

UNION BUDGET 2018

India | Analysis of Direct Tax Proposals



BAGARIA
& COMPANY

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1

Economic Survey

Analysis of growth of GDP, factors impacting growth

1. Economic Survey 2018

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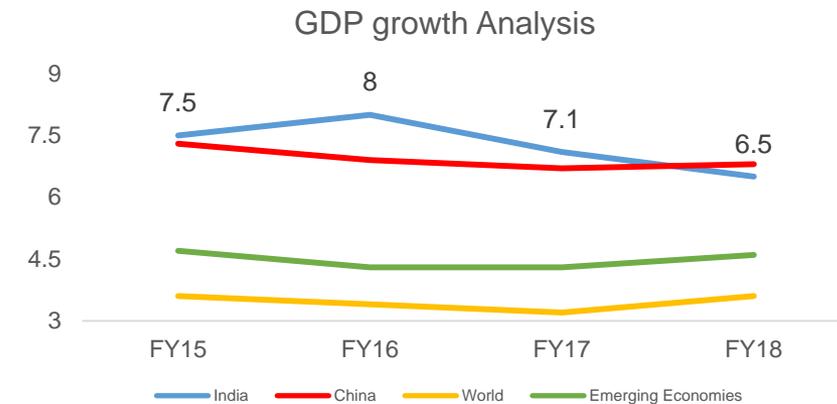
The Indian economy in 2017-18 showed a somewhat slower growth of 6.5 being the lowest in the last 4 years. The slowdown was witnessed due to multiple reasons including embracement of GST and the new Insolvency code, rise in crude oil prices, reduced investment levels and ongoing structural reforms.

Positive Key Indicators

- ▶ Indian market witnessed an increase of resource mobilization by Mutual Funds rising from Rs.17,54,619 crs in FY17 to Rs.21,41,346 crs in FY18, showing an increase of 22.04 y-o-y.
- ▶ Large increase in registered and indirect taxpayers. About 50 growth in registration of indirect taxpayers was witnessed post-GST whereas registration of direct taxpayers increased to an additional 18 lakhs over and above the annual growth trend.
- ▶ The Indian stock market has soared more than 46 in Rupee terms and outperformed many other major markets around the world since December 2015 resulting in an increased IPO activity. India witnessed 425 nos. of IPOs in an 8 month period for FY18 raising a total of Rs.1,52,919 crs as against Rs.1,02,946 crs in FY17.
- ▶ For the first time, India ranked 100th in World Bank's Ease of Doing Business (EODB) Report, 2018, gaining from its previous position at 130th according to its previous report.

Negative Key Indicators

- ▶ India witnessed decline in growth rate of industrial production from 4.6 to 3.2, in electricity generation from 5.8 to 4.9, in agricultural and allied activities from 4.9 to 2.1 in 2017-18 in comparison to 2016-17.
- ▶ Staggering no. of pending cases at various judicial levels and duration of delay in settling cases. The economic survey shows that a staggering Rs.7.58 lakh crs (over 4.7 of GDP) demands are stuck at various levels and the average time of receiving justice in tax matters is close to 6 years. Further, frivolous litigation by tax departments coupled with skewed success rate results in undue rise in demand and harassment of taxpayers.



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Rates of tax

Tax rates for corporates and non-corporates assesses

2. Rates of taxes

Individual rate of taxes

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Income	FY 2018-19	FY 2017-18	FY 2016-17	FY 2015-16	FY 2014-15
For Individual Tax Payer & HUF :					
> Rs. 2.5 Lakhs and < Rs. 5 Lakhs	5.20	5.15		10.30	
> Rs. 5 Lakhs and < Rs. 10 Lakhs	20.80			20.60	
> Rs. 10 Lakhs and < Rs. 50 Lakhs	31.20			30.90	
> Rs. 50 Lakhs and < Rs. 100 Lakhs	34.32	33.99		30.90	
> Rs. 100 Lakhs	35.88	35.53		33.99	
For Senior Citizen below at 80 age Tax Payer:					
> Rs. 3 Lakhs and < Rs. 5 Lakhs	5.20	5.15		10.30	
> Rs. 5 Lakhs and < Rs. 10 Lakhs	20.80			20.60	
> Rs. 10 Lakhs and < Rs. 50 Lakhs	31.20			30.90	
> Rs. 50 Lakhs and < Rs. 100 Lakhs	34.32	33.99		30.90	
> Rs. 100 Lakhs	35.88	35.53		33.99	
For Very Senior Citizen above 80 year tax Payer:					
> Rs. 5 Lakhs and < Rs. 10 Lakhs	20.80			20.60	
> Rs. 10 Lakhs and < Rs. 50 Lakhs	31.20			30.90	
> Rs. 50 Lakhs and < Rs. 100 Lakhs	34.32	33.99		30.90	
> Rs. 100 Lakhs	35.88	35.53		33.99	
Notes:					
- The above mentioned rates are effective rates of tax (including tax rate, surcharge, education cess, Health cess, etc).					
- It is proposed that from FY 2018-19 a standard deduction of Rs.40,000/- will be available to salaried employees. This deduction is not taken into consideration while calculating the above mentioned rates.					

2. Rates of taxes

Corporate rate of tax

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Status	Income / Turnover Criteria	FY19			FY18			FY17	FY16	FY15
		Income < Rs. 1 cr	Income 1 to 10 Crore	Income > 10 Crore	Income < Rs. 1 cr	Income 1 to 10 Crore	Income > 10 Crore			
Domestic Company	Total income < Rs. 1 Crs	-	-	-	-	-	-	29.87	30.9	30.9
	Rs. 1 crs > Total Income < Rs. 5 Crs	-	-	-	-	-	-	31.96	-	-
	Rs. 1 crs > Total Income < Rs. 10 Crs	-	-	-	-	-	-	-	33.06	32.4
	Total Turnover > Rs. 50 Crs in FY16	-	-	-	25.75	27.55	28.84	-	-	-
	Total Turnover < Rs. 250 Crs in FY17	26.00	27.82	29.12	-	-	-	-	-	-
	Remaining	31.20	33.35	34.94	30.09	33.06	34.61	34.61	34.61	33.99
New Domestic Manufacturing Company [^]	All turnover level	-	-	-	25.75	27.55	28.84	-	-	-
Foreign companies	All turnover level	41.60	42.43	43.68	41.2	42.02	43.26	41.2 / 42.024 / 43.26 *		
Partnership Firm / LLP	All turnover level	31.20	34.94		30.09	33.06	34.61	29.87/ 31.96/ 34.61	30.9/ 33.06/ 34.61	30.90/ 32.40/ 33.99
AOP / BOI / Trust	All turnover level	31.20	34.94		30.09	33.06	34.61			
Notes:										
[^] - A company within meanings of section 115BA of ITA.										
* - Depends on income bracket of the company										

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Impact on Individuals and businesses

Amendments having impact on all assessees, IBC & ICDS

3. Impact on Individuals

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Nature of Deduction	Eligible Assessee	Section	Old Exemption	New Exemption	Remarks
Health Insurance or medical check-up	Individual & HUF	80D	Rs. 30,000/-	Rs.50,000/-	The expenditure ought to be incurred for Senior Citizens [^]
Medical Treatment of specified diseases	Individual & HUF	80DDB	Senior citizen - Rs. 60,000/-*	Rs. 1,00,000/-	Applicable from FY 2018-19
Interest Income from Deposits	Senior citizens	80TTB	NA	Up to Rs.50,000/-	No deduction will be allowed u/s 80TTA if a deduction is claimed under this section. Applicable from FY 2018-19
TDS on Interest income	Senior citizens	194A	Rs.10,000/-	Rs.50,000/-	Applicable from FY 2017-18
Notes: [^] Senior Citizen means an individual resident in India who is of age of 60 years or more at any time during relevant previous year * The limit was Rs. 80,000/- in case of a person with age more than 80 years					

NPS benefit extended to non-employee class

As against the old provision u/s 10(12A), only an employee contributing to the National Pension Scheme (NPS) was allowed an exemption of 40% of total amount payable to him on closure of his account or his opting out. This benefit has now been proposed to be extended to non-employee subscribers also. Applicable from 1st April 2019.

Exemption in respect to Transport allowance

Finance Bill 2018 proposes that the present exemption in respect of transport allowance (except in the case of differently abled persons) and reimbursement of medical expenses to be withdrawn w.e.f. 1st April, 2019.

3. Impact on businesses

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Taxability of Compensation

Finance bill 2018 proposes to clarify that any compensation (whether revenue or capital in nature) -

- earned on termination or modification of any contract relating to employment is taxable as Income From Other Sources u/s 56 of the ITA
- earned on termination or modification of any contract relating to business is taxable as business income u/s 28 of the ITA

Presumptive income in case of goods carriage

At present, u/s 44AE of the ITA goods carriage transporters can avail presumptive taxation at Rs. 7,500 per vehicle per month given that the transporter holds less than 10 vehicles in a year. Now it is proposed, that heavy goods vehicle (having gross vehicle weight of more than 12MT) would be taxed at Rs. 1,000 per ton of gross weight per month or amount actually earned by Assessee, whichever is higher.

Deduction in respect of income of Farm Producer Companies

Finance Bill, 2018 proposes to insert new Section 80PA to provide 100% deduction of profit in respect of eligible business of Farm Producer Companies whose turnover is less than Rs. 100 crores

Eligible business shall mean:

- i) Marketing of agricultural produce grown by the members
- ii) Purchase of agricultural implements, seeds, livestock or other articles for agriculture for the purpose of supplying them to the members
- iii) Processing of agricultural produce of the members

This benefit is available for a period of 5 years from 1st April, 2018.

Royalty and Fees for Technical Services

Section 10 is proposed to be amended to provide exemption of any income arising to non-resident, other than company or foreign company by way of royalty or fees for technical services rendered outside India to National Technical Research Organisation (NTRO).

Consequently, it is proposed that NTRO will not be required to deduct tax at source on such payments.

Incentive for employment generation

Finance Bill, 2018 has proposed to extend the benefit u/s 80JJAA to the assessee carrying on the business of footwear and leather products.

It is also proposed to relax minimum period from 240 days to 150 days in case of apparel industries.

It is also proposed to give additional deduction of 30% for new employees employed for less than minimum period during first year but continues to remain employed for minimum period in next year.

Measures to promote start-ups

Finance Bill, 2018 proposes to amend Section 80 IAC to extend deduction of 100% of profits derived by eligible start-ups on fulfilment of the following conditions -

- a. The sunset clause for incorporation of such company ending on 1st April 2019 is now extended to 1st April 2021.
- b. Turnover not exceeding Rs. 25 Crores in 7 previous years commencing from the date of incorporation.
- c. Definition of eligible business is amended to extend the said deduction to Companies having a scalable business model with high potential of employment generation or wealth creation.

3. The Insolvency and Bankruptcy Code, 2016

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Rationalisation of provision relating to conversion of stock in trade into Capital Asset

- a. At present Section 45 provides for capital gain on conversion of capital assets into stock in trade. However, there is no provision for the reverse case. Finance Bill, 2018 proposes to amend Section 28 to tax any profit arising from conversion of stock in trade into capital asset as business income. Also fair market value on the date of conversion or the value determined in prescribed manner shall be the full value of consideration.
- b. Consequently, it is proposed to amend Section 49 for computation of cost of acquisition on conversion to be fair market value on the date of conversion.
- c. Section 2(42A) is also proposed to be amended to provide period of holding of such converted capital asset to be from the date of conversion.

Exemption for Foreign Company from income from sale of leftover stock of crude oil

While the exemption for Foreign Company from sale of leftover stock of crude oil was already exempt, such benefit has been proposed to be extended in cases of termination of agreement or arrangement as well u/s. 10(48B).

Provisions u/s 115BA relating to domestic manufacturing companies

To avoid confusion of applicable tax rates u/s 115BA of the ITA and schedule rates, it is clarified by way of amendment in the said section that provisions of section 115BA are restricted only to activities of the company relating to manufacturing, production, research or distribution.

Deduction in respect of certain incomes not to be allowed unless return is filed by the due date

At present, under the provisions of Section 80AC, deduction u/s 80IA, 80IAB, 80IC, 80ID or 80IE were disallowed in case of non furnishing of return of income by due date as per 139(1) of the ITA. Now it is proposed to disallow the entire class of deduction under the head 'Deductions in

respect of certain incomes under Chapter VIA' if the return of income is not filed by the prescribed due date.

The Insolvency and Bankruptcy Code, 2016

The Finance Bill, 2018 proposes to provide various amendments to promote and facilitate corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016 (IBC). Some of the amendments are as under:

1. Relief from MAT Liability

It is proposed that while calculating book profit under section 115JB of the act for the companies under the insolvency process, the aggregate amount of unabsorbed depreciation and loss brought forward shall be allowed to be reduced in such computation provided that the corporate insolvency resolution application is admitted by Adjudicating Authority under the IBC.

2. Benefit of carry forward and set off losses

Section 79 of the act provides for carry forward and set off of losses in a closely held company if there is continuity in the beneficial owner of the shares carrying not less than 51% of the voting power on the last day of the year in which loss was incurred. Finance Bill, 2018 proposes amendment in section 79 with effect from AY 2018-19 which states that if a company's application for corporate insolvency resolution process has been admitted under the IBC and there is change of shareholding than too the company would be allowed to carry forward its unabsorbed losses and depreciation provided a reasonable opportunity for hearing is given to concerned jurisdictional Principal Commissioner.

Trusts & institutions are now subjected to the rigours of provisions of section 40(a)(i) & sub-section (3) and (3A) of section 40A.

Further no deduction can be claimed by the assessee u/s 115BBE even when the assessing officer makes an addition.

3. Income Computation and Disclosure Standards (ICDS)

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Section	Amendment	Comments
36	Allowance of loss	This provides for the deduction of marked to market losses or other expected losses.
40A	No deduction or allowance of loss	It is proposed that no deduction or loss shall be allowed in respect of marked to market transactions except as stated in section 36(1)(xviii)
43AA	Insertion of new section	Any gain or loss arising on account of foreign currency transaction shall be treated as income or loss for purpose of computation of income.
43CB	Insertion of new section	It is for computation of income for construction of contracts under percentage completion method except certain service contracts.
145A	Valuation of inventory, and others	<ol style="list-style-type: none"> It is proposed to amend that the valuation of inventories shall be made as specified u/s. 145(2). The value of purchase and sale price shall include the amount of tax, duty ,cess or fee actually paid to bring goods upto the place of its location. If inventory is in the form of securities not listed or listed but not quoted on RSE , it shall be valued at actual cost. If the inventory is in form of listed securities, it shall be valued at lower of actual cost or NRV.
145B	Insertion of new section	<ol style="list-style-type: none"> Interest received by an assessee on compensation or enhanced compensation shall be deemed income of the year in which compensation is received. The claim for escalation of price in contract or export incentive is deemed to be the income in which reasonable certainty of its realization is achieved. Income u/s. 2(24)(xviii) shall be deemed to be income of the previous year in which it is received, if not charged to income tax for any earlier year.

Section

Sec 145

ICDS

Applicability:

- It is applicable from AY 2017-18.
- It is not applicable to Individual and HUF who are not subject to tax audit u/s. 44AB.
- It is applicable only for income arising from head " Income from Profits and Gains from Business profession" and "Income from other Sources"
- The Central Government may notify in the Official Gazette from time to time income computation and disclosure standards to be followed by any class of assesseees or in respect of any class of income.
- Where the assessing officer is not satisfied about the correctness or completeness of books of accounts , the assessing officer may make an assessment in the manner provided in section 144.

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Investments, Dividends & Capital Gains

Tax on LTCG is back, DDT expanded to deemed dividend, etc

4. Investment, dividend & capital gains

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Tax on LTCG no more exempt

- ▶ Finance bill 2018 has proposed to omit section 10(38) with effect from 1st April 2018 thereby ending exemption on LTCG on sale of listed Equity shares, units of an Equity Oriented fund or a unit of a business trust (referred to as 'said securities').
- ▶ Newly inserted section 112A provides the new regime for taxing of said securities as under;
 - a. LTCG exceeding Rs.1,00,000/- would be taxed at 10% w.e.f. 1st April 2018.
 - b. No benefit of indexation and/or cost of improvement would be available under 1st and 2nd proviso of section 48.
 - c. The cost of acquisition for the said securities acquired by the assessee before 1st February,2018 would be deemed to be the higher of –
 - the actual cost of acquisition of such asset; and
 - the lower of—
 - (a) the FMV of such asset; and
 - (b) the full value of consideration received or accruing as a result of the transfer of the capital asset.
 - d. FMV means the highest price of the said securities quoted on the stock exchange on 31st January 2018. In case of units of unlisted equity oriented funds and unlisted business trusts, the NAV as on 31st January, 2018 of such asset would be the FMV.
 - e. However, transfer of said securities in International Financial Services Centre (IFSC) would continue to be exempt where the consideration is received in foreign currency.

5

Allowable % variation for Real Estate transactions

Years for redemption of government bonds

Real Estate Transactions

At present, while taxing income from capital gains (section 50C), business profits (section 43CA) and other sources (section 56) arising out of transactions in immovable property, the sale consideration or stamp duty value, whichever is higher is adopted. The difference is taxed as income both in the hands of the purchaser and the seller.

In order to avoid undue litigation, amendments have been proposed in section 50C, 43CA and 56 to provide that no adjustments shall be made in a case where the variation between stamp duty value and the sale consideration is not more than 5% of the sale consideration.

Restriction in exemption by way of investment into bonds

The Finance Bill, 2018 has proposed to restrict the meaning of 'Long Term Capital Asset' only to Long term capital assets in the nature of land or building or both u/s 54EC. Therefore, any LTCG on any other asset will not have the benefit of section 54EC commencing from 1st April, 2018.

At present, the NHA and RECL bonds had the eligibility for deduction u/s 54EC if they were redeemable anytime after 3 years. With the proposed amendment in the current bill, the eligibility has been increased to 5 years.

4. Investment, dividend & capital gains

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DDT

Deemed Dividend brought under the net of DDT

- ▶ Deemed dividend u/s 2(22)(e) of the ITA till now has been kept outside the net of Dividend Distribution Tax (DDT). However the Finance Bill, 2018 has proposed to bring deemed dividend under the net of DDT that to at a rate of 30% instead of the prevailing DDT rate of 15%.
- ▶ This would cast an increase burden on the shareholder as well as the company at the time of granting loans and undertaking related party transactions.

Equity Oriented Funds subject to DDT

- ▶ By proposing an amendment in section 115R, the Finance Minister has brought Equity Oriented Funds (EOF) under the regime of DDT @10% which is line with dividend paying mutual funds.

Transfers between holding & subsidiary companies to remain tax neutral

- ▶ An amendment is proposed in section 56 of the ITA to provide exemption from tax under income from other sources for any transfer undertaken between a holding & a subsidiary company.
- ▶ This is a welcome move as transaction between a holding & a subsidiary company is merely a change of pocket.

Transactions under Agricultural Commodity Derivatives to be treated as non-speculative

- ▶ It is proposed that capital gains accruing as a result of transaction of an agricultural commodity derivative would be treated as a non-speculative transaction for the meaning of section 43(5).

No TDS on interest earned from 7.75% GOI Savings (Taxable) Bonds 2018

- ▶ It is proposed that no TDS would be deducted on such bonds u/s 193 of the ITA given that the amount of interest is less than or equal to Rs.10,000/- during the financial year.

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International taxation

Analysis of provisions impacting non-residents

5. International Taxation

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FIIIs bought under the tax net

Due to withdrawal of exemption u/s 10(38), FIIIs are now liable to pay tax at 10% on long term capital gains exceeding Rs.1 lakh, arising from transfer of equity shares or units of an equity oriented fund or business trust u/s 115AD of the ITA.

Redefining the concept of Agency PE

The meaning of an agent is proposed to be broadened and brought in lines with the MLI to include any person appointed by the non-resident, who has and habitually exercises in India, an authority to conclude contracts on behalf of the non-residents or habitually concludes contracts or habitually plays a principal role leading to a conclusion of contract.

Concept of “Significant Economic Presence” introduced

Significant Economic Presence (SEP) would amount to a Business connection u/s 9 of the ITA. A SEP shall mean any transaction carried out by a non-resident in India via download of data or software or systematic and continuous soliciting of business activities or creation of a user base. The Government is supposed to come with detailed rules after undertaking a dialogue with the concerned stakeholders.

Clarification proposed u/s 115JB

With retrospective effect from 1st April, 2001, Section 115JB is not applicable to a foreign company, if its total income includes only profits from business referred in

- Sec 44B - Shipping Business
- Sec 44BB - Exploration of mineral oil
- Sec 44BBA - Operation of aircrafts
- Sec 44BBB - Civil construction in turnkey power projects

Section 115AD

Amendment u/s 10(38) impacts FIIIs also

Section 9

Agents not concluding contracts brought under the ambit of Business Connection

Section 9

Significant Economic Presence to also constitute Business Connections. No physical presence required for PE

Section 115JB

No MAT to foreign companies solely having profits from business u/s 44B, 44BB, 44BBA, 44BBB

Section 286

Rationalisation of provisions relating to Country-by-Country Report

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Assessments

Analysis of trusts, procedures, assessments & penalties

6. Assessments

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Requirement to obtain PAN

- The Finance Minister in his speech suggested that all business entities in the country would be required to obtain Unique Entity number (UEN).
- In line to achieve the above now, obtaining the PAN is mandatory for entering into a financial transaction exceeding Rs. 2,50,000/- by a non-individual.
- Furthermore, to link financial transactions with natural persons, it is proposed that the concerned natural person being the competent person at such entities shall also apply for a PAN.
- This amendment is applicable from AY 2018-19.

New scheme for scrutiny assessments u/s 143(3) of the ITA

The Finance Bill, 2018 proposes focus on e-assessments and doing away with interactive assessments. Therefore, the government proposes to make and prescribe appropriate rules under newly inserted following sections :

- 143(3A) -The central government (CG) may make a new scheme by way of notification in official gazette for purpose of making assessment with:
 - a. Greater efficiency, transparency and accountability by eliminating the interface between the Assessing Officer and the assessee
 - b. Optimizing utilization of resources
 - c. Introducing a team based assessment with dynamic jurisdiction.
- 143(3B) -The CG are giving the effect into scheme may direct that any of the provisions of this act relating to assessment of total income or loss shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification

Rationalization of prima facie adjustments during processing of return of income u/s. 143(1)

- It is proposed that no amendment shall be made by CPC under sub clause (vi) after filing of return of income or after the completion of assessment.
- Sub clause (vi) of the said clause provides for adjustment in respect of addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return.
- This amendment is applicable from AY 2018-19.

Section 271FA - Penalty for failure to furnish statement of financial transactions or reportable accounts

- It is proposed to amend the amount of penalty from Rs.100 to Rs.500 per day of the default for transactions reportable u/s. 285BA(1)
- It is proposed to amend the amount of penalty from Rs.500 to Rs 1,000 per day of the default for transactions reportable u/s.285BA(5).
- This amendment is applicable from AY 2018-19.

Section 271J - Appeal against penalty order of CIT

- It is proposed to amend clause (a) of section 253(1) by adding section 271J and making penalty order of CIT appealable before the appellate tribunal.
- This amendment is applicable from AY 2018-19.



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