Direct Tax Rulings Overruled/Impacted by Finance Bill 2015

Finance Bill, 2015 has proposed several amendments to the existing Income-tax Act. The Bill proposes some amendments, which could have the effect of overruling quite a few Court and Tribunal decisions. Taxsutra.com has compiled a list of case-laws that are likely to be overruled/impacted if the amendments take effect.

Sr. No	Amendment Proposed	Case laws
1.	**Allowance of balance 50% additional depreciation u/s 32(1)(iia)** It is proposed to amend Sec 32(1)(iia) to allow balance 50% of the additional depreciation (not allowed in the year of acquisition and installation of such plant or machinery) in the immediately succeeding previous year.	**Confirmed:** **Apollo Tyres Ltd [TS-646-ITAT-2013(COCH)]** Cochin ITAT held that the balance 10% of the additional depreciation on new assets acquired post September would be available in the subsequent year. ITAT observed that Sec 32(1)(iia) prescribed no restrictions about the year in which additional depreciation was to be allowed.
2.	**Clarity relating to Indirect transfer provisions u/s 9(1)(i) explanation 5** The share or interest of a foreign company or entity shall be deemed to derive its value substantially from the assets (whether tangible or intangible) located in India, if the value of Indian assets exceeds the amount of ten crore rupees and represents at least 50% of the value of all the assets owned by the company or entity.	**Confirmed:** **Copal Research Limited [TS-509-HC-2014(DEL)]** Delhi HC set a 50% assets threshold and held that gains arising from sale of a share of a company incorporated overseas, which derives less than 50% of its value from assets situated in India would certainly not be taxable under section 9(1)(i) of the Act read with Explanation 5. HC observed that the expression "substantially" would necessarily have to be read as synonymous to "principally", "mainly" or at least "majority".
3.	**Expansion of definition of charitable purpose u/s 2(15)** Yoga included as a specific category in the definition of charitable purpose on the lines of education. Thus, Sec 11 exemption extended to yoga activities.	**Confirmed:** **Divya Yog Mandir Trust [TS-459-ITAT-2013(DEL)]** Delhi ITAT held that yoga can be safely accepted as a system fit into the definition of 'medical relief and providing yoga training through well-structured yoga shivir / camps can be covered in "imparting education". ITAT held that the assessee trust's activities relating to yoga were covered within first 3 limbs of the definition of charitable purpose as defined u/s 2(15)

4.	**Computation of book profit for calculation of MAT liability u/s 115JB** It is proposed that income share of a member of an AOP, on which no income–tax is payable u/s 86, should be excluded while computing the MAT liability of the member under 115JB. Further, it is proposed that income arising to a Foreign Institutional Investor ('FII') from transactions in securities (other than short term capital gains arising on transactions on which securities transaction tax is not chargeable) shall be excluded from the chargeability of MAT and the profit corresponding to such income shall be reduced from the book profit.	**<u>Overruled:</u>** **B. Seenaiah& Co Projects Ltd [(2009)315 ITR 1(Hyd ITAT)]** Hyderabad ITAT observed that unless specifically excluded under Explanation to sec 115JB, all amounts credited to the P&L, whether or not taxable under the normal provisions of the Act, would have to be included in computing the book profits. Thus, ITAT held that the share of income from AOP, which has been credited to the P&L account of the Assessee, cannot be excluded from book profits. **<u>Clarified:</u>** **Castleton Investments Ltd. [AAR NO. 999 OF 2010]** The AAR ruled that provisions of section 115JB of the ITA cannot be read down to confine its application only to domestic companies and it would equally apply to foreign companies. The AAR observed that MAT provisions do not distinguish between domestic and foreign companies and difficulty in preparing the accounts under the Indian Companies Act could not be a reason for non-applicability of MAT provisions. A similar view was taken by the **AAR in case of Moody's Analytics Inc.[A.A.R. NOS. 1186 TO 1189 OF 2011] and ZD [A.A.R. NO. 1098 OF 2011]**. **Bank of Tokyo Mitsubishi UFJ Ltd. [Appeal Nos. 5364 (DELHI) OF 2010 AND 5104 (DELHI) OF 2011]** Delhi ITAT upheld the view that the intention of legislature is very clear that the MAT provisions are applicable only to domestic companies and not to foreign companies. Further, ITAT observed that even if MAT is said to be applicable to foreign companies, in view of section 90(2), the taxpayer's claim for lower levy of tax under the tax treaty will have to be accepted as the provisions of section 115JB are subordinate to section 90(2) and have no overriding effect on section 90(2). **Timken Co. [AAR NO. 836 OF 2009]** The AAR held that provisions of section 115JB would not be applicable to foreign companies which have no presence or PE in India.

5.	**Rationalisation of TDS exemption provisions for interest payments made by co-operative society** It is proposed that the exemption provided from deduction of tax from payment of interest to members by a co-operative society u/s 194A(3)(v) of the Act shall not apply to the payment of interest on time deposits by the co-operative banks to its members (other than a member being a co-operative society).	**Overruled:** **Bagalkot District Central Co-operative Bank [TS-392-ITAT-2014(Bang)]** Bangalore ITAT held that a co-operative society engaged in banking business is not liable to deduct tax at source on interest payment on member deposits (both on time deposits and other than time deposits), despite payment exceeding Rs. 10,000, by virtue of exemption granted u/s 194A)3)(v). **Clarified:** **BhaganiNiveditaSahakari Bank Ltd[87 ITD 569 (Pune)]** Pune ITAT held that co-operative society (u/s 194A(3)(v)) was to be interpreted as co-operative society other than co-operative society carrying on banking business. **The DaivadnyaSahakara Bank Niyamit[ITA No. 327/PNJ/2013]** The Panaji bench held that the terms of clause (v) which is general in nature will not apply to a co-operative bank.

6.	**Clarity regarding source rule in respect of interest received by the non-resident engaged in the business of banking** It is proposed that any interest payable by the PE in India of a non-resident engaged in the banking business to its HO or any PE or any other part of such non-resident outside India shall be deemed to accrue or arise in India and shall be chargeable to tax in addition to any income attributable to the PE in India. The PE in India shall be deemed to be a person separate and independent of the non-resident person of which it is a PE. Accordingly, the PE in India shall be obligated to deduct tax at source on any interest payable to either the head office or any other branch or PE, etc. of the non-resident outside India and non-deduction would result in disallowance of interest claimed as expenditure by the PE and may also attract levy of interest and penalty.	**Overruled:** **Sumitomo Mitsui Banking Corporation [TS-187-ITAT-2012(Mum)]** ITAT Special bench held that the income received by the HO was not liable to tax in India under the domestic law. The Special bench observed that the branch and HO were same legal entities and thus the interest paid by branch to HO is also not deductible under the Act. It was held that TDS provisions u/s 195 are also not applicable on the interest payments. **ABN AMRO BANK, N.V. [TS-95-HC-2011(CAL)]** Calcutta HC held that interest paid by a branch of a foreign bank (PE in India) to HO was deductible in computing taxable profits of PE in India. The HC held that HO was not liable to pay any tax on interest earned from branch under the Act and that there was no obligation on branch to deduct tax while making remittance of interest to HO or other branches. The Calcutta HC ruling confirmed the decision of the Mumbai bench of ITAT in the case of **Dresdner Bank AG (108 ITD 375)**.
7.	**Rationalisation of provisions of section 11 relating to accumulation of Income by charitable trusts and institutions** It is proposed that Form 10 to avail benefit of accumulation of income u/s11 should be filed before the due date of filing return of income u/s139 for the fund or institution. Where the Form 10 is not submitted before this date, the benefit of accumulation would not be available and such income would be taxable at the applicable rate. Further, the benefit of accumulation would also not be available if return of income is not furnished before the due date of filing return of income.	**Overruled:** **Kandla Dock Labour Board [TS-835-ITAT-2011(Rjt)]** Rajkot ITAT held that assessee's claim for accumulation of income cannot be rejected merely on the ground that Form No. 10 was not filed along with the return of income, as section 11(1)(a) permits automatic accumulation of income. ITAT observed that filing of Form 10 u/s 11(2) and exercising in writing before the expiry of the time allowed u/s 139(1) for furnishing the return of income are different requirements. ITAT stated that for exercising in writing it is not required to file any prescribed form, it could be on simply application or it could be exercised by passing accounting entries in the books of account, financial statements and other documents filed along with the return of income.

8.	**Measure to curb black money – amendments to mode of accepting and repaying loans or deposits or specified advances** It is proposed that u/s 269SS and 269T, no payment or repayment of any loan or deposit or any sum of money, whether as advance or otherwise, in relation to transfer of an immovable property should be made otherwise than by an account payee cheque or account payee bank draft or by electronic clearing system through a bank account, if the amount of such loan or deposit or such specified sum is Rs 20,000 or more.	**Overruled:** **Madhav Enterprises Pvt Ltd[TS-842-HC-2014(GUJ)]** Gujarat HC observed that the amount received by the assessee (builder) from the prospective buyers (for booking of flat/shop) was advance money simplicitor which was neither a loan nor a deposit even within the meaning of the said term assigned to u/s 269T. Therefore, the HC held that when such amount is returned that too without interest, the provisions of section 269T would not be applicable.

9.	**Rationalisation of provisions for assessment of persons other than person on whom search initiated** It is proposed that for applicability of provisions of Sec 153C (which relates to assessment of income of any other person), AO is required to be satisfied that any books of account or documents seized or requisitioned pertain to, or any information contained therein,"relates to", inspite of "belong to", any person, other than the person searched.	**Overruled:** **Qualitron Commodities Pvt. Ltd [TS-89-ITAT-2015(DEL)]** Delhi ITAT quashes block assessment proceedings u/s 153C against assessee (other person), as the incriminating material seized from the Searched person's premises, though "relating to" the assessee, did not "belong to" the assessee. **Global Estate [TS-862-ITAT-2012(AGR)]** The Agra bench held that for making assessment u/s 153C, AO must record satisfaction that seized material, found during other person's search, "belonged" to assessee. The bench noted that no material was produced by the Revenue to prove that the AO was satisfied that the seized material belonged to a person other than the one referred to u/s 153A. **Tanvir Collections Pvt Ltd [TS-8-ITAT-2015(DEL)]** Delhi ITAT quashes block assessment proceedings u/s 153C against assessee (person not subject to search), being void ab initio, in absence of satisfaction recorded by searched person's AO that incriminating material found during search belonged to assessee. **Pepsico India Holdings** [WP(C)No 414 of 2014] Delhi HC explaining the difference between "belongs to" and "relates to", held that photocopies in the possession of a searched person does not mean and imply that they "belong to" the person who holds the originals. **SSP Aviation Ltd [TS-211-HC-2012(DEL)]** Delhi HC held that Sec 153C only requires AO's satisfaction that such documents etc "belongs to" such person other than searched and then he shall hand over the valuable article or books of account or document to the AO having jurisdiction over the other person. **Pepsi Foods Private Limited [TS-495-HC-2014(DEL)]** Delhi HC quashes Sec 153C notice issued as it holds that satisfaction note by AO failed to express "satisfaction" of the kind required u/s 153C, which is a precondition for issuance of notice. HC observed that satisfaction note itself must display reasons or basis

10.	**Amendment to conditions for determining residency status of companies u/s 6(3)** It is proposed that the condition for a company to qualify as resident in India will be if the place of effective management of the company, at any time in that year, is in India or it is an Indian company. For this clause, the "place of effective management" means a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance made.	**Clarified:** **Radharani Holdings Pvt Ltd VS Addl CIT (110 TTJ 920)** Delhi ITAT held that the control and management of a company incorporated in Singapore, was situated outside India as all the board meetings of the assessee company were held at Singapore and tax residency certificate has also been issued by the Singapore taxation authorities. ITA observed that the expression "control and management" means central control and management and not carrying on of day-to-day business and that the fact that one of the directors who holds 99 per cent shares of the company is resident in India or that the company has invested its entire funds in India is not decisive. **Narottam& Pereira Ltd. vs. CIT [TS-10-HC-1953(BOM)]** Bombay HC held that in the case of a foreign company, even if a slightest control and management is exercised from outside India it would not fall within the ambit of s. 6(3)(ii) and the company would be treated as a non-resident. ITAT observed that in the case of a company, the Department has to establish that the control and management of its affairs is situated wholly in India, for the company to be treated as resident in India.

11.	**Amendment to interpretation of expression "erroneous in so far as it is prejudicial to the interests of the revenue" for revision of orders u/s 263** It is proposed that for the purpose of providing clarity, an order passed by the AO shall be deemed to be "erroneous in so far as it is prejudicial to the interests of the revenue" if in the opinion of the Pr. CIT or CIT, the order is passed in specified scenarios, including order passed without making inquiries/verification.	**Clarified:** **Bisakha Sales Pvt. Ltd. [TS-590-ITAT-2014(Kol)]** Kolkata ITAT upholds CIT's order u/s 263 and expresses astonishment at 'bald' assessment order and 'hurry' of AO in completing re-assessment proceedings when he had substantial time at his disposal. ITAT observes strange pattern/peculiarity in over 500 pending appeals against Sec. 263 orders, wherein "..assessment stands concluded without any investigation or verification or inquiry worth its name.. ". **Star Griha Private Limited, [TS-514-ITAT-2014(Kol)]** Kolkata ITAT upholds CIT's order u/s 263 due to absence of requisite/proper enquiry and application of mind to facts of case by AO. ITAT held that non application of mind while making assessment amounts to erroneous assessment warranting exercise of revisional jurisdiction. **Sesa Goa Limited [TS-458-ITAT-2014(PAN)]** Panaji ITAT upholds CIT's revision order u/s 263 in absence of inquiry by AO regarding assessee's section 10B eligibility claim. ITAT observes that merely going through computation of claim does not mean that AO had applied his mind, eligibility of claim and computation of claim are two different things. ITAT held that before allowing claim, AO bound to inquire whether assessee complied with section 10B conditions, not a case of inadequate inquiry but complete absence of inquiry in present case. **Confirmed:** **Gee Vee Enterprises Limited [(99 ITR 375)]** The Word 'erroneous' include 'failure to make an enquiry where the circumstances of the case are such that provoke inquiry'. **Impacted:** **Malbar Industrial Company Limited [(243 ITR 83) SC]** The Supreme Court opined that where two views are possible and the AO has taken one view with which the CIT does not agree, the AO's order cannot be treated as erroneous and prejudicial to the interest of Revenue. It is necessary to show that the order of the AO is not in accordance to the law.

12.	**Clarification on applicability and computation of amount of penalty u/s271(1)(c) wh ere tax liability determined u/s 115JB/115JC** It is proposed that the computation of amount of tax sought to be evaded shall be the summation of tax sought to be evaded under the general provisions and the tax sought to be evaded under the provisions of section 115JB or 115JC. Where, if an amount of concealment of income on any issue is considered under both the calculations, then such amount shall not be considered in computing tax sought to be evaded u/s 115JB or 115JC.	**Overruled:** **Nalwa Sons Investments Ltd[(2010) 327 ITR 543 (Del)]** Delhi HC that penalty u/s 271(1)(c) was not to be imposed as the income of the assessee was assessed u/s 115 JB and not under the normal provisions. HC observed that even if there was concealment but that had its repercussions only when the assessment was done under the normal procedure. HC held that when the computation and tax paid was u/s 115 JB, the aforesaid concealment had no role to play and was totally irrelevant and therefore the concealment did not lead to tax evasion at all. **Matrix Laboratories Ltd.[TS-841-ITAT-2014(HYD)]** Hyderabad ITAT held that as the assessee's tax computation was determined by the AO u/s 115JB, there is no scope for levy of penalty u/s 271(1)(c).
13.	**Incase of demerger, cost to demerged co. shall be cost to resulting co.** Amends Sec 49(1)(iii)(e) to provide that the cost of acquisition of an asset acquired by resulting company shall be the cost for which the demerged company acquired the capital asset as increased by the cost of improvement incurred by the demerged company.	**Overruled:** **M/s Amritsar Hotel Ltd [TS-834-ITAT-2011(CHANDI)]** Chandigarh ITAT held that there are no provision in the Act which expressly provides the cost of acquisition of the demerged co. can be treated as cost of acquisition in the hands of the resulting co., in cases of demerger.

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