Exploring Provisions

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Round-up on beneficial provisions under Income tax and Service tax law

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PREFACE

It is a settled law that beneficial provisions and beneficial circulars must be interpreted in a liberal manner to provide due benefit to the assessee. It is by far a settled law that a provision granting incentive for promotion of economic growth and development in taxing statutes should be liberally construed and restriction placed on it by way of exception, should be construed in a reasonable and purposive manner so as to advance the objects of the provision.

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Purpose of this Document

This document aims to provide round-up on beneficial provisions under Income tax and Service tax law.

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Round-up on beneficial provisions under Income tax and Service tax law

I. Introduction

It is a settled law that beneficial provisions and beneficial circulars must be interpreted in a liberal manner to provide due benefit to the assessee. Various sections are present in the Act that are intended to provide incentives to exports, manufacturing, SEZ manufacturing, housing investments, new projects in north-eastern states, hotels and convention centers in specified areas and specified districts, R&D, etc. such as sections 10, 10A, 10AA, 10B, 10BA, 32A, 32AC, 35, 54, 54E, 80HHC, 80HHE, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID, 80-IE, 268A of the Income tax Act, 1961 and section 5 (1) (iv) of the Wealth tax Act 1957 all of which are to be interpreted so as to advance their object. Likewise under Service tax law CENVAT is a beneficial provision for reducing the cascading effect of taxation and if the object of CENVAT has to be sub-served reasonable interpretation must be given go the entitlements therein.

It is by far a settled law that a provision granting incentive for promotion of economic growth and development in taxing statutes should be liberally construed and restriction placed on it by way of exception, should be construed in a reasonable and purposive manner so as to advance the objects of the provision. For instance the Apex court in the case of CIT v. Lakshmi Machine Works [2007] 290 ITR 667 had the occasion to interpret the meaning of "total turnover" with respect to section 80HHC to extend relief to the exporters. In that context, the court held as under:

" Section 80HHC of the Income-tax Act, 1961, is a beneficial section : It was intended to provide incentive to promote exports. The intention was to exempt profits relatable to exports. Just as commis sion received by the assessee is relatable to exports and yet it cannot form part of ' turnover' for the purposes of section 80HHC, excise duty and sales tax also cannot form part of ' turnover' . Just as interest, commission, etc., do not emanate from the ' turnover' so also excise duty and sales tax do not emanate from such turnover. Since excise duty and sales tax did not involve any such turnover such taxes had to be excluded. Commission, interest, rent, etc., do yield profits, but they do not partake of the character of turnover and therefore they are not includible in the ' total turnover' . If so, excise duty and sales tax also cannot form part of the ' total turnover' under section 80HHC(3).

One cannot interpret the words ' total turnover' with reference to the definition of the word ' turnover' in other laws like the central sales tax or as defined in accounting principles.

Excise duty and sales tax are indirect taxes. They are recovered by the assessee on behalf of the Government."

At the same time it is a general law that the assessee cannot be compelled to avail benefit of any beneficial provisions. For instance it is at the discretion of the assessee to avail Cenvat credit scheme or not.

However, even if a beneficial provision is to be liberally construed, then also its interpretation should be as per the wordings of the section so pointed by the Supreme Court in IPCA Laboratory Ltd. v. Deputy CIT [2004] 266 ITR 521. If the wordings of the section are clear then benefits, which are not available under the section, cannot be conferred by ignoring or misinterpreting words in the section."

In the next pages we have captured certain beneficial provisions and beneficial circulars/notifications where the Courts have expounded reasonable interpretations to the use of certain words, provisos used therein.

II. S. 10 (22A)/10(23C) - exemption to hospitals

On the question whether the assessee's hospital is existing solely for philanthropic purposes and not for purposes of profit the Kerala High Court in CIT v. Pulikkal Medical Foundation Pvt. Ltd. (1994) 210ITR299 (SLP granted) held that a liberal interpretation has to be given to exemption clauses so that in case a hospital exists solely for philanthropic purposes, even if incidentally profit is earned, the hospital is entitled to the benefit under section 10(22A) of the Act. In order to achieve the main philanthropic objects, the hospital may do some profit earning business provided such profit is appropriated towards the expansion and development of the hospital or to start another institution with the same philanthropic objectives. The real test to be applied is what is the dominant or primary purpose of the institution. If the primary purpose is philanthropic, the inclusion of some objects for earning profits for the implementation of the primary object would not alter the character of that primary object. In other words, this will not be a ground for holding that the hospital is not existing solely for philanthropic purposes. All cumulative factors will have to be taken into consideration in order to decide whether the institution exists for philanthropic purposes and not for purposes of profit. Neither the fortuitous factor of having a large surplus in any particular year, nor the fact of diverting some income to objects which are not philanthropic in itself would be decisive of the matter.

III. Section 54F of I T Act 1961- Reconstruction of house

Under section 54F any capital gains earned from sale of capital asset other than a residential house can be reinvested into construction of a house to get exemption from income tax. In CIT v.Ashok Kumar Ralhan (2014) 360ITR575 the earlier structure was demolished and thereafter, new construction was made on the plot. The Delhi High Court held that the word “construction” for the purposes of section 54F of the Income-tax Act, 1961, has to be given a realistic, practical and pragmatic meaning keeping in mind the object and purpose of the provision.

However, one must take into account that the exemption can be obtained for rebuilding after demolition of existing house and not for carrying out any renovation/extension. Also the Mumbai bench in Asstt CITv. Dilip Manhar Parekh (2013) 56SOT487 however took an exception when it found that residential bungalow purchased was demolished within two years which according to the bench did not serve the purpose of the provision. The bench set aside the case of the assessee with the conclusion that the deduction u/s. 54F is available to purchase of residential house and such house should be real and not symbolic. If old house is only meant for demolition, it may not satisfy the test of purchase of residential house, more particularly when it was demolished within two years. Thus it may be a symbolic purchase of bunglow which may not pass the test of 'purchase' u/s. 54F of the Act or if it is treated as purchased, then demolition, being a voluntary act, may amount to 'transfer' taking note of Supreme Court decision dated 23.02.2001 in the case of CIT v. Grace Collis (115TAX326). It thus give more ammunition to the revenue.

IV. Section 54F of I T Act 1961- Purchase of new house in the name of wife/daughter/son

The Delhi High Court in CIT v. Kamal Wahal (2013) 351ITR4 held that section 54F being a beneficial provision enacted for encouraging investment in residential houses should be liberally interpreted. In this case whereas the Assessing Officer took the view that under section 54F , the investment in the residential house should be made in the assessee's name and inasmuch as the residential house was purchased by the assessee in the name of his wife, the claim was not allowable the Court held that the new residential house need not be purchased by the assessee in his own name nor is it necessary that it should be purchased exclusively in his name. The Court further inferred that moreover, the assessee had not purchased the new house in the name of a stranger or somebody who was unconnected with him. He had purchased it only in the name of his wife. There was also no dispute that the entire investment had come out of the sale proceeds and that there was no contribution from the assessee's wife.

It is thus very important to know that one who claims exemption for investment in house either in wife's name or in joint name must invest from his separate bank account and not from wife's account or joint account.

Likewise Hyderabad bench of the ITAT in N Ram Kumar v. Asstt. CIT (2012) 79DTR (A.T.) 86 held that the assessee will be entitled for deduction u/s 54F for the flat purchased in the name of his daughter subject to the restrictions under the proviso to section 54F(1) of the Act. The bench observed that the intention of the legislature in introducing sec. 54F as explained in Board's Circular No.346 dated 30th June, 1982 is for encouraging house construction. It is an encouragement given to the assessee to exchange one of the residential houses for another or where he has none to convert any of his long term assets into a residential house. The object behind such a provision is to encourage large scale house building activity or investment in house property to meet acute housing shortage in the country. Therefore, looking at the legislative intent, a liberal interpretation has to be given to section 54F which is a beneficial provision.

V. Section 54F of I T Act 1961- Miss-out of 3 year deadline

The Karnataka High Court in CIT v. Sambandam Udaykumar (2012) 345ITR389 held that if after making the entire payment, merely because a registered sale deed had not been executed and registered in favour of the assessee before the period stipulated, he cannot be denied the benefit of section 54F of the Act. Similarly, if he has invested the money in construction of a residential house, merely because the construction was not complete in all respects and it was

not in a fit condition to be occupied within the period stipulated, that
would not disentitle the assessee from claiming the benefit under section 54F of the Act. The Court further held that section 54F of the Act is a beneficial provision of promoting the construction of residential house. Therefore, the said provision has to be construed liberally for achieving the purpose for which it was incorporated in the statute. The intention of the Legislature was to encourage investments in the acquisition of a residential house and completion of construction or occupation is not the requirement of law.

VI. Section 54F- Existing house ownership

One of the condition for availing exemption is that the assessee should not own a residential house (not more than one house is substituted after 1.4.2001 for any house) on the date of transfer of the original asset. In Smt. Kalwanti D. Alreja v. ITO [1996] 54 TTJ 593 (Bom) the assessee was the owner of 2/5th undivided share in her house. She purchased 1/5th share in the house from her son and exemption under section 54F was claimed. The Department disallowed the exemption on the ground that the assessee was already the owner of a residential house. Therefore, exemption under section 54F was not available. On the facts, the Tribunal interpreted the words ' residential house' in the then proviso to section 54F(1) to mean an identifiable residential unit and not proportional ownership. The assessee was thus held eligible for exemption under section 54F of the Act. Likewise in Balvantram U. Chimna v. ITO [2001] 72 TTJ 451 the assessee was the owner of 1/8th share of the property which was used for self-residence. Sale proceeds on long-term capital asset transferred by the assessee were utilized for purchasing 5/18th share from other co-owners in the same house property. The Ahmedabad bench of ITAT held that exemption under section 54F could not be denied by invoking the proviso to section 54F (1).

VII. S.201 First proviso & proviso to section 206C (6A) of I T Act 1961- retrospective having application to all pending matters of short/non deduction/collection - respite from consequences for non/short deduction/collection of tax at source

On the principle of "fairness" the Supreme Court in Vijay v. State of Maharashtra [2006] 6 SCC 289 held:

"The negotiation is not a rigid rule and varies with the intention
and purport of the legislation but to apply it in such a case is a doc trine of fairness. When a new law is enacted for the benefit of the community as a whole, even in the absence of a provision the statute may be held to be retrospective in nature."

The Rajkot bench of the Tribunal in Gujarat Pipavav Port Ltd. V. Dy CIT (2014) 111DTR (Trib) 54/149ITR23 held that the first proviso to section 201 inserted w.e.f 1st July 2012 would apply retrospectively since it not only seeks to rationalize the provisions relating to deduction of tax at source but is also beneficial in nature in that it seeks to provide relief to the deductors of tax at source from the consequences flowing from non/short deduction of tax at source after ensuring that the interest of the Revenue is well protected. Justifying it in the nature of a beneficial provision the bench held that first Proviso inserted in sub-section (1) of section 201 seeks to achieve three-fold objectives. One, it seeks to (1) ensure that there is no loss to the Revenue, i.e., (i) the resident payee has furnished his return of income u/s 139, (ii) the resident payee has taken into account such sum on which tax was required to be deducted at source for computing income in such return of income, (iii) the resident payee has paid the tax due on the income declared by him in such return of income, (iv) the payer, i.e., the person responsible for deducting the tax at source, has furnished a certificate in Form No. 26A confirming the aforesaid; (2) rationalize the provisions relating to deduction of tax at source; (3) provide relief to the deductors of tax at source from the consequences of non/short deduction of tax at source.

This case pertained to defaults made during the period 2005-06 when the bench in the ultimate directed the assessee to appear before the Assessing Officer along with relevant documents as stipulated by the first proviso to sub-section (1) of section 201 within two months of the date on which this order is pronounced upon which the AO shall examine the claim of the assessee in the light of the said provisions and pass appropriate order accordingly in conformity with law after giving reasonable opportunity of hearing to the assessee. The assessee shall not be treated as assessee in default in case the AO is satisfied, after due verification, that the conditions stipulated by the first proviso to sub-section (1) of section 201 have been fulfilled by the assessee but in that situation also the assessee shall be liable to pay interest u/s 201(1A) at the prescribed rate from the date on which such tax was deductible u/s 194I to the date of furnishing of return of income by the payee.

Likewise the Rajkot bench of ITAT in Bharti Auto Products v CIT (2014) 27ITR (Tri) 711 held that the first proviso inserted in sub-section (6A) of section 206C seeks to (1) ensure that there is no loss to the Revenue, i. e., (i) the buyer has furnished his return of income under section 139 , (ii) the buyer has taken into account such sum on which tax was required to be collected at source under section 206C for computing income in such return of income, (iii) the buyer has paid the tax due on the income declared by him in such return of income, (iv) the payer, i. e., the person responsible for collecting the tax at source under section 206C , has furnished a certificate in form 27BA confirming the aforesaid ; (2) rationalize the provisions relating to collection of tax at source ; (3) provide relief to the collector of tax at source from the consequences of non/short deduction collection of tax at source and to that extent it is a beneficial provision. Keeping in view the fact that the first proviso to sub-section (6A) of section 206C not only seeks to rationalize the provisions relating to collection of tax at source but is also beneficial in nature in that it seeks to provide relief to collectors of tax at source from the consequences flowing from non/short collection of tax at source after ensuring that the interest of the Revenue is well protected, the proviso would apply retrospectively.

VIII. Section 90 of I T Act 1961- DTAA

Sub-section (1) of section 90 of the Act provides that the Central Government may enter into an agreement with the Government of any other country for the granting of relief of tax in respect of income on which tax has been paid in two different tax jurisdictions. Sub-section (2) of section 90 unequivocally provides that where the Central Government has entered into an agreement with the Government of any country outside India under sub-section (1) for granting relief of tax or for avoidance of double taxation, then, in relation to the assessee to whom such agreement applies, "the provisions of this Act shall apply to the extent they are more beneficial to that assessee". Thus when there is a Double Taxation Avoidance Agreement with another country sub-section (2) of section 90 of the Income-tax Act, 1961, would find application which provides unequivocally that in relation to the assessee to whom such Agreement applies, the provisions of the Act shall apply only if they are more beneficial to that assessee. If there is a conflict between the provisions under the Act and the Agreement, the assessee will be subjected to the more beneficial provision out of the two. If the provisions of the Agreement are more beneficial to the assessee vis-a-vis their counterpart in the Act, the assessee shall be entitled to be ruled by the provisions of the Agreement.

IX. Section 40(a) (ia) of I T Act 1961 – Amendment by Finance Act, 2010- Disallowance of expenditure on account of TDS defaults

The Delhi High Court in CIT v. Naresh Kumar (2014) 362ITR256 held that the amended section 40(a)(ia) expands and further liberalises the statute when it stipulates that deductions made in the first eleven months of the previous year but paid before the due date of filing of the return, will constitute sufficient compliance. It further held that the provisions relating to deduction of tax at source are important as this ensures that tax so deducted gets deposited with the Government and non-taxpayers/filers can be identified. The deductees do not suffer and are not deprived of credit of deduction made from their income. Section 40(a)(ia) of the Income-tax Act, 1961is a provision incorporated with that objective and purpose in mind. It is not basically a penal provision as when the tax deducted at source is deposited, the amount on which deduction was made is allowed as an expenditure incurred in the previous year in which the payment of tax deducted at source is made. Thus, it results in shifting of the year in which the expenditure can be claimed, even if payment has been made to the recipient and is to be allowed as expenditure in another year. The principle of matching, i. e., matching of receipts with expenditure to the extent indicated in section 40(a)(ia) , therefore, gets affected. The provision can work harshly and may be very stringent in some cases. The legislative purpose and the object is to ensure payment and deposit of tax deducted at source with the Government. Tax deducted at source results in collection of tax. The Legislature can and does experiment and intervene from time to time when it feels and notices that the existing provision is causing and creating unintended and excessive hardship to citizens and subjects or has resulted in great inconvenience and uncomfortable results. The amendments made in 2010 were a step in this direction and this aspect has to be kept in mind when examining and considering whether the amendment should be given retrospective effect or not. One important consideration in construing a machinery section is that it must be so construed as to effectuate the liability imposed by the charging section and to make the machinery workable. However, when the machinery section results in unintended or harsh consequences which were not intended, the remedial or correction action taken is not to be disregarded but given due regard. Section 40(a)(ia) has to be given full play keeping in mind the object and purpose behind the section. At the same time, the provision can be and should be interpreted liberally and equitably so that an assessee should not suffer unintended and deleterious consequences beyond what the object and purpose of the provision mandates. The amendments made to section 40(a)(ia) of the Act by the Finance Act, 2010, should be given retrospective effect.

This remedial provision has however turned the deductors a little casual with the result that now department has instituted prosecution for late deposit of TDS. Even a short deduction could lay one in trouble no matter the allowance of deduction is protected. The Calcutta High Cout in CIT v. S K Tekriwal (2014) 361ITR432 held that section 40(a)(ia) of the Act refers only to the duty to deduct tax and pay to the Government account. If there is any shortfall due to any difference of opinion as to the taxability of any item or the nature of payments falling under vari ous TDS provisions, the assessee can be declared to be an assessee in default under section 201 of the Act and no disallowance can be made by invoking the provisions of section 40(a)(ia) of the Act.

X. CBDT/CBEC Circulars- Impact of circulars that withdraw or curtail beneficial provisions

The Supreme Court in Catholic Syrian Bank Ltd. v. CIT [2012] 343 ITR 270 observed that the Central Board of Direct Taxes has statutory right to issue circulars under section 119 of the Act to explain or tone down the rigours of law and to ensure fair enforcement of the provisions. Circulars issued have force of law and are binding of the Income-tax authorities though they cannot be enforced adversely against the assessee. Normally, these circulars cannot be ignored. Thus, a circular may not override or detract from the provisions of the Act but can seek to mitigate the rigour of a particular provision for the benefit of an assessee in specified circumstances. The Delhi High Court in CIT v. Angelique International Ltd. (2013) 359ITR9 held withdrawal of beneficial circular cannot have retrospective effect. That was in the context of overseas selling agents commission where vide Circular No. 7 of 2009 the earlier circulars issued in 1969 and 2000 stood withdrawn.

Likewise CBE&C beneficial Circular dated 18.12.2006 clarifying that activities performed by the sovereign/public authorities under the provisions of law are in the nature of statutory obligations and the fee collected by them for performing such activities does not constitute provision of taxable service would assume retrospective application. Electrical Inspectorate v. CST 2008(9) STR 494(Bang). The Supreme Court in Commissioner of Central Excise, Bangalore v. M/s. Mysore Electricals Industries Ltd., in 2006 (204) E.L.T. 517 held that a beneficial circular has to be applied retrospectively while an oppresive circular has to be applied prospectively. Later the Supreme Court in Suchitra Components Ltd. V. CCE 2008 (11) 430 restated that where a circular is against, the assessee, he has a right to claim enforcement of the same prospectively.

XI. S.268A- competency to appeal- monetary limits set from time to time- advantage assessee

The Bombay High Court in CIT v. Vijaya V Kavekar (2013) 350ITR237 held that circulars or instructions issued under section 268A of the Income- tax Act by the Central Board of Direct Taxes fixing monetary limits for filing appeals before ITAT, High Court and Supreme Court are applicable not only to new cases but to pending cases as well for their main objective being to reduce the pending litigations where the tax effect is considerably small. Some Courts have rules for and some against this verdict. For instance the Gujarat High Court in CIT v. Shambhubhai Mahadev Ahir (2014) 363ITR572 went by the literal interpretation rather resorting to contextual and purposive interpretation of the provisions of the Act. The subject is pending before the Supreme Court.

XII. Rule 6(7) of Cenvat Credit Rules, 2004 (CCR)- procedure lapse cannot discount beneficial provision

Sub-rule 7 of Rule 6 of the CCR which had been introduced by the Finance Act, 2010 with retrospective effect from 10-9-2004 enabled an assessee to pay the amount of irregular cenvat credit taken viz a viz the provisions of Rule 6(3) of the CENVAT Credit Rules (CCR), 2004 along with interest and end the dispute pending on the date on which the Finance Bill, 2010 receives the assent of the President. To further make it happen the assessee was required to make an application to the Commissioner of Central Excise along with documentary evidence and a certificate from a Chartered Accountant or a Cost Accountant certifying the amount of credit on inputs or input services used in or in relation to exempted final products within a period of six months from the date on which the Finance Bill, 2010 receives the assent of the President. Only because the assessee missed the six month deadline by few days in CAE India P Ltd. V CST 2013(30) STR153 the department issued a show-cause notice and demanded Rs. 5,03,38,740/- from the appellant for the period from 2006-07 to 2009-10 under Rule 14 of the CCR read with the proviso to Section 73(1) of the Finance Act, 1994 and also demanded interest thereon under Rule 14 read with Section 75 and also proposed penalties under Sections 77 and 78 of the Act.

In this case the assessee made such application to Commissioner of Service tax instead of Commissioner of Central Excise but within six month deadline. However when it got routed to Commissioner of Central Excise the six month deadline got over by two days and the department declined the benefit of sub-rule (7) of rule 6 to assessee.

The Bangalore bench had to intervene in this case only to tell the department not to defeat the purpose of beneficial provision under rule 6(7) on hyper technical ground of receipt of application one day or two after expiry of prescribed period.

Further in UOI v. Suksha International, 1989 (39) E.L.T. 503 (S.C.), the Supreme Court has observed that an interpretation unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand what the policy gives with the other. In the Union of India v. A.V. Narasimhalu, 1983 (13) E.L.T. 1534 (S.C.), the Apex Court also observed that the administrative authorities should instead of relying on restrictive interpretations and technicalities, act in a manner consistent with the broader concept of justice. While drawing a distinction between a procedural condition of technical nature and a substantive condition in interpreting statute similar view was also propounded by the Apex Court in Mangalore Chemicals and Fertilizers Ltd. v. Dy. Commissioner, 1991 (55) E.L.T. 437 (S.C). Thus, the law is settled now that substantive benefit cannot be denied for procedural lapses.

Annexure

Provisions as per the Act

Section 10 (22A): INCOMES NOT INCLUDED IN TOTAL INCOME

In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included -

(22A) any income of a hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit;

Section 40 (a) (ia)- AMOUNTS NOT DEDUCTIBLE

Notwithstanding anything to the contrary in sections 30 to 38, the following amounts shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession",--

(ia) any interest, commission or brokerage, 7rent, royalty, fees for professional services or fees for technical services payable to a resident, or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work), on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in sub-section (1) of section 139

Provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in sub-section (1) of section 139, such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

For the purposes of this sub-clause,-

(i) "commission or brokerage" shall have the same meaning as in clause (i) of the Explanation to section 194H ;

(ii) "fees for technical services" shall have the same meaning as in
Explanation 2 to clause (vii) of sub-section (1) of section 9 ;

(iii) "professional services" shall have the same meaning as in clause (a) of the Explanation to section 194J ;

(iv) "work" shall have the same meaning as in Explanation III to section 194C ;
(v) "rent" shall have the same meaning as in clause (i) to the Explanation to section 194-I ;

(vi) "royalty" shall have the same meaning as in Explanation 2 to clause (vi) of sub-section (1) of section 9 ;

Section 54F- CAPITAL GAIN ON TRANSFER OF CERTAIN CAPITAL ASSETS NOT TO BE CHARGED IN CASE OF INVESTMENT IN RESIDENTIAL HOUSE

(1) Subject to the provisions of sub-section (4), where, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of any long-term capital asset, not being a residential house (hereafter in this section referred to as the original asset), and the assessee has, within a period of one year before 1two years after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, one residential house in india(hereafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,--

a) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45:

b) if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under section 45:

Provided thatnothing contained in this sub-section shall apply where-

(a) the assessee,-

(i) owns more than one residential house, other than the new asset, on the date of transfer of the original asset ; or

(ii) purchases any residential house, other than the new asset,
within a period of one year after the date of transfer of the original asset ; or

(iii) constructs any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset; and

(b) the income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable under the head ''Income from house property''.

For the purposes of this section,--

"net consideration", in relation to the transfer of a capital asset, means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.

(2) Where the assessee purchases, within the period of two years after the date of the transfer of the original asset, or constructs, within the period of three years after such date, any residential house, the income from which is chargeable under the head "Income from house property", other than the new asset, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such new asset as provided in clause (a), or, as the case may be, clause (b), of sub-section (1), shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such residential house is purchased or constructed.

(3) Where the new asset is transferred within a period of three years from the date of its purchase or, as the case may be, its construction, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such new asset as provided in clause (a) or, as the case may be, clause (b), of sub-section (1), shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such new asset is transferred.

(4) The amount of the net consideration which is not appropriated by the assessee towards' the purchase of the new asset made within one year before the date on which the transfer of original asset took place, or which is not utilised by him for the purchase or

construction of the new asset before the date of furnishing
the return of income under section 139, shall be deposited by him before furnishing such return such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139 in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit ; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset:

Provided that if the amount deposited under this sub-section is not utilised, wholly or partly for the purchase or construction of the new asset within the period specified in sub-section (1), then,--

(i) the amount by which--

a) the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of the new asset as provided in clause (a) or, as the case may be, clause (b) of sub-section (1),exceeds
b) the amount that would not have been so charged had the amount actually utilised by the assessee for the purchase or construction of the new asset within the period specified in sub-section (1) been the cost of the new asset, shall be charged under section 45 as income of the previous year in which the period of three years from the date of the transfer of the original asset expires; and

(ii) the assessee shall be entitled to withdraw the unutilised amount in accordance with the scheme aforesaid.

Section 201 (1)- Consequences of failure to deduct or pay.

201. [(1) Where any person, including the principal officer of a company,—

(*a*) who is required to deduct any sum in accordance with the provisions of this Act; or

(*b*) referred to in sub-section (1A) of section 192, being an employer, does not deduct, or does not pay, or after so deducting fails to pay,

the whole or any part of the tax, as required by or under this Act, then, such person, shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of such tax:

Provided that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident shall not be deemed to be an assessee in default in respect of such tax if such resident—

(*i*) has furnished his return of income under section 139;

(*ii*) has taken into account such sum for computing income in such return of income; and

(*iii*) has paid the tax due on the income declared by him in such return of income,

and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed:

Provided further that no penalty shall be charged under section 221 from such person, unless the Assessing Officer is satisfied that such person, without good and sufficient reasons, has failed to deduct and pay such tax.

Filing of appeal or application for reference by income-tax authority

268A. (1) The Board may, from time to time, issue orders, instructions or directions to other income-tax authorities, fixing such monetary limits as it may deem fit, for the purpose of regulating filing of appeal or application for reference by any income-tax authority under the provisions of this Chapter.

(2) Where, in pursuance of the orders, instructions or directions issued under sub-section (1), an income-tax authority has not filed any appeal or application for reference on any issue in the case of an assessee for any assessment year, it shall not preclude such authority from filing an appeal or application for reference on the same issue in the case of—

(*a*) the same assessee for any other assessment year; or (*b*) any other assessee for the same or any other assessment year.

(3) Notwithstanding that no appeal or application for reference has been filed by an income-tax authority pursuant to the orders or instructions or directions issued under sub-section (1), it shall not be lawful for an assessee, being a party in any appeal or reference, to contend that the income-tax authority has acquiesced in the decision on the disputed issue by not filing an appeal or application for reference in any case.

(4) The Appellate Tribunal or Court, hearing such appeal or reference, shall have regard to the orders, instructions or directions issued under sub-section (1) and the circumstances under which such appeal or application for reference was filed or not filed in respect of any case.

(5) Every order, instruction or direction which has been issued by the Board fixing monetary limits for filing an appeal or application for reference shall be deemed to have been issued under sub-section (1) and the provisions of sub-sections (2), (3) and (4) shall apply accordingly.

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Our Values:


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