

SALIENT FEATURES OF THE TAXATION LAWS (AMENDMENT) ACT, 2006

204 CTR (Articles) 140

- *By S.K. Tyagi*

The Taxation Laws (Amendment) Bill, 2005, was introduced in Lok Sabha on 9.5.2005. The aforesaid bill has received the assent of the President on 13.7.2006 and accordingly, the Taxation Laws (Amendment) Act, 2006, has come into effect.

A summary of the important features of the aforesaid Taxation Laws (Amendment) Act, 2006, is provided as follows:-

1. Amendment of section 10

Vide the aforesaid (Amendment) Act, *inter-alia*, certain provisions of section 10(23C) have been amended.

Under the existing provisions, in the first proviso to section 10(23C), the fund or trust or institution or any university or other educational institutions or any hospital or other medical institution referred to in sub-clauses (iv), (v), (vi) or (via) of the said clause (23C), shall make an application in the prescribed form and manner to the prescribed authority for the purpose of grant of exemption. However, no time limit has been provided for grant of approval or issue of notification under the aforesaid sub-clauses.

A new ninth proviso after the eighth proviso has been inserted in section 10, in order to provide that where an application for the issue of notification or grant of approval under the aforesaid sub-clauses is filed on or after the 13th of July, 2006, every such notification shall be issued or order granting approval or order rejecting the application, shall be passed before the expiry of **twelve months** from the end of the month in which such application was received.

Further, under the existing provisions contained in second proviso to section 10(23C), the Central Government or the prescribed authority, before notifying or approving the entities referred to in sub-clauses (iv), (v), (vi) or (via) of clause 23C, may call for such documents including audited annual accounts. However, there is no stipulation for getting their account audited by an accountant or furnishing the audit report along with the return of income.

Vide a new tenth proviso after the aforesaid ninth proviso inserted by the aforesaid Amendment Act, it is provided that when the total income of the aforesaid entities without giving effect to the

provisions of the said sub-clauses of clause (23C), exceeds the maximum amount which is not chargeable to tax in any previous year, such entities shall get their accounts audited by an accountant and furnish along with the return of income for the relevant assessment year the audited accounts and the report of such audit in the prescribed form duly signed and verified by such accountant.

The aforesaid amendment will take effect from the first day of April, 2006, and will, accordingly, apply to assessment year (AY) 2006-07 and subsequent years.

2. Amendment of section 12A

Section 12A relates to conditions as to registration of trusts, etc.

Under the existing provisions of section 12A, where total income of the trusts or institutions as computed under the Act, without giving effect to the provisions of sections 11 and 12, exceeds fifty thousand rupees in any previous year, the accounts of the trust or institution for that year shall be audited and such audit report shall be furnished along with the return of income.

Section 12A is amended by substituting '*the maximum amount which is not chargeable to income-tax*' in place of '*fifty thousand rupees*'.

The aforesaid amendment will take effect from first day of April, 2006, and will, accordingly, apply to AY 2006-07 and subsequent years.

3. Amendment of section 35

Section 35 deals with deduction of expenditure on scientific research.

The amendments in section 35 may be summarized as follows:-

- (i) The Central Board of Direct Taxes (CBDT) is now empowered to lay down by rules, the manner in which an association, university, college or other institution is to be granted approval and the guidelines and conditions to be fulfilled for grant of such approval by the Central Government.
- (ii) It is further provided that the application for approval shall be disposed of within twelve months from the end of the month in which such application was received by the Central Government.

- (iii) It is also provided that the deduction to which the assessee is entitled in respect of any sum paid to a scientific research association, etc., shall not be denied merely on the ground that subsequent to the payment of such sum by the assessee, the approval granted to the association etc. has been withdrawn.

The aforesaid amendments will take effect from first day of April, 2006, and will, accordingly, apply to AY 2006-07 and subsequent years.

4. Amendment of sections 35AC and 35CCA

Section 35AC deals with deduction of expenditure on eligible projects or schemes, whereas section 35CCA deals with deduction of expenditure by way of payment to associations and institutions for carrying out rural development programmes.

In each of the aforesaid sections, an Explanation has been inserted, according to which, the deduction to which the assessee is entitled to in respect of any sum paid to a public sector company or local authority or an association or institution, shall not be denied merely on the ground that subsequent to the payment of such sum by the assessee, the approval granted to such association, etc. or programme of rural development, is withdrawn.

The aforesaid amendments will take effect from first day of April, 2006, and will, accordingly, apply to AY 2006-07 and subsequent years.

5. Amendment of section 40

Section 40 deals with amounts not deductible in the computation of income from profits and gains of business or profession.

Under the existing provisions contained in sub-clause(ia) of clause (a) of section 40, non-deduction of tax at source on payment of interest, commission or brokerage, fees for professional services or fees for technical services or amounts payable to a contractor or sub-contractor, results in the disallowance of the sum in the computation of income of the payer.

The aforesaid sub-clause (ia) has been amended so as to extend the provisions thereof, to payments of royalty and rent. Further, the definition of the terms '*royalty*' and '*rent*' is also provided in the Explanation to the aforesaid sub-clause (ia).

The aforesaid amendment will take effect from first day of April, 2006, and will, accordingly, apply to AY 2006-07 and subsequent years.

6. Amendment of section 40A

Section 40A deals with expenses or payments not deductible in certain circumstances. Under the existing provisions contained in sub-sections (3) and (4) of section 40A, it is provided that any payment exceeding rupees twenty thousand, not made by way of a **crossed cheque** or **crossed bank draft** shall attract a disallowance to the extent of twenty per cent of such sum in the computation of income of the payer. Vide the aforesaid amendment in the aforesaid sub-sections (3) and (4) for the words '*crossed cheque drawn on a bank or by a crossed bank draft*', the words '*an account payee cheque drawn on a bank or account payee bank draft*', shall be substituted. In effect, the word '*crossed*' has been substituted by the words '*account payee*'.

The aforesaid amendment will take effect from 13th day of July, 2006.

7. Amendment of section 56

Section 56 deals with the computation of income from other sources. Under the existing provision in clause (v) of sub-section (2) of section 56, where any sum of money exceeding rupees **twenty five thousand** is received by an individual or an HUF without consideration from any person on or after 1.9.2004, the whole of such sum is included in the total income of the recipient. As per the proviso to the said clause, this clause shall not apply to any sum of money received from any relative or on the occasion of the marriage of the individual or under a will or by way of inheritance or in contemplation of the death of the payer.

The aforesaid proviso to clause (v) of sub-section (2) of section 56, has been amended so as to provide that this clause shall not apply to any sum of money received from:

- (i) any local authority as defined in the Explanation to Section 10(20), or
- (ii) any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in section 10(23C), or
- (iii) any trust or institution registered under section 12AA.

The aforesaid amendments will take effect from first day of April, 2006, and will, accordingly, apply to AY 2006-07 and subsequent years.

A new clause (vi) after clause (v) of section (2) of section 56 is inserted, so as to provide that where any sum of money, the aggregate value of which exceeds rupees **fifty thousand** is received without consideration by an individual or an HUF in any previous year from any person or persons on or after 1.4.2006, the whole of the aggregate value of such sum shall be included in the total income of the recipient.

The aforesaid amendment will take effect from first day of April, 2007, and will, accordingly, apply to AY 2007-08 and subsequent years.

8. Amendment of section 80GGA

Section 80 GGA deals with deduction in respect of certain donations for scientific research or rural development. In the aforesaid section 80GGA, three Explanations have been added. The first Explanation is added after clause (aa) of sub-section (2). The second Explanation is added after clause (b) of sub-section (2) and the 3rd Explanation is added after clause (bb) as Explanation 1 and the present Explanation is numbered as Explanation 2.

All the aforesaid Explanations lay down that the deduction to which the assessee is entitled in respect of any sum paid by way of donation for scientific research or programme of rural development to an entity, shall not be denied merely on the ground that subsequent to the payment of such sum by the assessee, the approval to such entity or programme has been withdrawn.

The aforesaid amendment will take effect from first day of April, 2006, and will, accordingly, apply to AY 2006-07 and subsequent years.

9. Amendment of section 139

Section 139 deals with the filing of returns of income by various entities. Under the existing provisions in clause (e) of sub-section (4C) of section 139, every fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via), shall furnish their return of income if the total income without giving effect to the provisions of section 10, exceeds the maximum amount which is not chargeable to tax.

The aforesaid clause (e) of sub-section (4C) of section 139, has been amended so as to provide that any university or other educational institution referred to in sub-clause (iiia) or any hospital or

other medical institution referred in sub-clause (iiia) of clause (23C) of section 10, shall furnish their return of income if their total income without giving effect to the provisions of section 10 exceeds the maximum amount which is not chargeable to tax.

The aforesaid amendments will take effect from first day of April, 2006, and will, accordingly, apply to AY 2006-07 and subsequent years.

After sub-section (4C), another sub-section (4D) has been inserted in section 139. As per the aforesaid sub-section (4D) every university, college or other institution referred to in clauses (ii) and (iii) of sub-section (1) of section 35, which is not required to furnish return of income or loss under any other provisions of section 139, shall furnish the return in respect of its income or loss in every previous year.

The aforesaid amendments will take effect from first day of April, 2006, and will, accordingly, apply to AY 2006-07 and subsequent years.

10. Amendment of section 143

Section 143 deals with the procedure for the assessment of income.

After the first proviso in sub-section (3) of section 143, another proviso is inserted, so as to provide that during the course of the assessment proceedings, where the AO is satisfied that the activities of the university, college or other institution referred to in clauses (ii) and (iii) of sub-section (1) of section 35 are not being carried out in accordance with all or any of the requisite conditions, then he may, after giving a reasonable opportunity of showing cause against the proposed withdrawal, to the concerned entity, recommend to the Central Government to withdraw the approval and that the Government may by order, withdraw the approval and forward a copy of the order to the concerned university, college or other institution and the AO.

The aforesaid amendment will take effect from first day of April, 2006, and will, accordingly, apply to AY 2006-07 and subsequent years.

11. Amendment of section 155

Section 155 deals with amendments and rectifications of the various orders passed by the income-tax authorities.

After sub-section (11), another sub-section (11A) has been inserted in section 155.

As per newly inserted sub-section (11A), the AO shall amend the order of assessment to allow deduction under sections 10A, 10B and 10BA, in respect of export income, which is received in or brought into India with the approval of the Reserve Bank of India or such competent authority within the prescribed time and the provisions of section 154 shall apply thereto and the period of four years shall be reckoned from the end of the previous year in which such income is so received in or brought into, India.

The aforesaid amendment will take effect from the 13th day of July, 2006.

12.Amendment of section 194-I

Section 194-I deals with deduction of tax at source from rent payable. Vide the aforesaid amendment, clause (i) of the Explanation to section 194-I, has been substituted and thereby the definition of the term '*rent*' has been enlarged. The definition of rent will now also include rent receivable in respect of plant, machinery and equipment.

Besides, another condition is added that section 194-I will apply whether or not any or all the items enumerated in the aforesaid Explanation are owned by the payee.

The aforesaid amendment shall take effect from 13th day of July, 2006.

13.Amendment of section 194J

Section 194J deals with deduction of tax from fees for professional or technical services. Sub-section (1) of section 194J has been amended so as to include '*royalty*' and '*any sum referred to in clause (va) of section 28*' for applicability of the provisions of section 194J. Further, the term '*royalty*', has been defined in the Explanation to section 194J.

The aforesaid amendment shall take effect from 13th day of July, 2006.

14. Other amendments in sections relating to procedural aspects, are not discussed here.

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