proposed that the provision may be amended to provide an opportunity to the assessee to make a fresh claim during the assessment proceedings. However, such a claim should also be verified and any wrong claim made by the assessee should also be subject to penal provisions. The assessee should make a claim in a prescribed Form and verify that such a claim shall be deemed to have been made in the return of income filed by him.

9.2 It is therefore proposed that the following proviso be inserted under section 143(3):

> "Provided that the Assessing Officer shall also take into consideration any claim for any exemption, deduction, set-off or any other relief made by the assessee in the prescribed Form and verified in the prescribed manner, which has been filed not later than thirty months from the end of the relevant previous year or before the completion of the assessment, whichever is earlier, and such claim shall be treated as having been made in the return of income for the purposes of this Act".

10.1 DEFERMENT OF ICDS [SECTION 145(2)]

By notification No. 892(E) dated 31st March, 2015 issued by virtue of the powers conferred under Section 145(2) of the Income tax Act, 1961, the Central Government notified "Income Computation and Disclosure Standards" with effect from 1-4-2015 (AY 2016-17). These standards are applicable to the computation of income under the heads "Profits and gains of business or profession" and "Income from other sources". The preamble states that if there is any conflict between the provisions of the Act and the ICDS, the latter will prevail.

Taxpayers are already grappling with regulatory changes of the Companies Act, 2013, Ind-AS and the proposed GST. Industry should be allowed more time to deal with another change of this nature. The Committee understands that the taxpayers feel that many of the provisions of the ICDS are capable of generating a legal debate about which at present there is no clarity.

Further, multiple accounting methods, one for the books of accounts and other for tax purposes, creates confusion, interpretation issues, multiplicity of records and additional compliance burden which may outweigh the gains to be obtained by the application of ICDS. It has also been felt by the Committee that ICDS deals only with the method of accounting and at best it brings timing difference on recognition of

expenditure or income as compared to the books of account. The Committee therefore feels that a fuller study of the implications of the ICDS is necessary before it is implemented.

10.2 Accordingly the Committee recommends that the implementation of the ICDS be deferred by making a suitable amendment under section 145(2) of the Act.

11.1 RE-OPENING OF ASSESSMENT ON ACCOUNT OF AUDIT OBJECTIONS

One of the key sources of dispute is the existing arrangement for follow up on audit objections by Internal Audit Party and the Revenue Audit Party. In terms of the existing arrangement, the Assessing Officer is required to take corrective steps following audit objections. The corrective measures take the form of rectification or reassessment (by reopening the case under section 147 or revision by the Principal Commissioner or Commissioner under section 263). In the case of rectification, these are generally in the nature of correction for arithmetical errors and other mistakes which are apparent from the record. The problem arises when the Assessing Officer seeks to take corrective measures by invoking the provisions of section 147 or 263 of the Income tax Act. Since the audit objections are based on material on record and there is no occasion for any new material to be brought on record in the course of audit, any re-opening of assessment or review by the Principal Commissioner constitutes "change of opinion" in the eyes of the law. This being so, the corrective measure under section 147 or section 263 of the Income tax Act is held to be invalid by Courts.

In Indian & Eastern Newspaper Society vs CIT (1979) 119 ITR 996 the Supreme Court extensively considered the powers and duties of both the internal audit party of the Income-tax Department (prior to 1960) and those of the C & AG under the Comptroller & Auditor General's (Duties, Powers and Conditions of Service) Act, 1971 and opined that neither statute recognises the power on such authorities to pronounce on the law and that their pronouncements on law cannot amount to "information" on the basis of which assessments can be reopened under Section 147. The same principle in our opinion should hold good for Section 263. It is also noticed that often the income-tax authorities are not in a position to overlook the audit objection on a point of law though they have taken a view after due application of mind to the legal position, due to several reasons. This has led to avoidable litigation, even though the ruling of the Supreme Court is clear and categorical.

Moreover, the Ministry of Law by its advice dated 24th June, 1982 to the Ministry of Finance (Department of Revenue) has opined, after referring to the ruling of the Supreme Court, that the *".....audit objection as well as the note of the Ministry of Law cannot be the basis for the re-opening of the assessments made under section 59 of the Estate Duty Act. Therefore, the instructions referred to by the Department in para (a) of their note based on the audit objection directing the reopening of the assessments already concluded runs counter to the decision of the Supreme Court referred to above". (Source: Page No. 9961 of Volume 6, 11th Edn. Law of Income Tax by Sampath Iyengar)*

In spite of several court judgments to this effect, the CBDT has issued a circular to the effect that in all cases of audit objections, the Assessing Officer should initiate corrective steps irrespective of whether the objection is valid or not in the eye of law. Consequently, steps are initiated by the Assessing Officer to reopen the completed assessment or by the Principal Commissioner for revision of assessment orders. These steps give rise to several rounds of litigation; first the assessee challenges the very act of reopening or revision, as the case may be, and upon losing, the Department files appeal before the higher Courts thereby clogging the judicial system. While this process is on, the Assessing Officer proceeds to complete the assessment on merit leading to another round of litigation. In large number of cases, the assessments on merit are completed even though the Department is in disagreement with the audit objection. This Committee was informed that more than 25%of the litigation in the Department is on account of mandatory corrective measures initiated following audit objections.

In view of the above, it is recommended that to the extent the audit objections are mistakes apparent from record, it should be mandatory for the Assessing Officer to take corrective steps. However, where the correction of the audit objections require re-opening or revision of completed assessments, the same should not be permitted since it amounts to change of opinion and creates uncertainty for the taxpayer. Such audit objections may be used as material for knowledge dissemination and system improvement. In other words, such audit objections may be given prospective effect by amending the law or issuing circular, as the case may be, to remove ambiguity and eliminate all scope for litigation.

The Committee is of the view that this recommendation, if accepted, will substantially reduce litigation, will infuse certainty in the interpretation of the statute by conforming to the judicial opinion of the Supreme Court and also foster finality to the assessment proceedings.

11.2 Based on the above, the Committee recommends that section 147 of the Income-tax Act, 1961 should be amended as follows:-

Amendment of section 147

In section 147 of the Income-tax Act, after *Explanation 2*, the following *Explanation* shall be inserted with effect from the 1st day of April, 2017, namely:-

"*Explanation 2A.* – For the removal of doubts, it is hereby declared that for the purposes of this section, it shall be deemed that no income chargeable to tax has escaped assessment merely on the ground that an objection has been raised, or observation made, by any authority in the course of any audit of any assessment or re-assessment, to the effect that the assessment has not been made in accordance with the provisions of this Act.".

12.1 PROPOSAL TO RAISE THRESHOLD LIMITS FOR TAX DEDUCTION AT SOURCE AND RATIONALIZE CERTAIN RATES FOR DEDUCTION OF TAX

With nearly 65% of the personal income-tax collection in India being raised through tax deducted at source (TDS), the onerous task of which has been cast on tax deductors, the TDS provisions need to be made more tax friendly and not as 'tedious' as they have remained over the years.

It is a matter of record that a number of annual threshold limits in respect of TDS have just not come to be revised over the years. With the liability of TDS being attracted on such tiny annual limits of Rs.2,500 in respect of payment of interest on securities and on interest on NSS accounts, Rs.5,000 for payment of interest on private deposits and commission or brokerage and Rs.10,000 for payment of bank interest, one can just imagine the enormous work that goes into compliance of these provisions. Considering the importance of the long overdue revision of these puny limits, the Committee has recommended suitable hikes in such threshold limits.

The Committee has also felt the dire need for rationalization of TDS rates, more particularly on account of the lowering down of the average tax rates in case of majority taxpayers in the Individual and HUF

categories, keeping in view the restructuring of the Income-tax rates over the past decade. To illustrate, in FY 2004-05, taxable income of Rs.5,00,000 in the case of an Individual or HUF attracted income-tax of Rs.1,24,000 at an average rate of tax of 24.8%. In FY 2015-16, the same taxable income of Rs.5,00,000 attracts income-tax of only Rs.23,000 (after rebate u/s. 87A), with the average tax rate working out to just 4.6%.

Today, the average tax rate of 10% gets attracted only on taxable incomes beyond Rs.7,00,000. As a result, majority of the taxpayers, more particularly those having mainly interest incomes, are required to claim sizable income-tax refunds. The Income-tax Department is also required to collect taxes in a very large number of such cases, merely to refund a substantial chunk of such collection, alongwith interest thereon.

Considering the fact that more than 80% of the taxpayers in the Individual or HUF categories come under the bracket of an average tax rate of less than 5%, the Committee is of the firm view that the TDS rates in case of interest and commission in the case of these two categories needs to be rationalized and accordingly its is recommended that the TDS rates for them be reduced from the existing 10% to 5%. This important change should go a long way to avoid a lot of unproductive work and waste of time and money.

Under the existing provisions, Individuals and HUFs have been exempted from the responsibility of tax deduction at source, unless their total sales, gross receipts or turnover from the business or profession carried on by them exceed the monetary limits specified under section 44AB. With a view to facilitate ease of business for small partnership firms (other than limited liability partnerships), who are also not equipped to discharge the complex formalities of tax deduction, the Committee recommends that they may also be included within the scope of this exemption.

The Committee places on record that a view was expressed by one of the members that any reduction in the rates of TDS may effect the cash flows of the government and caution needs to be exercised before any recommendation is made to that effect.

With a view to simplify the provisions in regard to interest, commission and lottery winnings etc., it has been proposed to consolidate the relevant provisions in this regard and consequentially delete certain related sections, including certain other sections, which are now obsolete and not in force.

The recommendations are summarized in the table given below:

REVISED SCHEDULE OF TDS FOR RESIDENT DEDUCTEES							
Present Section	**Nature of Payment**		**Present Threshold Limit (Rs.)**	**Proposed Threshold Limit (Rs.)**	**Present Rate of TDS (%)**	**Proposed Rate of TDS (%)**	**Remarks**
	Current Head	**Proposed Head**					
192	Salary	Salary	Basic Exemption Limit	Basic Exemption Limit	At average rate of tax	At average rate of tax	
193	Interest on Securities	Interest Income	2,500	15,000	10%	5%	* To be clubbed together under the head 'Interest Income' * Exclusions to be separately notified
194A	Interest other than Interest on Securities	Interest Income	Banks-10,000 Others-5,000	15,000	10%	Where Deductee Indl./HUF-5% For others 10%	
194B	Winnings from Lottery/Cross Word Puzzle	Income from Winnings	10,000	15,000	At Rates in Force	30%	To be clubbed together under the head 'Income from Winnings'
194BB	Winnings from Horse Race	Income from Winnings	5,000	15,000	At Rates in Force	30%	
194C	Payments to Contractors	Contract Payments	Single transaction-30,000 Annual limit-75,000	1,00,000 (annual limit)	Where Deductee Indl./HUF-1% For others 2%	Where Deductee Indl./HUF-1% For others 2%	* No separate Transaction Limit * Exclusions to be separately notified
194D	Insurance Commission	Commission Income	20,000	15,000	At Rates in Force	5%	* To be clubbed together under the head 'Commission Income'. * Commission Income to also include Brokerage
194G	Commission on Sale of Lottery Tickets	Commission Income	1,000	15,000	10%	5%	
194H	Commission or Brokerage	Commission Income	5,000	15,000	10%	5%	

194DA	Payment in respect of Life Insurance Policy	Payment in respect of Life Insurance Policy	1,00,000	1,00,000	1%	1%	
194E	Payments to Non-resident Sportsmen or Sports Associations	NA	Nil	Nil	20%	20%	To be classified separately under the Head-'Payments to Non-Residents'
194EE	Payments in respect of NSS Deposits	Payments in respect of NSS Deposits	2,500	15,000	20%	5%	No TDS where payment made to legal heirs
194F	Payments on repurchase of Units of MF or UTI	To be deleted since now not relevant	Nil	NA	20%	NA	
194I	Rent	Rent Income	1,80,000	2,40,000	* 2% for Plant or Machinery or Equipment * 10% for Land or Building	* 2% for Plant or Machinery or Equipment * 10% for Land or Building	
194IA	Payment on Transfer of Immovable Property	Payment on Transfer of Immovable Property	50,00,000	50,00,000	1% at the time of each payment during the year	1% of aggregate payment, to be deducted at the time of last payment during the year to each deductee	*Specified Agricultural Land to be exempted *234E relief
194J	Fees for Professional or Technical Services	Fees for Professional or Technical Services	30,000	50,000	10%	10%	Professional or Technical Services to include Non-Executive Director's Commission, Royalty and Non-compete Fees

194K	Income in respect of Units	To be deleted since now not relevant	2,500	NA	10%	NA	
194L	Payment of Compensation on acquisition of Capital Asset	To be deleted since now not relevant	1,00,000	NA	10%	NA	
194LA	Payment of Compensation on acquisition of certain Immovable Property	Compensation for compulsory acquisition	2,00,000	5,00,000	10%	10%	
194LB	Income by way of Interest from Infrastructure Debt Fund	NA	Nil	Nil	5%	5%	To be classified separately under the Head- 'Payments to Non-Residents'
194LBA	Income from Units of a Business Trust	Income from Units of a Business Trust	Nil	Nil	* Where deductee is Resident 10% * For Non-Residents 5% or at Rates in Force	5%	Payments to Non-Residents to be classified separately under the Head- 'Payments to Non-Residents'
194LBB	Income in respect of Units of Investment Fund	Income in respect of Units of Investment Fund	Nil	Nil	10%	10%	
194LC	Income by way of Interest from Indian Company	Specified Interest Payments to Non-residents	Nil	Nil	5%	5%	To be classified separately under the Head- 'Payments to Non-Residents'
194LD	Income by way of Interest on certain Bonds and Government Securities	Specified Interest Payments to Foreign Investors	Nil	Nil	5%	5%	To be classified separately under the Head- 'Payments to Non-Residents'

12.2 RECOMMENDATIONS

(A) Section 193 relating to "Interest on securities". should be deleted w.e.f. 1.6.2016 since it is being merged with new section 194A recommended to be introduced w.e.f. 1.6.2016

(B) Interest including Interest on securities.

(Newly drafted Section effective from 1.6.2016)

194A. (1) Any person, not being an individual or a Hindu undivided family or a firm (other than a limited liability partnership), who is responsible for paying to a resident any income by way of interest, including interest on securities, shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of:

(*i*) five per cent where the payment is being made or credit is being given to an individual or a Hindu undivided family;

(*ii*) ten per cent where the payment is being made or credit is being given to a person other than an individual or a Hindu undivided family.

Provided that an individual or a Hindu undivided family or a firm (other than a limited liability partnership), whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (*a*) or clause (*b*) of section 44AB[1] during the financial year immediately preceding the financial year in which such interest is credited or paid, shall be liable to deduct income-tax under this section.

[*Explanation.*—For the purposes of this section, where any income by way of interest, including interest on securities, as aforesaid is credited to any account, whether called "Interest payable account" or "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.]

(2) The provisions of sub-section (1) shall not apply—

(*i*) where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year by the person

1 Reference may be made to the appropriate section after amendments.

referred to in sub-section (1) to the account of, or to, the payee, does not exceed fifteen thousand rupees.

Provided that in respect of the income credited or paid in respect of—

(*a*) time deposits with a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act); or

(*b*) time deposits with a co-operative society engaged in carrying on the business of banking;

(*c*) deposits with a public company which is formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes and which is eligible for deduction under clause (*viii*) of sub-section (1) of section 36;

the aforesaid amount shall be computed with reference to the income credited or paid by a branch of the banking company or the co-operative society or the public company, as the case may be :

Provided further that the amount referred to in the first proviso shall be computed with reference to the income credited or paid by the banking company or the co-operative society or the public company, as the case may be, where such banking company or the co-operative society or the public company has adopted core banking solutions;

(*ii*) to such income credited or paid to—

(*a*) any banking company to which the Banking Regulation Act, 1949 (10 of 1949), applies, or any co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank), or

(*b*) any financial corporation established by or under a Central, State or Provincial Act, or

(*c*) the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (31 of 1956), or

(*d*) the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963), or

(*e*) any company or co-operative society carrying on the business of insurance, or

(*f*) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette;

(*iii*) to such income credited or paid by a firm to a partner of the firm;

(iv) to such income credited or paid by a co-operative society (other than a co-operative bank) to a member thereof or to such income credited or paid by a co-operative society to any other co-operative society;

Explanation.—For the purposes of this clause, "co-operative bank" shall have the same meaning assigned to it in Part V of the Banking Regulation Act, 1949 (10 of 1949);

(*v*) to such income credited or paid in respect of deposits under any scheme framed by the Central Government and notified by it in this behalf in the Official Gazette;

(*vi*) to such income credited or paid in respect of deposits (other than time deposits) with a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act);

(*vii*) to such income credited or paid in respect of,—

(*a*) deposits with a primary agricultural credit society or a primary credit society or a co-operative land mortgage bank or a co-operative land development bank;

(*b*) deposits (other than time deposits) with a co-operative society, other than a co-operative society or bank referred to in sub-clause (*a*), engaged in carrying on the business of banking;

(*viii*) to such income credited or paid by the Central Government under any provision of this Act or the Indian Income-tax Act, 1922 (11 of 1922), or the Estate Duty Act, 1953 (34 of 1953), or the Wealth-tax Act, 1957 (27 of 1957), or the Gift-tax Act, 1958 (18 of 1958), or the Super Profits Tax Act, 1963 (14 of 1963), or the Companies (Profits) Surtax Act, 1964 (7 of 1964), or the Interest-tax Act, 1974 (45 of 1974);

(ix) to such income credited by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal;

(x) to such income paid by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal where the amount of such income or, as the case may be, the aggregate of

the amounts of such income paid during the financial year does not exceed fifty thousand rupees;

(*xi*) to such income which is paid or payable by an infrastructure capital company or infrastructure capital fund or a public sector company or scheduled bank in relation to a zero coupon bond issued on or after the 1st day of June, 2005 by such company or fund or public sector company or scheduled bank;

(*xii*) to any income by way of interest referred to in clause (*23FC*) of section 10.

(xiii) any interest payable on such debentures, issued by any institution or authority, or any public sector company, or any co-operative society (including a co-operative land mortgage bank or a co-operative land development bank), as the Central Government may, by notification in the Official Gazette, specify in this behalf;

(xiv) any interest payable on any security of the Central Government or a State Government:

Provided that nothing contained in this clause shall apply to the interest exceeding rupees fifteen thousand payable on 8% Savings (Taxable) Bonds, 2003 during the financial year;

(xv) any interest payable to an individual or a Hindu undivided family, who is resident in India, on any debenture issued by a company in which the public are substantially interested, if—

(*a*) the amount of interest or, as the case may be, the aggregate amount of such interest paid or likely to be paid on such debenture during the financial year by the company to such individual or Hindu undivided family does not exceed fifteen thousand rupees; and

(*b*) such interest is paid by the company by an account payee cheque;

(x*vi*) any interest payable to the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (31 of 1956), in respect of any securities owned by it or in which it has full beneficial interest; or

(x*vii*) any interest payable to the General Insurance Corporation of India (hereafter in this clause referred to as the Corporation) or to any of the four companies (hereafter in this clause referred to as such company), formed by virtue of the schemes framed under sub-section (1) of section 16 of the General Insurance Business

(Nationalisation) Act, 1972 (57 of 1972), in respect of any securities owned by the Corporation or such company or in which the Corporation or such company has full beneficial interest; or

(*xviii*) any interest payable to any other insurer in respect of any securities owned by it or in which it has full beneficial interest;

(*xix*) any interest payable on any security issued by a company, where such security is in dematerialised form and is listed on a recognised stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and the rules made thereunder.

Explanation 1.—For the purposes of this section, "time deposits" means deposits including recurring deposits repayable on the expiry of fixed periods.

(3) The person responsible for making the payment referred to in sub-section (1) may, at the time of making any deduction, increase or reduce the amount to be deducted under this section for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct during the financial year.

(C) Winnings from lottery or crossword puzzle or from horse race. (Newly drafted Section effective from 1.6.2016)

194B. (1) The person responsible for paying to any person any income by way of winnings from any lottery or crossword puzzle or card game or other game of any sort or from gambling or betting of any form or nature whatsoever, as referred to under section 115BB, an amount exceeding fifteen thousand rupees shall, at the time of payment thereof, deduct income-tax thereon at the rate of thirty per cent:

Provided that in a case where the winnings are wholly in kind or partly in cash and partly in kind but the part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of the winnings, the person responsible for paying shall, before releasing the winnings, ensure that tax has been paid in respect of the winnings.

(2) Any person, being a bookmaker or a person to whom a licence has been granted by the Government under any law for the time being in force for horse racing in any race course or for arranging for wagering or betting in any race course, who is responsible for paying to any person any income by way of winnings from any horse race, as referred to under section 115BB, an amount exceeding fifteen thousand rupees shall, at the time of payment thereof, deduct income-tax thereon at the rate of thirty

per cent.

(D) Section 194BB relating to "Winnings from horse race" is recommended to be deleted w.e.f. 1.6.2016 because it has been recommended that these provisions be merged in section 194B

(E) Payments to contractors.

(Newly drafted Section effective from 1.6.2016)

194C. (1) Any person responsible for paying any sum to any resident (hereafter in this section referred to as the contractor) for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and a specified person shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to—

(*i*) one per cent where the payment is being made or credit is being given to an individual or a Hindu undivided family;

(*ii*) two per cent where the payment is being made or credit is being given to a person other than an individual or a Hindu undivided family,

of such sum as income-tax on income comprised therein.

(2) Where any sum referred to in sub-section (1) is credited to any account, whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

(3) Where any sum is paid or credited for carrying out any work mentioned in sub-clause (*e*) of clause (*iv*) of the *Explanation,* tax shall be deducted at source—

(*i*) on the invoice value excluding the value of material, if such value is mentioned separately in the invoice; or

(*ii*) on the whole of the invoice value, if the value of material is not mentioned separately in the invoice.

(4) The person responsible for paying such sums referred to in sub-section (1) shall be liable to deduct income-tax under this section, where such sum or, as the case may be, the aggregate of such sums credited or paid or likely to be credited or paid during the financial year, to the account of, or to the contractor, exceeds one hundred thousand rupees.

(5) No individual or Hindu undivided family shall be liable to deduct income-tax on the sum credited or paid to the account of the contractor

where such sum is credited or paid exclusively for personal purposes of such individual or any member of Hindu undivided family.

(6) No deduction shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of a contractor during the course of business of plying, hiring or leasing goods carriages, where such contractor owns ten or less goods carriages at any time during the previous year and furnishes a declaration to that effect along with his Permanent Account Number, to the person paying or crediting such sum.

(7) The person responsible for paying or crediting any sum to the person referred to in sub-section (6) shall furnish, to the prescribed income-tax authority or the person authorised by it, such particulars, in such form and within such time as may be prescribed.

Explanation.—For the purposes of this section,—

(*i*) "specified person" shall mean,—

(*a*) the Central Government or any State Government; or

(*b*) any local authority; or

(*c*) any corporation established by or under a Central, State or Provincial Act; or

(*d*) any company; or

(*e*) any co-operative society; or

(*f*) any authority, constituted in India by or under any law, engaged either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both; or

(*g*) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India; or

(*h*) any trust; or

(*i*) any university established or incorporated by or under a Central, State or Provincial Act and an institution declared to be a university under section 3 of the University Grants Commission Act, 1956 (3 of 1956); or

(*j*) any Government of a foreign State or a foreign enterprise or any association or body established outside India; or

(*k*) any person, being an individual or a Hindu undivided family or an association of persons or a body of individuals or firm (other than a limited liability partnership), if such person,—

(*A*) does not fall under any of the preceding sub-clauses; and

(*B*) is liable to audit of accounts under clause (*a*) or clause (*b*) of section 44AB[1] during the financial year immediately preceding the financial year in which such sum is credited or paid to the account of the contractor;

(*ii*) "goods carriage" shall have the meaning assigned to it in the *Explanation* to sub-section (7) of section 44AE;

(*iii*) "contract" shall include sub-contract;

(*iv*) "work" shall include—

(*a*) advertising;

(*b*) broadcasting and telecasting including production of programmes for such broadcasting or telecasting;

(*c*) carriage of goods or passengers by any mode of transport other than by railways;

(*d*) catering;

(*e*) manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer,

but does not include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from a person, other than such customer.

(F) Commission or brokerage.

(New section recommended to be effective from 1.6.2016)

194H. Any person, not being an individual or a Hindu undivided family or firm (other than limited liability partnership), who is responsible for paying, to a resident, any income by way of commission (including insurance commission and commission on sale of lottery tickets) or brokerage, shall, at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of:

(*i*) five per cent where the payment is being made or credit is being given to an individual or a Hindu undivided family;

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1 Reference may be made to the appropriate section after amendments.

(*ii*) ten per cent where the payment is being made or credit is being given to a person other than an individual or a Hindu undivided family.

Provided that no deduction shall be made under this section in a case where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year to the account of, or to, the payee, does not exceed fifteen thousand rupees:

Provided further that an individual or a Hindu undivided family or firm (other than limited liability partnership), whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (*a*) or clause (*b*) of section 44AB[1] during the financial year immediately preceding the financial year in which such commission or brokerage is credited or paid, shall be liable to deduct income-tax under this section:

Provided also that no deduction shall be made under this section on any commission or brokerage payable by Bharat Sanchar Nigam Limited or Mahanagar Telephone Nigam Limited to their public call office franchisees.

Explanation.—For the purposes of this section,—

(*i*) "commission or brokerage" includes any payment received or receivable, directly or indirectly, by a person acting on behalf of another person for services rendered (not being professional services) or for any services in the course of buying or selling of goods or in relation to any transaction relating to any asset, valuable article or thing, not being securities;

(*ii*) the expression "professional services" means services rendered by a person in the course of carrying on a legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or such other profession as is notified by the Board for the purposes of section 44AA;

(*iii*) the expression "securities" shall have the meaning assigned to it in clause (*h*) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) ;

(*iv*) where any income is credited to any account, whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be

1 Reference may be made to the appropriate section after amendments.

deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

(v) the expression "insurance commission" means any income by way of remuneration or reward, whether by way of commission or otherwise, for soliciting or procuring insurance business (including business relating to the continuance, renewal or revival of policies of insurance).

(G) Section 194G relating to "Commission, etc., on the sale of lottery tickets" is recommended to be deleted w.e.f. 1.6.2016 because it has been recommended that these provisions be merged in section 194H

(H) Section 194D relating to "Insurance commission" is recommended to be deleted w.e.f. 1.6.2016 because it has been recommended that these provisions be merged in section 194H

(I) Payments in respect of deposits under National Savings Scheme, etc.

Recommended to be amended w.e.f. 1.6.2016

194EE. The person responsible for paying to any person any amount referred to in clause (*a*) of sub-section (2) of section 80CCA shall, at the time of payment thereof, deduct income-tax thereon at the rate of five per cent :

Provided that no deduction shall be made under this section where the amount of such payment or, as the case may be, the aggregate amount of such payments to the payee during the financial year is less than fifteen thousand rupees :

Provided further that nothing contained in this section shall apply to the payment of the said amount to the heirs of the assessee.

(J) Section 194F relating to "Payments on account of repurchase of units by Mutual Fund or Unit Trust of India" is recommended to be deleted w.e.f. 1.6.2016 as it is no longer relevant.

(K) Rent

Recommended to be amended w.e.f. 1.6.2016

194-I. Any person, not being an individual or a Hindu undivided family or a firm (other than a limited liability partnership), who is responsible for paying to a resident any income by way of rent, shall, at the time of credit of such income to the account of the payee or at the time of

payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of—

(*a*) two per cent for the use of any machinery or plant or equipment; and

(*b*) ten per cent for the use of any land or building (including factory building) or land appurtenant to a building (including factory building) or furniture or fittings:

Provided that no deduction shall be made under this section where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year by the aforesaid person to the account of, or to, the payee, does not exceed two hundred and forty thousand rupees :

Provided further that an individual or a Hindu undivided family or a firm (other than a limited liability partnership), whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (*a*) or clause (*b*) of section 44AB[1] during the financial year immediately preceding the financial year in which such income by way of rent is credited or paid, shall be liable to deduct income-tax under this section.

Explanation.—For the purposes of this section,—

(*i*) "rent" means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of (either separately or together) any,—

(*a*) land; or

(*b*) building (including factory building); or

(*c*) land appurtenant to a building (including factory building); or

(*d*) machinery; or

(*e*) plant; or

(*f*) equipment; or

(*g*) furniture; or

(*h*) fittings,

whether or not any or all of the above are owned by the payee;

(*ii*) where any income is credited to any account, whether called "Suspense account" or by any other name, in the books of account

1 Reference may be made to the appropriate section after amendments.

of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

(L) Fees for professional or technical services.

Recommended to be amended w.e.f. 1.6.2016

194J. (1) Any person, not being an individual or a Hindu undivided family or a firm (other than limited liability partnership), who is responsible for paying to a resident any sum by way of—

(*a*) fees for professional services, or

(*b*) fees for technical services, or

(*ba*) any remuneration or fees or commission by whatever name called, other than those on which tax is deductible under section 192, to a director of a company, or

(*c*) royalty, or

(*d*) any sum referred to in clause (*va*) of section 28,

shall, at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to ten per cent of such sum as income-tax on income comprised therein :

Provided that no deduction shall be made under this section—

(*A*) from any sums as aforesaid credited or paid before the 1st day of July, 1995; or

(*B*) where the amount of such sum or, as the case may be, the aggregate of the amounts of such sums credited or paid or likely to be credited or paid during the financial year by the aforesaid person to the account of, or to, the payee, does not exceed fifty thousand rupees:

Provided further that an individual or a Hindu undivided family a firm (other than limited liability partnership) , whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (*a*) or clause (*b*) of section 44AB[1] during the financial year immediately preceding the financial year in which such sum by way of fees for professional services or technical services is credited or paid, shall be liable to deduct income-tax under this section :

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1 Reference may be made to the appropriate section after amendments.

Provided also that no individual or a Hindu undivided family referred to in the second proviso shall be liable to deduct income-tax on the sum by way of fees for professional services in case such sum is credited or paid exclusively for personal purposes of such individual or any member of Hindu undivided family.

Explanation.—For the purposes of this section,—

(*a*) "professional services" means services rendered by a person in the course of carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or advertising or such other profession as is notified by the Board for the purposes of section 44AA or of this section;

(*b*) "fees for technical services" shall have the same meaning as in *Explanation 2* to clause (*vii*) of sub-section (1) of section 9;

(*ba*) "royalty" shall have the same meaning as in *Explanation 2* to clause (*vi*) of sub-section (1) of section 9;

(*c*) where any sum referred to in sub-section (1) is credited to any account, whether called "suspense account" or by any other name, in the books of account of the person liable to pay such sum, such crediting shall be deemed to be credit of such sum to the account of the payee and the provisions of this section shall apply accordingly.

(M) Section 194K relating to "Income in respect of units" is recommended to be deleted w.e.f. 1.6.2016 as it is no longer relevant.

(N) Section 194L relating to "Payment of compensation on acquisition of capital asset" is recommended to be deleted w.e.f. 1.6.2016 as it is no longer relevant.

(O) Payment of compensation on acquisition of certain immovable property.

Recommended to be amended w.e.f. 1.6.2016

194LA. Any person responsible for paying to a resident any sum, being in the nature of compensation or the enhanced compensation or the consideration or the enhanced consideration on account of compulsory acquisition, under any law for the time being in force, of any immovable property (other than agricultural land), shall, at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode,

whichever is earlier, deduct an amount equal to ten per cent of such sum as income-tax thereon:

Provided that no deduction shall be made under this section where the amount of such payment or, as the case may be, the aggregate amount of such payments to a resident during the financial year does not exceed five hundred thousand rupees.

Explanation.—For the purposes of this section,—

(*i*) "agricultural land" means agricultural land in India including land situate in any area referred to in items (*a*) and (*b*) of sub-clause (*iii*) of clause (*14*) of section 2;

(*ii*) "immovable property" means any land (other than agricultural land) or any building or part of a building.

13.1 PROPOSAL FOR CERTAIN AMENDMENTS IN RULES 28, 28AA AND 28AB TO RESOLVE PRACTICAL DIFFICULTIES FACED BY PERSONS GRANTED CERTIFICATES FOR LOWER DEDUCTION UNDER SECTION 197

Section 197 read with Rules 28, 28AA and 28AB prescribe guidelines and procedure for issue of a certificate for TDS at a lower rate in the case of a person, when the Assessing Officer is satisfied that the total income of such person liable to TDS justifies the deduction of income-tax at any lower rate or no deduction of Income tax.

Certain practical difficulties faced by persons who are granted such Certificates have been brought to the notice of the Committee and redressal of the same can go a long way to facilitate ease of business in such cases.

13.2 Considering the same, the Committee recommends suitable amendments in the Rules 28AA and 28AB, to obviate the practical difficulties as explained hereunder:

1. Acceptance of application for issue of Certificate for TDS at lower rate, three months prior to commencement of financial year and prescribing a suitable time limit for issue of the same:

   (a) A common grievance of a large number of assessees, seeking the benefit of issue of Certificate for TDS at lower rate, is that the Department takes a long time for the issue of such certificate, resulting in hardship to the assessees, as their cash flow of business gets locked up in TDS, until such certificate comes to be issued. Since, as per current practice, the

Department entertains applications for issue of Certificate for lower TDS in the prescribed Form 13, only after the beginning of the concerned financial year, by the time the applicant is issued such Certificate, he has already been inflicted with avoidable TDS.

(b) Having considered this important aspect, the Committee recommends that this practical difficulty can be resolved by the following measures:

(i) Start accepting applications from all eligible assessees in the prescribed Form 13 electronically alongwith necessary documents, details and evidence as may be prescribedin terms of a guideline, atleast three months prior to the commencement of the financial year. This would also release a lot of pressure on the TDS authorities as experienced currently, in the beginning of the financial year.

(ii) Prescribe suitable time limit under Rules, as per commitment of the Department under its Citizens' Charter.

(iii) The existing certificate issued by the department for immediately preceding previous year, shall continue to be valid till the issue of a fresh certificate if the assessee has filed the application for issue of a fresh certificate.

2. Need to treat Certificate for TDS at lower rate as valid, in respect of all units of the tax deductor:

(a) When a Certificate for TDS at nil/lower rate u/s.197 is presented by a deductee to a deductor, the benefit of the same should be available to the deductee, qua all units of the deductor and not only a specific unit with a specific TAN.

(b) Punjab & Haryana High Court has held in the case of CIT v/s Parle Biscuits P. Ltd. (2013) (351 ITR 138) that, "Where certificate is issued for deduction of tax at source at lower rate to principal officer of deductor assessee, mere fact that such certificate was issued in respect of one unit, while assessee had separate TANs for separate units, would not invalidate such certificate for another units."

(c) It has been brought to the notice of the Committee that CPC TDS does not consider this position and if a unit of the same deductor with a separate TAN has granted benefit to the deductee based on the Certificate issued u/s. 197, TDS

demand on account of short deduction is raised against the deductor in such cases.

(d) A deductee cannot be expected to obtain separate certificates in the name of the same deductor, qua different TAN units, which may run into a large number. In the interests of ease of doing business, it is desirable that the Certificate u/s.197 issued to a deductee, clearly reflecting the name and PAN of the deductor, should be treated as valid for all units of such deductor, even where TAN are different for such different units.

Some of the members also recommended that the certificate for lower deduction of tax at source being decided on the basis of assessable income (or loss) of the deductee, the department may consider issuing the certificate to the deductee, to be used for all Deductors upto a particular limit specified in the certificate, subject to checks and balances.

14.1 RECOMMENDATION TO AMEND THE PROVISIONS OF RULE 37BA TO OBVIATE THE HARDSHIPS ARISING IN RELATION TO CLAIMING OF CREDIT FOR TAX DEDUCTED U/S. 199

Section 199 read with rule 37BA deal with the provisions in regard to granting credit for tax deducted. However, there are a number of situations, where in actual practice, it becomes extremely difficult or at times, even virtually impossible for the person entitled to claim credit for tax so deducted.

To obviate hardships in three such situations, which have come to be represented before the Committee, it is proposed to amend the relevant provisions of Rule 37BA, as suggested hereinafter:

a) Rule 37BA(2) currently provides that, *"where under any provisions of the Act, the whole or any part of the income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, credit for the whole or any part of the tax deducted at source, as the case may be, shall be given to the other person and not to the deductee."* This is however, subject to the Proviso under this rule which prescribes that, *"the deductee files a declaration with the deductor and the deductor reports the tax deduction in the name of the other person in the information relating to deduction of tax."* In many cases, even where the deductee has filed a declaration, the deductor does not report the tax deduction as requested, as a result of which neither the

deductee, nor the person in whose hands the relevant income is assessable is entitled to claim credit.

b) Section 206AA(1) and (6) provide for tax deduction by the deductor at a higher rate, where PAN has not been furnished or where the PAN provided is invalid. Even where the deductee obtains and reports his correct PAN to the deductor at a later stage, the deductor is not inclined to correct the statement of tax deducted, as a result of which no one gets entitled to claim credit for such TDS, which remains in the Government Treasury in Suspense account.

c) Under Section 200(3), the deductor of tax is required to report the details of tax deduction in the statement prescribed for such purpose. The Proviso under this sub-section also authorizes the deductor to file a correction statement for rectification of any mistake in respect of the information so submitted. However, in many cases because of negligence on part of the deductor resulting in a mistake, on account of which the deductee is unable to seek correct credit or where even after the deductee has requested the deductor to correct the same, he does not do so, there should be a suitable mechanism under which the deductee can claim relief.

The Committee is of the view that is all such situations, the deductee, who is legitimately entitled to claim credit of tax deducted u/s. 199, cannot be left high and dry. With a view to overcome the hardships faced by deductees under the above situations, the Committee recommends that in all such cases, the concerned deductee should be allowed to report the correct information in this regard to a designated authority, in a prescribed form that may be devised by CBDT which can be submitted before the due date of filing of return of income, as applicable in his case under section 139(1). On the basis of such reporting by the deductee, a suitable mechanism for granting credit for tax deducted in all such cases should be worked out by the CBDT.

14.2 In view of the above, the Committee recommends the following amendments to Rule 37BA, which contains relevant provisions for granting credit for tax deducted at source for the purposes of section 199:

Credit for tax deducted at source for the purposes of section 199

37BA. (1) Credit for tax deducted at source and paid to the Central Government in accordance with the provisions of Chapter XVII, shall be given to the person to whom payment has been made or credit has been

given (hereinafter referred to as deductee) on the basis of information relating to deduction of tax furnished by the deductor to the income-tax authority or the person authorised by such authority.

(2) (*i*) Where under any provisions of the Act, the whole or any part of the income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, credit for the whole or any part of the tax deducted at source, as the case may be, shall be given to the other person and not to the deductee:

Provided that the deductee files a declaration with the deductor and the deductor reports the tax deduction in the name of the other person in the information relating to deduction of tax referred to in sub-rule (1).

(*ii*) The forms to be filed by the deductee under clause (*i*) shall contain the name, address, permanent account number of the person to whom credit is to be given, payment or credit in relation to which credit is to be given and reasons for giving credit to such person.

Sub Rules (2A), (2B) and (2C) proposed to be added w.e.f. 1.7.2016

(2A) Where in a case referred to in sub-rule (2) above, the deductor has not reported such information in respect of the tax deduction in the name of such other person, the concerned deductee may report such information relating to deduction of tax referred to in sub-rule (1) in the prescribed form and verified in the prescribed manner to the income tax authority or the person authorised by such authority before the due date of filing of return of income, as applicable in his case under section 139(1).

Provided that upon such reporting by the deductee, the credit for the whole or any part of such tax deducted at source, as the case may be, shall be given to the other person and not to the deductee subject to due verification of his claim.

(2B) Where tax has been deducted at source in the case of a deductee under the provisions of sub-section (1) or sub-section (6) of section 206AA and where the deductor has not reported the permanent account number of the deductee in respect of such tax deducted at source, the concerned deductee may report such information relating to deduction of tax referred to in sub-rule (1) in the prescribed form and verified in the prescribed manner to the income tax authority or the person authorised by such authority before the due date of filing of return of income, as applicable in his case under section 139(1).

Provided that upon such reporting by the deductee, the credit for the whole or any part of such tax deducted at source, as the case may be, shall be given to the deductee subject to due verification of his claim.

(2C) Where tax has been deducted at source in the case of a deductee and where the deductee points out that the deductor has committed any mistake in the reporting of such tax deduction under section 200(3), the concerned deductee may report the correct information in this regard in the prescribed form and verified in the prescribed manner to the income tax authority or the person authorised by such authority before the due date of filing of return of income, as applicable in his case under section 139(1).

Provided that upon such reporting by the deductee, the credit for such tax deducted at source, as the case may be, shall be given to the deductee subject to due verification of his claim.

(3) (*i*) Credit for tax deducted at source and paid to the Central Government, shall be given for the assessment year for which such income is assessable.

(*ii*) Where tax has been deducted at source and paid to the Central Government and the income is assessable over a number of years, credit for tax deducted at source shall be allowed across those years in the same proportion in which the income is assessable to tax.

(4) Credit for tax deducted at source and paid to the account of the Central Government shall be granted on the basis of—

(*i*) the information relating to deduction of tax furnished by the deductor to the income-tax authority or the person authorised by such authority;

(*ii*) the information in the return of income in respect of the claim for the credit; and

(iii) the information as reported by the deductee to the income-tax authority or the person authorised by such authority; in accordance with the provisions of sub-rules (2A) to (2C) of this rule,

subject to verification in accordance with the risk management strategy formulated by the Board from time to time.

15.1 PROPOSAL FOR CERTAIN AMENDMENTS IN RULE 30 AND 31 IN RELATION TO TIME AND MODE OF PAYMENT OF TDS AND FILING OF STATEMENT OF TDS UNDER THE PROVISIONS OF SECTION 200

Section 200(1) read with Rule 30 prescribes guidelines and procedure in relation to the time and mode of payment of tax deducted to the credit of the Central Government.

Similarly, Section 200(3) read with Rule 31A prescribes guidelines and procedure in relation to filing of Statements for such tax deducted at source.

Having considered the provisions in this regard, the Committee recommends that the following relaxations in terms of the time-limits prescribed under these rules should be considered:

(i) Persons required to deduct tax and file a Challan cum Statement in Form 26QB are required to do so within a tight time frame of seven days from the end of the month in which the deduction is made. Since such persons are not familiar with TDS procedures, with a view to grant them sufficient time for compliance, it is proposed that they may be allowed time of thirty days to comply with the necessary formalities, instead of the prevailing time limit of only seven days from the end of the month in which the tax deduction is made.

(ii) In case where the income or amount is credited or paid in the month of March, instead of the current time limit of 30 days until 30th April, it is proposed that an enhanced time limit of 45 days, until 15th May be allowed for payment of tax deducted, for better compliance.

(iii) As per the current provisions, where the deductor is the Government, the time granted for filing Statements of tax deducted is one month from the end of the quarter, however, non-Government deductors are granted only 15 days time for the purpose. The Committee recommends that even non-Government deductors need to be given a similar time of one month, for purposes of better compliance. Moreover, at the end of the year, the prescribed time of one month needs to be increased to one and a half month for all deductors.

15.2 In view of the above, the Committee recommends the following amendments to Rules 30 and 31A:

Time and mode of payment to Government account of tax deducted at source or tax paid under sub-section (1A) of section 192.

Sub-Rules (2), (2A) and (3) of rule 30 to be amended with effect from 1.6.2016

30. (1) All sums deducted in accordance with the provisions of Chapter XVII-B by an office of the Government shall be paid to the credit of the Central Government—

(*a*) on the same day where the tax is paid without production of an income-tax challan; and

(*b*) on or before seven days from the end of the month in which the deduction is made or income-tax is due under sub-section (1A) of section 192, where tax is paid accompanied by an income-tax challan.

(2) All sums deducted in accordance with the provisions of Chapter XVII-B by deductors other than an office of the Government shall be paid to the credit of the Central Government—

(*a*) on or before 15th day of May where the income or amount is credited or paid in the month of March; and

(*b*) in any other case, on or before seven days from the end of the month in which—

(*i*) the deduction is made; or

(*ii*) income-tax is due under sub-section (1A) of section 192.

(2A) Notwithstanding anything contained in sub-rule (1) or sub-rule (2), any sum deducted under section 194-IA shall be paid to the credit of the Central Government within a period of ninety days from the end of the month in which the deduction is made and shall be accompanied by a challan-cum-statement in Form No. 26QB.

(3) Notwithstanding anything contained in sub-rule (2), in special cases, the Assessing Officer may, with the prior approval of the Joint Commissioner, permit quarterly payment of the tax deducted under section 192 or section 194A or section 194D or section 194H for the quarters of the financial year specified to in column (2) of the Table below by the date referred to in column (3) of the said Table:—

TABLE

Sl. No.	*Quarter of the financial year ended on*	*Date for quarterly payment*
(1)	*(2)*	*(3)*
1.	30th June	7th July
2.	30th September	7th October
3.	31st December	7th January
4.	31st March	15th May

Statement of deduction of tax under sub-section (3) of section 200

Sub-Rules (2) proposed to be substituted and Sub-Rule (4A) proposed to be amended with effect from 1.4.2016

31A . (1) Every person responsible for deduction of tax under Chapter XVII-B, shall, in accordance with the provisions of sub-section (3) of section 200, deliver, or cause to be delivered, the following quarterly statements to the Director General of Income-tax (Systems) or the person authorised by the Director General of Income-tax (Systems), namely:—

(*a*) Statement of deduction of tax under section 192 in Form No. 24Q;

(*b*) Statement of deduction of tax under sections 193 to 196D in—

(*i*) Form No. 27Q in respect of the deductee who is a non-resident not being a company or a foreign company or resident but not ordinarily resident; and

(*ii*) Form No. 26Q in respect of all other deductees.

(2) Statements referred to in sub-rule (1) for the quarter of the financial year ending with the date specified in column (2) of the Table below shall be furnished by the due date specified in the corresponding entry in column (3) of the said Table:

TABLE

Sl. No.	*Date of ending of the quarter of the financial year*	*Due date*
(1)	*(2)*	*(3)*
1.	30th June	31st July of the financial year
2.	30th September	31st October of the financial year
3.	31st December	31st January of the financial year
4.	31st March	31st May of the financial year immediately following the financial year in which deduction is made

(3) (i) The statements referred to in sub-rule (1) may be furnished in any of the following manners, namely:—

(a) furnishing the statement in paper form;

(b) furnishing the statement electronically under digital signature in accordance with the procedures, formats and standards specified under sub-rule (5);

(c) furnishing the statement electronically along with the verification of the statement in Form 27A or verified through an electronic process in accordance with the procedures, formats and standards specified under sub-rule (5).

(*ii*) Where,—

(*a*) the deductor is an office of the Government; or

(*b*) the deductor is the principal officer of a company; or

(*c*) the deductor is a person who is required to get his accounts audited under section 44AB[1] in the immediately preceding financial year; or

(*d*) the number of deductee's records in a statement for any quarter of the financial year are twenty or more,

the deductor shall furnish the statement in the manner specified in item (b) or item (c) of clause (i).

1 Reference may be made to the appropriate section after amendments.

(*iii*) Where deductor is a person other than the person referred to in clause (*ii*), the statements referred to in sub-rule (1) may, at his option, be delivered or cause to be delivered in the manner specified in item (b) or item (c) of clause (i).

(3A) A claim for refund, for sum paid to the credit of the Central Government under Chapter XVII-B, shall be furnished by the deductor in Form 26B electronically under digital signature in accordance with the procedures, formats and standards specified under sub-rule (5).

(4) The deductor at the time of preparing statements of tax deducted shall,—

(*i*) quote his tax deduction and collection account number (TAN) in the statement;

(*ii*) quote his permanent account number (PAN) in the statement except in the case where the deductor is an office of the Government;

(*iii*) quote the permanent account number of all deductees;

(*iv*) furnish particulars of the tax paid to the Central Government including book identification number or challan identification number, as the case may be;

(*v*) furnish particulars of amount paid or credited on which tax was not deducted in view of the issue of certificate of no deduction of tax under section 197 by the Assessing Officer of the payee;

(*vi*) furnish particulars of amount paid or credited on which tax was not deducted in view of the compliance of provisions of sub-section (6) of section 194C by the payee;

(*vii*) furnish particulars of amount paid or credited on which tax was not deducted in view of the furnishing of declaration under sub-section (1) or sub-section (1A) or sub-section (1C) of section 197A by the payee;]

(viii) furnish particulars of amount paid or credited on which tax was not deducted in view of the notification issued under sub-section (1F) of section 197A.

(4A) Notwithstanding anything contained in sub-rule (1) or sub-rule (2) or sub-rule (3) or sub-rule (4), every person responsible for deduction of tax under section 194-IA shall furnish to the Director General of Income-tax (System) or the person authorised by the Director General of Income-tax (System) a challan-cum-statement in Form No. 26QB electronically in accordance with the procedures, formats and standards

specified under sub-rule (5) within ninety days from the end of the month in which the deduction is made.

(5) The Director General of Income-tax (Systems) shall specify the procedures, formats and standards for the purposes of furnishing and verification of the statements or claim for refund in Form 26B and shall be responsible for the day-to-day administration in relation to furnishing and verification of the statements or claim for refund in Form 26B in the manner so specified.

(6) Where a statement of tax deducted at source is to be furnished for tax deducted before the 1st day of April, 2010, the provisions of this rule and rule 37A shall apply as they stood immediately before their substitution or omission by the Income-tax (Sixth Amendment) Rules, 2010.

16.1 RECOMMENDATION TO EXEMPT NON-RESIDENTS HAVING TAX IDENTIFICATION NUMBER (TIN) FROM THE APPLICABILITY OF TDS AT A HIGHER RATE UNDER SECTION 206AA

Under the current provisions of Section 206AA, tax is required to be deducted by the deductor at a higher rate as prescribed under the said section, where the deductee does not furnish his Permanent Account Number (PAN). This section was introduced with the objective that the furnishing of PAN was important with a view to trail the taxability of the payments in the hands of a non-resident. As regards non-residents, the Committee noted that in view of the specific provisions of Section 115A and the provisions under the respective Double Tax Avoidance Agreements (DTAAs) prescribing specific rates for tax deduction at source u/s. 195, there was no justification for providing deduction of tax at a higher rate than as prescribed under Section 115A or under the respective DTAA. In fact, this provision has proved to be an impediment in terms of ease of business, as many non-residents prefer not to do business with Indian residents, if obtaining of PAN is insisted from them.

The Committee was of the view that it should suffice if the concerned non-resident furnished to the deductor, in lieu of such Permanent Account Number, his tax identification number in the country or the specified territory of residence and in case there is no such number, then, a unique number on the basis of which the person is identified by the Government of the country or the specified territory of which such person claims to be a resident.

16.2 Accordingly, the Committee recommends to amend the provisions of Section 206AA, by substituting sub-section (7) to the said section as under:

Sub-section (7) to Section 206AA to be substituted with effect from 1.6.2016 as follows:

(7) The provisions of this section shall not apply in respect of the following:

(i) a non-resident, who does not have a Permanent Account Number, furnishes to the deductor, his tax identification number in the country or the specified territory of residence and in case there is no such number, then, a unique number on the basis of which the person is identified by the Government of the country or the specified territory of which such person claims to be a resident.

(ii) payment of interest, on long-term bonds, as referred to in section 194LC, to a non-resident, not being a company, or to a foreign company.

17.1 RECOMMENDATIONS REGARDING RECOVERY OF DISPUTED DEMAND

Under the existing regime for recovery of demand, Assessing Officers insist upon collecting disputed demands even when they are in appeal. The situation is aggravated in years when the revenue collection targets are ambitious. In practice, this is leading to serious hardship to the taxpayer particularly in cases where there is high-pitched assessment. Experience has shown that generally an application under section 220(6) for not treating the assessee as being in default is routinely rejected.

The Committee believes that the procedure for collection of disputed demand needs to be streamlined with a view to balancing the need to meet revenue targets and fair treatment to the taxpayer. Accordingly, the Committee recommends that the taxpayer should be allowed automatic stay of demand on payment of seven and one-half percent of the demand. The stay will remain in operation till the first appellate order is passed. Further, the Committee recognizes that in cases of high-pitched assessment, the payment of seven and one-half percent of the demand could be extremely onerous for the taxpayer. In this background, it is recommended that in such cases, the taxpayer should be given the liberty to approach the Commissioner (Appeals) and request for stay without mandatory payment of seven and one-half percent of the demand.

The Committee also recognises that undue hardship is caused to the taxpayer when penalty is levied and sought to be collected even when the appeal against the quantum addition is pending in the Tribunal. Recognizing this hardship, the Committee recommends that recovery of the demand arising from the levy of penalty after the order of

Commissioner (Appeals) should be stayed till one month after the disposal of the quantum appeal by the Tribunal.

Some of the members were of the view that the statutory authority i.e. the Assessing Officer, being a quasi judicial authority cannot be divested of its power to grant stay of demand. Another view was that automatic stay of demand on payment of 7.5% tax may create incentives for tax evasion.

17.2 Based on the aforesaid recommendation, section 220 of the Income-tax Act, 1961 should be amended as follows:-

Amendment of section 220

In section 220 of the Income-tax Act, for sub-section (6), the following sub-sections shall be substituted with effect from the 1st day of April, 2017, namely:-

"(6) Where an assessee has presented an appeal under section 246A, the Assessing Officer shall treat the assessee as not being in default in respect of the amount in dispute in the appeal, even though the time for payment has expired, as long as such appeal remains undisposed of if the assessee has paid seven and one-half percent of such amount within sixty days from the date of presenting the appeal.

(6A) Where an assessee has presented an appeal under section 246A, the assessee may, notwithstanding anything to the contrary contained in sub-section (6), apply to the Commissioner (Appeals) for stay in any proceedings for recovery of the amount and the Commissioner (Appeals) may, in his discretion and subject to such conditions as he may think fit to impose in the circumstances of the case, direct, within thirty days of receipt of application, the Assessing Officer to treat the assessee as not being in default in respect of the amount in dispute in the appeal, even though the time for payment has expired, as long as such appeal remains undisposed of.

(6B) Where the amount relates to a notice of demand in pursuance of an order under clause (c) of sub-section (1) of section 271 and the assessee is in appeal before the Tribunal in respect of the order of assessment or reassessment in which the proceedings for the levy of the said penalty were initiated, such amount shall not be recovered until one month after the receipt of the appellate order of the Tribunal by the Assessing Officer and the assessee shall not be deemed to be in default during the said period".

18.1 RECOMMENDATION FOR AMENDMENT TO SECTION 234C TO PROVIDE RELIEF WHERE A NEW BUSINESS IS STARTED DURING THE FINANCIAL YEAR

Section 234C provides that no interest for deferment of advance tax shall be levied in cases where the shortfall in payment of tax is on account of under-estimate or failure to estimate capital gains or casual income which has arisen during the year and where the assessee could not have anticipated such income.

However, Section 234C requires to be suitably amended with a view to provide that liability for interest under the said section shall not apply to any case, where a taxpayer declares income from business for the first time after the first or second installment of advance tax is due and where the taxpayer has discharged his liability for payment of advance tax in the installments to follow.

18.2 Accordingly, the committee recommends that the following proviso be inserted in section 234C:

> "Provided further that nothing contained in the sub-section shall apply to any shortfall in the payment of the tax due on the returned income where the assessee is assessed for the first time under the head "Profits and gains of business or profession".

The Committee also recommends that an appropriate column or space be provided in the return of income where the assessee can disclose the information necessary for taking the benefit of the proviso.

19.1 RECOMMENDATION FOR REDUCING THE FEE UNDER SECTION 234E FOR DEFAULT IN FURNISHING STATEMENTS OF TDS AND TCS FROM RS.200/- PER DAY TO RS.100/- PER DAY

The levy of mandatory fee u/s. 234E at the rate of Rs.200/- per day for default in furnishing of Statements of TDS u/s. 200(3) and TCS u/s. 206C(3) has been a matter of debate ever since it came to be introduced with effect from 1.7.2012. While in principle, courts have justified the levy as being constitutional, it is widely believed that this levy is harsh keeping in view the fact that the person committing any default for delayed deduction or payment of tax is already inflicted with penal interest of 12% or 18% per annum. Moreover, in cases of grave default of non-furnishing of such Statements beyond one year, there is also a provision for levy of penalty of Rs.10,000/- to Rs.1,00,000/-.

In fact, prior to the introduction of this mandatory levy, the penalty for similar defaults as provided u/s. 272A(2)(k) was imposable at Rs.100/- per day. In cases of any default by a Government Office, while there is no

provision for levy of fee u/s. 234E, the penalty for similar defaults u/s. 272A(2)(m) is prescribed at Rs.100/- per day. In view of the above, there is a case for reduction of the fee u/s. 234E from Rs.200/- per day to Rs.100/- per day.

19.2 Accordingly, it is recommended that sub-section (1) of Section 234E be amended as follows:

> "234E. (1) Without prejudice to the provisions of the Act, where a person fails to deliver or cause to be delivered a statement within the time prescribed in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C, he shall be liable to pay, by way of fee, a sum of one hundred rupees for every day during which the failure continues."

20.1 RECOMMENDATION FOR PROVIDING FOR GRANT OF TIMELY REFUND WITH INTEREST AND ALSO PROVIDING FOR PAYMENT OF HIGHER INTEREST IN CASE OF DELAYED REFUND UNDER SECTION 244A

(A) Under section 244A of the Income-tax Act, the tax administration is liable to pay interest at the rate of one-half percent per month or part thereof (i.e. 6 percent per annum) on refund of any amount which becomes due to the assessee. The rate of interest paid to the assessee does not fully reflect the opportunity cost of money to the assessee. Further, the low rate of interest creates a perverse incentive for the tax administration to delay the processing of returns under section 143 (1) of the Income-tax Act. The Committee recommends that the tax administration should be held accountable for delay in processing of returns beyond a reasonable period. Accordingly, the Committee recommends that interest on refunds should be payable at the rate of -

(a) one percent per month, or part thereof, if the return is processed under section 143(1) of the Income-tax Act anytime after six months from the end of the month in which the return is filed or the refund is issued anytime after the end of the said six month period;

(b) one and one-half percent per month, or part thereof, if the return is processed under section 143(1) of the Income-tax Act anytime after twelve months from the end of the month in which the return is filed or the refund is issued anytime after the end of the said twelve month period;

This will also prompt the tax administration to put its house in order to expeditiously settle payment mismatches, if any. However, one member

was of the view that a penal interest rate of 18% coming at cost of public exchequer is too high and not justified.

(B) Another major grievance of taxpayers is in relation to not granting of timely refunds in pursuance to orders passed in any appeal or other proceeding under this Act. Even where refund of tax is granted, in many a cases interest due to the assessee is not correctly worked out. As a result, not only does the taxpayer remain deprived of his legitimate refund consequentially due to him, but he also suffers on account of the provision u/s. 244A which grants only simple interest at the rate of 6% per annum. Infact, in such a case it is the revenue which is utilizing the taxpayer's funds without due justification and therefore, the taxpayer ought to be compensated.

With a view to ensure timely actions in this regard by the Assessing Officer, it is recommended to provide through the insertion of Section 244A(1B) that the Assessing Officer shall, without the assessee being required to make any claim in that behalf, refund the amount due to the assessee in all such cases, with interest due thereon under the provisions of section 244A and that such refund shall be granted within three months from the end of the month in which such orders are passed. Further, to enforce accountability on the Assessing Officer, it is also recommended to provide that if such refund due to the assessee is not granted to him within three months from the end of the month in which such order is passed, the assessee shall be entitled to receive additional interest on the such delayed refund at one half per cent per annum, over and above the normal interest of one half per cent per annum due to him u/s. 244A(1).

(C) Under the present provisions of Section 244A, an assessee is entitled to interest on refund arising out of excess payment of advance tax, tax deducted or collected at source and tax or penalty paid in pursuance of a notice u/s. 156. However, there is no provision to grant interest on refund, where the same arises out of any self assessment tax or interest paid by an assessee under any provision of the Act. It is unfair and inequitable that an assessee should be deprived of interest on such refund of tax or interest, more particularly when the moneys representing such refund have been used by the Government until the same are refunded. Further, the grant of refund on self-assessment tax is also justified as the interest payable by the department is now only 6% p.a. which will not be an incentive for the tax payer to intentionally deposit more tax just to earn interest on the excess amount.

20.2 Based on the aforesaid, the following amendments are recommended to section 244A of the Income-tax Act:

Amendment of section 244A

(New Section to be substituted with effect from 1.4.2017)

244A. (1) Where refund of any amount becomes due to the assessee under this Act, he shall, subject to the provisions of this section, be entitled to receive, in addition to the said amount, simple interest thereon calculated in the following manner, namely:—

(a) where the refund is out of any tax paid under section 115WJ or collected at source under section 206C or paid by way of advance tax or treated as paid under section 199, during the financial year immediately preceding the assessment year, such interest shall be calculated at the rate of one-half per cent for every month or part of a month comprised in the period from the 1st day of April of the assessment year to the date on which the refund is granted:

Provided that no interest shall be payable if the amount of refund is less than ten per cent of the tax as determined under sub-section (1) of section 115WE or sub-section (1) of section 143 or on regular assessment;

(b) where the refund is out of any tax or interest paid on self assessment under section 140A or out of any tax or interest or penalty paid in pursuance of a notice of demand under section 156 or by way of any set off refund made under section 245 or on account of tax, interest or penalty paid under any other provision of this Act, such interest shall be calculated at the rate of one-half per cent for every month or part of a month comprised in the period or periods from the date or, as the case may be, dates of payment of the tax or interest or penalty to the date on which the refund is granted.

(1A) The interest on refund payable under sub-section (1) shall, notwithstanding anything to the contrary contained therein, be payable at the rate of –

(a) one percent per month, or part thereof, if-

(i) the return is processed under section 143(1) of the Income-tax Act anytime after six months from the end of the month in which the return is filed; or

(ii) the refund is issued anytime after the end of the said six month period; and

(b) one and one-half percent per month, or part thereof, if-

(i) the return is processed under section 143(1) of the Income-tax Act anytime after twelve months from the end of the month in which the return is filed; or

(ii) the refund is issued anytime after the end of the said twelve month period.'.

(1B) Where a refund is due to the assessee in pursuance of an order referred to in section 240 and the Assessing Officer does not grant the refund within a period of three months from the end of the month in which such order is passed, the assessee shall be entitled to receive in addition to the amount of refund and regular interest due thereon under the provisions of sub-section (1), additional interest at the rate of one half per cent per month on the amount of refund due from the date immediately following the expiry of the period of three months aforesaid to the date on which the refund is granted.

(2) If the proceedings resulting in the refund are delayed for reasons attributable to the assessee, whether wholly or in part, the period of the delay so attributable to him shall be excluded from the period for which interest is payable, and where any question arises as to the period to be excluded, it shall be decided by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner whose decision thereon shall be final.

(3) Where, as a result of an order under sub-section (3) of section 115WE or section 115WF or section 115WG or sub-section (3) of section 143 or section 144 or section 147 or section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264 or an order of the Settlement Commission under sub-section (4) of section 245D, the amount on which interest was payable under sub-section (1) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly.

(4) In a case referred to in (3) above, where the interest is reduced, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the amount of the excess interest paid and requiring him to pay such amount and

such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall apply accordingly.

(5) In a case referred to in (3) above, where the interest is increased, the Assessing Officer shall inform the assessee by a communication specifying the amount of the interest due to him and shall refund such amount to the assessee without the assessee being required to make a claim in this regard.

21.1 RECOMMENDATION FOR AMENDMENT OF SECTION 245 TO RATIONALIZE THE PROVISIONS IN REGARD TO SET OFF OF REFUNDS DUE TO AN ASSESSEE

Adjustment of Refunds due to assessees against erroneous demands shown outstanding in their cases causes great heartburning. Even where the assessee lodges his objection on the CPC Portal pointing out that the demand sought to be adjusted against the refund was not outstanding and therefore is being erroneously adjusted, there is no remedy by which the CPC can take note of the same.

In view of the above, Section 245 is proposed to be suitably amended so as to provide that no set off of refund under this section shall be made by any income-tax authority without giving intimation in writing to such person of the action proposed to be taken under this section and without dealing with the objections if any, filed by such person in response to such intimation served on him.

Moreover, it is settled by several judicial pronouncements that where any demand outstanding against the assessee relates to a point, which stands squarely covered by a decision in favour of the assessee, such demand cannot be adjusted against any refund due to the assessee. Courts have logically explained in this regard that the assessee in such a case would have been undisputedly entitled to stay on recovery of such demand and merely because the Department is in possession of the assessee’s funds due to him as his legitimate refund, the same cannot be adjusted against such a demand.

The revenue cannot defend such erroneous adjustments merely on the ground that the system does not provide for any such mechanism. Suitable systems shall be required to be put in place to provide remedy keeping in mind that the assessee's money are being adjusted without the authority of law.

21.2 To give due effect to this settled interpretation of Section 245 and avoid any litigation on this aspect, Section 245 is recommended to be amended as follows with effect from 1.4.2017:

Set off of refunds against tax remaining payable

245. (1) Where under any of the provisions of this Act, a refund is found to be due to any person, the Assessing Officer, Deputy Commissioner (Appeals), Commissioner (Appeals) or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be, may, in lieu of payment of the refund, set off the amount to be refunded or any part of that amount, against the sum, if any, remaining payable under this Act by the person to whom the refund is due.

Provided that no set off of any refund due to the person shall be made against any demand remaining payable under this Act, where in respect of such demand the relevant issue is covered in favour of the person by a judicial decision rendered in his own case by the Commissioner (Appeals) or Income-tax Appellate Tribunal or High Court or the Supreme Court.

(2) No set off of refund under this section shall be made by any income-tax authority without giving intimation in writing to such person of the action proposed to be taken under this section and without dealing with the objections if any, filed by such person in response to such intimation served on him.

22.1 RECOMMENDATION FOR AMENDMENT TO SECTION 254(2) TO PROVIDE A SHORTER TIME FOR RECTIFICATION OF MISTAKE BY THE TRIBUNAL

The existing provisions of Section 254(2) provide for a time-limit of four years from the date of the order of the Appellate Tribunal for rectification of mistakes apparent from the record. In practice this long time-limit has given rise to difficulties arising on account of non-availability of the Members who passed the order due to transfer or retirement or otherwise. Moreover any mistake in the order should not be allowed to remain for such a long period. Section 245D(6B) relating to rectification of mistake by the Settlement Commission also prescribed the period of six months for the rectification. Section 35C(2) of the Central Excise Act, 1944 which gives similar power to the CESTAT to rectify its orders was amended by the Finance Act, 2002 with effect from 11-5-2002

to reduce the time-limit for rectification from four years to six months. This is in tune with the time-limit of one hundred and eighty days provided in Section 35G of the Central Excise Act for filing an appeal to the High Court from the order of the CESTAT. Section 260A(2)(a) of the Income Tax Act, 1961 however provides for a time-limit of one hundred and twenty days for filing an appeal to the High Court from the order of the Appellate Tribunal on a substantial question of law. The Committee recommends that the time-limit for rectification of the order of the Appellate Tribunal under Section 254(2) of the Income Tax Act, 1961 should be reduced similarly to 120 days from the date of the order sought to be rectified.

22.2 Accordingly, the Committee recommends that the first part of the existing Section 254(2) of the Income Tax Act, 1961 be amended to read as under:

> "The Appellate Tribunal may, at any time within one hundred and twenty days from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1), and shall make such amendment if the mistake is brought to its notice by the assessee or the Assessing Officer:"
>
> No change is being recommended to the Proviso to the sub-section.

23.1 RECOMMENDATION FOR AMENDMENT OF SECTION 255(3) TO WIDEN THE SCOPE OF DISPOSAL OF APPEALS BY THE SINGLE MEMBER BENCHES OF THE INCOME TAX APPELLATE TRIBUNAL

The existing provisions of Section 255(3) provide that a Single Member Bench of the Appellate Tribunal can dispose of Appeals in cases where the assessed income of the assessee does not exceed Rs.15 lakhs. On account of this limit, which is small in the view of the Committee, cases where the total income assessed is more than the above figure, cannot be heard by SMC Benches. The Committee recommends that in the interest of speedy disposal of appeals the limit can be enhanced to rupees one crore where the tax effect involved would be around Rs.30 lakhs. This will also help disposal of appeals in places where there is only one Bench functioning.

23.2 It is therefore recommended that Section 255(3) be amended as follows:

> "(3) The President or any other member of the Appellate Tribunal authorized in this behalf by the Central Government may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member and which pertains to an assessee in whose

case the total income assessed by the Assessing Officer does not exceed rupees one crore, and the President may, for the disposal of any particular case, constitute a Special Bench consisting of three or more members, one of whom shall necessarily be a judicial member and one an accountant member."

24.1 RECOMMENDATION FOR AVOIDING REVISION OF ASSSESSMENT ON ACCOUNT OF AUDIT OBJECTIONS

Based on the discussion is para 10.1 above, it is recommended that section 263 of the Income-tax Act, 1961 should be amended as follows:-

Amendment of section 263

In section 263 of the Income-tax Act, in sub-section (1), the *Explanation* shall be renumbered as *Explanation 1* thereof and after *Explanation 1* as so numbered , the following *Explanation* shall be inserted with effect from the 1st day of April, 2017, namely:-

"*Explanation 2*. – For the removal of doubts, it is hereby declared that for the purposes of this section, it shall be deemed that the order passed by the Assessing Officer is not erroneous in so far as it is prejudicial to the interests of the revenue merely on the ground that an objection has been raised, or observation made, by any authority, on a point of law, in the course of any audit of any assessment or re-assessment, to the effect that the assessment (has not been made in accordance with the provisions of this Act) or re-assessment made was erroneous in so far as it is prejudicial to the interests of the revenue".

25.1 RECOMMENDATIONS FOR PRESCRIBING TIME LIMIT OF ONE YEAR FOR DISPOSAL OF PETITIONS FOR WAIVER OF PENALTY AND INTEREST UNDER SECTIONS 273A, 273AA AND 220(2A)

Whereas, a time limit of 1 year for disposal of a tax payer's Revision Petition u/s. 264 has been prescribed, there is no such time limit for disposal of Petitions for Waiver of Penalty u/s. 273A and 273AA and Waiver of Interest u/s. 220, 234A/B/C. As a result, Petitions of tax payers on these points remain unattended to for long.

It is highly desirable that a similar time limit of 1 year from the end of the financial year in which the petition is filed should be prescribed in all such cases. For the purpose it is proposed that Sections 273A, 273AA and 220(2A) may be suitably amended and CBDT may issue suitable directions under Section 119(2)(a) providing for such time limit for disposal of petitions for waiver of interest under Sections 234A, 234B and 234C.

25.2 Accordingly, sub-section (4) is recommended to be inserted to Section 273A with effect from 1.6.2016 as follows:

"(4) Where any person has filed an application for waiver of penalty under this section, the order thereon, either accepting or rejecting the plea for waiver of penalty, in full or in part, shall be passed by the concerned Principal Commissioner or Commissioner within a period of twelve months from the end of the month in which such application is filed.

Provided that no order rejecting the plea for waiver of penalty either fully or partly under this section shall be passed by the Principal Commissioner or Commissioner, without granting the person who has filed such an application, an opportunity of being heard."

Similarly, sub-section (4) is recommended to be inserted to Section 273AA with effect from 1.6.2016 as follows:

"(4) Where any person has filed an application for waiver of penalty under this section, the order thereon, either accepting or rejecting the plea for waiver of penalty, in full or in part, shall be passed by the concerned Principal Commissioner or Commissioner within a period of twelve months from the end of the month in which such application is filed.

Provided that no order rejecting the plea for waiver of penalty either fully or partly under this section shall be passed by the Principal Commissioner or Commissioner, without granting the person who has filed such an application, an opportunity of being heard."

The Committee also recommends that following 2 provisos may be added below sub-section (2A) of Section 220 with effect from 1.4.2017:

"Provided that the order thereon, either accepting or rejecting the plea for waiver of interest either fully or partly shall be passed by the concerned Principal Commissioner or Commissioner within a period of twelve months from the end of the month in which such application is filed.

Provided further that no order rejecting the plea for waiver of interest under this Section, either fully or partly, shall be passed by the Principal Commissioner or Commissioner without granting the person who has filed such an application an opportunity of being heard."

26.1 RECOMMENDATION FOR AMENDMENT TO SECTION 273B REGARDING CIRCUMSTANCES FOR NON-LEVY OF PENALTY

The almost automatic initiation and consequent levy of penalty by Assessing Officers for additions or disallowances made under scrutiny assessment has given rise to proliferation of litigation. Quite often penalty is imposed for concealment of income under Section 271(1)(c) of the Income Tax Act to forestall any audit objection or departmental action.

In CIT Vs. Reliance Petro Products 322 ITR 158, the Supreme Court stated: "*If we accept the contention of the revenue then in case of every return where the claim made is not accepted by the Assessing Officer for any reason, the assessee will invite penalty under Section 271(1)(c). That is clearly not the intendment of the legislature*".

In respect of penalties under Section 271 to Section 272BBB (other than provisions relating to penalty under Section 271AAA and 271AB for cases where search has been initiated) several situations arise where an assessee, despite acting bona fide by relying on an interpretation of law which is supported by a ruling of a Bench of the Tribunal or of any High Court or of the Supreme Court, invites penalty.

These penalties have not only inflicted hardship upon the tax payers despite their claim being bona fide or for the reason that their view point on a question of law or interpretation of the provisions of the statute was not accepted by the Assessing Officer, but have also given rise to wasteful litigation where the penalties have mostly been cancelled by the appellate authorities.

In the larger interests of the assessees and the Income Tax Department, the Committee recommends that the scope of Section 273B should be suitably enlarged to provide that penalty for concealment of income or furnishing inaccurate particulars thereof will not be imposed where any addition or disallowance is made without any evidence or in a routine manner or on estimate and in cases where the Assessing Officer takes a view which is different from the bona fide view adopted by the assessee on any issue involving the interpretation of any provision of the Income Tax Act or any other law in force and which is supported by any judicial ruling.

The Committee believes that the amendments recommended will cut wasteful litigation and also infuse a sense of responsibility and accountability both upon the tax payer and the revenue.

26.2 Accordingly, the Committee recommends that the existing section 273B be substituted by the following section effective from 1.4.2017:

"273B. (1) Notwithstanding anything contained in the provisions of clause (b) of sub-section (1) of section 271, section 271A, section 271AA, section 271AAA, section 271B, section 271BA, section 271BB, section 271C, section 271CA, section 271D, section 271E, section 271F, section 271FA, section 271FAA, section 271FAB, section 271FB, section 271G, section 271GA, section 271H, section 271-I, clause (c) or clause (d) of sub-section (1) or sub-section (2) of section 272A, section 272AA or section 272B or section 272BB or section 272BBB, no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause for the said failure or if he shows that in respect of the alleged default, he has acted *bona fide* relying on an interpretation of any provision of this Act or any other law for the time being in force or which is supported by any ruling of any Tribunal or High Court or the Supreme Court.

(2) Where during the course of any assessment proceedings under this Act, any addition or disallowance is made by an Assessing Officer based on any assumptions, without evidence or is made merely on estimate or as a result of a view taken by the Assessing Officer, which is different from the *bona fide* view taken by the assessee on an issue involving the interpretation of any provision of this Act or any other law for the time being in force or which is supported by any ruling of any Tribunal or High Court or the Supreme Court, then notwithstanding anything contained under clause (c) or clause (d) of sub-section (1) of section 271 or any Explanation under the said section, no penalty shall be imposable on the assessee in respect of such addition or disallowance.

27.1 RECOMMENDATION FOR AMENDMENT IN SECTION 281B TO PROVIDE RELEASE OF ATTACHED PROPERTY ON SUBMISSION OF BANK GUARANTEE

Under Section 281B, AO has the power to provisionally attach the assets, with the approval of the CIT/CCIT. Such attachment is supposed to be temporary, with a limit of 6 months, extendable to a maximum of 24 months. However, in view of the fact that in many such cases, the proceedings itself get stayed as a result of applications made by the taxpayer, the time limit has been amended by the Finance Act 2014 till 60 days after assessment. In many cases, taxpayer challenges the

validity of proceedings itself by a Writ, wherein proceedings for assessment may be stayed, or opts for an advanced ruling before the Authority of Advanced Ruling (AAR) and obtains a stay on assessment till the AAR decision, which can further prolong the duration of the attachment under this section.

In many cases, assets are attached because of a proposal on the part of the non-resident taxpayer to alienate the assets. In such cases, attachment can become the central issue of dispute, in some cases, becoming even more important than the taxability of its income in India. As the attachment of its property can obstruct its business reorganization plans, it can become the primary source of its grievance with the Indian tax authorities.

One possible way of protecting the revenue interest of India, while allowing the taxpayers to continue with their business plans could be in substituting the attachment of property with financial security (such as Bank Guarantee). At present, there is no clarity on the powers and obligations of the Assessing Officer for accepting a request for substituting the attachment of assets with a Bank Guarantee of the same value. In some cases, taxpayers may not be clear about this option, in other cases the Assessing Officer may not be willing to accept such a request. There can also be cases where the Assessing Officer may want a financial security in respect of the whole anticipated tax demand, instead of the value of the asset attached, for which the taxpayer may not agree. Lack of clarity on such obligations is likely to be a major hindrance in resolution of such matters, affecting ease of doing business. It is also necessary to ensure that the value of the asset attached is commensurate with the anticipated demand and not in far excess of it.

International experience in Mutual Agreement Procedure (MAP) under tax treaties suggests that taxpayers are usually not averse to providing a Bank Guarantee in respect of disputed tax demand. However, in respect of section 281B attachment, another major factor that may deter taxpayers from coming forward with a financial security, is the possibility of recovery from it immediately after the assessment, even if the taxpayer prefers to appeal against the tax demand.

After taking into account these various factors, the Committee recommends that such grievances and hardships on part of the taxpayers can be avoided by providing a statutory option to the taxpayer to submit a Bank guarantee for the value of the assets attached u/s 281B or a lower amount covering the tax demand anticipated by the Assessing Officer, and seek relief from attachment of its assets. The Committee also

recommends that prohibiting recovery from such Bank Guarantee till the time for filing an appeal against the Assessment order has expired, or in case where such an appeal is filed, till the time that appeal is disposed, would be a necessary assurance for the taxpayer for exercising this option, and facilitate resolution of disputes related to attachment of property u/s 281B without impacting taxpayer's business plans.

There could be a need to clarify the conditions or format of the Bank Guarantee, including the Banks from which such Guarantee would be acceptable and the time for which such Bank Guarantee needs to be furnished. Taking into account that the Bank Guarantee would be only for a limited period, and the appellate proceedings may not be disposed during that period, the option of encashing a bank guarantee that is due to expire shortly, say 15 days, would need to be provided to the Assessing Officer. This would also shift the onus on the taxpayer to extend the validity of the Bank Guarantee before the trigger of recovery sets in.

The Committee also recommends that a sub-section may be inserted in Section 281B to provide for the display of the attachment in the portals of the website of the Department of Revenue, Govt. of India, or in such other website as may be notified by the Govt. of India. This is with the view to providing information to those who are dealing with the particular assessee in whose case the attachment is made. The Committee has taken note that even as per the existing regulations, such information as is relevant to the credit rating of any individual or other entity is required to be put up in certain websites.

Rules may also be required for vesting the power of valuation of asset in a Valuation Officer or authorized valuer, and providing other details of the manner in which the value of the property attached should be determined.

27.2 Accordingly, the Committee recommends that the following sub-sections be inserted in section 281B:

> "(3) Where, an assessee referred to in sub-section (1) furnishes a Guarantee from a scheduled Bank, as prescribed, for an amount equal to the value of the property attached under sub-section (1), the Assessing Officer shall release such property by order in writing, within 15 days of receipt of such guarantee.
>
> Provided that where the Assessing Officer is satisfied that a Guarantee from a scheduled Bank for an amount less than the value

of the property would protect the interest of the revenue, he may accept it under this sub-section.

Explanation - For the purpose of this sub-section, the value of the property would be determined in the manner as prescribed.

(4) Where, a notice of demand specifying a sum payable is served upon the assessee in consequence of an order in the proceeding referred in sub-section (1) or any other proceeding, and the assessee fails to pay that sum within the time specified in the notice of demand or sixty days after such notice is served, whichever is later, the Assessing Officer may invoke the Guarantee referred in sub-section (3) to recover such amount.

Provided that where the assessee has filed an appeal against the order under section 246 or clause (d) of sub-section (1) of section 253 of this Act, the sum payable by the assessee shall not be recovered by invoking the Guarantee referred in sub-section (3) during the pendency of such appeal.

(5) Notwithstanding anything in the Proviso to sub-section (4), the Assessing Officer shall, if it is necessary to do so to protect the interest of the revenue, invoke the Bank Guarantee, if the assessee fails to renew the Guarantee referred in sub-section (3) or furnish a fresh Guarantee from a scheduled Bank for an equal amount, one month before the expiry of the Guarantee referred in sub-section (3).

(6) Where the Assessing Officer is satisfied that the Guarantee referred in sub-section (3) is not required anymore to protect the interests of revenue, he shall release that Guarantee forthwith.

(7) Every order of provisional attachment and any extension thereof shall be displayed in the website of the Department of Revenue, Government of India, or in such other website as may be notified by the Government of India.

Explanation - For the purpose of this section, 'scheduled Bank' means a Bank included in the Second Schedule of the Reserve Bank of India Act, 1934.”

PART 2

RECOMMENDATIONS FOR REFORMS THROUGH ADMINISTRATIVE INSTRUCTIONS

1. IMPLEMENTATION OF IND-AS AND THEIR IMPACT ON TAXABLE INCOME

IND-AS (Indian version of IFRS) accounting standards are being implemented with effect from previous year commencing on 1st April, 2015 based on fair value, permitting recognition of unrealised income and anticipated unrealised losses and various other implications on book profit, turnover as well as income levels.

These provisions may substantially change assets, liabilities, turnover, provisions, income recognition, notional gains and notional losses impacting book profit as well as income figures. It is therefore proposed that till such time the taxation department as well as assessee are able to understand the real impact on taxable income and book profit, the present status quo need to be maintained. Implementation without deeper study of the impact may give rise to avoidable litigation.

2. TAX DEDUCTION AT SOURCE-SIMPLIFICATION

This is another very important area, where procedural provisions impact a substantial number of assessees. There is scope for improvement in the system to take care of the following situations often encountered by the tax payers:

a. Any errors made while depositing the TDS should be allowed to be rectified by Deductor.
b. Tax Deductor to inform the Deductee about deduction by SMS or email.
c. Merger or demerger or restructuring: The TDS to be transferred to resulting company in terms of Scheme approved by High Court. Form 26AS, OLTAS, ITD data to amend on electronic amendment application by centralized software system.
d. TDS return filing and rectification software to be directly accessed by assessee, similar to Income Tax Return. No need for TIN centers.
e. TDS returns are processed quarterly. Any extra TDS paid by mistake should be permitted to be requested electronically for refund. Request should be processed electronically in a time bound manner.

f. Rectification of TDS returns to be permitted without any restriction, to facilitate Deductee to get credit. No prosecution should be launched where tax being deposited late is so done alongwith interest and where the same has been paid voluntarily within 12 months from the date of deduction.

g. The deductor should include full details of deductee including name and address as well as details of payment in the TDS return in respect of any deductee who has not submitted PAN details and consequently where tax was deducted @ 20%. Where deductor is not able to rectify the TDS return, the deductee should be permitted to obtain PAN at any time and take credit for TDS, if he files his income tax return and an electronic application is made for rectification of TDS.

h. While data is being punched in the return of TDS, software should be competent to have an electronic pop up of name of the Deductee as soon as any PAN number is punched in the TDS return. This will reduce chances of mistakes.

i. Electronic request with proof of payment of tax or 26AS credit to be processed within 15 days. Solutions/queries can be emailed and processed with no human interface. In case there is no response, the help desk shall render assistance in this regard.

j. Where there are small tax demands (less than rupees five thousand in each case) which are outstanding for more than 5 year old and the department is not able to trace the proper records, the Government may consider writing off the demand. This will eliminate the outstanding arrears in about 1.5 crore cases. In other cases also where sufficient record is not available with the department there should be a mechanism for writing off of the demands.

k. In case where the income or amount is credited or paid in the month of March, instead of the current time limit of 30 days until 30th April, it has been proposed that an enhanced time limit of 45 days, until 15th May be allowed for payment of tax deducted, for better compliance. It is further recommended that in such cases if the tax, along with interest is paid by 30th June of the relevant assessment year, no penalty proceedings should be initiated. This will help correction of mistakes of assessee found during audit or finalization of accounts.

l. In all cases of non payment of tax deducted at source to the government for a period of 12 months from deduction, prosecution should be initiated to protect deductee's interest, unless the full TDS amount along with interest is paid by the deductor before the initiation of prosecution. Penalty proceedings are in any case required to be initiated in such cases.

3. TRANSPARENCY IN TAX ADMINISTRATION – E- GOVERNANCE

The Committee agreed in principle that the Government should aim to complete most of the taxation processes electronically so as to eliminate human interface. E-Governance may be considered for implementation in the following fields also:

a. Filing of Income tax returns
b. Rectification of mistakes
c. Appeal
d. Refund
e. Transfer of Jurisdiction
f. Assessment including scrutiny assessment
g. Processing of Returns, TDS Returns, request/applications under various sections and rectifications
h. Appeals

The Committee also agreed in principle that all communications to and from tax department should be undertaken electronically. There should be a system for monitoring online submission of replies to queries and it should be under the guidance of senior officers.

The Committee also recommends that electronic technology is needed to be put in place for:

a. Selection of cases for scrutiny
b. Issue of notices for scrutiny assessments
c. Preparation of questionnaire for scrutiny assessments
d. Submission of reply by the assesses
e. Seeking of additional information/clarification by the Assessing Officer
f. Response on additional information and supporting details
g. Issue of show cause notice in respect of proposed additions/ disallowance by the Assessing Officer
h. Final submission and issue of assessment orders

4. SYSTEM ISSUES

The IT software needs to be strengthened to ensure that the following issues are resolved:

a. Tax Deducted at Source reflected in 26AS not reflected in OLTAS
b. TDS reflected in 26AS and OLTAS are not reflected in Income Tax Department System (ITD).
c. Even self-assessment tax and advance tax challans, are at times, not reflected in ITD and OLTAS for many years.

5. ISSUE OF PAN TO NON RESIDENTS

Currently, the Government of India is accepting self attested documents for several purposes and does not insist on getting the same attested by prescribed authorities.

However, non-residents are facing practical difficulties on account of the current requirement of getting the documents attested by consular authorities. In many cases the Indian Embassies may be located far away from their place of residence. To remove this difficulty it is recommended that documents for issuance of PAN may be allowed to be self attested or notarized.

6. ADJUSTMENT OF REFUNDS

It is settled by several judicial pronouncements that where any demand outstanding against the assessee relates to a point, which stands squarely covered by a decision in favour of the assessee, such demand cannot be adjusted against any refund due to the assessee. Courts have logically explained in this regard that the assessee in such a case would have been undisputedly entitled to stay on recovery of such demand and merely because the Department is in possession of the assessee’s funds due to him as his legitimate refund, the same cannot be adjusted against such a demand.

The revenue cannot defend such erroneous adjustments merely on the ground that the system does not provide for any such mechanism. Suitable system shall be required to be put in place to provide remedy keeping in mind that the assessee's money is being adjusted without the authority of law.

7. INSTRUCTIONS TO ENSURE FAIRNESS IN THE APPLICATION OF SECTION 14A

(A) The Committee recommends that suitable instructions may be administratively issued by the CBDT to the Assessing Officers that they should adequately record their satisfaction or otherwise in the assessment order while invoking the section.

(B) The Committee is aware that in some cases disallowance of interest is made on the ground that the borrowings are made in relation to exempt income even where the assessee on the basis of the books of account and other records is able to demonstrate that the borrowings were not used to make investments earning tax-free income. This situation can be taken care of by the CBDT by issuing suitable instructions to the Assessing Officers.

8. AMENDMENT OF RETURN FORM TO PROVIDE COLUMN FOR MAKING DISCLOSURES

The existing return forms do not have any column enabling the assessee to disclose his view point regarding certain claims for deductions, exemption, etc. Non disclosure of bona fide views may result in imposition of penalty. The committee has received suggestions that adequate space should be provided in the return form to enable the assessee to submit his view point and justification of his claim. It is there recommended that the return forms be suitably amended. This will also be necessary to meet the requirement of declaration of the bona fide view of the assessee in order to avoid penalty as recommended by the Committee in the proposed section 273B(2).

Justice R.V. Easwar

Former Judge, Delhi High Court and
Former President, ITAT

Chairman

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