



LITIGATION

WALK THE TALK!

The Finance Minister, in her budget speech has proclaimed the beginning of the next phase - “Ease of Doing Business 2.0”. For every business entity, ease of dispute resolution is an important parameter for a conducive business environment. While the last year’s budget brought about many changes in this direction, the taxpayer and tax consultants were hoping to witness further steps this year too.

The wish-list for many included the Customs Amnesty Scheme, rationalization on faceless assessments, effective implementation of Dispute Resolution Committee, legislative changes regarding the constitution of GST Tribunals and Effective Advance Ruling Mechanism under Income tax. While most of these did not see the light of the ‘budget’ day, it cannot be said that there is nothing in store. Some of the key changes which would have far reaching implications in the entire dispute resolution mechanism are:

- A. **Facelift of Faceless Assessments:** With a view to resolve the difficulties faced in the implementation of faceless assessment under Section 144B of the Income Tax Act, 1961 (**IT Act**), the entire faceless assessment procedure has been modified. The amendments *inter alia* propose to outline the scope of the cases to be covered under faceless assessment and setting up of various units such as National Faceless Assessment Centre (**NaFAC**), Regional Faceless Assessment Centres, assessment units (**AU**), verification units (**VU**), technical units (**TU**) and review units (**RU**) and their powers and functions.
- B. **Retro Empowering:** With a view to nullify the effect of an assessee favouring ruling by Supreme

Court (Canon India), the Government has proposed to insert Section 135AA to the Customs Act, 1962 to validate the past actions of the officers of Customs overriding the effect of any judgment, decree or order of any court or quasi-judicial authorities. In other words, a Show Cause Notice issued under Section 28(4) of the Customs Act by a DRI officer cannot be challenged on the ground of jurisdiction.

The amended position, prospectively, provides that the investigating officer, post conducting the inquiry and investigation, would forward a report in writing to the jurisdictional proper officer to initiate suitable actions including issuance of a Show Cause Notice under Section 28 of Customs Act.

- C. **Unburdening of Courts:** With a view to reducing the burden on Courts, Section 158AB has been proposed to be inserted to provide a simplified procedure in cases where an appeal is pending on an identical question of law before the jurisdictional High Court or Supreme Court. It proposes that a collegium (constituted under the Act) may decide and intimate the concerned officers not to file any appeal before ITAT or HC in such cases. Decision on deferment will be subject to acceptance by the assessee that question of law in its case is identical to the question in another case.
- D. **Draconian Expansion in Scope:** The scope of information, which could potentially become the basis of re-assessment under the Section 148 of the IT Act, has been expanded to *inter-alia* include the likes of audit objection, information received under Section 90 of the IT Act, etc.

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While it appears to be old wine in a new bottle, it is important to note that some of the provisions regarding issuance of show cause notice, draft assessment order and opportunity of personal hearing on request - support the principles of natural justice more emphatically. This is in line with the recent judgment pronounced in case of BALCO by Delhi High Court, wherein it was *inter alia* held that an assessee has a vested right to a personal hearing and the same must be given, when requested by assessee.

The position on show cause notice issuance pursuant to DRI investigation now seems amply clear. Now, however, the fate of numerous matters pending in litigation would need to be re-visited to potentially challenge the retro applicability of amendments.

Overall, while a few proposals/amendments are laudable, the litigation burden bears heavily on corporate India. Diligence is the key. Any misses could invite further disputes & litigation.

