

## COMPENSATION UNDER RFCTLRR ACT, BOOK PROFIT u/s 115JB AND ITR6



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The issue is regarding compensation received by a company carrying on the business as builder and developer. The company had purchased lands for its business. One of its land is acquired by the Govt. for infrastructure and compensation is paid. The profit is reflected in the Profit and Loss account including this compensation.

The compensation received is exempt as per Sec.96 of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLRR ACT) read with Circular 36 of 2016.

Issue is whether the compensation received is deductible in computing book profit for the purpose of Sec. 115JB?

Let us analyse the issues.

### **1. Relevant provision under the RFCTLRR ACT**

This Act is a special Act and as per established principles of law, overrides any general law. The Act replaced the Land Acquisition Act, 1894, a nearly 120-year-old law enacted during British rule.

Sec. 96 of the RFCTLRR Act, inter alia provides that income-tax shall not be levied on any award or agreement made (except those made u/s 46- which specifies the compensation decided by other than RBI and/or Cent. Govt.) under RFCTLRR Act. It reads as under-

#### ***96. Exemption from Income-tax, stamp duty and fees***

*No income tax or stamp duty shall be levied on any award or agreement made under this Act, except u/s 40 and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.*

Thus, the special law on the subject does not make any distinction between the compensation for acquisition of an agricultural land and any other land. All compensations under this law are exempted from income tax, stamp duty and any fees for any copy under that act.

The exemption under this new law brought to all the persons irrespective of its status under the Income Tax Act and for both agricultural and other land owners at par, as far as income tax is concerned.

## **2. Exemption Provision under the Income Tax Act, 1961**

### **Sec. 10(37) provides that**

S. 10. Incomes not included in total income —

S. 10. In computing the total income of a previous year any person, any income falling within any of the following clauses shall not be included—

.....

(37) in the case of an assessee, **being an individual or a Hindu undivided family**, any income chargeable under the head “Capital gains” arising from the transfer of agricultural land,

where—

(i) such land is situated in any area referred to in item (a) or item (b) of sub-clause (iii) of clause (14) of section 2;

(ii) such land, during the period of two years immediately preceding the date of transfer, was being used for agricultural purposes by such Hindu undivided family or individual or a parent of his;

(iii) such transfer is by way of compulsory acquisition under any law, or a transfer the consideration for which is determined or approved by the Central Government or the Reserve Bank of India;

(iv) such income has arisen from the compensation or consideration for such transfer received by such assessee on or after the 1st day of April, 2004.

Explanation — For the purposes of this clause, the expression “compensation or consideration” includes the compensation or consideration enhanced or further enhanced by any court, tribunal or other authority.

**The exemption is available only to an individual or HUF and only for the agricultural land.**

### **3. Circular no. 36 of 2016**

Under Income Tax Act, 1961 there is discrimination whereas under the new RFCTLRR Act which flatly exempts every compensation from income tax without any discrimination.

The issue was conveyed to the authorities under the Income Tax Act. On recognising the discrimination created under the Income Tax Act, 1961, a clarificatory circular no. 36 of 2016, dt.25-10-2016 (*F. No. 225/88/2016-ITA.II*) is issued. Para 3 of the circular reads as under -

*As no distinction has been made between compensation received for compulsory acquisition of agricultural land and non-agricultural land in the matter of providing exemption from income-tax under the RFCTLRR Act, **the exemption provided under section 96 of the RFCTLRR Act is wider in scope than the tax-exemption provided under the existing provisions of Income-tax Act, 1961.** This has created uncertainty in the matter of taxability of compensation received on compulsory acquisition of land, especially those relating to acquisition of non-agricultural land. **The matter has been examined by the Board and it is hereby clarified that compensation received in respect of award or agreement which has been exempted from levy of income-tax vide section 96 of the RFCTLRR Act shall also not be taxable under the provisions of Income-tax Act, 1961 even if there is no specific provision of exemption for such compensation in the Income-tax Act, 1961.***

Thus, even if there is no specific provision under the Income Tax Act, 1961, the capital gain arising out of compensation under section 96 of the RFCTLRR Act shall be exempt by virtue of this beneficial circular.

### **4. Book profit u/s 115JB**

Sec. 115JB reads as under

S. 115JB. Special provision for payment of tax by certain companies —

(1) Notwithstanding anything contained in any other provision of this Act, where in the case of an assessee, being a company, the income-tax, payable on the total income as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after the 1<sup>st</sup> day of April, 2012, is less than fifteen per cent of its book profit, such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee on such total income shall be the amount of income-tax at the rate of fifteen per cent.

.....

For the purposes of this section, “book profit” means the profit as shown in the statement of profit and loss for the relevant previous year prepared under sub-section (2), as increased by—

.....

and as reduced by-

.....

(ii) the amount of income to which any of the provisions of section 10 (other than the provisions contained in section 10(38) thereof) or section 11 or section 12 apply, if any such amount is credited to the Profit & Loss account.

## 5. Legal precedence

It would not be out of place to discuss some issues in this regard.

- 1) The Apex Court has in the case of **Appollo Tyres Ltd., (2002) 255 ITR 273**, held that the only power vested with the Assessing Officer is to make increases and deductions as provided in the explanation to Section 115JB of the Act. Assessing Officer has no power to embark upon a fresh enquiry in regard to the entries made in the books of accounts of the company.
- 2) In the case of **Sri Hariram Hotels Pvt. Ltd. (2016) 237 TAXMAN 0564 (Karnataka)= (2016) 285 CTR 0190 (Kar)**, the company created the capital gain of Rs.51,71,820/- arising out of the sale of the land directly to the capital reserve and not to the profit and loss account.

The Assessing Officer took the view that the capital gains ought to have been included to the profit and loss account, according to the accounting standard referred to by him in the assessment order and hence, arrived at a conclusion that the profit shown in the profit and loss account should be increased by the amount of capital gain.

CIT (A) confirmed the AO’s order relying upon **Veekaylal Investment Co.(P) Ltd. (2001) 249 ITR 597 (Bom)**. ITAT confirmed the order. Hon. Karnatak High Court concluded that-

*The only power vested with the Assessing Officer is to make increases and deductions as provided in the explanation to Section 115JB of the Act. Assessing Officer has no power to embark upon a fresh enquiry in regard to the entries made in the books of accounts of the company. In the light of the judgment of Apollo Types (supra), we are*

*of the opinion that the Assessing Officer has no power to recompute the book profit and has to rely upon the authentic statements of accounts of the company, the accounts being scrutinized and certified by the statutory auditors though with a qualification, approved by the company in general body meeting and thereafter filed before the Registrar of Companies, who has a statutory obligation to examine and be satisfied that the accounts of the company are maintained in accordance with the requirements of the Companies Act.*

3) The case before **Hon. ITAT Mumbai, ACIT vs. JSW Steel Limited & Anr. (2020) 180 ITD 0505 (Mumbai-Trib).**

The assessee company received Sales Tax Subsidy under the Government of Karnataka's new industrial policy, 1993 and package of incentives and treated this as Capital Receipt. (AY 2006-07). It is worth the reproduce the relevant part of the judgment-

*47. We further noted that Hon'ble Kolkata High Court, in the case of Ankit Metal & Power Ltd. In ITA no. 155 of 2018 had considered an identical issue and after considering the decision of Hon'ble Supreme Court in the case of Apollo Tyres Ltd. Vs. CIT (supra) held that when a receipt is not in the character of income as defined under section 2(24) of the I. T. Act, 1961, then it cannot form part of the book profit u/s 115JB of the I. T. Act, 1961. The Hon'ble High court, further observed that sales tax subsidy received by the assessee is capital receipt and does not come within definition of income under section 2(24) of the I. T. Act, 1961 and when, a receipt is not a in the nature of income, it cannot form part of book profit u/s 115JB of the I. T. Act, 1961. The Court, further observed that the facts of case before the Hon'ble Supreme Court in the case of Apollo Tyres Limited (supra) were altogether difference, where the income in question was taxable, but was exempt under a specific provision of the Act, and as such it was to be included as a part of book profit, but where the receipt is not in the nature of income at all, it cannot be included in book profit for the purpose of computation u/s 115JB of the I. T. Act, 1961.*

*48. We further noted that the ITAT special bench of Kolkata Tribunal, in the case of Sutlej Cotton mills Ltd. vs. ACIT (1993) (45 ITD 22), held that a particular receipt, which is admittedly not an income cannot be brought to tax under the deeming provisions of section 115J of the Act, as it defies the basic intention behind introduction of provisions of section 115JB of the Act. The ITAT Jaipur bench, in case of ACIT vs. Shree Cement Ltd, had considered an identical issue and held that incentives granted to the assessee is capital*

*receipt and hence, cannot be part of book profit computed u/s 115JB of the Act. Similarly, the ITAT Kolkata Bench, in the case of Sipca India Pvt. Ltd. Vs DCIT 186 TTJ 289 had considered an identical issue and held that when, subsidy in question is not in the nature of income, it cannot be regarded as income even for the purpose of book profit u/s 115JB of the Act, though credited in the profit and loss account and have to be excluded for arriving at the book profit u/s 115JB of the Act.*

*50. In this view of the matter and considering the ratio of case laws discussed hereinabove, we are of the considered view that when a particular receipt is exempt from tax under the Income tax law, then the same cannot be considered for the purpose of computation of book profit u/s 115JB of the I. T. Act 1961.*

- 4) An issue may arise considering cl. (vi) of Sec.2(45) which states that - Capital Gains chargeable u/s 45 is included in the definition of Income. It is worth the reproduce the following para from **Kanga and Palkhiwala's The Law and Practice of Income Tax-11<sup>th</sup> Edition**, -

*This sub-clause deems as income any capital gains chargeable u/s 45. Though the definition of income is inclusive, capital receipts do not come within the ambit of the charging section except to the extent of any capital receipt expressly covered by this sub-clause. A capital receipt is not income u/s 2(24) unless it is chargeable to tax as capital gains u/s 45. Under this sub-clause, the legislature has not included all capital gains as income, but only those capital gains which are chargeable u/s 45. Capital gains not chargeable to tax u/s 45 fall outside the definition of income in s.2(24) and are not taxable. Ref. Cadell Weaving v CIT, (2001) 249 ITR 265*

- 5) The issue is also fully covered by the recent order of **Hon. Lucknow Bench of ITAT in the case of V.S. Promoters and Builders Private Limited, ITA No. 378/LKW/2020, AY 2016-17.**

Ld. AO noted that assessee has made part compliance in respect of notices issued to him. Ld. AO, further noted that assessee has claimed exemption of Rs.2,06,25,199/- towards receipt of "compensation on land" and another Rs.3,04,03,804/- as interest on the compensation, both of which are exempt as per Section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('RFCTLAAR Act'). Ld. AO required assessee to substantiate its claim for which it submitted its reply by referring to CBDT Circular No. 36/2016, dt. 25/10/2016. However, ld. AO noted that provisions

of Section 10(37) of the Act provides exemption on the capital gains arising only to an “individual” or “HUF” in respect of compulsory acquisition of an agricultural land situated in specified urban limit. According to him, it is not available to the assessee being a company. He, thus, disregarded claim of exemption made by the assessee and added Rs.5,10,29,003/- to the total income of the assessee.

After considering submissions made by the assessee in respect of Section 96 of RFCTLAAR Act, 2013 read with CBDT Circular no. 36/2016 and by placing reliance on decision of the Hon’ble High Court of Kerala in the case of Madaparambil Varkey Varghese vs. ACIT in WP(C). No.1908 of 2019 (Kerala High Court), ld. CIT(A) deleted the addition made by ld. AO.

Hon. High court held that -

*8. Thus, the above referred CBDT Circular provides that in absence of specific provisions in the Income-tax Act, 1961, award under the RFCTLAAR Act, 2013, in the hands of land losers, both for agricultural and non-agricultural land is tax free, both under normal and MAT provisions, under the Act.*

*9. Considering the above submissions and provisions of law as well as CBDT Circular, we do not find any reason to interfere with the findings of ld. CIT(A) directing ld. AO to delete the addition made in this respect. Accordingly, grounds taken in this respect are dismissed.*

Thus, the compensation income is exempt in the hands of the company and that, the capital gain which is exempt cannot be included in computing book profits u/s 115JB.

## **6. The practical issues in ITR and the resolution**

Although under the legal precedence the issue is settled, the exemption of compensation provided by the Clarificatory circular no. 36 of 2016 does not appear in any section of the Act nor in the ITR.

Issues are created as to under what section the exemption is to be claimed as the utility for the ITR does not give any other sections except Sec.10 [except 10(38)], 11 and 12 only for computing the book profit.

The list of deletions contains incomes exempt u/s 10, except u/s 10(38).

Practical approach only can resolve the issue.

The incomes which are exempt are provided in Sec.10. The clarificatory circular is issued taking reference to Sec. 10(37). The necessary fall out is that the clarification is issued which has enhanced the scope of Sec. 10(37) accepting and clearly stating that the scope

under RFCTLRR Act is much wider than under the Income Tax Act. It is also clarified that the exemption is available even if there is no specific provision under the Income Tax Act, 1961.

The softwares available for computation of income and preparing the ITR do not have any specific window for this deduction.

Hence, the deduction from Profit for the purpose of Book Profit has to be claimed under Sec. 10.