

Finance Bill 2010 – Direct Tax Proposals

Presentation by :

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OBJECT/SCOPE

*To deliberate upon direct tax proposals of
Finance Bill 2010 (of February 26, 2010)*

Basic Objective of FM to Taxation in Finance Bill 2010

- *Taxation*
- *While formulating them (tax proposals), I have been guided by the principles of sound tax administration as embodied in the following words of Kautilya:*

"Thus, a wise Collector General shall conduct the work of revenue collection.... in a manner that production and consumption should not be injuriously affected.... financial prosperity depends on public prosperity, abundance of harvest and prosperity of commerce among other things." (Para 117 of Speech of Budget)

FM on Direct Tax Code from Budget Speech

- ***25. I am happy to inform the Honourable Members that the process for building a simple tax system with minimum exemptions and low rates designed to promote voluntary compliance, is now nearing completion. On the Direct Tax Code the wide-ranging discussions with stakeholders have been concluded. I am confident that the Government will be in a position to implement the Direct Tax Code from April 1, 2011***

Supreme Court on Relevance of Budget Speech/Memorandum etc

❖ *Per Justice S.B.Sinha in R&B Falcon 301 ITR 289:*

“CBDT has the requisite jurisdiction to interpret the provisions of the Income Tax Act. The interpretation of CBDT being in the realm of executive construction, should ordinarily held to be binding, except where it violates any provision of the law or is contrary to any judgment rendered the courts.....even in certain situation a representation made be an authority like finance minister presenting the bill before the parliament may also be found bound thereby...where a representation is made by maker of the legislation at the time of introduction of the bill.....the same carries a great weight..”

Supreme Court on Relevance of Budget Speech/Memorandum etc

- ❖ *Other interesting rulings of general use on Role of Explanatory Memo/ Budget Speech:*
- ❖ *SC ruling in K.P.Varghese 131 ITR 597*
- ❖ *SC in Navnet Jhaberi 56 ITR 198*
- ❖ *Justice Markandey Katju in his book on Interpretation of Tax Statues*

Proposals at a glance

- *Settlement Commission Scope expanded..*
- *Charitable Trust Taxation – Commercial Activity Threshold introduced...*
- *MAT increased from 15 to 18%*
- *Non resident Taxation : SC ruling in Inshikawajima re-nullified with extended language*

Proposals at a glance

- *R&D promoted...weighted deduction enhanced*
- *SEZ anomaly in tax benefit computation – retrospective operation clarified*
- *Gift Transactions : Welcome Clarifications*
- *Conversion of LLP into Company – Tax Neutral if conditions satisfied of sec 47(xiiib)*

Proposals at a glance

- *Personal Income Tax (Individual; HUF AOP; BOI; Artificial Juridical Person) – Basic Tax Exemption Limit (in INR- Lacs) (AY 2011-2012) Slab Rate Changes (“L” stands for INR Lacs)*

Rate %age	Sr Citizen resident	Women resident	Others
10%	2.4L to 5L	1.9L to 5L	1.6L to 5L
20%	5L to 8L	5L to 8L	5L to 8L
30%	8L above	8L above	8L above

Proposals at a glance

- *On domestic companies Surcharge reduced from 10 to 7.5%*

Clause by Clause Analysis

Charitable Trust Taxation: Clause 3: Section 2(15) provided advancement of general public utility shall lose charitable character if involves Carrying on of commercial activities...w.e.f AY 09-10

Particular	Earlier Status	Amendment proposed
Extent of Commercial Activity for Charity – Pecuniary Limit	No Threshold criteria	Upto INR 10Lacs for “receipts” from Commercial activities- no losing of charitable status

Section 2(15) Charitable trust

Chd ITAT ruling in HP Environment case 125 TTJ 98 (services incidental rendered without profit motive not hit by new amendment); DHC ICAI Foundation 226 CTR 27 ; (merely because some remuneration is taken for incidental accounting projects at instance of govt – amended proviso not applies)

Section 2(15) Charitable trust

Latest Delhi ITAT ruling in Cane Development 33 DTR 170 Held if partly charitable objects are there, exemption u/s 11;12 is there and whatever action can be taken is possible at final assessment stage and not 12A registration stage

Bang ITAT (contra) 317 ITR 65 AT

Clause by Clause Analysis

Charitable Trust Taxation: Section 12AA(3)

Clarified w.e.f 1 June 2010 that CIT has power to cancel registration of section 12A Clause 7

Judicial Precedents Nullified:

Hyd Bench of ITAT in 106 ITD 256 Sri

Chaitanya & Pune Bench of ITAT in 119 TTJ 261

ETC

Clause by Clause Analysis

*Non Resident Taxation: Scope of 9(1)(v); (vi)
And (vii) Retrospective amendment from
1/6/1976 Clause 4*

Issue *Whether Rendition and Utilization both
are required to be satisfied for Indian
Taxability of services? SC ruling in IHI 288 ITR 408*

Legislative Background: *Earlier Explanation
reinforced with more WORDS prima-facie Doubtful and
Unhealthy amendment : as SC seems to have
Read down the law constitutionally & **further, SC has
issued notice in related matter on assessee's SLP
(No25295/2009) over Kar High Court ruling in
225 CTR 220***

Earlier Budget/2009 change

- ❖ *Anomaly in SEZ Unit Deduction u/s 10AA removed (Parity in Numerator and Denominator) from AY 2010- 2011*
- ❖ **MADE NOW RETROSPECTIVELY APPLICABLE FROM AY 2006-2007 FROM EARLIEST DATE**

<u>Earlier Formulae</u>	<u>2009 Budget Change</u>
For Deduction Computation	For Deduction Computation
Profits of business of Unit* Export Turnover <u>of Unit</u> /Total Turnover of Business of <u>Assessee</u>	Profits of business of Unit* Export Turnover <u>of Unit</u> /Total Turnover of Business of <u>undertaking/unit</u>

Clause by Clause Analysis

Section 35(2AB) – Scientific Research Weighted Deduction (clause 9)

Particular	Earlier limit	Amendment proposed
Inhouse research →	150% of specified expense	200% of specified expense
Contribution to outside approved institution etc	125% of sum paid	150% of sum paid

Clause by Clause Analysis

Section 35(1)(iii) – List of Scientific Research Associations to include “undertaking engaged in social science or statistical research” – their income would be exempt u/s 10(21) – contribution eligible for deductions etc in hands of payer

Clause 5, 9, 26, 32, 34

2009-Budget Change

Section 35AD – Investment Linked Tax Incentive for Specified Business (clause 10; 13; 17; 24; 28) – For AY 2010-2011 – Key Points;

- ❖ *for cold chain facility for specified products; for warehouse facilities for agricultural produce (business commences after 1/4/2009) and laying & operating a cross country natural gas pipeline distribution network (business commences after 1/4/2007/ 1/4/2009)*
- ❖ *For all capital expense (excl land ; goodwill and financial instrument)*
- ❖ *loss of specified business – only adjustable against profits of the specified business – indefinite carry forward – section 73A*

Clause by Clause Analysis

Section 35AD (refer above slide) expanded to include 2 star hotel IRRESPECTIVE OF LOCATION (tourism sector boosted) AY 2011-2012 – Clause 10,23 (business of building and operating hotel)

Further, Parity introduced with Petroleum Regulations of hitherto specified criteria in Income Tax Act of pipeline capacity (AY 2010-11)

Clause by Clause Analysis

Section 40(a)(ia) Clause 12:

Disallowance for expense for TDS default With retrospective effect from 2010-2011

Particular	Earlier	Amendment proposed
Time Limit for TDS deposition	Only last month TDS could be deposited by ITR filing date	Now extended for whole year tax deduction

Clause by Clause Analysis

Section 201(1A) Clause 42:

Rate of Interest for non payment of TDS/tax withheld: with effect from 1/7/2010

Particular	Earlier	Amendment proposed
Rate of interest %age	One percent per month/part of month	1.5% per month/part of month

Clause by Clause Analysis

Tax Audit Threshold Limit : Section 44AB

Clause 14, 15 from AY 2011-2012

(Related change in Presumptive Tax Scheme)

Particular	Earlier	Amendment proposed
Business	40 Lacs (INR)	60 Lacs
Profession	10 Lacs (INR)	15 Lacs

Clause by Clause Analysis

*Section 44AB : Tax Audit Penalty Section 271B
(Clause 50)*

Particular	Earlier	Amendment proposed
Max Penalty Amt	INR 1 Lac	INR 1.5 Lac

Clause by Clause Analysis

*Tax Audit Threshold Limit : Section 44AB
Clause 14, 15 from AY 2011-2012*

Particular	Earlier	Amendment proposed
Business	40 Lacs (INR)	60 Lacs
Profession	10 Lacs (INR)	15 Lacs

Clause by Clause Analysis

Section 44BB versus 44AD Clause 16,17: AY 2011-2012 (Huge impact in terms of tax computation)

Latest Advance Ruling in Geofizyka Torun p.zo.o. (Precedents noted here: [vide AC(IT) vs. Paradigm Geophysical (P) Ltd. [(2008) 25 SOT 94]; ONGC vs. DC(IT) (ITA No2145/D/2004); DC(IT) vs. Schlumberger Seaco Inc. (50 ITD 346); DIT (Intrnl. Taxation) vs. Jindal Drilling Industries Ltd. (ITA No. 3416(Del) of 2003].

Clause by Clause Analysis

Section 44BB versus 44AD Clause 16,17: AY 2011-2012

Proposed Now: That 44DA would supersede over 44BB (The applicant IN AFORESAID ADVANCE RULING has been providing the seismic data acquisition, processing and interpretation services to various oil and gas exploration and production companies in India: Such services are aimed at increasing the exploration success of its customers and assisting them in maximizing the production from their existing reservoirs)

Clause by Clause Analysis

Section 47(xiiib) : Company to LLP conversion not be regarded as TRANSFER for CAPITAL GAINS LEVY provided:

- i) Total Sales < INR 60 Lacs in any of three preceding years*
- ii) Shareholders of Co – Partners in LLP with same proportion of Shareholding in co.*
- iii) No consideration apart from Profit sharing in LLP and Capital Contribution*
- iv) All assets and liabilities moves*
- v) No amount paid from accumulated profits for 3yrs prd from conversion date, to any partner*
- vi) Erstwhile shareholders shares minimum Profits of 50% in LLP for 5 yrs from conversion date*

Clause by Clause Analysis

Other related amendments:

- i) Business Loss and Unabsorbed Dep of Co to be allowed in hands of LLP if above conditions fulfilled*
- ii) If conditions un-complied, benefit availed to be chargeable profits of LLP in default year*
- iii) Mat Credit not transferable (Section 115JAA)*

Clause by Clause Analysis

Other related amendments:

- i) Section 35DDA(4A) benefit of unavailed VRS expense available to successor LLP*
- ii) Proportionate depreciation benefit to predecessor Co and successor LLP*
- iii) Cost of Capital asset for Successor LLP = Cost of Acquisition for Predecessor Co.*
- iv) Block of Assets WDV for LLP = WDV of predecessor CO on conversion date*

Clause by Clause Analysis

*Section 56 (2)(VII) : Unrelated Party "Gift"
Transactions etc*

- 1. SCOPE EXPANDED: to include transfer to firm or closely held company (on/after 1/6/2010) QUA SHARES IN CLOSELY HELD COMPANY ONLY (hitherto only Indl and HUF's included)*

Exempted List: transfer specified in section 47(via); (vic); (vicb); vid and (vii)- only specified amalgamation and demerger (Co- LLP conversion not there? And what about general slump Sale? etc)

Clause by Clause Analysis

*Section 56 (2)(VII) : Unrelated Party "Gift"
Transactions etc*

2. WELCOME CLARIFICATION : that Section 56(2) applies qua Capital Asset Qua Recipient and not to Stock In trade; Raw Material and Consumable Stores (for recipient) (from 1/10/2009)

Clause by Clause Analysis

*Section 56 (2)(VII) : Unrelated Party "Gift"
Transactions etc*

2. WELCOME CLARIFICATION : that Section 56(2) applies qua Capital Asset Qua Recipient and not to Stock In trade; Raw Material and Consumable Stores (for recipient) (from 1/10/2009)

Clause by Clause Analysis

Section 56 (2)(VII) : Unrelated Party "Gift" Transactions etc

3. *WELCOME CLARIFICATION : that Section 56(2) applies qua immovable Property only vis a vis ZERO CONSIDERTION and not in inadequate consideration cases*

Clause by Clause Analysis

Section 56 (2)(VII) : Unrelated Party "Gift" Transactions etc

- 4. Bullion Added in the list of specified property (from 1/6/2010- AY 2011-2012)*
- 5. REFERENCE TO DVO: Section 142A linked with section 56(2)*

Clause by Clause Analysis

Section 80CCF : Deduction in respect of Long Term Infrastructure Bonds (clause 24)

FROM AY 2011-2012

Particular	Earlier limit	Amendment proposed
Long Term Infrastructure Bonds	Zero/Nil	Max INR 20,000

Clause by Clause Analysis

Contribution to Central Government Health Scheme : Section 80D FROM AY 2011-2012

Particular	Earlier Scope	Amendment proposed
AMOUNT OF DEDUCTION	INR 15,000 (for self, spouse, dependent children and parents)	INR 20,000 (if person insured in 65yrs/above)

Clause by Clause Analysis

Housing and Real Estate Sector: Section 80IB(10)

EXTENSION OF TIME LIMIT OF COMPLETION FROM 4 YEARS TO 5 YEARS (FROM APPROVAL YEAR END)- FOR PROJECTS APPROVED ON/AFTER 1/4/2005

Particular	Earlier Scope	Amendment proposed
Built-up area of shops/Commercial area (allowed)	5% of total built up area or 2000 sq feet (lower)	For projects pending for completion approved after 1/4/2005 <u>for income pertaining to 2010-11 asst year onwards</u> : 3% or 5,000 sq feet (higher)

Clause by Clause Analysis

Particular	Earlier Time Limit of Completion	Amendment proposed
Section 80-ID <u>Deduction of hotel in National Capital Territory</u>	31/3/2010	31/7/2010 (CLAUSE 28) <u>(TO PROVIDE MORE TIME FOR FACILITIES TO BE SET UP IN LIGHT OF COMMONWEALTH GAMES IN OCT 2010)</u>

Clause by Clause Analysis

- ❖ *Tax Deduction at Source –thresh holds revamped-
INR (basic exemption)*

Particular	Existing Rate	Amendment/Proposal w.e.f 1/7/2010
194C Contractor Payment	20,000 (single transaction)	30,000 (single transaction)
	50,000 (aggregate of transactions for whole year)	75,000 (aggregate of transactions for whole year)
194h Commission Brokerage	2,500	5,000

Clause by Clause Analysis

❖ *Tax Deduction at Source – thresh holds revamped- INR*

Particular	Existing Rate	Amendment/Proposal w.e.f 1/7/2010
194I Rentals	1,20,000	1,80,000
194J Professional/Technical Services	20,000	30,000
194B Lottery Winnings	5,000	10,000
194BB Horse Race Winning	2,500	5,000
194D Insurance Commission	5,000	20,000

Clause by Clause Analysis

- ❖ *Section 203(3) – TCS and TDS Certificate by deductor (EARLIER dispensed)*
- ❖ *NOW:*
- ❖ *Since said certificate constitute important documentary evidence for deductee/collecttee, proposed that deductor shall continue to issue said certificates*
- ❖ *Clause 43,44*

Clause by Clause Analysis

- ❖ *Scope of Income Tax Settlement Commission Section 245A(b)*
- ❖ *Meaning of term "Case" and ITSC scope expanded: Search Assessment cases: During Pendency (notice issued u/s 153A and assessment not completed) provided Additional amount of income tax payable is INR 50 Lacs*
- ❖ *Existing limit of additional tax payable for general cases increased from INR 3 Lacs to INR 10 Lacs*
- ❖ *18 Months Time limit to ITSC for passing orders from month end in which application made (on/after 1/6/2010) (existing application of June 2007 to June 2010 to be disposed within 12 months)*

Clause by Clause Analysis

- ❖ *High Court : Power to Condone Delay*
 - ❖ *P&h High Court following Hongo SC in Shergarh Cooperative : Held No power ITA 654/2009*
 - ❖ *Delhi High Court in orders dated 4/9/2009 incl **CM No. 11031/2008 in ITA No.932/2008** : held power available*
 - ❖ *Allahabad High Court: Mohd Farooq : Held Power not available (Full Bench)*
 - ❖ CIT vs. Grasim Industries (27 DTR 130 Bombay High Court) and ACIT vs. Mahavir Prasad (26 DTR 105 Chhattisgarh High Court). – no power

Clause by Clause Analysis

- ❖ *High Court : Power to Condone Delay*
- ❖ *Section 260A(2A): Proposed to specifically provide from 1/10/1998 Power to High Court to condone delay is available*

Clause by Clause Analysis

- ❖ *Other changes: In brief*
 - ❖ *Document Identification No DIN: deferred section 282B: to be issued after 1/7/2011*
 - ❖ *Non Life Insurance Companies: Parity with IRDA guidelines in income recognition vis a vis unrealized gains in investment appreciation*
 - ❖ *Extension of Time Limit for Notification related to CPU Bangalore Section 143(1B): till 31.3.2011*

Thank You

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