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**Significant Highlights of Draft Recommendations of Income Tax Simplification Committee**



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## Background

On 27 October, 2015, the Government of India had constituted a 10-member Committee under the Chairmanship of Justice R.V Easwar, former Judge of the Delhi High Court with a view to simplify the provisions of the Income Tax Act, 1961.

The Committee has given their draft recommendations which contain 27 suggestions for amendments under the Income-tax Act and 8 recommendations for reform through administrative instructions.

**Some of the significant recommendations are highlighted hereunder:**

## Recommendations to Check or Curb Litigation/Facilitate Speedier Disposal

### 1 Provide clarity regarding taxability of surplus on sale of shares & securities -capital gains or business income

Amendments in section 2(14) should be made to provide that in cases where shares are shown as capital assets and held for 1 year or less, the Assessing Officer will not re-characterize the surplus on sale as business income, provided the surplus in a year is Rs.5 lacs or less; in case they are held for a period more than 1 year, and shown as capital assets (and not as stock-in-trade), surplus to be taxed as long-term capital gains.

### 2 Simplify Section 14A (disallowance of expenditure incurred in relation to income not includible in total income)

The Committee notes that around 15% of the tax litigation is on account of section 14A disallowance. Thus, to reduce the litigation, amendments should be made in Section 14A to provide that:

i. Income which has suffered 'Economic Taxation' (such as, Dividend received after suffering Dividend Distribution Tax and Share of Profit from a Partnership Firm suffering tax in the firm's hands) will not be treated as exempt income in the hands of the assessee and no expenditure will be disallowed as relatable to them;
ii. Expenditure disallowed shall not exceed the amount claimed.
iii. Executive instructions should be issued to provide that no interest be disallowed if source of investment is directly relatable to taxable income.

### 3 Rationalization of section 50C to provide relief where sale consideration fixed under agreement to sell

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 similar provision inserted by way of section 43CA (dealing with land or building or both, held as other than capital asset) does take care of such a situation.

Amendments to Section 50C should be made to bring it in line with Section 43CA i.e. where the date of the agreement fixing the value of consideration for the transfer of the immovable property and the date of registration are not the same, the stamp duty value may be taken as on the date of the agreement, instead of that on the date of registration. This exception shall, however, apply only in a case where the amount of consideration, or a part thereof, has been paid by any mode other than cash on or before the date of the agreement for the transfer of such asset.

### 4 Eliminate taxation in the hands of the buyer where the immovable property has been received for inadequate consideration-section 56(2)(vii)(b)(ii)

Currently, the provisions of section 56(2)(vii)(b)(ii) provide that where any immovable property is received for a consideration by an individual or an HUF, which is less than the stamp duty value of the property by an amount exceeding Rs. 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.

### 5 No re-opening or revision of assessments under sections 147 and 263 respectively merely on the basis of audit objections

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 reopening of assessment or review 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 has been held to be invalid by Courts (including Supreme Court).

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In view of the above, it is recommended that where the correction of the audit objections requires 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.

### 6 Amendment to Section 255(3) to enhance the monetary limit for SMC cases before the Tribunal to Rs.1 crore from the present Rs.15 lakhs.

The current 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 Rs. 1 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.

### 7 Amendment to Section 254(2) to reduce the time-limit for rectification of orders of the Tribunal from the present 4 years to 120 days

The current provisions of Section 254(2) provide for a time-limit of 4 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.

Therefore, it is recommended 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 to 120 days from the date of the order sought to be rectified.

### 8 Recommendation regarding non-levy of penalty for concealment under section 271(1)(c)

The Committee observes that there has been almost automatic initiation and consequent levy of penalty by Assessing Officers for additions or disallowances made under scrutiny assessment, giving rise to proliferation of litigation.

Therefore, it is recommended that no penalty for concealment should be levied

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.

### 9 Avoid undesirable delay in issue of refunds- Deletion of section 143(1D)

The Committee notes that the provisions of Section 143(1D) 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. 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, the Committee is of the view that 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. It is, therefore, recommended that Section 143(1D) should be deleted with effect from 1-7-2016.

### 10 Making of fresh claim during assessment proceedings

The judicial interpretation in Goetze (India) Ltd. Vs. CIT (SC) 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, has resulted in some practical difficulties. 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.

### 11 Stay of disputed demand under certain circumstances

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.

Therefore, the Committee recommends that the taxpayer should be allowed automatic stay of demand on payment of 7.5% 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 7.5% 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 7.50% of the demand.

## Recommendations to Promote Ease of Doing Business and Simplify Procedures

### 12 Deferment of ICDS

As the taxpayers are already grappling with regulatory changes of the Companies Act, 2013, Ind-AS and the proposed GST, the Committee is of the view that Industry should be allowed more time to deal with another change in the form of ICDS and thus, the implementation of the ICDS be deferred.

### 13 Proposal to raise threshold limits for tax deduction at source and rationalize certain rates for deduction of tax

The committee observes that a number of annual threshold limits in respect of TDS have not been revised over the years. The Committee has also felt the dire need for rationalization of TDS rates.

It is therefore, recommendation for enhancement and rationalization of the threshold limits and reduction of the rates of TDS is made. Further, having regarding to the fact that more than 80% of the taxpayers fall 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 individuals & HUFs to be reduced to 5% as against the present 10%.

### 14 Proposal to resolve practical difficulties faced by persons granted certificates for lower deduction under section 197

At present, certain practical difficulties faced by persons who are granted certificates under section 197. To obviate the difficulties, the Committee recommends that: (i) Acceptance of application for issue of Certificate for TDS at lower rate, 3 months prior to commencement of financial year and prescribing a suitable time limit for issue of the same (ii) 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.

## 15 Recommendation to exempt Non-Residents having tax identification number (TIN) from the applicability of TDS at a higher rate under section 206AA

The Committee is 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 of residence. As such, it proposes that the provisions of section 206AA be amended to exclude from the requirement of PAN, in cases where the non-resident furnishes the Tax Identification Number (TIN) of his country of residence or where there is no TIN, 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 non-resident person claims to be a resident.

## 16 Proposal to obviate the hardships arising in relation to claiming of credit for tax deducted u/s. 199

The Committee notes three situations where credit of tax deducted is not given to the deductee. (1) Where the deductee has filed a declaration under Rule 37BA (2), 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.(2) 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.(3) 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.

The Committee recommends that in all such cases, suitable mechanism should be devised so that the concerned deductee can claim credit for tax deducted.

## 17 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

The Committee makes the following recommends: (i) Extension of the time frame for filing a Challan-cum-Statement in Form 26QB (ii) Enhanced time limit of 45 days (i.e. until 15th May) be allowed for payment of tax deducted where the income or amount is credited or paid in the month of March (iii) Extension of the time limit for filing TDS Statement from existing 15 days to one month.

## 18 Threshold limits for Tax Audit to be hiked- from Rs. 1 crore to Rs. 2 crore for assessees carrying on business and Rs. 25 lacs to Rs. 1 crore for assessees exercising a profession

The Committee believes 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 Rs. 1 crore to Rs.2 crore for assessees carrying on business and from the present Rs.25 lacs to Rs.1 crore for assessees exercising a profession.

## 19 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 is of the view that this scheme is quite popular amongst small traders and it is felt that there is a strong case for introducing a similar simplified presumptive income scheme for professionals.

## 20 Amendment to section 234C to provide relief where a new business is started during the financial year

As per the Committee's proposal, 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.

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.

The Draft Report of this committee is available on the following link http://taxsimplification.in/REPORT.pdf for public feedback by 23rd January, 2016. After receiving the feedback, the committee will finalise the report and submit it to the Central Government before 31st January, 2016.

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