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Income Tax Exemption offered on compensation to land losers by section 96 of the Special Act “RFCTLARR Act,2013” and treatment of such exempted compensation under Income Tax Act,1961 .

1. Introduction :

The Land Acquisition Act,1894 was repealed with the introduction of “ The Right to Fair Compensation And Transparency in Land Acquisition , Rehabilitation and Resettlement Act,2013 (in short “RFCTLARR Act,2013 “or “Central Act No. 30 of 2013” or “2013 Act”) was came in to force from 1st January,2014. It extends to the whole of India except the State of Jammu & Kashmir.

This “ RFCTLARR Act,2013” is a welfare legislation , which made a quantum leap from the provisions of the 1894 Land Acquisition Act. The object of the said Act is not merely to provide just and fair compensation but also to make provisions for the rehabilitation and resettlement of the families of the land losers. The preamble of the Act shows that the Act was intended to look at land losers as persons who can become partners in the development of the country.

Section 96 of the “ RFCTLARR Act,2013” was intended to a tool towards securing the laudable objectives of the 2013 Act . Section 96 of the 2013 Act which provides exemption income tax, stamp duty and fees reads as under:

“No Income-tax or stamp duty shall be levied on any award or agreement made under this Act, except under 46 and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same “.

A plain reading of the Section 96 of the 2013 Act establishes that any award under this Act shall be treated as tax-free under the Income –tax Act. Salient features of the Act for treatment of awards in the form of compensation received by land losers under the Income-tax can be summarised as under :

- 2013 Act is exempting all acquisitions under this Act from income-tax irrespective of the nature of the land may be agricultural land or non-agricultural land and location of the land;
- 2013 Act is exempting all acquisitions under this Act from Income-tax irrespective of the nature of treatment in books of accounts i.e land may be held as investment or stock-in-trade;
- 2013 Act applies to all land losers irrespective of their status ;
- Any award in any form under this Act as defined under section 96 is exempt from income tax (except those covered under section 46).

2. RFCTLARR Act,2013 and Income-tax Act,1961 (ITA) – CBDT Circular No: 36 of 2016 ,Dated 25/10/2016:

Section 96 of the “ RFCTLARR Act,2013” exempts awards from the levy of Income-tax under the I.T Act ,1961. Section 96 was enacted under the 2013 Act for making tax-free of award granted to the land losers but there was no specific provision for to treat such award as tax –free under the Income-tax Act ,1961.

Even recently passed Finance Act,2018 no provision was enacted under the Income –tax Act,1961 to declare award under the “ RFCTLARR Act,2013” as tax-free in the hands of land losers.

CBDT vide Circular No: 36 of 2016 ,Dated 25/10/2016 offers due recognition to the provisions of section 96 enacted under the “ RFCTLARR Act,2013” so as to treat award under the said Act as tax-free under the Income –tax Act,1961. The operative Para 2 and Para 3 of the Circular No : 30 of 2016 ,dated 25/10/2016 reads as under :

“Para 2. The RFCTLARR Act which came in to effect from 1st January ,2014, in section 96, inter alia provides that income-tax shall not be levied on any award or agreement made (except those made under section 46) under the RFCTARR Act. Therefore, compensation received for compulsory acquisition of land under the RFCTLARR Act (except those made under section 46 of RFCTLARR Act), is exempted from the levy of income-tax.”

“Para 3. As no distinct has been made between compensation received from compulsory acquisition of agricultural land and non-agricultural land in the matter of providing exemption from income-tax under the RFCTLARR Act, the exemption provided under 96 of the RFCTLARR 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 here by clarified that compensation received in respect of award or compensation has been exempted from levy of income –tax vide section 96 of the RFCTLARR 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.”

3.Issues:

CBDT Circular No. 36 of 2016 ,dated 25/10/2016 clarifies that in absence of specific provision under the Income-tax Act ,1961 award under the “RFCTLARR Act,2013 “ in the hands of land losers , both for agricultural and non-agricultural land is tax free .However the Circular is silent in certain areas under the Income-tax Act ,1961 in relation to award received under “RFCTLARR Act,2013 “ as tax free which are explained in this Article with the help of Judicial Precedents .

4. Implication of TDS provision under section 194LA on compensation received under the “RFCTLARR Act,2013” , No TDS under section 194LA.

Regarding applicability of TDS under section 194LA on payments made to land losers under the “RFCTLARR Act,2013” (except those covered under section 46) , this aspect was Judged by the Hon’ble Andhra Pradesh High Court in Writ Petition Nos. 7874 of 2016 and batch in the case of **C.Nanda Kumar Vs. UOI** , date of order **13th March 2017** . Hon’ble High Court after due analysis of section 96 of the “RFCTLARR Act,2013” and CBDT Circular No. 36 of 2016 ,dated 25/10/2016 held that provisions of section 194LA are not applicable to compensation received under the “RFCTLARR Act,2013” (except those covered under section 46).

The operative of the said order reads as under :

“ Para 39. We can not lose sight of the fact that Central Act 30 of 2013 (RFCTLARR Act,2013) is a welfare legislation, which made a quantum leap from the provisions of the 1894 Land Acquisition Act. The object of the 2013 Act is not merely to provide just and fair compensation but also to make provisions for the rehabilitation and resettlement of the families of the land losers. The preamble to the Act shows that the Act was intended to look at land losers as persons who can become partners in the development of the country. Section 96 of the 2013 was inserted to be a tool towards securing laudable objectives of the 2013 Act. Therefore, it can never be contended that Section 194LA of the Income –tax Act will make inroads in to the welfare provision contained in the 2013 land Acquisition Act. There is no use giving effect to the provisions of Section 96 of the 2013 Act by first asking the Land Acquisition Authority to deduct tax under section 194LA and then driving the poor land losers from pillar to post to get a refund of the amount from the Income Tax Department. An interpretation that will lead the farmers and land losers to go from the Collectorate to the Income Tax Officer, is antithetic to the objects and reasons of the 2013,Act. “

“Para 40. Therefore, in fine , the writ petitions are allowed and there shall be a direction to the respondents not to deduct tax at source , when ever any compensation is paid for the acquisition of land under the 2013 Land Acquisition Act, except those covered by Section 46 of the 2013 Act.”

4. Treat of compensation received under the “RFCTLARR Act,2013” under normal and MAT /AMT provisions of the I.T Act,1961.

4.1. Section 96 of “RFCTLARR Act,2013” being special Law prevails over the Income-tax Act,1961 :

Section 96 of “RFCTLARR Act,2013” offers exemption from Income-tax on award or agreement made under this Act. “RFCTLARR Act,2013” (except those covered under section 46) being special Act , always prevails over the Income-tax Act,1961 .

It is trite Law that Special Law should prevail over the General law. More over it is true that under any statue where there is special as well as general provision special provision always prevails . This aspect was well recognised by the Hon’ble Supreme Court in several cases . Some land mark judgments are as under :

CIT Vs. Oriental Fire & General Insurance Co. Ltd Vs. CIT (2007) 291 ITR 370 (SC).
Britannia Industries Ltd Vs. CIT (2005) 278 ITR 546 (SC).
UOI Vs. AzadiBachao Andolan (2003) 263 ITR 706 (SC).
General Insurance Corpn. Of India Vs. CIT (1999) 240 ITR 139 (SC).

Though the facts and circumstances under which the above rulings have been given are distinguishable, legal principles laid down in the above judgments are clearly justifies that exemption from Income-tax provided under section 96 of the “ RFCTLARR Act,2013” being special Act prevails over the Income-tax Act,1961 .

4.2 Eligibility criteria laid down in exemption section are required to be construed strictly , once it is found that the applicant satisfies the same , benefit of exemption shall not be denied :

Literally 'exemption' is freedom from liability , tax or duty. Fiscally it may assume varying shapes , specially , in growing economy. In fact, an exemption provision is like an exception and on normal principle of interpretation of statutes it is constructed strictly . Once it is found that applicant satisfies the eligibility criterion of exemption and ambiguity or doubt of eligibility cleared and the subject falls under the exemption provision then full benefit shall be extended. Reliance is placed upon the following Judicial Precedents :

G.P. Ceramics (P.) Ltd. v. Dy. Commissioner, Trade Tax (2009) 2 SCC 90 (SC)

P.R .Brabhakar Vs. CIT (2006) 284 ITR 548 (SC)

CIT Vs. Gwalior Rayon Silk Manufacturing Co. Ltd (1992) 196 ITR 149 (SC)

Bajaj Tempo Ltd Vs. CIT (1992) 196 ITR 188 (SC).

4.3.Circulars issued by CBDT are binding in law in all tax authorities ,assessee can rely on circulars for securing what ever relief they are entitled to under the circular and beneficial circulars can not be withdrawn retrospectively:

Circulars issued by the CBDT are binding in law on all tax authorities and assessee can rely on them for securing whatever relief they are entitled to under this circular. Reliance is placed upon the following Judicial Precedents:

Commissioner of Customs Vs. Indian Oil Corporation Ltd (2004) 267 ITR 272 (SC).

Hindustan Aeronautics Ltd Vs. CIT (2000) 243 ITR 808 (SC).

CIT Vs. Hero Cycles Pvt Ltd (1997) 228 ITR 463(SC).

K.P .Varghese Vs. ITO (1981) 131 ITR 597 (SC).

4.4 Circulars issued by CBDT may deviate from provisions of I.T Act,1961, however Circular which confers some benefit on tax –payer, Assessee is fully entitled to avail benefit of the Circular:

It is Judicially decided that CBDT Circular is neither binding the Courts nor the Assessee. Circulars can not overwrite the provisions of Law. It is well settled in law that even if the contents of circular may amount to a deviation on a point of Law , a circular of CBDT which confers some benefit on Assessee is binding on all officers concerned with execution of Income-tax Act and they must carry out their duties in the light of the Circular. Reliance is placed upon the following Case Laws:

UCo Bank Vs. CIT (1999) 237 ITR 889 (SC)

Kerala Financial Corporation Vs. CIT (1996) 218 ITR 159 (SC)

State of Travancore Vs. CIT (1986) 158 ITR 102 (SC)

Dattatraya Gopal Shette Vs. CIT (1984) 150 ITR 460 (Bom)

4.5 Beneficial Circulars can not be withdrawn retrospectively :

Where a Circular issued earlier created a vested right in the tax payer and such right is sought to be curtailed or withdrawn by a subsequent Circular , then such subsequent Circular will not be a retrospective effect. Reliance is placed upon the following case laws:

BASF (India) Ltd Vs. W.Hasan , CIT (2006) 280 ITR 136 (Bom)/(2006) 151 Taxman 31
Shakti Raj Films Distributors Vs. CIT (1195) 213 ITR 20 (Bom)
CIT Vs. Prasad Productions Pvt. Ltd (1989) 179 ITR 147 (Mad)
CIT Vs. Geeva Films (1983) 141 ITR 632 (Ker)
CIT Vs. B.M.Edward (1979) 119 ITR 334 (Ker)- FB.

Comments :

When viewed in the light of the above discussions , judicial precedents and CBDT Circular No. 36 of 2016 ,dated 25/10/2016 benefits offered to land losers under section 96 of the “ RFCTLARR Act,2013” extends to both normal and MAT /AMT provisions of the I.T Axt,1961, accordingly all assessee’s may be corporate or non corporate are entitled to treat the awards received under the special Central Act 30 of 2013 as tax free irrespective of the nature of lands whether held as investments or stock-in-trade.

5. Implication of section 14A read with rule 8D on compensation received under the “RFCTLARR Act,2013”.

Relevant statutory provisions under section 14A enacted in the I.T Act,1961 reads as under :

“ Expenditure incurred in relation to income not includible in total income “.

14A. (1) For the purposes of computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act.

(2) The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act.

(3) The provisions of sub-section (2) shall also apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act :

Sub-section (2) of Section 14A deals with the proportionality as it empowers the AO to extricate that amount of expenditure which is incurred in relation to such income which does not form

part of the total income under the Act. However, this is to be done 'in accordance with such method as may be prescribed.' This prescription is provided by the delegated legislation, in the form of Rule 8D of the Income Tax Rules, 1962 (for short 'Rules') which Rule was inserted w.e.f. March 24, 2008 vide Income Tax (Fifth Amendment) Rules, 2008.

5.1 Where Land was held as Investment :

Reliance is placed upon the decision of Hon'ble Supreme Court in ***CIT v. Walfort Share and Stock Brokers P Ltd.*** [2010] 326 ITR 1 (SC) wherein Hon'ble Supreme Court has held that the basic principle of taxation is to tax the net income, i.e., gross income minus the expenditure and on the same analogy the exemption is also in respect of net income. In other words, where the gross income would not form part of total income, its associated or related expenditure would also not be permitted to be debited against other taxable income.

The same view was also reiterated by the Hon'ble Supreme Court in the case ***Maxopp Investment Ltd Vs. CIT*** (2018) 91 taxmann.com 154, thus under section 14A where the assessee had earned exempt income where land was held as Investment, his total expenditure has got to be apportioned between taxable income and exempt income and the expenses related with exempt income would have to be disallowed.

5.2 Where Land was held as Stock-in-trade :

Regarding applicability of disallowance under section 14A read with rule 8D to business income where assets are held as stock-in-trade there was divergent opinion among High Courts which was recently settled by the Hon'ble Supreme Court recently in the case of ***Maxopp Investment Ltd Vs. CIT*** (2018) 91 taxmann.com 154 and the observation of the Hon'ble Supreme Court was as under :

“In those cases where assets are held as stock-in-trade, main purpose is to trade in those assets and earn profits there from, in the process, certain exempted income is also earned, though incidentally, which also an income. This triggers applicability of section 14A read with rule 8D which is based on theory of apportionment of expenditure between taxable and non-taxable income. Therefore, to that extent, expenditure incurred in acquiring those assets will have to be apportioned and business expenditure incurred for acquiring those assets related with exempt income shall be disallowed under section 14A read with section 8D.”

Comments :

Award received by land losers under “RFCTLARR Act, 2013” being tax free under section 96 of the Act (except those covered under section 46), on claiming such compensation as tax free under the I.T Act, 1961, provisions of section 14A attracted and accordingly disallowance under section 14A r.w.r 8D shall be made.

6. Implication of expenditure disallowed under section 14A read with rule 8D on compensation received under the “RFCTLARR Act,2013” under section 115JB i. e under MAT .

Where land loser’s are covered under the provisions of MAT under section 115JB , expenditures disallowed under section 14A on tax free income of compensation could not be considered as part of Book Profit under section 115JB as held by the Special Bench of the Hon’ble Delhi Tribunal in the case of **ACIT Vs. Vireet Investment (P). Ltd (2017) 82 taxmann.com 415.**

7. Implication of loss suffered on compensation received under the “RFCTLARR Act,2013” .

It is trite law that where the income from a source is altogether exempt from income-tax , loss from that source is neither eligible for set off against taxable income from different source under the same head of income under section 70 nor against taxable income from different heads under section 71. This view is supported by the judicial precedents:

CIT Vs. Harprasad & Co. (P.) Ltd (1975) 99 ITR 118 (SC)

CIT Vs. S.S. Thiagarajan (1981) 129 ITR 11 (Mad)

Conclusion

When viewed in the light of above discussion , provisions of the Act, , Judicial precedents including CBDT Circular No . 36 /2016 dated 25/10/2016 , compensation received by land loser’s under “ RFCTLARR Act,2013” (except those covered under section 46), the implication under I.T Act,1961 is summarised as under :

- 2013 Act is exempting all acquisitions under this Act from income-tax irrespective of the nature of the land may be agricultural land or non-agricultural land and location of the land;
- 2013 Act is exempting all acquisitions under this Act from Income-tax irrespective of the nature of treatment in books of accounts i.e land may be held as investment or stock-in-trade;
- 2013 Act applies to all land losers irrespective of their status ;
- Any award in any form under this Act as defined under section 96 (except those covered under section 46) is exempt from income tax both under normal and MAT provisions under the I.T Act,1961.
- Expenditure related with the tax-free income of compensation shall be disallowed under section 14A r.w.r 8D.
- Expenses disallowed under section 14A can not form part of Book Profit for MAT under section 115JB.
- Loss suffered under compulsory acquisition under this Act is neither eligible for set off against taxable income under the same head nor against taxable income from different head.