NO VERVE IN BUDGET PROPOSALS

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"Free Enterprise was born with man and shall survive as long as man survives."

— **A. D. Shroff**
1899-1965
Founder-President
Forum of Free Enterprise

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by

H. P. Ranina*

The economic scenario as it prevails today highlights three basic weaknesses, the uncontrollable price situation, stagnant industrial sector and dwindling foreign exchange reserves.

The other disquieting features of the Indian economy are the growing cancer of black money and tax evasion, marginal profitability from a flatulent public sector, labour indiscipline fanned by political elements and decaying infra-structural constituents like shortages of power, inadequacy of railway wagons and general deficiency in communications.

All these problems have been left untouched by the Finance Minister, indicating lack of will to solve them or inability to find meaningful solutions for them. The budget proposals will do nothing to revivify industry and to enable it to attain the target of 9 per cent rate of growth which has been fixed in the Seventh Five-Year Plan.

The proposals as discussed hereafter are divided into three parts : proposals affecting industry; those affecting individuals and lastly, miscellaneous provisions.

PROPOSALS PERTAINING TO INDUSTRY

Though, in recent years, the Finance Minister has allowed depreciation at higher rates, the important point which has been overlooked is that depreciation is still allowed on the outmoded concept of historical cost. The reality of the situation is that the replacement cost of an asset is roughly three times its original cost and, therefore, industry finds it difficult to replace its

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If the granting of depreciation on the replacement cost would make it a complicated system, as the determination of replacement cost every year may be cumbersome, the Government could follow the simple expedient of allowing a tax-payer to write-off the difference between the value of the replaced asset and the original cost of the old asset. Alternatively, the Government may consider allowing a tax-payer to claim depreciation on double the value of the original cost. This would ensure that sufficient resources are available to replace the assets at frequent intervals.

The only so-called concession given to industry in this year's Budget, is to allow companies to deposit the full surcharge with the Industrial Development Bank of India instead of half of it, as was proposed last year.

Turning now to the provisions made by the Finance Bill, 1984, the provisions relating to weighted deduction are sought to be abolished. Under section 35(2-A) of the Income-tax Act, 1961, a weighted deduction equal to one and one-third times the actual expenditure incurred by a tax-payer on sponsored research carried on in an approved laboratory is allowed as deduction in computing the taxable profits.

The weighted deduction is allowed only if the research is undertaken by a scientific research association or university or college or other institution which is approved by the prescribed authority and the research programme is also approved by the prescribed authority having regard to the social, economic and industrial needs of the country.

Under section 35(2-B) of the Act, where a tax-payer incurs any expenditure on scientific research under a programme approved by the prescribed authority, a weighted deduction of one and one-fourth times the amount of such expenditure is allowed in computing the taxable profits. In order to qualify for the deduction, the expenditure must not be of a capital nature for acquisition of land or building or construction of any building. Further, the research programme must be one approved by the prescribed authority having regard to the social, economic and industrial needs of India.

Under section 36(1) (ii-a) of the Act, in computing the taxable profits, a tax-payer is allowed a weighted deduction equal to one and one-third times the amount of the expenditure incurred on payment of any salary to an employee who is totally blind or suffers from a permanent physical disability. The deduction is allowed only if the employee concerned is not in receipt of salary exceeding Rs.20,000 and the tax-payer produces before the Income-tax Officer in respect of the first assessment year for which the deduction is claimed, in relation to such employee, a certificate as to his total blindness from a registered medical practitioner being an oculist, or, as the case may be, a certificate as to the permanent physical disability from a registered medical practitioner.

All the aforesaid provisions are proposed to be deleted ostensibly with a view to simplify the tax law. If that is the intention of the Finance Minister, he can safely delete more than 50 per cent of the sections in the Income-tax Act which are utterly cumbersome and have been found to be counterproductive.

Section 33-B of the Income-tax Act provides for a deduction by way of "rehabilitation allowance" for facilitating the re-establishment, reconstruction or revival of the business of an industrial undertaking in India which is discontinued because of extensive damage to or destruction of its building, machinery, plant or furniture as a direct result of natural calamities (such as flood, cyclone, earthquake), riot or civil disturbance, accidental fire, explosion or enemy action. This deduction is allowed in cases where such business is re-established, reconstructed or revived by the assessee within a period of three years from the end of the year in which it was discontinued.

The deduction, which is allowed in the computation of the profits of the year in which the business is so re-established, reconstructed or revived, is allowed in a sum equal to 60 per cent of the "terminal allowance" admissible to the assessee under section 32(1)(iii) of the Income-tax Act in respect of the damaged or destroyed assets of the assessee's business. The expression "terminal allowance" means the deduction allowable in the year in which the building, machinery, plant or furniture used in a business is sold, discarded, demolished or destroyed. The allowance is equal to the amount by which the salvage value or the insurance money receivable in respect of such assets falls short of their written-down value.

Having regard to the fact that most of the industrial undertakings are adequately insured, the insurance money received by an assessee on the destruction of his industrial assets would ordinarily be more than their written-down value. In such cases, no terminal allowance will be admissible to the assessee and he will, therefore, also not be entitled to any rehabilitation allowance under section 33-B of the Income-tax Act.

Besides, the deduction under section 33-B can be availed of by an assessee only when he starts earning profits from the industrial undertaking after it has been re-established, reconstructed or revived. The cash benefit of this concession is, therefore, deferred until the industrial undertaking starts earning adequate profits. Thus, the provision in section 33-B does not confer any significant benefit on the assessees.

For the aforesaid reasons, section 33-B is proposed to be discontinued with effect from the Assessment Year 1985-86.

Under the existing provisions of section 35-C of the Income-tax Act, a company or a co-operative society which uses the products of agriculture, animal husbandry or dairy or poultry farming as raw materials or processes such products, is eligble for a deduction of the amounts of expenditure incurred, whether directly or through an approved association or body, in the provision of agricultural inputs and extension services to cultivators, growers or producers of such products.

The claim under section 35-C, being an expenditure-linked concession, is liable to misuse as the evidence of expenditure incurred can be easily manipulated, thereby conferring tax benefit to the tax-payer without corresponding gain to the growers and producers of goods and services. The weighted deduction in this regard is proposed to be abolished in respect of expenditure incurred after 29th February, 1984.

In paragraph 10 of the Finance Minister's speech, it has been mentioned, "we have not faltered in our commitment to the welfare of our people". However, one of the proposals made by him will directly affect welfare activities carried on by employers.

Sums contributed by an employer to a recognised provident fund, an approved superannuation fund and an approved gratuity fund are deducted in computing his taxable profits. Expenditure actually incurred on the welfare of employees is also allowed as deduction. Certain employers have created irrevocable trusts, ostensibly for the welfare of employees, and transferred to such trusts substantial amounts by way of contribution.

Some of these trusts have been set up as discretionary trusts with absolute discretion to the trustees to utilise the trust property in such manner as they may think fit for the benefit of the employees, without any scheme or safeguards for the proper disbursement of these funds. Investment of trust funds has also been left to the complete discretion of the trustees. According to the Finance Minister, such trusts are, therefore, intended to be used as a vehicle for tax avoidance by claiming deduction in respect of such contributions, which may even flow back to the employer in the form of deposit.

If it is the opinion of the Finance Minister that trusts are being used as a vehicle for tax avoidance, in view of the fact that investment of trust funds is left to the discretion of the trustees, he could have provided that such funds should be invested in the manner laid down in section 11(5), as applicable to charitable trusts. Further, some guidelines could be provided for disbursing the funds of the trust.

To deny deduction for the contributions made to such a trust and, that too, with retrospective effect, strikes at the root of welfare activities undertaken by employers. It is most unfair to prevent genuine welfare activities only because there is some probability of there being some misuse. Such misuse could be prevented instead of destroying the very concept of welfare.

At a time when foreign exchange reserves are falling, import substitution is necessary with a view to cut down dependence on imports. Import substitution can only be achieved by carrying on scientific research.

It is, therefore, strange that the deduction in respect of expenditure on land is sought to be denied where the land is used for research activities.

Coupled with the withdrawal of the deduction under section 35(2-B), this provision will have a deleterious effect on the research programmes which are already in hand.

Section 80-N of the Income-tax Act provides for a deduction of the whole of the income of an Indian company received by way of dividends on shares allotted to it in a foreign company in consideration for the provision of technical "know-how" or technical services rendered to such foreign company in the computation of its taxable income.

This tax concession is available only if the agreement under which the technical "know-how" or technical services are provided to the foreign company is approved by the Central Board of Direct Taxes. The exemption is limited to the extent such income is received in convertible foreign exchange in India or having been received in convertible foreign exchange outside India, or having been converted into convertible foreign exchange outside India, is brought into India by or on behalf of the Indian company in accordance with the law regulating payments and dealings in foreign exchange.

Section 80-0 of the Income-tax Act also provides for a deduction of the whole of the income of an Indian company received by way of royalty, commision, fees, or any similar payment from the Government of a foreign State or a foreign enterprise for the provision of technical know-how or technical services in the computation of taxable income. This tax concession also is available only if the royalty, etc. is received under an agreement approved by the Central Board of Direct Taxes.

The exemption is limited to the extent the income so derived is received in convertible foreign exchange in India or having been received in convertible foreign exchange outside India, or having been converted into convertible foreign exchange outside India, is brought into India by or on behalf of the Indian company in accordance with the law regulating payments and dealings in foreign exchange.

When these provisions are made with the avowed objective of encouraging export of technology and earning adequate foreign exchange, the proposal of the Government to reduce the exemption from 100 per cent to 50 per cent in both these cases, needs to be assailed as it would retard the flow of foreign currency and would not provide sufficient impetus to export of technology.

The reduction of another corporate relief under section 80-M in respect of priority industries from 100 per cent to 60 per cent would prevent companies from promoting new ventures in subsidiary companies.

Under section 40(c) of the Income-tax Act, expenditure incurred by a company on the provision of any remuneration or benefit or amenity to a Director or person who has a substantial interest in the company or to a relative of the Director or of such person, and expenditure or allowance in respect of any assets of the company which are used by such person for his own purposes or benefit, is not allowable as a deduction in computing the taxable profits of the company, to the extent such expenditure or allowance is, in the opinion of the Income-tax Officer, excessive or unreasonable.

The aggregate of such expenditure and allowance is further subject to an overall ceiling limit of Rs.72,000 in a year, in respect of any one Director or person who has a substantial interest in the company or a relative of the Director or of such person. Where expenditure or allowance relates to only a part of a year, the monetary ceiling is the amount calculated at the rate of Rs. 6,000 per month or part of a month comprised in the period to which the expenditure or allowance relates.

Section 40-A(5) of the Income-tax Act also places certain ceiling limits on the deductible amount of expenditure incurred by a tax-payer on account of payment of salary to any employee or a former employee or in providing any perquisite, etc., to any such employee. Under this provision, expenditure incurred by a tax-payer on the payment of salary to an employee in respect of the period of his employment in India during the relevant year is not allowed as deduction in computing the taxable profits of the employer to the extent it exceeds an amount calculated at the rate of Rs. 5,000 for each month or part of a month.

In addition, the aggregate of expenditure incurred by a tax-payer in providing any perquisites, whether convertible into money or not, to an employee and the amount of expenditure or allowance (such as depreciation allowance) in respect of assets of the tax-payer used by the employee for his own purposes or benefit, is not allowed as deduction in computing the income from business or profession, to the extent it exceeds 20 per cent of the amount of salary payable or an amount calculated at the rate of Rs. 1,000 for each month or part thereof comprised in the period of employment in India during the relevant accounting year, whichever is less.

In the case of a person who ceased to be an employee of the tax-payer, at any time during the twenty-four months immediately preceding the relevant year, the ceiling limit in respect of any expenditure by way of fees for services rendered or where the tax-payer has also incurred in relation to such person any expenditure by way of salary, the aggregate of such expenditure by way of fees and salarv is Rs. 60,000 per annum.

Having regard to the guidelines issued by the Company Law Board in regard to managerial remuneration, the Finance Bill, 1984 seeks to raise the aforesaid monetary limits as under :-

(i) the monthly ceiling limit of Rs.6,000 under section 40(c) will be raised to Rs.8,500 and the overall ceiling limit under the said section will be raised from Rs.72,000 to Rs.1,02,000;

(ii) the monetary ceiling limit under section 40-A(5) will be raised from Rs.5,000 to Rs.7,500 per month;

(iii) in the case of a person who at any time during the twenty-four months immediately preceding the relevant year was an employee of the tax-payer, the ceiling in respect of fees paid or the aggregate of fees and salary paid to such person, is proposed to be raised from Rs.60,000 to Rs.90,000.

Expenditure incurred on payment of any salary to a research worker engaged in scientific research during any one or more of the three years immediately preceding the commencement of business, which is deemed under section 35(1)(i) of the Income-tax Act to have been laid out or expended in the accounting year in which the business is commenced, is allowed in the hands of the employer to the extent it does not exceed Rs.5,000 for each month or part thereof comprised in the period of employment during the accounting year in which the business is commenced and in the period of his employment during which he was engaged in scientific research during the three years immediately preceding that year.

In consequence of the increase in deductible amount of remuneration from Rs.5,000 to Rs.7,500, it is proposed to provide that in relation to any such period of employment falling in the accounting year relevant to the assessment year 1985-86 and any subsequent year, the deductible remuneration will be taken at Rs.7,500 as against Rs.5,000 under the existing provision.

Thus, none of these provisions would make any difference to the stagnant industrial sector which will certainly not be able to achieve the target of 9 per cent industrial growth fixed under the Seventh 5-Year Plan.

PROPOSALS AFFECTING INDIVIDUALS

The Finance Minister has to be congratulated for his bold measure in reducing the rates of personal income-tax at almost all levels, though it is difficult to understand his reason for not doing so on the slab of income ranging from Rs.40,000 to Rs.50,000.

The increase in the wealth-tax exemption for houses from Rs. 1 lakh to Rs.2 lakhs seems to be attractive at first sight but, on closer scrutiny, it is almost meaningless because after the introduction of Rule 1-BB in the Wealth-tax Rules, the value of a residential house has come down substantially to a figure of less than Rs.1 lakh. Hence, the increase in the limit to Rs.2 lakhs would affect a very microscopically small number of wealthtax payers.

The increase in the exemption limit in respect of investment in certain financial assets from Rs. 1.65 lakhs to Rs. 2.65 lakhs, is a step in the right direction.

However, no corresponding increase has been given to exempt a further amount of dividends from shares, interest on bank deposits, etc. The overall limit of Rs. 10,000 prevailing at present, including the exemption for units, would continue.

Therefore, while a part of the wealth would be exempt from wealth-tax, the income earned therefrom would not have the same tax advantage, but would be taxable in excess of the limit of Rs. 10,000. The Finance Minister has taken a very retrograde step in abolishing section 80-CC of the Income-tax Act, 1961.

Under the existing provisions of this section, individuals, Hindu Undivided Families and associations of persons or bodies of individuals consisting only of husband and wife governed by the system of community of property in force in the Union Territories of Dadra and Nagar Haveli, Goa, Daman and Diu who acquire any equity shares forming part of the eligible issue of capital of new industrial companies or public housing finance companies are entitled to a deduction, in the computation of their taxable income, of an amount equal to 50 per cent of the cost of such shares, subject to a maximum amount of investment of Rs.20,000.

The tax deduction under this section was allowed to stimulate investment in certain categories of new equity shares. Thus, it is deplorable that the provision meant to stimulate investment has been withdrawn with effect from the Assessment Year 1984-85 in respect of shares offered for public subscription after 29th February, 1984.

Section 80-D of the Income-tax Act provides for the allowance of a deduction in the computation of total income of individuals and Hindu Undivided Families resident in India with reference to the expenditure incurred on medical treatment (including nursing) of handicapped dependants, suffering from a physical or mental disability which a registered medical practitioner certifies has the effect of reducing such person's capacity for normal work or engaging in gainful employment.

Under the existing provisions, the maximum allowable deduction is Rs. 4,800 in case of hospitalisation for 182 days or more and Rs. 1,000 in other cases. The benefit of this section has been withdrawn with effect from the Assessment Year 1985-86.

Under section 80-U of the Income-tax Act, a resident individual who is either totally blind or is subject to or suffers from a permanent physical disability (other than blindness) which has the effect of reducing substantially his capacity for engaging in a gainful employment or ocupation is allowed a deduction of Rs. 10,000 in the computation of his taxable income. In order to avail of this deduction, such an individual has to produce before the Income-tax Officer in the first assessment year for which the deduction is claimed, in a case of total blindness, a certificate from a registered medical practitioner being an oculist, and in the case of any other permanent physical disability, a certificate from a registered medical practitioner.

This concession has led to litigation as claims for deduction under this provision have been made even by persons with a physical disability of a relatively minor nature. With a view to preventing disputes and litigation on this issue, it is proposed to empower the Central Board of Direct Taxes to frame rules for specifying the various categories of permanent physical disabilities for the purposes of this section.

A person who is suffering from one of the specified disabilities will alone be eligible for the tax concession under this provision. In specifying the categories of permanent physical disabilities, the Board will have to take into account the nature of such disability and the effect such disability is likely to have on the capacity of the person suffering therefrom to engage in gainful employment or occupation.

Under the existing provisions of the Income-tax Act, income derived by a tax-payer from investments in specified categories of financial assets is exempt under section 80-L upto an aggregate amount of Rs. 7,000. The financial assets specified for this purpose include shares in Indian companies, units in the Unit Trust of India and deposits with banking companies.

In addition, under a separate provision contained in the Unit Trust of India Act, 1963, a further deduction upto Rs.3,000 is allowed in respect of income received on units of the Unit Trust of India Act.

The Finance Bill, 1984, seeks to enlarge the list of specified financial assets to include deposits under such National Deposit Scheme, as may be framed by the Central Government and notified by it in this behalf in the Official Gazette.

In addition to deposits with banking companies, deposits with any bank established by or under any law made by Parliament are also eligible for this tax exemption if the bank is approved by the Central Government for the purposes of this concession. It is proposed to issue a notification approving the Industrial Development Bank of India for the purposes of this concession.

As stated above, a separate exemption of up to Rs.3,000 is allowed in respect of income on units of the Unit Trust of India. It is proposed to place deposits under any notified National Deposit Scheme on par with units of the Unit Trust of India. It is accordingly proposed to make a provision in the Income-tax Act to the effect that where the gross total income of the tax-payer includes any income by way of interest on such deposits or income in respect of units of the Unit Trust of India, the tax-payer will be eligible for a further deduction upto a maximum of Rs.3,000.

Under the provisions of the Income-tax Act, income-tax is deductible at source on payment of any income chargeable under the head "Interest on Securities". The Act also provides for deduction of incomet-tax at source from income by way of dividends paid by an Indian company or a company which has made the prescribed arrangements for the declaration and payment of dividends within India.

The requirement of deduction of tax at source from such incomes is dispensed with in certain circumstances, subject to the fulfilment of certain conditions, including procedural formalities, laid down in the law. With a view to avoiding paper work and inconvenience to small investors, the Finance Bill, 1984, seeks to make certain modifications in the relevant provisions of the Income-tax Act.

The effect of the proposed modification will be that it will not be necessary to deduct tax at source from any interest on debentures paid to an individual, who is resident in India if the following conditions are fulfilled, namely :-

(i) the debentures have been issued by a company in which the public are substantially interested ;

(ii) the debentures are listed in a recognised stock exchange in India;

(iii) the interest is paid by the company by an account payee cheque; and

(iv) the aggregate amount of interest paid or likely to be paid by the company to the holder of the debentures during the financial year does not exceed Rs.1,000.

Similarly, it will not be necessary to deduct tax from income by way of dividends paid by a company in which the public are substantially interested to a shareholder, being an individual who is resident in India, if —

(a) the dividends are paid by such company by an account payee cheque; and

(b) the amount of such dividends or, as the case may be, the aggregate amount of such dividends distributed or paid, or likely to be distributed or paid, during the financial year by such company to the shareholder does not exceed Rs. 1,000.

Under the provisions contained in Chapter XX-A of the Income-tax Act, the Central Government is empowered, subject to the fulfilment of certain conditions, to acquire any immovable property having a fair market value exceeding Rs.25,000 in cases where the declared consideration for transfer of the property is less than the fair market value of the property on the date of transfer.

With a view to eliminating unproductive work in handling a large number of relatively smaller cases, it is proposed to amend section 269-C contained in Chapter XX-A of the Income-tax Act to raise the aforesaid monetary limit to Rs.50,000.

Section 269-F of the Act lays down the procedure for hearing of objections by the competent authority before an Order of acquisition may be made by him. One of the conditions to be fulfilled before any such Order is made is that the competent authority must be satisfied that the fair market value of the immovable property to which the proceedings relate exceeds Rs. 25,000. Consequential to the proposed amendment to section 269-C, it is proposed to amend section 269-F of the Act to raise the aforesaid monetary limit to Rs.50,000.

Under section 269-P of the Act, any person presenting a document for transferring any immovable property for an apparent consideration exceeding Rs.10,000 is required to furnish to the registering officer a statement in the prescribed form in duplicate in respect of such transfer. With a view to eliminating unproductive work in handling a large number of relatively smaller cases, the Finance Bill, 1984 seeks to amend section 269-P of the Act to raise the aforesaid monetary limit to Rs.25,000.

Under the existing provisions of the Wealth-tax Act, the value of specified assets, such as shares in Indian companies, units in the Unit Trust of India and deposits with banking companies, is exempt from levy of wealth-tax upto an aggregate amount of Rs. 1,65,000. With a view to providing a further stimulus for investment in such assets, it is proposed to raise the amount of exemption under the provision to Rs.2,65,000.

It is also proposed to include in the list of assets qualifying for this exemption, the following financial assets, namely :-

(a) deposits with the Industrial Development Bank of India; and

(b) deposits under such National Deposit Scheme as may be framed by the Central Government and notified by it in this behalf in the Official Gazette.

As in the case of other financial assets, exemption in respect of the aforesaid assets will be available only where such assets have been held by the tax-payer for the period of six months ending with the relevant valuation date.

In addition to the aforesaid exemption under the Wealth-tax Act, a further exemption of upto Rs.35,000 is allowed under the Unit Trust of India Act, 1963, in respect of the units of the Unit Trust of India. It is proposed to place deposits under the National Deposit Scheme referred to in the preceding paragraph on par with units of the Unit Trust of India.

It is accordingly proposed to make a provision in the Wealth-tax Act to the effect that where the net wealth of the tax-payer includes any units of the Unit Trust of India or deposits under the National Deposit Scheme, the tax-payer will be eligible for a further exemption upto a maximum of Rs.35,000.

Under the existing provisions of the Wealth-tax Act, the value of one house (or part of a house) belonging to the tax-payer is exempt from wealth-tax upto Rs. 1 lakh. The proposed amendment seeks to raise this limit to Rs. 2 lakhs. However, this amendment would bring relief to just a handful of wealth-tax payers who have vast properties.

This is because after the introduction of Rule 1-BB in the Wealth-tax Rules, the value of residential houses has come down drastically since, under this provision, it is only necessary to take the net maintainable rent and multiply by the factor provided in the Rule depending upon whether the land on which the residential house is located is freehold or leasehold.

In respect of old buildings where the standard rent is considerably less, the value of a house under Rule 1-BB would be negligible and, in a vast majority of cases, it has been less than Rs.1 lakh, which is the limit of exemption prevailing at present. Thus, the increase in the exemption limit from Rs.1 lakh to Rs.2 lakhs, would make no material difference to the tax liability of wealth-tax payers.

MISCELLANEOUS PROVISIONS

Accounts maintained by companies are required to be audited under the Companies Act, 1956. Accounts maintained by co-operative societies are also required to be audited under the Co-operative Societies Act, 1912. There is, however, no obligation on other categories of tax-payers to get their accounts audited.

A proper audit for tax purposes would ensure that the books of account and other records are properly maintained and that they faithfully reflect the income of the tax-payer and claims for deductions are correctly made by him. Such audit would also help in checking fraudulent practices. It can also facilitate the administration of tax laws by a proper presentation of the accounts before the tax authorities and considerably saving the time of assessing Officers in carrying out routine verifications, like checking correctness of totals and verifying whether purchases and sales are properly vouched or not. The time of the assessing Officers thus saved could be utilised for attending to more important investigational aspects of a case.

Having regard to the foregoing considerations, the Finance Bill, 1984, seeks to make a new provision in the Income-tax Act making it obligatory for a person carrying on business to get his accounts audited before the "specified date" by an "accountant", if the total sales, turnover or gross receipts in business for the accounting year or years relevant to the Assessment Year 1985-86 or any subsequent assessment year exceed or exceeds twenty lakh Rupees.

A person carrying on profession will also have to get his accounts audited before the "specified date", if his gross receipts in profession for an accounting year or years relevant to any of the aforesaid assessment years exceed ten lakh Rupees. The proposed new provision also casts an obligation on such persons to obtain before the "specified date" a report of the audit in the prescribed form duly signed and verified by the "accountant" setting forth such particulars as may be prescribed by rules made in this behalf by the Central Board of Direct Taxes.

In cases where accounts are required to be audited by or under any other law (as in the case of companies and co-operative societies), it will suffice if the accounts are audited under such other law before the "specified date" and the assessee obtains before the said date the report of the audit as required under such other law, and also a report of audit in the form to be prescribed by the Central Board of Direct Taxes.

For the purposes of the proposed provision, the term "accountant" will have the same meaning as in the Explanation below sub-section (2) of section 288 of the Income-tax Act. The expression "specified date", in relation to the accounts of any accounting year or years relevant to any assessment year, would mean the date of the expiry of four months from the end of the accounting year, or where the assessee has more than one accounting year, from the end of the accounting year which expired last before the commencement of that assessment year or the 30th June of that assessment year, whichever is later.

If any person fails, without reasonable cause, to get his accounts audited in respect of any accounting year or years relevant to an assessment year or to obtain a report of such audit as required under the aforesaid provision, the Income-tax Officer may direct that such person shall pay, by way of penalty, a sum equal to one-half per cent of the total sales, turnover or gross receipts, as the case may be, in the business, or of the gross receipts in the profession, in such accounting year or years, subject to a maximum of one lakh Rupees.

In my opinion, this provision is in the best interest of the tax-payers, as it would ensure that the probability of the accounts being rejected or additions being made are considerably reduced. In other words, it is in the best interest of the tax payers to have their accounts audited so that the possibility of the tax department rejecting them is considerably diminished.

This provision comes into effect from the Assessment Year 1985-86. Hence, proper accounts would have to be maintained for the previous year relevant to this assessment year, so that an audit could be carried out.

It must also be noted that even limited companies which have their accounts audited, would be required to furnish a report from the auditors in addition to the statutory report. Such further report is to be obtained from the auditor in the prescribed form before the specified date, which is the date on which the return of income is required to be filed.

Unaccounted cash found in the course of searches carried out by the Income-tax Department is often explained by tax-payers as representing loans taken from or deposits made by various persons. Unaccounted income is also brought into the books of account in the form of such loans and deposits, and tax-payers are also able to get confirmatory letters from such persons in support of their explanation.

With a view to circumventing this device, which enables tax-payers to explain away unaccounted cash or unaccounted deposits, the Finance Bill, 1984 seeks to make a new provision in the Income-tax Act debarring persons from taking or accepting, after 30th June, 1984, from any other person any loan or deposit otherwise than by an account payee cheque or account payee bank draft if the amount of such loan or deposit or the aggregate amount of such loan and deposit is Rs.10,000 or more. This prohibition will also apply in cases where on the date of taking or accepting such loan or deposit, any loan or deposit taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), and the amount or the aggregate amount remaining unpaid is Rs.10,000 or more.

The proposed prohibition would also apply in cases where the amount of such loan or deposit, together with the aggregate amount remaining unpaid on the date on which such loan or deposit is proposed to be taken, is Rs. 10,000 or more.

The proposed prohibition will, however, not apply to any loan or deposit taken or accepted from, or any loan or deposit taken or accepted by, the following namely :-

(a) Government;

(b) any banking company, post office savings bank or any co-operative bank ;

(c) any corporation established by a Central, State or Provincial Act :

(d) any Government company as defined in section 617 of the Companies Act, 1956 ;

(e) Such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette.

For the purposes of the proposed provision, the expression "banking company" shall have the meaning assigned to it in clause (a) of the Explanation to section 40-A(8) of the Income-tax Act and the expression "co-operative bank" shall have the meaning assigned to it in Part V of the Banking Regulation Act, 1949. The expression "loan or deposit", for the purposes of the proposed provision, would mean loan or deposit of money.

If a person without reasonable cause or excuse takes or accepts any loan or deposit in contravention of the aforesaid provisions, he shall be punishable with imprisonment for a term which may extend to two years and shall also be liable to a fine equal to the amount of such loan or deposit.

The aforesaid provision would apply in respect of loans or deposits taken or accepted after 30th June, 1984. It must be noted that a trade advance taken in the normal course, would not be considered to be a loan or deposit.

CONCLUSION

The aforesaid provisions would merely result in making cosmetic changes and would do nothing to solve the problems of inflation, unemployment and the falling foreign exchange reserves. The Finance Minister should have kept before him not the prospects of the forthcoming elections, but the challenges which would be thrown in the implementation of the Seventh 5-Year Plan. The proposals should have been tailor-made to equip the industrial sector and the economy in general to attain the targets which are set in this Plan.

The views expressed in this booklet are not necessarily the views of the Forum of Free Enterprise.

"People must come to accept private enterprise not as a necessary evil, but as an affirmative good."

— Eugene Black

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Forum of Free Enterprise

The Forum of Free Enterprise is a non-political and non-partisan organisation, started in 1956, to educate public opinion in India on free enterprise and its close relationship with the democratic way of life. The Forum seeks to stimulate public thinking on vital economic problems of the day through booklets and leaflets, meetings, essay competitions, and other means as befit a democratic society.

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