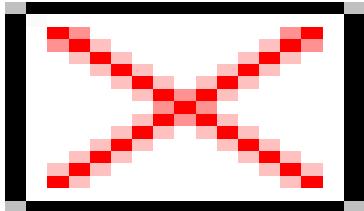


Unsettling a settled tax dispute resolution structure

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India, the annual finance budget is not merely a statement of income and expenditure of Central Government, rather it is a bundle of unrestrained aspirations and expectations of over 1.3 billion hearts on one hand and the extent of a political resolve as well as fiscal limitations of the government to meet such aspirations and expectations on the other hand. After gaining people's confidence as to its ability to tackle one of the biggest challenges posed to the Indian economy by the unrivalled mayhem of novel Covid-19 pandemic and the promising progression towards achieving V shaped recovery, the Government has rolled out the Budget 2021 which, by and large, received a positive response from economists and experts.

Owing to the Post-Covid-19 caused grim state of affairs and lower tax collection, the country was waiting with bated breath for budget announcements and speculating the alteration of tax slabs and introduction of new levies to counterbalance the impact of pandemic. However, to people's amazement, the Budget was laudably focused at spending on health, infrastructure, and financial sector with big shots of monetizing PSU assets, new divestments, insurance FDI and above all a stable tax regime. The proposed promising changes aimed at facilitating the economy's reset to capture the pace it needs for sustainable development and growth even though it comes at the cost of a high fiscal deficit. Some of the bold steps proposed in this Budget included extension of deductions on account of affordable housing and incentives for affordable rental housing, incentives for start-ups, relaxations for filing IT returns for senior citizens of the age of 75 years or more, rationalization of Customs duty rates, conciliation mechanism for quick resolution of contractual disputes, etc.

During previous budgets, the Government had introduced the Sabka Vishwas (legacy Dispute Resolution) Scheme and Direct tax Vivad Se Vishwas Scheme, amnesty schemes to get resolve long pending disputes under the Excise, Service Tax, and Income Tax, which yielded an overwhelming response from taxpayers.

While most of the announcements in this year's budget embody the Government's commitment to ease of doing business, the new set of provisions relating to the changes in tax dispute resolution under the Income Tax Act do not seem to be progressive approach as they actually fail to promise a quicker resolution of tax disputes. There still remain several unaddressed issues where resolution of disputes is concerned.

First, the taxpayers were desperately hoping for introduction of an amnesty scheme for Customs matters, which much to their dismay did not happen.

Second, much to the shock of the tax experts, the Government proposed to discontinue the Income-tax Settlement Commission which *inter alia* provided a one-time speedy relief and partial or complete waiver of penalty and immunity from prosecution to applicants in respect of proceedings pending before an assessing officer. The Commission was a well-established mechanism prevailing for a very long period of time and was indeed generating good results.

Even though the Government has proposed the formation of a Dispute Resolution Committee to reduce litigation and grant immunity from prosecution and partial or complete waiver of penalty - this mechanism is only meant for resolution of disputes of small taxpayers with an income up to 50 lacs and disputed income up to 10 lacs during any assessment year. The worrying factor is that disputes involving large demands are entirely excluded. Given the long timeframes for resolution of disputes, this will continue to be a deterrent for foreign investments in India. On the flip side however, it also demonstrates the Government's intention to take serious actions without leaving any recourse with

the defaulting taxpayers from escaping prosecution and penalty in matters involving large demands.

Another perplexing issue is that the Government has announced that all pending applications up to February 1, 2021 would be decided by an interim board for settlement (exclusively constituted for this purpose). It is incomprehensible why the Government chose not to continue with an already stable Settlement Commission.

Another unclear amendment relates to the constitution of a Board of Advance Ruling to replace the existing structure of Advance Ruling Authorities. The existing Advance Ruling Authorities comprises of a Chairman or Vice Chairman (who must be a retired judge of the Supreme Court / High Court). Ironically, instead of forming a more robust body for effectively dealing with the applications, the Union Budget has suggested the formation of a board consisting of two members (being the officers not below the rank of Chief Commissioner) from the Income Tax department itself.

Absence of a judicial member in the board takes away the gravitas of the Board and does not inspire the required trust amongst the taxpayers. The Hon'ble Supreme Court in its recent decision in the case of ***Madras Bar Association Versus Union of India & Anr.*** - [2020-TIOL-174-SC-MISC-LB](#) *inter alia*

held that all courts should have judicial independence to instill the confidence in the minds of the litigants. Similar to the state of affairs of the GST Advance Ruling Authorities, the new Board of Advance Ruling could also now be seen as a pro revenue structure.

Furthermore, the orders passed by the Board could be challenged by way of an appeal before the jurisdictional High Courts even by the department. This is uncanny as the department would have an option to challenge the advance ruling given by a pair of its own officers! It is also likely that every favorable ruling to the taxpayer would be a subject matter of litigation. To this effect, the proposed structure of Advance Ruling, instead of providing a certainty in advance, may actually result in a litigation in advance.

All in all, the proposed structure is more likely to trigger more than one proceeding at multiple stages (High Court and lower Authorities) involving an identical question of law.

One reason for taxpayers to cheer is with respect to curtailing the time limit for re-opening of assessments from existing six years to three years. This is a welcome step in bringing certainty to the taxpayers and will also ease their record preservation burden. Further, in more serious tax evasion cases too, the existing time limit of 10 years has been kept intact but it has been assured that this re-opening would be invoked in exceptional cases with evidence of concealment of income of Rs 50 lakh or more only after the approval of the Principal Chief Commissioner. A similar provision has been introduced under the Customs Act requiring issuance of show cause notice within a period of two years, or extended period of three years, from the date of initiation of audit, search, seizure or summons.

The introduction of these time limits indeed indicate the Government's intent for wanting Department officials to take actions for re-opening of the assessment and issuance of show cause notices within the stipulated time.

Moreover, the introduction of faceless Income-tax Appellate Tribunal (ITAT) in addition to the existing faceless assessment mechanism has paved the way for a new era of digital dispute resolution mechanism. It has been assured that in case of need, virtual hearing through video conferencing would be granted. Similar mechanism has been proposed in respect of proceedings before Settlement Commission, Dispute Resolution Committee and Board of Advance Rulings. A large section of pleaders may not find virtual hearing as effective as hearing in person. Had this been an option for the Appellant to decide, it could have been better.

To sum up, the Government has shown a progressive approach inasmuch as it curtails the timelines for re-opening of assessment and introduces faceless appellate mechanism. However, the discontinuation of Settlement Commission, limited scope of the proposed dispute resolution committee and revamping the advance ruling mechanism may have a regressive impact.

[The views expressed are strictly personal.]

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