

Union Budget 2022-23

Summary of the budget proposals

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1. Foreword

On 1 February 2022, the Finance Minister presented her fourth Union Budget for fiscal year 2022-23 (“FY23”). The budget focuses on long-term growth and building a strong economy with an emphasis on domestic manufacturing, digitisation, rural upliftment and planned urbanisation. The Finance Minister mentioned that the annual budget has steadiness, predictability and futuristic as it has been designed for the next 25 years. Further, the Finance Minister said that the budget continues to build on the vision drawn in the Budget of FY 2021-22 (“FY22”). The overall, sharp rebound and recovery of the economy is reflective of our country’s strong resilience. India’s economic growth in the current year is estimated to be 9.2 percent.

The substantial increase in capital expenditure to Rs 7.50 lakh crore is the highlight of the Union Budget and this bodes well for sustaining the economic activity and job creation in the medium term. While the fiscal deficit broadened, the incremental deficit is essentially to finance capital expenditure.

The budget focused on four top priorities, which are highlighted as follows:

- i. PM Gati Shakti
- ii. Inclusive Development
- iii. Productivity, Enhancement & Investment, Sunrise Opportunities, Energy Transition, and Climate Action
- iv. Financing of Investment

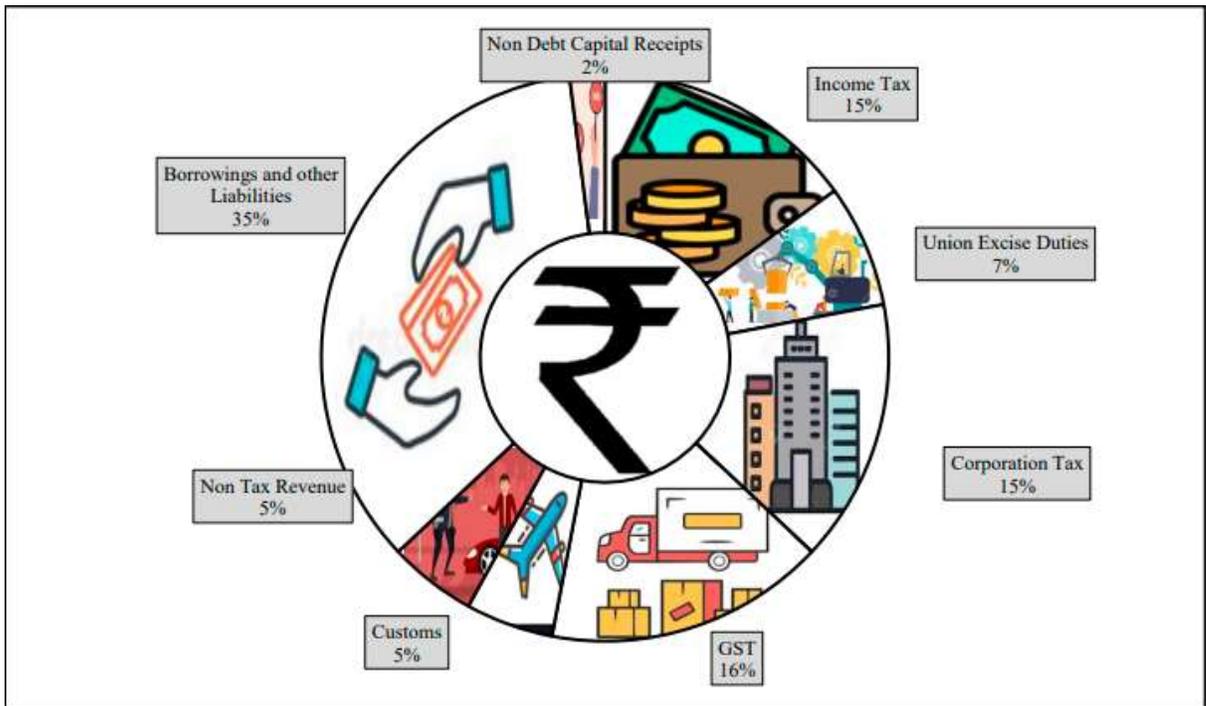
Overall, the policy framework gives importance to addressing both supply and demand side constraints and adopting an agile policy response to the unprecedented challenges posed by the ongoing pandemic.

2. Macro Fiscal – Key Highlights

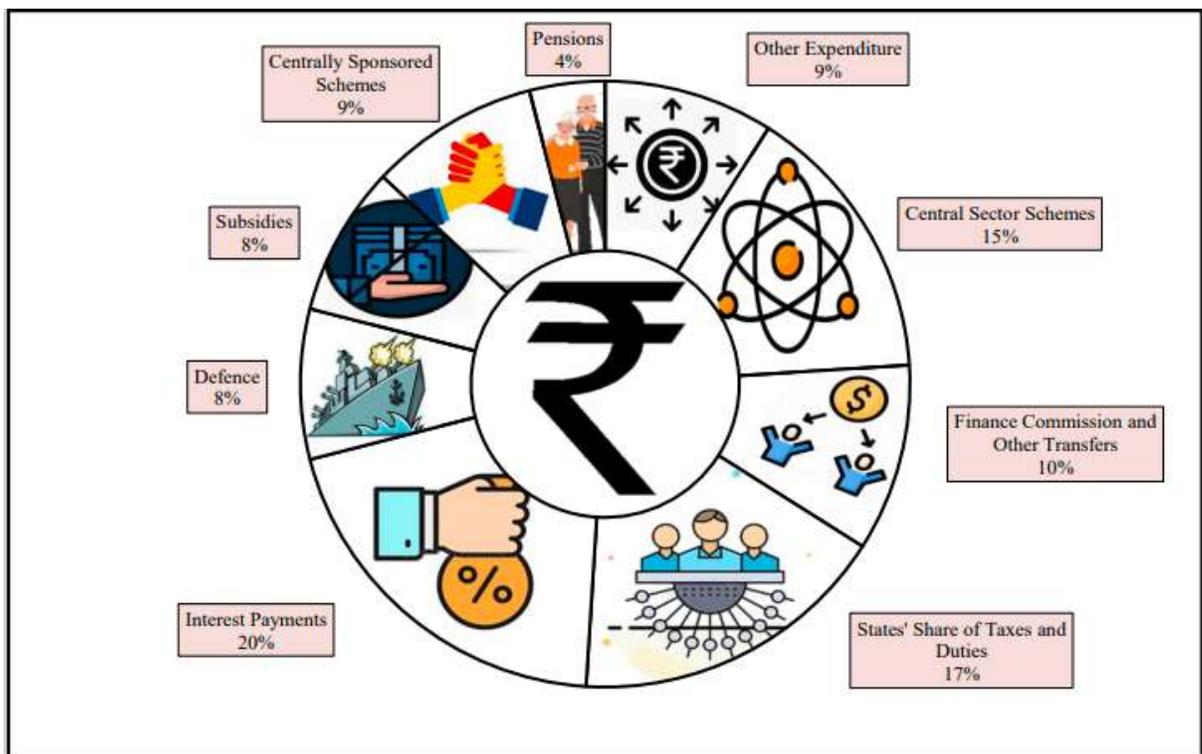
- i. Real and nominal GDP growth rates are estimated at 8 - 8.5 percent as per Economic Survey and 11.1 percent as per Union Budget 2022 for FY23.
- ii. Fiscal deficit in the current year is estimated at 6.9 percent of GDP, a marginal slippage from the budgeted target.
- iii. The Budget signals a return to fiscal consolidation with fiscal deficit reducing to 6.4% of GDP in FY23. This is estimated to gradually reduce to nearly 4.5% by FY2025-26.
- iv. Total expenditure growth is estimated at 7.4 percent in FY22 and 4.6 percent in FY23.
- v. Budget focuses on uplifting capital expenditure, that is estimated to grow by 24.5 percent in FY23.
- vi. As a proportion of GDP, centre's capital expenditure is budgeted at 2.9 percent of GDP in FY23, the highest since at least FY2008-09.
- vii. Growth in Centre's gross tax revenues is estimated at 24.1 percent in FY22, slowing to 9.6 percent in FY23.
- viii. The budgeted estimate of disinvestment receipts for FY22 was Rs 1.75 lakh crore, whereas the revised estimates is Rs. 0.78 lakh crore during FY22.
- ix. Introduction of Digital Rupee by Reserve Bank of India starting from FY23.
- x. Set up of International Arbitration Center for timely settlement of disputes under international jurisprudence.

3. Budget at a glance

Rupee comes from



Rupee goes to



4. Direct Tax Proposals

A. Changes in tax rates/surcharge:

- i. The tax rates are unchanged as compared to last year.
- ii. Rate of surcharge for individuals/ private trusts/ HUFs capped for long term capital gains is capped at 15 percent with effect from FY23.
- iii. Withdrawal of concessional rate of tax on dividends received from investee companies in which Indian companies owns at least 26 percent of the total equity share capital.
- iv. Rate of surcharge for Association of Persons with only company as members is capped at 15 percent with effect from FY23.
- v. Vide the Taxation Laws (Amendment) Act, 2019, the Minimum Alternate Tax (MAT) rate for companies has been reduced to 15% to provide parity between co-operative societies and companies. This is effective from FY2023 onwards.

B. New scheme for taxation of virtual digital assets introduced:

- i. Proposed Section 115BBH seeks to provide where the total income of the assessee includes any income from transfer of any virtual digital asset, such part of total income shall be taxed at the rate of 30% However - a) no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any provision of the Act, b) no set off of any loss arising from transfer of virtual digital asset shall be allowed against any income and such loss shall not be allowed to be carried forward to subsequent assessment years. This amendment will take effect from 1st April, 2023 and will accordingly apply in relation to the FY23 and onwards.
- ii. TDS under proposed section 194S shall be deducted on payment for transfer of virtual digital asset to a resident at the rate of one per cent of such sum TDS shall not be applicable in the following cases:
 - a. In case of specified persons, the provisions of section 203A and 206AB will not be applicable.
 - b. no tax is to be deducted in case the payer is the specified person and the value or the aggregate of such value of consideration to a resident is less than Rs. 50,000 during the financial year. In any other case, the said limit is proposed to be Rs. 10,000 during the financial year.
 - c. It is also proposed to provide that in case of a transaction where tax is deductible under section 194-O along with the proposed section 194S, then the tax shall be deducted under section 194S and not section 194-O.
 - d. This amendment will take effect from 1st of July 2022.

- vi. Gifting of virtual digital assets shall be treated within the definition of property and shall be taxable in the hands of the recipient. This amendment will take effect from 1st April 2023 and will accordingly apply in relation to the FY23 and onwards.

C. Promoting voluntary tax compliance and reducing litigations:

- i. **Provision of filing updated return by introduction of new section 139(8A)** - Section 139(8A) has been proposed to be introduced to provide that the updated return can be filed for the previous year relevant to such assessment year, within twenty four months from the end of the assessment year by payment of an amount equal to twenty five percent or fifty percent as additional tax on the tax and interest due on the additional income furnished would be required to be paid even in cases where no return has been filled originally.
- ii. **Introduction of Section 140B provide for payment of tax for opting to file a return under the proposed provision of section 139(8A)** - The tax computed as per the updated return filed under Section 139(8A) shall be paid and the return should be accompanied by the proof of such payment of tax. The additional tax, payable at the time of furnishing the return under sub-section (8A) of section 139, shall be equal to twenty-five per cent of aggregate of tax and interest payable, as determined in subparagraphs I or II above, if such return is furnished after expiry of the time available under sub-section (4) or sub-section (5) of section 139 and before completion of period of twelve months from the end of the relevant assessment year. However, if such return is furnished after the expiry of twelve months from the end of the relevant assessment year but before completion of the period of twenty-four months from the end of the relevant assessment year, the additional tax payable shall be fifty per cent of aggregate of tax and interest payable.
- iii. **Litigation management when in an appeal by revenue an identical question of law is pending before jurisdictional High Court or Supreme Court by Introduction of Section 158AB** - It is proposed to insert a new Section 158AB to provide that where a “collegium” of income-tax department (as would be prescribed by the CBDT) is of the opinion that any question of law arising in case of a taxpayer is identical with a question of law already raised in his case for earlier year or in case of any other taxpayer, which is pending before the jurisdictional High Court or Supreme Court or in a special leave petition, and the taxpayer has received favourable order from relevant appellate authority (CIT Appeals, Tribunal or jurisdictional High Court, as the case may be), then the collegium may decide and intimate the Commissioner or Principal Commissioner to defer filing of appeal (till the decision is given by the respective court and communicated to the jurisdictional Assessing Officer) to higher appellate authority (with effect from FY 22-23). Such decision on deferment will be subject to acceptance by the taxpayer that the question of law in their case is identical to the question of law pending before High Court or Supreme Court.
- iv. **Clarification regarding treatment of cess and surcharge in Section 40(a)(ii)**- It is proposed to include an Explanation retrospectively in the Act itself to clarify that for the purposes of this sub-clause, the term “tax” includes and shall be deemed to have always included any surcharge or cess, by whatever name called, on such tax. Amendment is made retrospectively to make clear the position irrespective of the circular of the CBDT. So, any surcharge or education cess paid on income tax shall not be allowed as an expense.

- v. **Clarification in respect of disallowance under section 14A in absence of any exempt income during an assessment year** - In order to make the intention of the legislation clear and to make it free from any misinterpretation, it is proposed to insert an Explanation to section 14A of the Act to clarify that notwithstanding anything to the contrary contained in this Act, the provisions of this section shall apply and shall be deemed to have always applied in a case where exempt income has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such exempt income.
- vi. **Clarifications on allowability of expenditure under section 37** – In order to make the intention of the legislation clear and to make it free from any misinterpretation, it is proposed to insert another Explanation to sub-section (1) of section 37 to further clarify that the expression “expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law”, under Explanation 1, shall include and shall be deemed to have always included the expenditure incurred by an assessee:
- a. for any purpose which is an offence under, or which is prohibited by, any law for the time being in force, in India or outside India; or
 - b. to provide any benefit or perquisite, in whatever form, to a person, whether or not carrying on a business or exercising a profession, and acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guidelines, as the case may be, for the time being in force, governing the conduct of such person; or
 - c. to compound an offence under any law for the time being in force, in India or outside India.
- vii. **Clarification regarding deduction on payment of interest only on actual payment** – It is proposed to amend Explanation 3C, Explanation 3CA and Explanation 3D of section 43B to provide that conversion of interest payable under clause (d), clause (da), and clause (e) of section 43B, into debenture or any other instrument by which liability to pay is deferred to a future date, shall also not be deemed to have been actually paid.
- viii. **Consequence for failure to deduct/collect or payment of tax** – In order to make the intention of the legislation clear and to make it free from any misinterpretation, it is proposed to:
- a. amend sub-section (1A) of section 201 to provide that where any order is made by the Assessing Officer for the default under sub-section (1) of the said section, the interest shall be paid by the person in accordance with the order made by the Assessing Officer in this regard;
 - b. amend sub-section (7) of section 206C to provide that where any order is made by the Assessing Officer for the default under sub-section (6A) of the said section, the interest shall be paid by the person in accordance with the order made by the Assessing Officer in this regard.
- D. Key mergers and acquisitions related amendments:**
- i. **Conversion of interest into debentures – disallowance of interest expenditure** - Section 43B of the Income Tax Act provides that any interest converted into loan or borrowing (from, inter-alia, any bank/ public or state financial institution/ NBFC) shall be disallowed as deduction, till such time interest has

actually been paid by the borrower. Finance Bill, 2022 proposes to extend the remit of such disallowance to any interest converted (but not actually discharged) into debentures.

- ii. **Continuity of business losses in case of unlisted PSUs** - Section 79 of the Income Tax Act provides that any loss incurred by an, inter-alia, unlisted company (i.e., companies in which public are not substantially interested) shall not be eligible to be carried forward and set off, if there has been a change in beneficial shareholding of more than 51% in the year of incurrence of loss vis-à-vis in the year of claim of set off.
- iii. **Assessment on successor entity in case of business reorganization** - The proceedings of the Act have to be continued in the case of the predecessor only and such proceedings once completed, cannot become illegal as a result of subsequent order of any court, till the decision of the court is received, Therefore, with a view to clarify that such proceedings under the Act are valid, it is proposed to insert a sub-section (2A) to section 170, to provide that the assessment or other proceedings pending or completed on the predecessor in the event of a business reorganization, shall be deemed to have been made on the successor.

Further, it is seen that post such reorganization, the affairs of the successor entity go through a complete change with effect from the date from which such reorganization takes place. However, due to the indefinite timeline involved in issuing such orders, there is a gap between the effectivity of such order and the date on which such order is issued by the competent authority. This also affects the final accounts of such entities as they are unable to modify their already filed returns in accordance with the reorganization. Hence, in order to remove this anomaly, it is proposed to insert a new section 170A to the Act, to enable for the entities going through such business reorganization, for filing of modified returns for the period between the date of effectivity of the order and the date of issuance of final order of the competent authority.

- iv. **Enabling revision of income-tax returns in case of business reorganisation** - It is proposed to insert Section 170A to enable the entities going through business reorganization to file modified returns for the period between the Appointed Date (date from which merger / demerger scheme comes into effect) and the Effective Date (date on which merger / demerger scheme becomes effective i.e., typically upon filing of NCLT order with Registrar of Companies) within 6 months from the end of the month in which merger/demerger order is issued.
- v. **Enabling provision for modification in income-tax demands under IBC restructuring** - It is proposed to insert section 156A to provide a mechanism to the income-tax department to enable them to reduce outstanding income-tax demands from the outstanding demands register as a part of the overall restructuring process under Insolvency and Bankruptcy Code ("IBC").
- vi. **Ambit of anti-avoidance provisions to include certain securities, InvIT / REIT /AIF units** - It is proposed to amend sub-section (8) of section 94, pertaining to the prevention of tax evasion through bonus stripping, so as to make the said provision applicable to securities as well. It is also proposed to amend the Explanation to the said section to modify the definition of unit, so as to include units of business trusts such as InvIT, REIT and AIF, within the definition of units. This amendment will take effect from 1st April 2023 and will accordingly apply in relation to the FY23 and onwards.

vii. **Consequential amendment for reduction of Goodwill from block of assets to be considered as 'transfer'** - It is proposed to clarify that for the purposes of section 50 of the Act, reduction of the amount of goodwill of a business or profession, from the block of asset in accordance with sub item (B) of item (ii) of sub-clause (c) of clause (6) of section 43, shall be deemed to be transfer. It is retrospectively effective from 1st April, 2021.

viii. **Deduction of tax on benefit or perquisite out of business or profession** - Under Section 28(iv) of the Income Tax Act, the value of benefit or perquisite, whether convertible into money or not, arising from business or profession is charged to tax in the hands of recipient.

In order to widen the tax net, it proposed to insert section 194R to provide that any person (other Individual or HUF whose turnover / gross receipts does not exceed INR 1 Cr in case of business or INR 50 Lacs in case of profession in preceding financial year) responsible for paying such benefit or perquisite is required to deducted tax at the rate of 10% of value of such benefit or perquisite.

Further, in case where the benefit or perquisite is wholly in kind or partly in cash and partly in kind, and such part in cash is not sufficient to meet the TDS liability, then the person responsible for providing such benefit of perquisite shall, before releasing the benefit or perquisite, should ensure that tax has been paid in respect of the benefit or perquisite.

ix. **Justification of source of funds of loans or borrowings** - It is proposed to amend the provisions of section 68 of the Act so as to provide that the nature and source of any sum, whether in form of loan or borrowing, or any other liability credited in the books of an assessee shall be treated as explained only if the source of funds is also explained in the hands of the creditor or entry provider. However, this additional onus of proof of satisfactorily explaining the source in the hands of the creditor, would not apply if the creditor is a well regulated entity, i.e., it is a Venture Capital Fund, Venture Capital Company registered with SEBI.

E. Socio-economic welfare measures:

i. **Tax Incentives to International Financial Services Centre (IFSC)** - In order to incentivise operations from IFSC, it is proposed to:

- a. amend Clause (4E) of Section 10 to extend the exemption to the income of a non-resident from offshore derivative instruments, or over the counter derivatives issued by an offshore banking unit;
- b. amend Clause (4F) of Section 10 to extend the exemption to the income from royalty and interest on account of lease of ship (similarly, Section 80LA is sought to be amended to provide 100% exemption of the profits arising to a unit set up in IFSC on transfer of a ship, subject to such unit having commenced its operations on or before 31 March 2024);
- c. introduce Clause (4G) in Section 10 for exemption of income received from portfolio management services in IFSC, subject to specified conditions; and
- d. amend Section 56(2)(viib) so as to provide that any investment by a Category I and Category II AIF registered under IFSC law shall not be subject to deemed taxation in the hands of the investee company, where such investment is made at a premium.

- ii. **Setting up new manufacturing entity-** Section 115BAB of the Income Tax Act provides an option for opting concessional tax rate of 15% (plus applicable surcharge/ cess), subject to certain conditions, for new domestic companies setting up manufacturing facilities, provided such manufacturing facility is set up on or after 1 April 2019 but prior to 31 March 2023. Finance Bill, 2022 has proposed to extend the said time limit for setting up new manufacturing facility to 31 March 2024.
- iii. **Exemption of profits for eligible start-ups** - Section 80-IAC of the Income Tax Act provides an exemption of 100% profits of eligible start-ups, provided such start-up was set up on or before 1 April 2022. Finance Bill, 2022 has proposed to extend the said time limit for incorporating a start-up to 31 March 2023.
- iv. **Incentives to National Pension System (“NPS”) subscribers for state government employees** - Any contribution by the Central Government or any other employer to the account referred to in section 80CCD of the Act (NPS account) was allowed as deduction up to 10% to the assesses in computation of total income. The State Governments were given an option to raise the contribution to 14% w.e.f 01.04.2019 on their own volition. Note: This amendment will take effect retrospectively from 1st April, 2020 and will accordingly apply in relation to the FY20 and onwards so as to ensure no additional tax liability arises on any contribution made in excess of 10% during such time.
- v. **Condition of releasing of annuity to a disabled person** - It is proposed to allow the deduction under the section 80DD also during the lifetime, i.e., upon attaining age of sixty years or more of the individual or the member of the HUF in whose name subscription to the scheme has been made and where payment or deposit has been discontinued.
- vi. **COVID-19 related receipts** - The Finance Bill, 2022 has proposed to provide that:
 - a. any sum received by an employee in relation to medical expenses actually incurred in relation to treatment of COVID-19 either for himself or for his family, shall not be considered as “perquisite” while computing salary income of such employee;
 - b. any receipt of sum of money, subject to condition, from any person in relation to treatment of COVID-19 either for himself or for his family, shall not be considered as “income from other sources” u/s 56(2)(x) of the Income Tax Act; and
 - c. any ex-gratia payment to the member of family of a deceased person (on account of COVID-19) from an employer, without limit, or from any other person (up to INR 10 Lacs) shall not be considered as “income from other sources”.

F. Other key direct tax proposals:

- i. **No Set Off of business losses/ unabsorbed depreciation against undisclosed income** - The Finance Bill, 2022 has proposed to insert a new Section 79A to the Income Tax Act to provide that no set off of business losses/ unabsorbed depreciation shall be permitted against undisclosed income consequent to search or seizure proceedings.

- ii. **TDS on sale of immovable property** - In case of transfer of immovable property (other than agricultural land), tax deducted at source is proposed to be at 1% of consideration paid to the seller or the stamp duty value of the property, which is higher. In case the consideration paid for the transfer of immovable property and the stamp duty value of such property are both less than fifty lakh rupees, then no tax is required to be deducted.
- iii. **Key changes in faceless assessment scheme** - One key amendment, which could reverse various judicial precedents, and could impose additional burden on taxpayers, is retrospective omission of Section 144B(9) of the ITA. The said section provides that the assessment proceedings shall be void if the procedure mentioned in the section was not followed. Further, it is proposed to extend the date for issuing directions for the purposes of these sections 92CA, 144C, 253 and 255 till 31st March, 2024.
- iv. **Rationalisation of provisions relating to assessment and reassessment** - It has been proposed that a notice under section 148 shall be issued only for the relevant assessment year after three years but prior to ten years from the end of the relevant assessment year where the AO has documents to reveal that the income chargeable to tax represented in the form of Assets or expenditure in respect of a transaction or in relation to an event or occasion or an entry or entries in the books of accounts which has escaped assessment amounting to Rs.50 Lakhs or more.
- v. **Amendment in the provisions of section 263** - It is proposed to amend the provisions of section 263 of the Act so as to provide that the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or Commissioner who is assigned the jurisdiction of transfer pricing may call for and examine the record of any proceeding under this Act, and if he considers that any order passed by the TPO, working under his jurisdiction, to be erroneous in so far as it is prejudicial to the interests of revenue, he may pass an order directing revision of the order of TPO.