

Analysis of select amendments proposed by the Finance Bill, 2023

February 2023

Legend

ITA	Income-tax Act, 1961
AY	Assessment Year
FY	Financial Year
CIT(A)	Commissioner of Income-tax (Appeals)
ITAT	Income-tax Appellate Tribunal
JC	Joint Commissioner of Income-tax
DCIT	Deputy Commissioner of Income-tax
Pr. CCIT	Principal Chief Commissioner of Income-tax
CCIT	Chief Commissioner of Income-tax
Pr. DGIT	Principal Director General of Income-tax
DGIT	Director General of Income-tax

Introduction of the authority of Joint Commissioner (Appeals)

- New authority to address high pendency of cases before the CIT(A)
- To handle certain classes of cases involving small amounts of disputed demands
- Section 246 of the ITA is to be substituted to provide for JC(A)
- Following to become appealable orders before JC(A):
 - a. Intimations under section 143(1)
 - b. Order under section 143(3)
 - c. Order of assessment, reassessment or re-computation under section 147
 - d. Order being an intimation under section 200A(1)
 - e. Order under section 201;
 - f. Order being an intimation under section 206(6A)
 - g. Order under section 206CB(1)
 - h. Order imposing a penalty under Chapter XXI; and
 - i. Order under section 154 or section 155 amending any of the orders mentioned in clauses (a) to (h)

Introduction of the authority of Joint Commissioner (Appeals)

- Orders passed above the rank of DCIT cannot be appealed against JC(A):
 - These are appealable only before DRP / CIT(A) / ITAT as applicable
- Existing appeals pending before the CIT(A) to be transferred to JC(A) by notification
- Provisions also contemplate:
 - Transfer of any matter which pending before the JC(A) to the CIT(A)
 - Providing an opportunity of being reheard when the appeal is transferred.
 - Making the JC(A) faceless

Assistance of professionals during search and seizure

- Amendments made to empower the authorized officer to requisition the services of specified persons.
- Backdrop of search and seizure becoming complex with the digitization of data, cloud storage etc. This will require usage of data forensics, advanced technologies for usage of data etc. for complete and proper analysis of accounts.
- There is requirement of specific domain experts such as digital forensic professionals, valuers, archive experts etc. Services of professionals such as locksmiths, carpenters etc. are also required.
- Above professionals to be approved by Pr. CCIT or CCIT or Pr. DGIT or DGIT per procedure to be prescribed.



Defining execution of 'last of authorization of the search'

- The timelines for completing assessment or reassessment in search cases is linked to the 'execution of the last of the authorisations during such procedure', in order to establish the day of conclusion of search proceedings.
- What constitutes as last authorisation is provided in section 153B.
- As the provisions of section 153B are no longer applicable per amendments made in FA 2021, it is proposed to provide the meaning of execution of last authorisation under section 132 itself.



Alignment of time limits under section 153

Nature of assessment	Existing	Proposed
Scrutiny assessment under section 143 / 144 of regular return	6 months (after considering 3 months for issuing 143(2) notices) from the end of the AY in which the income was first assessable – typically Dec 31 following the AY	12 months from the end of the AY in which the income was first assessable – typically Mar 31 following the AY
Scrutiny assessment of updated return	9 months from the end of the FY in which the return was furnished	12 months from the end of the FY in which the return was furnished
OGE to order passed under section 263 by Pr. CCIT and CCIT	---	Same time limit as is now provided in sections 153(3), 153(5) and 153(6)

Alignment of time limits under section 153

Nature of assessment	Existing	Proposed
Assessments / reassessments pending as of the date of the search	---	Time limits under sections 153(1), 153(1A), 153(2) and 153(3) is extended by 12 months in all categories of post-search / post-requisition assessments
OGE to CIT(A), ITAT, HC, SC order and revisionary order on an updated return	---	Time limit as is now provided in sections 153(3), 153(4) and 153(6)



Time limits under reassessment proceedings

Action	Existing	Proposed
Filing of return in response to notice under section 148	---	3 months from the end of the month in which notice is issued or further time that AO may allow
Time limit for issuing notice under section 148 where last of authorisation for search under section 132 / requisition under section 132A is after 15 th March	---	Notice deemed to be issued on 31 March

Provisions relating to reassessment proceedings

- Pr. CCIT / Pr. DG / CC / DG is authority to sanction issue of notice for assessment / reassessment of more than 3 years have elapsed from the end of the relevant AY.
- In computing the 3 years above, the period of limitation excluded by 3rd, 4th, 5th, 6th proviso of section 149(1) would be excluded.

Penalty for furnishing inaccurate statement of financial transaction or reportable account

- Section 271FAA provides for penalty of Rs. 50,000 to be imposed on the reporting person for certain cases of inaccurate reporting under section 285BA(1).
- The prescribed income-tax authority under section 285BA(1) shall be the prescribed authority to levy such penalty.
- Penalty of Rs. 5,000 for every inaccurate reportable account or transaction to be paid by such reporting financial institution.
 - If the inaccuracy is due to the false or inaccurate information provided by the reportable account holder, the penalty can be recovered on behalf of such reportable account holder.



Decriminalisation of section 276A of the Act

- No imprisonment for certain failures in compliances by liquidators or receivers of Companies.



Reducing the time provided for furnishing the TP report

- An assessee is required to furnish the TP documentation maintained within a period of 30 days from a notice received in this regard from the assessing officer or CIT(A).
- Due to limited time available for TP proceedings, it has been proposed to reduce the time limit available for furnishing transfer pricing documentation to 10 days.

Rationalisation of appeals to the appellate tribunal

- Presently no provisions to file appeal before ITAT against penalty orders under sections 271AAB, 271AAC and 271AAD if these orders are passed by CIT(A)
- Similarly, orders under section 263 passed by Pr. CCIT or CCIT or order under section 154 passed with reference to such an order.
- Hence, scope of appeals that can be filed under section 253 to the ITAT amended to provide for these penalty orders.

Provisions related to business reorganisation

- Section 170A earlier provided for the successor entity in a business reorganisation to file a modified return of income within 6 months from the end of the month in which such order of reorganisation was passed by the relevant authority.
- The said provision is now amended to require any person to whom such order applies to furnish a modified return within 6 months from the end of the month in which such order is passed.
- AO permitted to pass an order modifying the total income of the relevant AY considering the order of reorganisation and the modified return as furnished above.
- Where the assessment proceedings are pending completion, the AO is permitted to consider the order of business reorganisation and the modified return of income before determining the total income.

Modification of directions related to faceless schemes and e-proceedings

- The Central Government, while issuing the e-proceedings and faceless schemes, imposed time limits for issuance of directions for implementations of the scheme.
- For various reasons, adjustments were to be made to the directions issued under these provisions. However, power to make amendments were not available which is now proposed to be granted.
- Such powers would now be available for the following schemes:
 - e-Dispute Resolution Scheme, 2022
 - e-advance rulings Scheme, 2022
 - Faceless Appeal Scheme, 2021
 - Faceless Penalty Scheme, 2022

THANK YOU

