

CFI Post-Budget Interaction with CBDT Chairman on 26th May

A delegation of CFI members had an opportunity to meet **Shri Atulesh Jindal, Chairman, Central Board of Direct Taxes (CBDT)** to discuss Direct Taxation issues on 26th May 2016 at 11.00 a.m. at Ministry of Finance, North Block, Delhi.

The delegation members included Mr. Soodamani Meyyappan, General Manager Taxation, Hindustan Construction Co. Ltd., Mr. Mahesh Kothari, Deputy General Manager-Taxation, Simplex Infrastructure Ltd., Mr. P K Mehta, General Manager – Corporate Affairs, Punj Lloyd Ltd., Mr. Siddharth Singh, Secretary General & Mr. Shiv Rawat, Deputy Director respectively from CFI.

While complimenting the Chairman for the several positive steps announced in the Budget 2016-17 for the infrastructure construction sector, CFI urged the Chairman that the taxation policy need to be framed keeping in view the practices prevailing in infrastructure construction sector.

CFI also briefed the Chairman about the current financial crisis faced by infrastructure construction sector due to huge debts for reasons beyond their control including delay in recovery of payments/claims from clients, litigations, multiplying interest on bank loans etc.

The gist of the discussion is given below:

1. Amendment to Rule 8D of Income Tax rules

Rule 8D had an elaborate formula to disallow expenses such as interest and other administrative expenses not directly relatable to the exempt income. 0.5% of the average value of annual investment was considered for purpose of disallowance. It is proposed to provide that disallowance will be limited to 1% of the average monthly value of investments yielding exempt income, but not exceeding the actual expenditure claimed.

While seemingly a good proposal in view of the cap that the amount of disallowance cannot exceed the actual expenditure incurred, the following issues are to be addressed:

The detailed amended rule has not been published; ideally, the amendment should have also stated that no disallowance is to be made in the year when there is no exempt income and it is not clear whether entire disallowance will be limited to 1% or only the expenditure which is considered not directly relatable to the exempt income.

Chairman informed that the department will shortly come out with necessary guidelines.

2. CBDT Circular dated 7th March 2016 – Clarification regarding Taxability of Consortium members

CBDT vide circular dated 7th March 2016, has clarified regarding the Taxability of Consortium members instead of taxing JV or AOP. Member's seeks more clarifications on the following:

One of the requirements of the circular says that each member is independently responsible for executing its part of work through its *own resource*. Practically, the work is subcontracted many a time to the other partner also. Hence the only requirement should be that the risk and reward for each members share lies with the said member

only. The method of executing the work should be individual choice of member concerned.

Further , the circular should state that in cases where the members of the AOP declare to the contractee under rule 37BA, that the income of the Joint Venture is taxable in hands of the individual members, it is mandatory for the contractee to issue separate TDS certificates in the name of the members based on the declaration so given.

Chairman agreed to review the issue.

3. Applicability of Section 143 (1D) of Income-Tax Act

The intent of section 143(1D) was to selectively grant refund u/s 143(1), after the issue of notice u/s 143(2). **The beneficial amendment proposed in the original Finance Bill seeking to grant refund u/s 143(1) even in cases which has been selected for scrutiny u/s 143(2), has been withdrawn/reversed with the subsequent amendment whereby an embargo of one year from the end of the financial year in which return is furnished, has been placed before issuing refund u/s 143(1).** This has resulted into hardship and difficulties in the form of unnecessary blockage of funds, especially to the Corporate Assessee and already starved construction sector.

However while tabling the bill in Lok Sabha on 05.05.2016 again an amendment was proposed that the processing of return is not necessary before the expiry of one year from the end of the financial year in which return is furnished, where a notice is issued for scrutiny assessment under Section 143(2) of the Act and the Finance Bill has already got the presidential assent on 14.05.2016 which has become an Act.

CFI members had emphasized that various assesseees of large scale operations are subject to mandatory scrutiny every year and issue of refund is a routine process in their case. Department can very well adjust demand if any arising at the time of scrutiny assessment, with the subsequent refund if any u/s 143(1)/154 by taking recourse to Section 245 and that to with up to date interest. **Suggestion: Amendment introduced in original Finance Bill 2016 may please be restored.**

CBDT Chairman agreed to examine the issue.

4. Roadmap not announced for reduction in Corporate Tax rates

In the budget 2015-16, it was proposed that Corporate Tax rates would be reduced from 30% to 25% over the next 4 years beginning from FY 2016-17. However no announcement has been made regarding the road map for the proposed reduction in Corporate Taxes, though the sunset clause has been announced that deduction under Sections 80-IA, 80 IAB and 80 –IB(9).will not be available if the specified activity commences on or after 1st April 2017. The Federation suggested the roadmap for reduction in Corporate Tax rates.

5. Income Computation and Disclosure Standards (ICDS) – Retention money & Foreign Exchange differences recognized as revenue

a. Effect of recognition of retention money (ICDS-III):

As per ICDS III relating to construction contracts, Contract revenue shall comprise initial amount of revenue agreed in the contract **including retentions** and variations in contract work, claims and incentive payments if it can be

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measured reliably including transition provisions. Further, as per clause 22 of ICDS III (transitional provision), not only current year's retention amount will be taxed, but this will be having its effect retrospectively. As a result, there will be a substantial tax burden in the assessment year 2016-17 if the above provision is retained. The argument of not considering outstanding retention amount as on 1st April, 2015 requires no further clarification as this is patently unjust and against the provisions of the Act as also against the declared policy of the Central Government

Under ICDS, retention money is specifically included as part of contract revenue. Industry suggests that the erstwhile practice of excluding retention money from the Taxable income be continued. This is against the principles of accounting and consistency. It will unsettle already settled law on the subject.

b. Effects of Changes in Foreign Currency Rate (ICDS VI)

ICDS VI provides for recognition of all resulting exchange differences as income or as expenses in the previous year. In effect, the ICDS does not make any distinction between capital v revenue nature of foreign exchange fluctuations. ICDS overlooks the fact that fluctuation on capital account is not part of income base.

Further, as per clause 12 of ICDS VI (transitional provisions) this will have also retrospective effect and as a result any construction company with non-integral branches in foreign countries with substantial amount lying in the "Foreign Currency Transition Reserves" will also be seriously affected which is against the provisions of Income Tax Act and also against the declared policy of the Government of not to make retrospective amendment and will affect the construction industry in a substantial manner.

Suggestion by the members :

- i. The members pointed out that the Direct Tax Committee has not yet published the FAQs to overcome the problem of transition provisions.
- ii. The above provisions of ICDS may please be rolled back to their erstwhile treatment or may please be withdrawn. This fact was also well accepted by the Income Tax Simplification Committee headed by Justice R.V. Easwar, which after deliberation on the issue, recommended deferment of ICDS with following observations
- iii. Considering the regulatory changes in the Companies Act, 2013, Ind AS and proposed GST, the Industry should be allowed more time to deal with another change of this nature.
- iv. Further multiple accounting methods, one for the books of accounts and other for tax purposes, creates confusion, interpretation issues, multiplicity of records and additional compliance burden which may outweigh the gains to be obtained by the application of ICDS.

Chairman agreed to review the issue and will also check the latest development from the Committee appointed for the purpose.