FEATURES OF THE FINANCE (NO.2) BILL, 2009

Direct Taxes

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About the Author

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Salient Features of the Finance (No.2) Bill, 2009

DIRECT TAXES

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Introduction

The Finance Minister, Mr. Pranab Mukherjee, presented the first Budget of the newly elected UPA Government on July 6, 2009, a budget which is at once bold and transparent. Bold in the sense that despite having constraints on resources, the Finance Minister has provided for all the expenditure required not only to boost the economy but also the expenditure required for inclusive growth and equitable development. An idea of the boldness can be gauged from the fact that the expenditure of a total of Rs.10,20,838 crores has been provided for, which represents an increase of about Rs.2,69,554 crores over the estimates of expenditure for the year 2008-2009 of Rs.7,50,884 crores. This means that the budget estimates of the expenditure for the year 2009-2010 is higher by 35 per cent. The revenue receipts estimated for the year 2009-2010 are Rs.6,14,497 crores as against the budget estimates of Rs. 6,02,935 crores for the year 2008-09, an increase of less than 2 per cent only. This shows that despite almost negligible growth in the tax revenue, the Finance Minister has taken a call not to reduce the expenditure and has resorted to heavy borrowings, which has resulted in the fiscal deficit going upto 6.8 per cent. The total expenditure of Rs.10,20,838 crores is proposed to be met by revenue receipts of Rs.6,14,497 crores, other receipts of Rs.5,345 crores and by borrowings of Rs.4,00,996 crores. This means that almost 40 per cent of the total expenditure will be met from borrowings. This is in sharp contrast to the practice in earlier years. In the year 2007-2008 for a total expenditure of Rs. 7,12,671 crores, a sum of Rs. 1,26,912 crores was raised through borrowings , i.e., less than 18 per cent of the total expenditure. There is thus a quantum jump in percentage terms of the funding of expenditure from 18 per cent two years ago to almost 40 per cent in the current financial year. This shows the Finance Minister's boldness as also his transparency as he has put every figure in the budget document.

Another interesting feature of the budget is the estimation of the revenue receipts at Rs.6,41,079 crores as against the revised estimate of Rs.6,27,949 crores for the year 2008-2009, projecting a growth of about 2 per cent despite projecting growth in GDP of around 7 per cent. This is in sharp contrast to the growth in the revenue in the last few years as can be seen from the following Table.

Table 1. Growth In Tax Revenue And Growth In Domestic Product

Year	Tax Revenue (In Crores of Rupees)	Growth in percentage as Compared to last year	Percentage Growth in GDP
2005-06	3,66,151	20.06	9.0
2006-07	4,73,512	29.32	9.2
2007-08	5,85,410	23.63	8.7
2008-09 (Revised Estimates)	6,27,949	7.26	6.7
2009-2010 (Budget Estimates)	6,41,079	2.09	7.0

In the year 2008-09 when the GDP has grown by 6.7 per cent, the growth in tax revenue has been more than 7 per cent. In the year 2009-10, whereas the growth in GDP has been projected at 7 per cent, growth in revenue has been kept at just around 2 per cent. The analysis of the estimates of tax revenue for the year 2009-10 indicates that under all heads, tax collection, whether as personal income tax, customs or excise duty, has been kept lower than the collection in the year 2008-2009. The increase has been projected around 15 per cent only in the corporation tax, i.e., the income tax applicable on corporates. There can possibly be two reasons for this. One can be the uncertainty in the growth of the economy ,which may have an impact on tax collections. That is why estimates kept for tax collections are conservative. The other reason can be the need to borrow more to give boost to the economy. That is why probably a wide gap has been kept between the estimated expenditure and estimated tax collections. Any increase in tax collections over and above the estimates can further be used to boost the economy which may further help in achieving a better GDP growth.

As usual, the Finance Minister has tried to meet the expectations of all the sections of the society while working out his tax proposals. On the front of direct taxes, he has given benefit to all the individuals by raising the threshold limit and the abolition of surcharge. To the corporates he has given relief by the abolition of fringe benefit tax and commodity transaction tax. The Finance Bill has 83 clauses proposing to amend various provisions of Income Tax Act and Wealth Tax Act. All these changes, as proposed in the Finance Bill (No.2) 2009 are discussed below. Unless otherwise stated, all these amendments are proposed to be effective from April 1, 2010, i.e., assessment year 2010-2011 relevant to the income earned in the financial year 2009-2010.

A. Tax Rates

1. No Change in tax rates - Surcharge abolished for all, other than for corporates

The Finance (No.2) Bill, 2009 has made no change in tax rates for individual, HUF, firms as well as companies. However, the threshold limit has been increased for Individual, Hindu Undivided family, Association of Persons, Body of Individuals and artificial judicial person from Rs.1,50,000 to Rs.1,60,000. In the case of the individual being a women resident in India the threshold has been increased from Rs.1,80,000 to Rs.1,90,000 and for Senior Citizens resident in India the same has been increased from Rs.2,25,000 to Rs.2,40,000. Further, surcharge has been abolished for all entities except companies. A domestic company is required to pay surcharge at the rate of 10 per cent if its total taxable income exceeds Rs. one crore, whereas a company other than a domestic company is required to pay surcharge at the rate of two and one half per cent if its income exceeds Rs. one crore. No surcharge shall be payable by a firm which will include partnership firm as well as limited liability partnership firm and a co-operative society. So, by and large surcharge stands almost abolished except for those companies whose total income exceed Rs. one crore. However, education cess at the rate of two per cent and higher education cess at the rate of one per cent shall continue to be payable by all taxpayers.

2. Fringe Benefit Tax abolished

The Fringe Benefit Tax (FBT) introduced by the Finance Act, 2005 is proposed to be abolished with immediate effect, i.e., from assessment year 2010-11, meaning thereby that no fringe benefit tax is to be paid in respect of expenditure incurred on or after 1st April, 2009. The abolition of FBT is an acceptance by the Government of the fact that FBT was too complex and the compliance cost too high as compared to the revenue being raised from it. The abolition of FBT means that the perquisites which were hitherto not taxable in the hands of the employees, as the same were liable for FBT, will become taxable in the hands of the employees. Corresponding amendment to this effect has been made in Section 17 Clause 2(vi) by withdrawing the exemption of those perquisites liable for fringe benefits.

The corporates who have paid the first instalment of advance tax of fringe benefit tax on 15th June, 2009, may get the same adjusted as advance income tax, though the Finance Bill as well as the budget speech is silent on this issue.

3. Commodity Transaction Tax (CTT) being abolished

The Commodity Transaction Tax (CTT) introduced last year by the Finance Act, 2008, but not notified is being abolished.

4. Rate of Minimum Alternate Tax increased from 10 per cent to 15 per cent

The Finance (No.2) Bill, 2009 proposes to enhance the Minimum Alternate Tax from 10 per cent to 15 per cent. Presently, MAT is payable in respect of income which is exempt either under Section 10A, 10B or Section 80-IA, 80-IB, 80-IC of the Act including income from long term capital gains exempt under Section 10(38) of the Act. As such all those taxpayers who are engaged in business whether as an Export oriented unit/ Free Trade Zone/ Infrastructure developer/ Telecommunication/ Housing/ Power have to assume that their income is not fully exempt but half exempt, i.e., it is required to pay tax at the rate of 15 per cent as against 30 per cent payable otherwise.

It has to be noted that the increase is not just nominal but by 50 per cent, i.e., from 10 per cent to 15 per cent. MAT was introduced to collect tax from corporates not paying tax consistently because of tax planning despite having substantial income. The small consolation given by the Finance Minister is by way of extending the period of availing credit of MAT paid from 7 years to 10 years.

B. Change in Tax Deduction at Source (TDS) rates

1. No Surcharge, education cess for TDS

The Finance (No.2) Bill, 2009 proposes to modify the tax deduction at source rates. The biggest relief is not to include surcharge, education cess and higher education cess for the purpose of deduction of tax at source. As per the proposal in the Finance (No.2) Bill, 2009,the levy of surcharge has been withdrawn on tax deduction at source in all cases effective from April 1, 2009. Education Cess and Higher Education Cess are to be included only in case of deductions on payment of salary. This will make the process of deduction and payment easier.

2. TDS- Rates reduced – on payment of interest to corporates

Further, the rates at which tax is to be deducted has been reduced. The changes have been carried out at two places; one in the Part II of the Finance Bill itself which is effective from April 1, 2009 and another by way of amendment to Section 194C and 194-I of the Act which shall be effective from 1st October, 2009.

As per the changes in Part II of the Finance Bill, the rate of deduction of tax at source on payment of interest to a company has been reduced from 20 per cent to 10 per cent. The rate of deduction on any other income for payment whether to a company or any other person has been reduced from 20 per cent to 10 per cent. As stated above, this change is effective from 1st April, 2009.

3. Payment to Contractors – Sub-Contractors – Same Rate of TDS

Further, the rate of deduction in respect of payment to contractors, in case contractor is an Individual or HUF, has been reduced from 2 per cent to 1 per cent. However, rate of deduction in respect of payment to sub-contractors if the sub-contractor is a person other than Individual or HUF has been increased from 1 per cent to 2 per cent. The net effect of this is that rate of deduction both for contractor and sub-contractor including for advertising, if it happens to be an Individual or HUF, shall be 1 per cent and if it happens to be a person other than an Individual or HUF, i.e., a firm or a company etc., the rate shall be 2 per cent including for an advertising contract. This amendment will avoid the controversy of making distinction between a contractor or a sub-contractor. Further, no tax at source is to be deducted in respect of payment to a transport operator in case the transport operator furnishes permanent account number (PAN). The TDS rate in case PAN is not given will continue to be 2 per cent on payment to contractor and 1 per cent on payment to sub-contractor. The above amendments shall be effective from October 1, 2009.

4. Tax to be deducted at 20 per cent – Failure to submit PAN

Another amendment has been proposed by the Finance (No.2) Bill, 2009 to achieve transparency and increased computerisation, whereby the rate at which tax is to be deducted will be twenty per cent or the rate in force which is higher in case Permanent Account Number (PAN) is not furnished by the person whose tax is to be deducted at source. A difficult obligation is being put on the deductor to ensure that PAN furnished by the deductee is correct. If the same is invalid or does not belong to the deductee, the tax rate applicable shall be 20 per cent. In the absence of any mechanism available to the deductor to verify the correctness of the PAN furnished, it will be difficult for the deductor to ensure that the PAN furnished is the correct PAN of the deductee, despite the proposal of mandatory quoting of PAN in all correspondence, bills and vouchers exchanged between the deductor and the deductee.

This provision however shall be effective only from April 1, 2010.

5. TDS-Rate reduced on payment of Rent

The rate of tax deduction at source in respect of payment of rent has been reduced to 2 per cent from 10 per cent for the use of any plant, machinery or equipment and to a uniform rate of 10 per cent in respect of rent of land, building or furniture as against the earlier rate of 15 per cent on payment to Individual/HUF and the rate of 20 per cent on payment to a person other than Individual and HUF. This change in rates on rent shall be effective from 1st October, 2009.

Thus the rates of deduction of tax at source have by and large been streamlined at 10 per cent with no surcharge and no education cess/higher education cess. The new rates can be summarized as under:

Table 2. Changes in rates of TDS

S.No.	*Section*	*Nature of Payment*	*Rate*	*W.e.f.*
1.	192	Salaries	As per actual tax computed on the salaries with Education cess and Higher education cess.	Apr 1, 2009
2.	194A	Interest	10 per cent	Apr 1, 2009
3.	194H	Commission or Brokerage	10 per cent	Apr 1, 2009 Existing (no change)
4.	194-I	(i) Rent Land, Building, Furniture (ii) Rent Plant, Machinery & Equipment	10 per cent 2 per cent	Oct 1, 2009 Oct 1, 2009
5.	194J	Professional or Technical Services	10 per cent	Apr 1, 2009 Existing (no change)
6.	194C	Contractors/Sub-Contractors including advertising (i) To Individual/HUF (ii) To person other than individual/HUF (iii) Transporters (If PAN is furnished)	 1 per cent 2 per cent NIL	 Oct 1, 2009 Oct 1, 2009 Oct 1, 2009

C. Deductions

1. Contribution to Pension Scheme allowed for the Self-Employed

Finance Act (No.2) of 2004 had introduced deduction for Central Government employees in respect of the notified Pension scheme upto 10 per cent of the salary by introducing Section 80CCD. The scope of the same was extended retrospectively for other employees by the Finance Act, 2007. The Finance (No.2) Bill, 2009 has further widened the scope by extending

the benefit to all individuals, meaning thereby that any individual whether employed or not can claim deduction in respect of a contribution to the pension scheme, i.e., New Pension System Trust set – up by the government under Section 80CCD. As per the existing provision the deduction is restricted to actual contribution to the extent that it does not exceed 10 per cent of the salary in the previous year. Since the benefit is extended to individual other than employees, a suitable amendment will be required in this section restricting the deduction with reference to gross total income instead of salaries. It may be noted that the contribution under this scheme will be counted towards the total deduction of Rs. 1 lakh available for long term savings. This is not an independent deduction since Section 80CCE restricts the aggregate amount of deductions under Section 80C, 80CCC and 80CCD to one lakh only.

2. Enhanced deduction for medical treatment of dependent

The deduction under section 80DD available to a resident individual and HUF in respect of expenditure incurred for the medical treatment of dependent suffering from severe disability is proposed to be increased from Rs.75,000 to Rs.1,00,000. However, the deduction in respect of expenditure incurred for ordinary disability is being retained at Rs.50,000 only.

3. Donation to Political Parties

In the year 2003, by an amendment carried out by the Election and Other Related Laws (amendment) Act, 2003, Section 80GGB & 80GGC were introduced allowing 100 per cent deduction in respect of contributions made to registered political parties. This Finance (No.2) Bill, 2009 has widened the scope by allowing deduction in addition to the contributions/donations to political parties also to the electoral trusts as may be approved by the board in accordance with the scheme to be made by the Central Government. The deduction shall be 100 per cent of the amount donated. Further, the contribution received by such electoral trust shall be treated as its income, but shall be exempt under the new provision being inserted as Section 13B, if the trust distributes 95 per cent of the aggregate donations received by it along with the surplus if any, brought forward from any earlier previous year during the year itself. As such the electoral trusts will only be a medium/pass-through entity and shall not be in a position to accumulate funds on its own. Interestingly anonymous donations are not being taxed in the hands of neither the electoral trust nor in the hands of political parties despite the fact that the same may represent income on which tax has not been paid.

D. Charitable Trusts/Institutions

1. *Charitable purpose to include preservation of environment, monuments etc.*

The Finance Act, 2008 had restricted the meaning of a charitable purpose to relief of the poor, education or medical relief only. The result was that all other objects of general public utility were not considered charitable if it involves the carrying on of any activity in the nature of trade, commerce & business for a cess or fee or for any other consideration. This has affected a large number of institutions which were involved in charitable activities including those engaged in the preservation of environment including watersheds, forests and wild life and protection of monuments or places or objects of artistic or historic interest. To exempt such institutions, the definition of charitable purpose is being widened and these activities, even if they involve carrying on any act in the nature of trade, commerce or business for a cess or a fee shall be considered charitable and eligible for exemption. One can only hope that in the coming budgets more of such activities will be noticed and exemption granted.

2. *Time for filing application for seeking exemption being extended*

Under the existing provision introduced by the Finance Act, 2006 application for seeking exemption under section 10(23C) in respect of income of hospital, educational institution etc. is required to be filed within the financial year itself for which exemption is being sought. This has created a practical difficulty for these institutions as accounts are finalised after the end of the financial year and only then can it be ascertained that it needs to file application as its 'aggregate annual receipts' exceed Rs.1 crore. Considering this, the Finance (No.2) Bill, 2009 has extended the time limit for filing such applications to 30th September following the financial year. The proposal is proposed to be retrospective from financial year 2008-09, giving time upto September 30, 2009. But considering the fact that the amendment for making application within the financial year was introduced by the Finance Act, 2007 for financial year 2007-08, i.e., w.e.f. June 1, 2007, the retrospective effect should be given from financial year 2007-08 as against 2008-09 proposed in the memorandum explaining the provisions of the Finance Bill.

3. *Partial exemption for Anonymous Donations*

The Finance Act, 2006 had inserted a new section 115BBC to tax entire anonymous donations received by Charitable Trusts or institutions other than for religious purposes. This Finance Bill proposes to grant partial exemption by exempting anonymous donation upto 5 per cent of the total income or a sum of Rs.1 lakh whichever is higher. The reference in the section is to 5 per cent of 'total income of the assessee'. However, as per the provisions of Section 2(45), the meaning of the same will be the total amount computed as per the provisions of the Act, which by and large in case of charitable trusts is nil or negligible. The intention appears to be

to exempt 5 per cent of the total income computed as per the commercial principles before allowing any deduction or exemption under the provisions of the Act. Alternatively, a ceiling needs to be prescribed with reference to the total donations received or gross receipts.

4. Approval of donations under Section 80G to be valid in perpetuity

The Finance (No.2) Bill, 2009 proposes to introduce an amendment to section 80G by deleting proviso to clause (vi) of Sub-section 5, providing that the approval granted for donation shall be valid for not more than 5 assessment years. As such an approval once granted to a trust or institution for donation under section 80G shall be valid in perpetuity unless withdrawn. This amendment shall be effective from April 1, 2009. Further, the memorandum to the Finance (No.2) Bill, 2009 provides that the existing approvals expiring on or after October 1, 2009 shall be deemed to be valid in perpetuity. However, in case of approvals expiring before October 1, 2009, the same have to be renewed and once renewed will be valid in perpetuity unless withdrawn.

5. 80G approval not to be invalid in case any trust or institution ceases to be charitable within the meaning of Section 2(15) of the Act

As per an amendment carried out by Finance Act, 2008 the meaning of 'charitable purpose' had been restricted to exclude those trusts or institutions engaged in advancement of 'any other object of general public utility' if it involves the carrying on of any act in the nature of trade, commerce or business for a cess or fee. Consequent to these, donations given to these trusts are not eligible for exemption under section 80G. However, such institution or trusts may have collected donation and donors would have made the donation under a bonafide belief. In order to avoid this hardship Finance (No.2) Bill, 2009 proposes to amend the provision of section 80G(5) to provide that such institutions or funds which have approval under section 80G for the financial year 2007-08 shall be deemed to have been established for charitable purposes and shall also be deemed to be approved under section 80G of the Act for financial year 2008-09. Accordingly this amendment is effective from April 1, 2009, i.e., assessment year 2009-10.

E. Salaries

1. Benefit of Voluntary Retirement restricted to one provision

The Finance (No.2) Bill, 2009 proposes to amend Section 10(10C) of the Act in respect of the exemption of Rs.5 lakhs allowed on account of amount received by an employee on voluntary retirement under Voluntary Retirement Scheme and also Section 89 providing relief in respect of salary paid in arrears or in advance by restricting the benefit in respect of the amount received on voluntary retirement under one Section only. This has been done in order to

nullify the effect of the decisions of the various courts whereby it was held that benefit can be claimed under both the Sections.

2. *Fringe benefits to be taxed in hands of employees*

Before the introduction of the Fringe Benefit Tax in the year 2005, as per Clause (vi) of Section 17(2), such fringe benefits or amenities were taxable in the hands of each employee and after introduction of Fringe Benefit Tax, such fringe benefit other than those liable for FBT, were taxable in the hands of the employees.

Now with the abolition of the Fringe Benefit Tax, all perquisites which were hitherto taxable as fringe benefits in the hands of the employer, shall now be taxable in the hands of the employees. For this the Finance Bill proposes to make amendment to Section 17(2) by substituting clause (vi) with new clauses (vi), (vii) & (viii).

3. *Motorcar, Food & Beverages, Expenditure at clubs etc.*

As per the newly inserted clause (viii) section 17(2), the following perquisites as per Rule 3 will now become taxable in the hands of the employees with effect from April 1, 2009

(i) Motorcar facility provided by the employer for personal use by the employee.

(ii) Free food and beverages to the employees other than those provided during working hours at office or business premises or through paid vouchers.

(iii) Gift or voucher except when it is below Rs.5000 in the aggregate during the previous year

(iv) Membership fee, annual fees and expenditure incurred in a club which is charged to a credit card except when it is incurred wholly and exclusively for business purposes.

The use of a motor car by an employee shall also become a chargeable perquisite in the hands of the employee. The value of the perquisite shall be computed as per Rule 3(2) of the Income Tax Rules 1962. According to this rule, when the motorcar is used partly for official duty and partly for personal purposes, the value of the perquisite shall be Rs.1,200 per month in case the capacity of engine does not exceed 1.6 litres and in other cases Rs.1,600 per month. However, if it is a chauffeur-driven car then Rs.600 per month shall be the additional value of the perquisite.

Besides the above, perquisites such as food and beverages provided outside the working place & expenses incurred at the club shall be chargeable as perquisite in the hands of the employee in accordance with Rule 3(7) which are presently applicable in respect of those entities which are not liable for Fringe Benefit Tax, i.e., sole proprietorship concern and charitable trust and institution etc.

4. Sweat equity share as fringe benefits in the hands of the employees.

With the abolition of the Fringe Benefit Tax, the Sweat Equity Shares allotted or transferred directly or indirectly by the employer or the former employer free of cost or at concessional rate shall also be taxed as a perquisite in the hands of the employees as per the new Clause (vii) being introduced in Section 17(2) of the Act.. For this purpose the value of the Sweat Equity Share shall be the fair market value to be determined in accordance with the method to be notified by the Board on the date on which the option is exercised as reduced by the amount actually paid or recovered from the assessee. The employee shall now be liable to pay tax at the time of allotment of shares itself despite the fact that they may not have requisite funds to pay tax. This could create genuine hardship for the employees. Ideally the amount of income consequent to this perquisite can be determined on the date of allotment of Sweat Equity Shares but the liability to pay tax should occur only at the time of actual sale of such shares.

5. Contribution to an approved superannuation fund in excess of Rs.1 Lakh to be taxed as perquisite

The amount of any contribution to approved superannuation fund in excess of Rs.1 Lakh shall also now be charged as a perquisite in the hands of the employees in view of the new Clause (vii) to Section 17(2) of the Act.

The employer will now again be required to include the value of these perquisites computed as per Rule 3 in the income of the employees for the purpose of deduction of tax at source every month. Since the amendments are being made midway in the year after the Finance Act, 2009 is notified, each employer will be required to rework the tax deductible for each employee and deduct tax thereafter accordingly.

F. Business Income

1. Remuneration to Partners

The Finance (No.2) Bill, 2009 has made a long overdue amendment to the provision of Section 40(b) in respect of the ceiling of remuneration to partners. As per the proposed amendment, a uniform limit for both professional and non professional firms have been prescribed whereby 90 percent of the first Rs.3 Lakhs of the book profit can be distributed as remuneration to partners and of the book profit above Rs.3 Lakhs, 60 per cent can be distributed as remuneration to partners. The minimum amount of remuneration to partners has been increased from Rs.50,000 to Rs.1,50,000, which will be allowed even in case of loss. The net impact of this can be understood with the following example in the case of a professional firm.

Book Profit for this Section means the net profit as per profit and loss account computed under the head profit and gain of business or profession before the payment of remuneration to partners.

Table 3. Savings in Tax on Partnership Firms

(Amount in Rupees)

1.	Book Profit	3,00,000	5,00,000	10,00,000
2.	Remuneration (allowable as per existing provision)	1,90,000	2,70,000	4,70,000
3 (1-2)	Taxable Income of the firm	1,10,000	2,30,000	5,30,000
4	Tax thereon	33,990	71,070	1,63,770
5	Remuneration allowable as per proposed amendment	2,70,000	3,90,000	6,90,000
6 (1-5)	Taxable Income	30,000	1,10,000	3,10,000
7	Tax thereon	9,270	33,990	95,790
8 (4-7)	Savings in tax by the firm	24,720	37,080	67,980

2. Payment to transporters in cash-ceiling raised from Rs.20,000 to Rs.35,000

The Finance (No.2) Bill, 2009 proposes to raise the limit of cash payment, i.e., payment in ways other than by account payee cheque or draft to transport operators from Rs.20,000 to Rs.35,000. The explanation given for this amendment is that truck owners/ drivers have little working capital and they need cash to route expenses for diesel, fuel and repairs etc. which generally exceeds Rs.20,000. But this kind of hardship is not limited to transport operators only. Ideally this ceiling should have been increased across the board considering the fact that the amount of Rs.20,000 was fixed long time back in the year 1996 when it was increased from Rs.10,000 fixed in the year 1988, which in turn was increased from Rs.2,500 at the time when the provision was first introduced in the year 1968. This amendment will be effective from October 1, 2009.

3. Benefit of weighted deduction for in-house research and development extended to all sectors

The provision of Section 35(2AB) which provides weighted deduction of 150 per cent in respect of expenditure incurred on scientific research other than the expenditure on land and building for specified industries is proposed to be extended to all businesses of manufacturing or production of any article or thing other than the restricted list in the eleventh schedule. This provision has been introduced for promoting research and development in all sectors of economy. It may be noted that the benefit of this deduction is available only to companies and not to all assessees, i.e., individual, firms etc. Further, the research and development facility has to be got approved from the Department of Scientific and Industrial Research for being eligible to claim the said deduction.

4. New Section 35AD to provide investment-linked tax incentive for specified businesses

Finance (No.2) Bill, 2009 proposes to introduce a new investment linked tax incentive for the business of setting up and operating cold chain facility, warehousing facility for storage of agriculture produce, which commences its operation on or after April 1, 2009 and for the business of laying and operating cross country natural gas or crude petroleum pipe line network, which commences its operation on or after April 1, 2007. As per the proposal the entire expenditure of a capital nature incurred for the purpose of a specified business other than expenditure on land, goodwill or financial instrument shall be allowed as deduction during the year in which such expenditure is incurred. However, it has been provided that such business shall not be eligible for claiming deduction under Chapter VIA nor shall the expenditure incurred be allowed deduction under any other provision of Income Tax Act. The loss of specified business shall also not be eligible for set-off against any other income and the same will be carried forward for set-off against income from any specified business only in the following assessment year. Consequential changes have also been proposed in other provisions of the Act, particularly section 43 and 50B to ensure that the benefit of the expenditure incurred is not allowed under any other provision. By restricting the benefit of the expenditure in the year in which it is incurred, the benefit may not be practically possible as major expenditure would be incurred in the year in which eligible business may not have commenced. Further, the restriction not to allow deduction against other income means that the deduction can only be claimed against its own eligible business income which may not be in the year in which claim is allowable. The net benefit is that one can claim capital expenditure and carry forward the same which otherwise it could have claimed by way of depreciation. It may be further noted this provision does not give any additional benefit. All it

allows is accelerated depreciation by allowing 100 per cent of the capital expenditure in the year in which it is incurred.

5. *Scope of presumptive taxation being extended to all small businesses*

The Finance (No.2) Bill, 2009 proposes to extend the existing scope of presumptive taxation of retail trade by applying a fixed rate of income on the total turnover or gross receipts to all businesses. Presently, this option is available to only those taxpayers who are engaged in retail trade. Now with the proposed amendment, every business whether it may be manufacturing, job work, labour work, whole sale trade, canteen including retail trade shall be eligible if its total turnover or gross receipts does not exceed Rs. 40 lakhs. However, the presumptive rate of computing income at 5 per cent of total turnover or gross receipts presently applicable is being increased to 8 per cent, with the result that even for retail trade the rate shall now be 8 per cent. This scheme shall now be available only for individual, HUF and partnership firms. The scheme will not be available to companies, limited liability partnership and other entities, i.e., association of persons, body of individuals. The scheme shall not be applicable if the assessee has claimed any deduction under Section 10A,10AA, 10B, 10BA or under Chapter-VIA-C, i.e., in respect of free trade zone, export oriented unit, Special Economic Zone, backward area, infrastructure development, etc. For the purpose of computing income, 8 per cent flat rates shall be applied on the total turnover or gross receipts and no deduction in respect of any expenditure such as depreciation etc. shall be allowed. Further, the written-down value of fixed assets shall also be deemed to stand reduced by the eligible depreciation. However, deduction under Section 40(b) shall be allowed in respect of interest and remuneration paid to partners in case of partnership firm. It may be noted that 8 per cent is the minimum rate and in case the assessee claims to have earned higher income, then such higher income shall be deemed to be income chargeable to tax.

An assessee opting for this scheme shall not be required to pay advance tax. The tax payable can be paid at the time of filling the return. With the applicability of this section to all businesses at the rate of 8 per cent of total turnover or gross receipt, the existing Section 44AD for computing income of civil construction and section 44AF in respect of retail trade are being merged as Section 44AD. In case any of the eligible assessee, i.e., individual, HUF, partnership firm whose total turnover or gross receipts in business is less than rupees forty lakhs and claims that its income is less than 8 per cent of its total turnover or gross receipts, it shall not only be required to maintain accounts but also required to get the same audited. It may be noted that existing section 44AD and 44AF were also applicable to corporate assessees and these were required to get its accounts audited and submit tax audit report under Section 44AB, in case income claimed was less than the fixed percentage. With the exclusion of corporates and limited liability partnership firms from the purview of presumptive

taxation, these entities will not be required to get their accounts tax audited, even if its total turnover/gross receipts is less than Rs. forty lakhs and income is less than 8 per cent of its total turnover/gross receipts. Further, the scheme is not applicable in respect of professions.

The amendment is proposed to be prospective and shall be applicable from assessment year 2011-12, i.e., financial year starting from 1st April, 2010. Accordingly, the existing scheme of presumptive taxation in respect of retail trade will continue to be applicable for the current financial year 2009-10, i.e., assessment year 2010-2011.

6. *Amount of Presumptive Income for transporters being enhanced*

The Finance (No.2) Bill, 2009 proposes to increase the amount of presumptive income under section 44AE in respect of heavy goods vehicle from Rs.3,500 to Rs.5,000 per month and in respect of other than heavy goods vehicle from Rs.3,150 to Rs.4,500 per month. The scheme shall continue to be applicable to all assessees including corporates, limited liability partnership firm so long as it does not own more than 10 goods carriages. It may be noted that now it will not be possible to claim higher fund flow than the income declared since the presumptive income shall be higher of income computed by applying the fixed rate or income as may be claimed to have been actually earned. If the assessee claims that he has earned higher income, he will be duty bound to declare such higher income. Only then will he be eligible to take benefit of such higher income in its funds flow.

The amendment is also proposed to be prospective from assessment year 2011-12, i.e., financial year starting from April 1, 2010.

7. *No claim in the return – no deduction*

The Finance (No.2) Bill, 2009 proposes to introduce an amendment to Section 80-IA by introducing Sub-section (5) whereby deduction in respect of income exempt under the various provisions of the Act such as in respect of Free Trade Zone, Export Oriented Unit, Special Economic Zone, backward areas, infrastructure facility etc. shall not be allowed in case assessee has not made the claim in the return of income. This amendment raises a very serious issue, whereby the age-old principle that assessee's ignorance should not be used against him to the advantage of the revenue and the assessing officer is duty bound to allow all such deduction of which the assessee is eligible, even if not claimed by him, is being undone. Tax is required to be charged on the income which is chargeable to tax, not on the income arbitrarily worked out because of some default or ignorance of the tax payer. With the tax law becoming more and more complex, there is every possibility that even the best informed taxpayers, may not be in a position to correctly claim the deduction available and later on may find that some claim of deduction to which it was entitled, has not been claimed. Similarly, there is a possibility that a claim made by the assessee may fail and it may become

eligible for any alternative claim. The tax authorities have got great power to assess, reopen the completed assessment to reassess, and revise the income of the assessee. Through this amendment the right of the assessee to claim an eligible deduction which ultimately is to be determined and approved by the tax authorities is proposed to be withdrawn.

An amendment of a similar nature was made by the Finance Act, 2006 by inserting section 80AC providing that no deduction in respect of any income exempt under the provisions of the act shall be allowed in case the return is not filed in time. The effect of the said amendment is too harsh as it converts exempt income into taxable income merely because the return could not be filed in time even for reasons beyond the control of the assessee. There is every possibility that some unfortunate happening including fire, tragedy in family, assessee's death, which is beyond his or her control. Besides the loss on account of such happening, the assessee may be saddled with a liability of crores of rupees because of the operation of such harsh provision.

It appears that lately there has been a tendency to take away the benefit of exempt income one way or the other, e.g. by making exempt income liable for Minimum Alternate Tax, hike in Minimum Alternate Tax rate, not allowing benefit of exemption in case the return is not filed in time and the recent amendment not to allow claim if not claimed in the return. It will be better if the exemptions itself are withdrawn rather than ignoring the principle of taxation to collect tax on the correct taxable income.

The reason given in the memorandum explaining the provisions states that this amendment is being made to prevent abuse of tax incentives. As explained above, this provision is not in line with this objective. To make things more difficult, this amendment is being made retrospectively from assessment year 2003-04, with no opportunity for the assessee to be alert and do the needful.

8. Deduction in respect of exempt income to be allowed under one section only

The Finance (No.2) Bill, 2009 proposes to amend retrospectively Section 80-A by inserting Sub-section (4), making it explicit that where the deduction in respect of any amount of business income is claimed and allowed under any one provision, i.e., under Section 10A, 10AA, 10B, 10BA or under Chapter VIA-C, i.e., deduction in respect of backward areas, infrastructure development, and to the extent of such income shall not be allowed under any other provisions of the Act and in no case shall exceed the total income of such eligible business. This amendment is being made to ensure multiple deductions are not claimed in respect of same income and is proposed to be retrospective from the assessment year 2003-04.

9. Inter –se transfer between Units/Undertakings to be valued at market price

The Finance (No.2) Bill, 2009 proposes to introduce Sub-section (5) to Section 80-A to provide that the value of goods and services transferred inter-se between the eligible and non eligible undertakings/units for the purpose of determining the income of eligible undertakings/units shall be taken at the market value on the date of the transfer. The market value shall mean, in case of sale or supply, the price it would fetch if sold by the eligible undertaking in the open market subject to statutory or regulatory restriction if any and in case of purchases or services acquired it shall mean the cost it would have incurred, if the same were acquired from the open market subject to statutory or regulatory restriction if any.

This amendment is proposed to be effective from 1st April, 2009, but is stated be clarificatory in nature and this amendment will apply to all cases where proceedings are pending before any authority on or after such date.

10. Benefit of development of infrastructure not to be allowed to works contract

The Finance (No.2) Bill, 2009 proposes to make an amendment retrospectively with effect from assessment year 2000-01, making it explicit that the benefit of exemption available in respect of income from development of infrastructure facility which include roads, bridges etc. shall not be available to a business in the nature of works contract which are normally awarded by Central or State Governments. The purpose of this amendment is to clarify that for being eligible one has to invest to develop the infrastructure facility and not simply execute the project.

11. For computing exempt income of SEZ, the income to be apportioned on the basis of turnover of SE, not the total turnover of the assessee

The Finance (No.2) Bill 2009 proposes to amend Section 10AA(7), whereby for the purpose of computing eligible income, the total income of the Special Economic Zone (SEZ) unit will be proportionately calculated in the ratio of export turnover of the SEZ unit to the total turnover of the SEZ unit as against the existing provision, whereby such income was being computed in proportion to the export turnover of the SEZ unit to the total turnover of the assessee. This amendment is being carried out to give effect to the budget speech of the Finance Minister in February, 2009, at the time of presentation of the interim budget. Surprisingly, the explanatory note despite accepting the fact that the earlier provision was discriminatory, has not proposed the amendment retrospectively from 2006 when the Section 10AA for Special Economic Zone unit was introduced. The amendment is proposed to be effective from assessment year 2010-11, which means that even for assessment year 2009-10, these Special Economic Zone Units will have to bear with the discrimination.

12 . The word 'manufacture' being defined

The Finance (No.2) Bill,2009 proposes to define the term 'manufacture' to avoid dispute on its interpretation. As per the proposal 'manufacture' means change in the non-living physical object or article or thing resulting in the transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use or bringing into a new and distinct object and or article or thing with different chemical composition or integral structure. However, the proposed definition itself will be a subject matter of interpretation and may unsettle many of the judgments delivered on the interpretation of the term 'manufacture'. The word 'object' or 'article' or 'thing' itself is the subject matter of interpretation and further in the proposed definition, the requirement of the new and distinct object having the different name, character and use cannot be cumulative. The requirement of a different name, character and use has to be alternate not cumulative, and on fulfilling either of these conditions, a new and distinct object comes into existence.

13. Benefit of exemption to undertakings in Free Trade Zone and EOU – extended for one more year.

The Finance (No.2) Bill 2009 proposes to extend the exemption available to undertakings in Free Trade Zone under Section 10A and 100 per cent Export Oriented Unit under Section 10B in respect of its income by another one year, i.e., assessment year 2011-2012. As per the proposal, no exemption shall be available from assessment year 2012-13 onwards. It may be noted that this extension does not extend the eligibility period of exempt income of 10 years. In case the period of 10 years gets completed before the assessment year 2012-13 the exemption will be available till that period only. From assessment year 2012-13, no undertaking shall be eligible to claim exemption irrespective of the fact that whether it has completed the period of 10 assessment years or not by that time.

14. Extension of one year for setting up power generation, transmission or distribution undertaking.

The Finance (No.2) Bill, 2009 proposes to extend the terminal date by one year for setting up an undertaking for the generation and distribution of power or which starts transmission or distribution or which undertakes substantial renovation and modernization of existing network of transmission or distribution up to March 31, 2011. Accordingly, any undertaking, which starts generating and distributing power or which starts transmission or distribution or which undertakes substantial renovation and modernization of existing network of transmission or distribution by March 31, 2011 shall be eligible to claim exemption under Section 80-IA(iv) in respect of its income from such business for 10 consecutive assessment years. Similarly, the benefit of tax holiday under Section 80-IA(4)(v) in respect of an undertaking owned by an Indian company, which is set up for reconstruction or revival of power generating plant is

being extended retrospectively for a period of three years to March 31, 2011. Accordingly, if such undertakings begin to generate or transmit or distribute power before March 31, 2011, it shall be eligible for tax holiday for a period of 10 consecutive assessment years.

15. Benefit to housing project under section 80-IB(10) being restricted to one residential unit only

The Finance (No.2) Bill, 2009 proposes to insert a new proviso to Section 80-IB(10) in respect of exemption available for housing project, to provide that the benefit of the exemption shall not be allowed in case it allots more than one residential unit in the housing project to the same person, and in case of an individual, if the residential unit is allotted to spouse or minor children of such individual or HUF in which, such individual is Karta or to any person representing such individual, a spouse or minor children of such individual or the HUF of such individual. The objective of this amendment is to ensure that the benefit of this is limited to low and middle income households only and the builder does not exploit this provision for building individual flat for elite classes of the society.

16. Benefit of exemption for production of mineral oil extended to natural gas – further extension of three years.

The Finance (No.2) Bill, 2009 proposes to extend the benefit of tax holiday under Section 80-IB(9) in respect of profit and gains from undertakings engaged in commercial production or refining of mineral oil also to undertakings engaged in commercial production of natural gas in blocks licensed by Government of India. Further, the period for claiming the benefit under this Section is being extended from April 1, 2009 to March 31, 2012. Accordingly, any undertaking which begins production of mineral oil or natural gas by March 31, 2012 shall be eligible to claim tax holiday for a period of seven consecutive assessment years. In order to avoid dispute, it has also been clarified that the term "undertaking" in the context of mineral oil for the purpose of claiming deductions under this sub-section shall be 'all blocks licensed under the single contract' and not individual 'well' in a block. The implications of this amendment will be that the period of seven consecutive assessment year will start from the date when the first of the well in a block starts commercial production and one will not be eligible to compute the period of seven years for each of the wells independently.

G. Capital gains

1. The Capital Gains to be computed on the value assessable for stamp duty in respect of Agreement to Sell

The Finance (No.2) Bill, 2009 proposes to extend the scope of Section 50C whereby capital gains are to be computed on the basis of value assessed for the purpose of stamp duty in respect of immovable property.

As per the proposed amendment, even in the case where a transfer takes place by way of documents such as agreement to sell or power of attorney, which is not required to be registered, the capital gain shall be computed on the basis of the stamp duty in respect of such documents which would have been payable had the documents for transfer been required to get registered. This amendment is being proposed to remove the dispute which has arisen in respect of transfer, which has not been registered but affected through a agreement to sell or a power of attorney. This amendment is proposed to be effective from October 1, 2009 and shall accordingly apply to all transactions undertaken on or after such date. This will mean that the transfer before October 1, 2009 by way of agreement to sell/power of attorney will not be covered by the provisions of Section 50C of the Act.

2. Cost of acquisition of Sweat Equity Shares to be the fair value

A corresponding amendment is being made in Section 49 by substituting sub-section (2AA) whereby the cost of acquisition in respect of Sweat Equity Shares for the purpose of computing capital gains shall be the fair market value taken for the purpose of computing value of the perquisite in the hands of the assessee. Accordingly, at the time of sale of the share, the assessee shall be required to compute capital gain not on the basis of the actual amount paid to the employer but the fair market value adopted for the purpose of the perquisite.

H. Income from Other Sources

1. Purchaser to pay tax for inadequate consideration

The Finance (No.2) Bill, 2009 proposes to make a far reaching amendment to Section 56 to tax property received without consideration or inadequate consideration as deemed income from other sources in the hands of individual and HUF. As per the proposal, any property, i.e., immovable property, shares, securities, jewellery, archaeological items, drawings, paintings, sculptors or any work of art received without consideration or for inadequate consideration, the aggregate fair market value of such property over and above the consideration, if any, paid, shall be considered as income of the recipient and shall be included in the computation of income under the head 'income from other sources'. For the purpose of valuation in case of immovable property the same will be taken as the value for the purpose of stamp duty and in case the difference exceeds Rs. 50,000 the entire difference shall be taxed as income. In respect of other properties the valuation shall be done in accordance with the rules to be prescribed by the Central Board of Direct Taxes and in case the difference in the valuation as per the rules and consideration paid is more than Rs.50,000 the entire difference shall be taxed as income of the recipient. This provision is applicable to individual and HUF only but shall not be applicable in case the property is received from any

relative or on the occasion of the marriage or under a will or from the charitable institutions etc. This provision shall be applicable from 1st October,2009 and shall accordingly apply to all transactions on or after 1st October,2009.

The amendment does not make a distinction between the transaction undertaken for personal purpose or in the course of business. Accordingly, it will have far reaching implications in respect of persons engaged in the business of real estate, shares and securities, jewellery or antiques etc. All purchases made by persons engaged in this business can be subject matter of dispute in case the same has been made as bargain or by way of distress sale. Further, in case of difference of more than Rs.50,000 the entire difference shall be subjected to tax as income from other sources.

This provision will have far reaching implications. It makes an assumption that any transaction entered into at a price which is different from the price to be determined on the basis of fixed rules there is presumption of underhand consideration which has been passed on by the buyer to the seller, and the buyer needs to pay tax on such underhand consideration. This assumption may not be correct in all cases. This provision treats all honest and dishonest taxpayers in one category. Further, this will open a flood gate of litigation. In each and every case of purchases of property the assessing officer will ask for valuation. The valuation despite best of rules is going to be subjective particularly in the case of diamonds, paintings etc. There are so many factors which are considered both by the buyer and seller before striking a deal. All these factors cannot be captured in the rules to adjust the fair market value. The scope of this provision is also too wide. It is applicable to all transactions howsoever small the value of purchase be, because the exemption of Rs.50,000 is based on fair market value, which can be known only after the process of valuation.

2. Interest on compensation – Pay tax in the year of the receipt.

The interest received by the assessee on compensation or enhanced compensation is presently taxable either on receipt basis or on accrual basis as per the method of accounting regularly employed by the assessee with the result that in case the assessee follows accrual method of accounting and interest on compensation or enhanced compensation is received after a gap of many years, the interest pertaining to the period for which the period prescribed for reopening of the assessment has expired, cannot be brought to tax. In order to avoid this hardship this Finance Bill proposes to provide in Section 145A that irrespective of method of accounting being followed by the assessee the interest received on compensation or enhanced compensation shall be taxed on receipt basis in the year in which it is received and taxed under the head 'income from other sources'. Further, under Section 57(iv) deduction of 50 per cent of such income shall be allowed and no deductions of any expenditure etc. shall be allowed under any other clause from such interest. This will make

the taxation of such interest income simple both for the tax payers as well as the tax authorities. Though, in the bill, this provision is stated to be effective from assessment year 2010-11, the memorandum makes a mention that it would be applicable from the assessment year 1998-1999. Hopefully, this anomaly will be addressed at the time of passage of the Finance (No.2) Bill, 2009.

I. Minimum Alternate Tax

1. The provision for diminution in value of any asset not to be allowed while computing tax profit.

The Finance (No.2) Bill, 2009 proposes to introduce retrospective amendment effective from assessment year 1998-1999 providing that any provision made for diminution in the value of any asset shall be added to the book profit for the purpose of levy of minimum alternate tax. This amendment is going to have very serious implications. Not only any provision for impairment of any asset required to be made as per the Accounting Standard (AS) 28, 'Impairment of Assets', the provisions for bad and doubtful debts and provisions for diminution in value of stores and spares shall be added to the book profit but there can also be an issue why the depreciation on fixed assets be not added back as depreciation is also a provision for diminution in the value of the fixed assets. This amendment goes against the principle on the basis of which MAT was introduced to levy tax on the income declared in the annual accounts of the company though the taxable income computed under the provisions of the Act may be lower than that. Any provision made in the diminution in value of the assets such as book debts, or store and spares is based on a sound accounting principle and policies and the actual profit is the profit only after such provisions. These provisions are not reserves or hidden profit but the actual expenditure or loss measured by applying the sound accounting principle though termed as provisions. Being retrospective from assessment year 1998-99, this amendment unsettles not only the sound accounting principle but also the judicial pronouncement delivered on this issue in the case of Apollo Tyres Vs. CIT 256 ITR 273 (SC) and Commissioner of Income-Tax Vs. HCL Comnets System and Services Ltd. 305 ITR 409 (SC).

J. Transfer Pricing

1. Determination of arm's length price- No adjustment if variance more than 5 per cent

The Finance (No.2) Bill, 2009 proposes to amend the provisions of Section 92(C)(2) which provides that where more than one price is determined by the most appropriate method, the arm's length price is the arithmetical mean of such price or at the option of the assessee, a price which may vary from the arithmetical mean by an amount not exceeding 5 per cent of

such arithmetical mean. There have been dispute on this issue whether in case where the variance is more than 5 per cent, the entire variance is to be considered, or variance after deduction of 5 per cent arithmetical amount is to be considered. The amendment proposes that if the variance is more than 5 per cent then the entire variance shall be considered and in such cases the transfer price shall be treated as arm length price and no adjustment of 5 per cent shall be made. This amendment has been proposed to overrule large number of judicial judgments delivered by various benches of the Tribunal. This amendment is being made w.e.f. 1st October,2009 and as per the memorandum shall apply in respect of all proceedings which are pending before the Transfer Pricing Officer on or after such date.

2. Power to the Board to provide Safe-Harbour Rules.

The Finance (No.2) Bill, 2009 proposes to empower the Central Board of Direct Taxes to formulate the Safe-Harbour Rules, i.e., the circumstances in which the income-tax authorities shall accept the transfer price declared by the assessee. This will reduce the litigation. This amendment is proposed to be retrospective from April 1, 2009, i.e., assessment year 2009-10.

K. Tax Deduction at Source

1. Time Limit prescribed for verification of TDS Return/Statement

The Finance (No.2) bill, 2009 proposes to prescribe a time limit for verification of TDS return/statement and holding a person to be in default under Section 20(1) of the Act. As per the proposal, no order can be passed after a period of two years from the end of the financial year in which the statement of tax deductions at source is filed by the deductor. However, in case where no statement has been filed by the tax deductor, such an order can be passed up to four years from the end of the financial in which the payment was made or the credit was given. This amendment shall be effective from April 1, 2010 and it will apply to all such orders which are passed on or after April 1, 2010. However, in respect of pending cases pertaining to the financial year 2007-2008 and earlier years the orders can be passed upto March 31, 2011. This amendment on the one hand provide time limit but at the same time in respect of pending case it gives unlimited time irrespective of the financial year to pass order upto March 31, 2011. Further, it may be noted that this time limitation shall not be applicable in respect of tax deductions from non-resident Indians and also where the deductor has deducted the tax but not deposited the same or where the employer has failed to pay tax in respect of the perquisite, which he is required to pay under section 192 (1A). As per this provision of 192(1A), the employer can pay tax in respect of the perquisites provided to the employee, which are not by way of monitory payment, i.e., perquisites in kind and the employee is not required to pay tax on such perquisites.

2. TDS return to be processed – Refund to be allowed to the deductor

The Finance (No.2) Bill, 2009 proposes to substitute the quarterly statement by empowering the Board to decide the periodicity, which probably will be yearly in respect of TDS and TCS return. This amendment is proposed to be effective from October 1, 2009 and shall be applicable from financial year 2009-2010 also. However, it is also proposed that the statement of TDS and TCS so filed be processed and adjustment made in respect of any arithmetical error or incorrect claim if it is apparent from any information in the statement such as rate of TDS etc. On the basis of this processing and adjustment intimation will be sent to the deductor about the additional tax liability, if any, or granting refund due. This process is to be concluded within a period of one year from the end of the financial year in which the statement is filed. The new procedure being introduced will address the various procedural issues in respect of TDS. This will also facilitate refund of excess tax to the deductor, which otherwise was practically impossible to get in case any excess amount has been deposited by mistake. This amendment shall be effective from April 1, 2010.

3. Work contract not to include supply contracts for tax deduction at source.

The Finance (No.2) Bill, 2009 proposes to clarify that the works contract shall not include manufacturing or supplying the product according to the requirement or specification of the customer by using raw material purchased from the person other than such customer since such a contract is a contract for sale. However, the works contract shall include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer. Further, in such cases, tax at source shall be deducted on the invoice value excluding the value of the material purchased from such customer after such value is separately mentioned in the invoice. However, if such value of the material component has not been separately mentioned in the invoice, tax at source shall be deducted on the total value of the invoice. This amendment is proposed to be effective from October 1, 2009.

L. Miscellaneous

1. Creation of Alternate Dispute Resolution Forum

The Finance (No.2) Bill, 2009 proposes to provide Alternate Dispute Resolution Forum for all foreign companies and for assessees in whose case there is a variation in the transfer price consequent to the order of the Transfer Pricing Officer. As per the proposed amendment where the assessing officer on or after October 1, 2009 proposes to make variation in the income or loss returned by the above class of assesses then he shall forward the draft assessment order to the assessee. On receipt of the draft assessment order, the assessee can either file his acceptance or file objections before the Dispute Resolution Panel within a period

of 30 days. In case the assessee accepts the draft assessment order or does not file any objection within a period of 30 days, the Assessing Officer shall pass an assessment order on the basis of the draft order within a period of one month from the end of the month in which either the acceptance is received or the period of filing of the objections expires. However, in case where the assessee files objections before the Dispute Resolution Panel, the Dispute Resolution Panel after considering the objections and the report of the assessing officer, the evidence furnished or collected or the result of any enquiry made by it, may confirm, reduce or enhance the variation proposed in the draft order.

The Dispute Resolution Panel shall not have the power to set aside the order. The Dispute Resolution Panel shall decide the issue within a period of nine months from the end of the month in which the draft order is forwarded to the assessee. Upon receipt of the directions from the Dispute Resolution Panel, the Assessing Offer shall pass the Assessment Order in conformity with the directions without any further opportunity to the assessee within one month from the end of the month in which the direction is received. The Dispute Resolution Panel shall comprise of three Commissioners of Income-Tax and shall be constituted by the Board at different places. The Dispute Resolution Panel shall have all the powers of the Civil Court as is available to the Assessing Officer under Section 131(1). The Order passed by the Assessing Officer on the directions of the Dispute Resolution Panel shall be appealable directly to the Income-tax Appellate Tribunal. The Finance Bill does not exclude the jurisdiction of the Commissioner of Income Tax for revision under Section 263, which is required in view of the fact that the directions are being issued by a Panel of three Commissioners.

2. Power to withdraw approvals

The Finance (No.2) Bill, 2009 proposes to insert a specific new Section 293C to provide that the approval granting authority shall have the power to withdraw the approval at any time after giving a reasonable opportunity to the concerned assessee. This is being done to harmonize with the other amendment whereby the approval once granted shall not be required to be renewed and shall be valid till such time it is withdrawn. However, no corresponding amendment has been proposed to make such approval cancellation/withdrawal order appealable as is the case when the approval sought is rejected. In the absence of such a specific provision, the only course available to the assessee in case of withdrawal of approval will be to file a unit petition before the High Court. This amendment is effective from 1st October, 2009.

3. Additional Director/Joint Director to have power to issue search warrant.

The Finance (No.2) Bill, 2009 proposes to make retrospective amendment to provide that Additional Director or Additional Commissioner shall have the power to issue search warrant

U/s 132 and132A of the Act. Similarly, Joint Commissioner or Joint Director shall also have the power to issue search warrants. Amendment in the case of Additional Director/Additional Commissioner is being made retrospectively from June 1, 1994 and in the case of Joint Director/Joint Commissioner retrospectively from October 1,1998.

4. Scope of income escaping being reassessed widened.

The Finance (No.2) Bill, 2009 proposes to make clarificatory amendment retrospectively from April 1, 1989 to provide that the assessing officer shall have the power to assess or reassess the income while making assessment under Section 147 of the Act not only in respect of income in respect of which the reasons have been recorded but also income in respect of any issue which comes to his notice subsequently in the course of the re-assessment proceedings notwithstanding that the reasons for such issue has not been included in the reasons recorded. This is being done to overrule some judgment whereby it was held that Assessing Officer does not have the power to assess/re-assess the income beyond the issue for which reasons have been recorded.

It may be noted that the implications in this amendment will be in respect of the income which has escaped the assessment though the reason may not have been recorded but the assessing officer will still not have the power to make roving enquiries in respect of income, which has not escaped the assessment.

5. Written-down value to be computed after allowing full depreciation.

A clarificatory amendment is being introduced under Section 43(6) to provide that in case of composite income, i.e., income which is chargeable to tax and income, which is not chargeable to tax, depreciation shall be computed as if the total composite income is chargeable to tax and full depreciation shall be deemed to have been allowed for computing written down value. This amendment will address the issue, which has arisen in the case of assessees engaged in the manufacture of rubber, tea, coffee etc. whereby part of the income being agricultural income is not chargeable to tax.

6. Document Identification Number

The Finance (No.2) Bill, 2009 in order to improve the tax administrative proposes, to insert a new Section 282 B to provide that every income tax authority shall allot a computer generated document identification number in respect of every notice, order, letter or any other correspondence issued by him to any other Income-tax authorities or assessee or any other person and such number shall be quoted in such notice, order, letter or correspondence. Similarly, every document, letter or any correspondence received by the income tax authorities shall be accepted only after allotting and quoting a computer generated document identification number. To make this effective, it has been further

provided that any notice, letter, correspondence issued by the income tax authorities or received by the income tax authorities , which does not bear the document identification number shall be treated invalid and shall be deemed to have been never issued or received. This is very important change, which will ensure complete transparency and also improve efficiency of tax administration. This will also help in avoiding controversies about the genuineness of the notice, letters issued or received and the timings of the same. This amendment shall be effective from October 1, 2010, i.e., almost a year after.

7. Notice or summons can be issued electronically

A section of the Income Tax Act in respect of return of service is being substituted w.e.f. 1st October, 2009 to provide that the service of notice of summons or any other communication can be made not only by post but also by such courier service as may be approved by the Board or in the form of any electronic record, which will include email etc. The Board is also being empowered to make rules for other means of transmission of documents and addresses for electronic mail at which communications can be delivered or transmitted to the person named therein. This is being done to facilitate sending notices etc. not only by courier but also through email etc. This will expedite the issue of notice etc. However, no corresponding amendment is being made giving assessee also an option to file replies electronically.

8. Taxation of Limited Liability Partnership (LLP)

The Finance (No.2) Bill, 2009 has provided taxation scheme for limited liability partnership on the lines of the partnership firm. Accordingly, the income of the LLP will be taxed in the hands of the LLP and the amount disbursed to the partner as profit shall be exempt as is in the case of partnership firm under Section 10(2A) of the Act. Remuneration and the interest to the partners of the LLP shall be allowable on the same lines as is allowed in the case of the partnership firm under Section 40 (b). The return of income is required to be signed by the designated partner of the LLP and in the absence of any designated partners or non-availability of the designated partner for any unavoidable reason, the same can be signed by any other partner. In case of liquidation of LLP, the liability for payment of tax of every partner will be joint and several unless the partner proves that the non-recovery cannot be attributed to any gross negligence, misfeasance or breach of the duty on his part.
With the inclusion of LLP in the definition of a firm as per provisions of clause (xiii) of section 47 any conversion of a LLP into a company will not be subject to capital gains. However, this does not address the issue of conversion of sole proprietor-ship and existing partnership concern into an LLP and also conversion of a private limited company into an LLP. Unless this amendment is carried out, it may be difficult for anyone to opt for status of LLP, which is a

new status meant for growth and capacity building of professional firms so as to make them internationally competitive.

9. *Penalty for concealment*

The Finance (No.2) Bill, 2009 proposes to make a clarificatory amendment effective from 01.06.2007 in respect of explanation 5(A) to section 271(1)(c) with regard to deemed concealment to provide that where the assessee is found to be owner of any money bullion, jewellery or valuable article or thing or any income based on any entry in any books of account or other document, which represents income for any previous year which has ended before the date of the search and where the return of such income has been furnished but such income has not been declared or the due date for filing the return for such year has expired but the return has not been filed then even after such income is declared later on in the return of income after the date of search, it shall be deemed to represent the concealed income and penalty accordingly shall be leviable. This amendment is being made to cover the omission in the earlier amendment made by the Finance Act, 2007. This amendment shall be effective retrospectively from 01.06.2007 and shall be applicable where search is initiated on or after 01.06.2007.

M. Advance Tax

1. *No advance tax if liability is less than Rs.10,000.*

The Finance (No.2) Bill, 2009 proposes to enhance the threshold limit for payment of advance tax from present Rs.5000 to Rs.10,000. Accordingly, advance tax shall be required to be paid in case the liability to pay tax is Rs.10,000 or more. This amendment is effective from April 1, 2009 and as such it is applicable for financial year 2009-2010.

N. Wealth Tax

1. *Wealth tax to be paid when net wealth exceeds Rs.30 lakhs*

The Finance (No.2) Bill, 2009 proposes to enhance the threshold limit for payment of Wealth Tax from Rs.15 lakhs to Rs.30 lakhs. This amendment will be effective from the assessment year 2010-2011, i.e., the net wealth as on March 31, 2010.

Conclusion

The budget as said in the beginning on the whole is a good budget trying to meet the expectations of all sections of the society though every one may not be fully satisfied. The various issues arising consequent to the proposed amendments and the inconsistencies discussed above will hopefully be addressed by the Finance Minister at the time of passage of the Bill by the Parliament.