

Sub: Amendments proposed in the Finance Bill, 2018

The following three amendments in the Income Tax Act, 1961 have been proposed in the Finance Bill, 2018:

1. Clause 22. In section 79 of the Income-tax Act [as substituted by section 32 of the Finance Act, 2017], after the second proviso, the following proviso shall be inserted, namely:—

“Provided also that nothing contained in this section shall apply to a company where a change in the shareholding takes place in a previous year pursuant to a resolution plan approved under the Insolvency and Bankruptcy Code, 2016, after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.”.

Notes on Clause 22: Clause 22 of the Bill seeks to amend section 79 [as substituted by section 32 of the Finance Act, 2017] of the Income-tax Act relating to carry forward and set off of losses in case of certain companies.

The said section, inter alia, provides that where a change in shareholding has taken place in a previous year in the case of a company, not being a company in which the public are substantially interested, no loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year unless on the last day of the previous year the shares of the company carrying not less than fifty-one per cent of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than fifty-one per cent of the voting power on the last day of the year or years in which the loss was incurred.

It is proposed to amend the aforesaid section to provide that nothing contained in the said section shall apply to a company where a change in the shareholding takes place in a previous year pursuant to approved resolution plan under the Insolvency and Bankruptcy Code, 2016, after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.

This amendment will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-2019 and subsequent years.

2. Clause 35. In section 115JB of the Income-tax Act,—

(a) in Explanation 1,—

(A) after clause (iig), the following clause shall be inserted, namely:—

‘(iih) the aggregate amount of unabsorbed depreciation and loss brought forward in case of a company against whom an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under section 7 or section 9 or section 10 of the Insolvency and Bankruptcy Code, 2016.

Explanation.—For the purposes of this clause, the expression “Adjudicating Authority” shall have the meaning assigned to it in clause (1) of section 5 of the Insolvency and Bankruptcy Code, 2016 and the loss shall not include depreciation; or’;

(B) in clause (iii), after the words “books of account”, the words, brackets, figures and letter “in case of a company other than the company referred to in clause (iih)” shall be inserted;

Notes on clause 35: Clause 35 of the Bill seeks to amend section 115JB of the Income-tax Act relating to special provision for payment of tax by certain companies.

The said section provides for levy of tax on certain companies on the basis of book profit which is determined after making certain adjustments to the net profit disclosed in the profit and loss account prepared in accordance with the provisions of the Companies Act, 2013.

It is proposed to amend Explanation 1 to the said section so as to provide that in case of a company, against whom an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under section 7 or section 9 or section 10 of the Insolvency and Bankruptcy Code, 2016, the aggregate amount of unabsorbed depreciation and loss brought forward shall be allowed to be reduced from the book profit and the loss shall not include depreciation.

These amendments will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-2019 and subsequent years.

Clause 43. In section 140 of the Income-tax Act, in clause (c), in the second proviso,—

(A) in clause (b), after the words “principal officer thereof;” occurring at the end, the word “or” shall be inserted;

(B) after clause (b), the following shall be inserted, namely:—

‘(c) where in respect of a company, an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under section 7 or section 9 or section 10 of the Insolvency and Bankruptcy Code, 2016, the return shall be verified by the insolvency professional appointed by such Adjudicating Authority.

Explanation.—For the purposes of this clause the expressions “insolvency professional” and “Adjudicating Authority” shall have the respective meanings assigned to them in clause (18) of section 3 and clause (1) of section 5 of the Insolvency and Bankruptcy Code, 2016;’.

Notes on clause 43: Clause 43 of the Bill seeks to amend section 140 of the Income-tax Act relating to return by whom to be verified.

It is proposed to amend the said section so as to provide that where in respect of a company an application has been admitted by the Adjudicating Authority under section 7 or section 9 or section 10 of the Insolvency and Bankruptcy Code, 2016, the return shall be verified by the insolvency professional appointed by such Adjudicating Authority.

It is further proposed to define the expressions “insolvency professional” and “Adjudicating Authority” in the said section.

These amendments will take effect from 1st April, 2018.