

# **MISCELLANEOUS AMENDMENTS BY FINANCE ACT, 2022**

## **SECTION 155(18): TIME-LIMIT FOR RECTIFICATION UNDER SECTION 154 TO DISALLOW DEDUCTION OF ANY SURCHARGE, CESS NOT ALLOWABLE UNDER SECTION 40**

- Where any deduction in respect of any surcharge or cess, which is not allowable as deduction under section 40, has been claimed and allowed in the case of an assessee in any previous year, such claim shall be deemed to be under-reported income of the assessee for such previous year for the purposes of sub-section (3) of section 270A, notwithstanding anything contained in sub-section (6) of section 270A, and the Assessing Officer shall recompute the total income of the assessee for such previous year and make necessary amendment; and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of section 154 being reckoned from the end of the previous year commencing on the 1st day of April, 2021:

**Provided** that in a case where the assessee makes an application to the Assessing Officer in the prescribed form and within the prescribed time, requesting for recomputation of the total income of the previous year without allowing the claim for deduction of surcharge or cess and pays the amount due thereon within the specified time, such claim shall not be deemed to be under-reported income for the purposes of sub-section (3) of section 270A.

### **♦ ANALYSIS OF SECTION 155(18) (INTRODUCED BY FINANCE ACT, 2022) ♦**

As per section 40(a)(ii), "Income tax" is not allowable as deduction while computing the income. But certain courts held that "**Surcharge or Cess on Income tax**" is not "Income tax" and consequently "surcharge or Cess" was allowed as deduction while computing income under the head P/G/B/P. **Section 40(a)(ii) has been amended retrospectively by Finance Act, 2022 to disallow "Surcharge or Cess"** in any assessment year in which deduction has been claimed by the assessee and allowed to him.

Section 155(18) is explained by the following example.

Assessee claimed deduction of "Surcharge and Cess" in assessment year 2009-10 of an amount of ₹ 10,00,000. The same was allowed to the assessee in view of High court judgements. Now as per section 155(18):

- (i) Such claim of deduction of surcharge and cess of ₹ 10,00,000 shall be deemed to be under reported income of the assessee for previous year 31.03.2009 for the purpose of section 270A(3).

Section 270A(6) provides certain circumstances in which it shall be deemed that there is no under reported income. Section 155(18) overrules section 270A(6) and provides that this will be treated as under reported income on which penalty of 50% shall be levied.

- (ii) Assessing Officer shall recompute the income of previous year 31.03.2009 by disallowing ₹ 10,00,000 being surcharge and cess by passing a rectification order under section 154 read with section 155(18). The rectification order shall be passed upto 31.03.2026.
- (iii) In order to encourage voluntary compliance by the assessee, the proviso to section 155(18) states that no penalty for under reported income shall be levied if the assessee himself makes application to Assessing Officer in prescribed form requesting for recomputation of income after disallowing surcharge and cess and pays the tax and interest within the prescribed time.

## 2. Amendments pertaining to successor entity subsequent to business reorganization [Sections 170, 170A and 156A]

**Tax proceedings in the case of predecessor entity** - Section 170 provides for assessment in cases of succession (otherwise than by death). In practice, however, once an entity starts the process of reorganization by filing an application with the adjudicating authority/High Court, the period of time involved in coming to a conclusion with respect to such reorganization is found to be a long-drawn process and is not time bound. The reorganization often is from a preceding date. During the pendency of the court proceedings, the income-tax proceedings (and assessments) are carried on and often completed on the predecessor entities only. Courts have held such proceedings and consequent assessments illegal as the predecessor assessee ceases to exist in the midst of a perfectly valid and legal proceeding **CIT's Maruti Suzuki India Ltd.**

Hence, till the decision of the court is received, the proceedings of the Act have to be continued in the case of the predecessor only and such proceedings once completed, cannot become illegal as a result of subsequent order of any court.

**Amendment to section 170** - With a view to clarify that such proceedings under the Act are valid, sub- section (2A) has been inserted to section 170. It provides that the assessment/reassessment/any other proceedings, made or initiated on the predecessor during the course of pendency of such succession, shall be deemed to have been made or initiated on the successor. "**Successor**" means all resulting companies in a business reorganisation, whether or not the company was in existence prior to such business reorganisation.

**Modified return**- Further, it is seen that post such reorganization, the affairs of the successor entity go through a complete change with effect from the date from which such reorganization takes place. However, due to the indefinite timeline involved in issuing such orders, there is a gap between the effectiveness of such order and the date on which such order is issued by the competent authority. This also affects the final accounts of such entities as they are unable to modify their already filed returns in accordance with the reorganization. Hence, in order to remove this anomaly, section 170A has been inserted. Section 170A is applicable as follows-

- (i) **There is a business reorganisation.** "Business reorganisation' means the reorganisation of business involving the amalgamation or de-merger or merger of business of one or more persons.
- (ii) **Successor** has already submitted a return of income/loss under section 139 for any assessment year relevant to the previous year to which the order given below applies.
- (iii) After submission of aforesaid return, the High Court or Tribunal or an Adjudicating Authority (as defined in section 5(1) of Insolvency and Bankruptcy Code, 2016] has passed an order pertaining to business reorganisation.

If the aforesaid conditions are satisfied, the **successor can furnish modified return pertaining to the period contained in the aforesaid order**, Modified return can be submitted **within 6 months from the end of the month in which the order of High Court/Tribunal/Adjudicating Authority is issued**. It should be submitted in prescribed form and manner in accordance with and limited to the aforesaid order.

**Modification/revision of notice-** Generally, in cases of business reorganisation, Court/Tribunal/Adjudicating Authority modify demand created vide various proceedings in the past. However, there is no procedure/ mechanism provided in the Act to reduce such demands from the outstanding demand register. Hence, in order to remove this anomaly, **section 156A has been inserted. It can be invoked as follows-**

- (i) A notice of demand has already been issued under section 156 pertaining to any tax/interest/penalty/ fine, etc.
- (ii) The aforesaid liability has been reduced as a result of an order of an Adjudicating Authority (asdefined in section 5(1) of the Insolvency and Bankruptcy Code, 2016]
- (iii) If the aforesaid conditions are satisfied, the Assessing Officer shall modify the demand payable in conformity with such order and shall thereafter serve on the assessee a notice of demand specifying the sum payable, if any. Such notice of demand shall be deemed to be a notice under section 156 and the provisions of the Act shall apply accordingly.
- (iv) When, however, the aforesaid order of the Adjudicating Authority is modified by the National Company Law Appellate Tribunal or the Supreme Court, the modified notice of demand shall be revised accordingly.

#### ♦ ANALYSIS OF SECTION 170(2A) AND 170A INSERTED BY FINANCE ACT, 2022 ♦

Let's say X Ltd. files an application for merger into Y Ltd. before the High court for approval. The application is filed on 10.07.2017. Let's say on 31.01.2020, a notice under section 148 is issued in respect of assessment year 2016-17 on X Ltd. and proceedings under section 147 are initiated. On 28.02.2021, High Court approves the merger w.e.f. 01.04.2017 and such order is received by Principal Commissioner/ Commissioner on 05.03.2021.

Now, as per the case of **Principal Commissioner of Income Tax v. Maruti Suzuki India Ltd. (2019)(SC)**, assessment proceedings and order passed in name of X Ltd. (Amalgamating Company) was declared as null and void as on the date of such order, the amalgamating company ceased to exist.

To overrule the above judgement, section 170(2A) has been inserted to provide that any proceeding **initiated** or **made** on the predecessor during the period of pendency of succession application i.e.:

- Commencing from the date of filing of application for such reorganization (In our case, 10.07.2017) and
- Ending with the date on which such order disposing off the application is received by Principal Commissioner/ Commissioner (In our case 05.03.2021)

shall be deemed to be **initiated** or **made** on the successor. (In our case Y Ltd.)

It may be noted that the provisions of section 170(2A) shall also apply where the Assessing Officer passes the assessment order before 25.03.2021 i.e., assessment is completed before the date on which order of High court is received.

Section 170A has also been introduced to provide that where the successor (In our case Y Ltd.) has filed any return of income for any assessment year relevant to previous year to which such order of approval of the High Court applies, a **MODIFIED** Return shall be furnished by successor **limited** to any issues arising out of the said order. In other words, the successor shall give effect to the merger as per the approval order of the High Court and shall not make any other adjustments not relating to such order of approval.

In our example, since by 28.02.2021, Y Ltd. would have filed return for A.Y. 2018-19, 2019-20, 2020-21, Y Ltd. shall be required to file a modified return by 31.08.2021 in accordance with and limited to any issues arising out of the said order, i.e., to give effect to the merger in its books of account.

It may also be noted that the provisions of section 170(2A) or 170A apply to an amalgamation or demerger or merger of business of one or more persons. The provisions of these sections shall also apply to cases where an entity is merged/ amalgamated into another entity pursuant to an order to such effect passed by an Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016.

For instance, where Videocon Ltd. is declared insolvent and by an order of appropriate authority is merged into X Ltd., then any assessment proceedings initiated or on order to that effect passed under the Income Tax Act during the course of pendency of proceedings before the appropriate authority for the merger shall be deemed to be initiated or made on X Ltd.

## **WITHDRAWAL OF EXEMPTION UNDER SECTION 10(8)/ (8A)/ (8B)/ (9)**

### **Section 10(8)**

It provided exemption to the income and remuneration of an individual who is assigned duties in India in connection with any co-operative technical assistance programmes and projects in accordance with an agreement entered by the Central Government with the Government of a foreign State. Both the remuneration received by the individual from the foreign State and any other income accruing or arising outside India and is not deemed to accrue or arise in India, are exempt under the said clause in certain cases. This exemption has been withdrawn from Assessment Year 2023-24.

### **Section 10(8A)**

It provided exemption on the remuneration or fee received by certain consultants (directly or indirectly) out of the funds made available to an international organisation (agency) under a technical assistance grant agreement between the agency and the Government of a foreign State. It further provided exemption to any income accruing or arising outside India (which does not accrue or arise in India) in respect of which the consultant is required to pay income-tax or social security tax to the Government of the country or the country of his or its origin. This exemption has been withdrawn from Assessment Year 2023-24.

### **Section 10(8B)**

It provided exemption to an individual who is an employee of the consultant [as referred to in clause (8A)] and who is assigned duties in India in connection with a technical assistance programme and project in accordance with an agreement entered into by the Central Government and the agency subject to certain conditions. It further provided exemption to any income accruing or arising outside India (which does not accrue or arise in India) in respect of which the consultant is required to pay income or social security tax to the country of his origin. This exemption has been withdrawn from Assessment Year 2023-24.

### **Section 10(9)**

It provided exemption to the income of the family members of any individual or consultant [as referred in clauses (8), (8A) and (8B)], who accompany such individual or consultant to India, if the income does not accrue or arise in India and in respect of which such member is required to pay income-tax or social security tax to the Government of foreign state or country of origin of such member. This exemption has been withdrawn from Assessment Year 2023-24.