

Taxation Laws (Amendment) Act, 2019

No. 46 Of 2019

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An Act further to amend the Income-tax Act, 1961 and to amend the Finance (No. 2) Act, 2019.

Taxation Laws (Amendment) Act, 2019

No. 46 Of 2019

[11th December, 2019.]

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. Short title and commencement.

(1) This Act may be called the Taxation Laws (Amendment) Act, 2019.

(2) Save as otherwise provided, it shall be deemed to have come into force on the 20th day of September, 2019.

CHAPTER II

2. Amendment of section 92BA.

In section 92BA of the Income-tax Act, 1961 [43 of 1961] (hereafter in this Chapter referred to as the Income-tax Act), after clause (v), the following clause shall be inserted, with effect from the 1st day of April, 2020, namely:—

"(va) any business transacted between the persons referred to in sub-section (6) of section 115BAB;"

3. Amendment of section 115BA.

In section 115BA of the Income-tax Act, with effect from the 1st day of April, 2020, —

(a) for the marginal heading "Tax on income of certain domestic companies", the marginal heading "Tax on income of certain manufacturing domestic companies" shall be substituted;

(b) in sub-section (1), for the words "subject to the other provisions of this Chapter", the words, figures and letters "subject to the other provisions of this Chapter, other than those mentioned under section 115BAA and section 115BAB" shall be substituted;

(c) in sub-section (4), after the proviso, the following proviso shall be inserted, namely:—

"Provided further that where the person exercises option under section 115BAA, the option under this section may be withdrawn."

4. Insertion of new sections 115BAA and 115BAB.

After section 115BA of the Income-tax Act, the following sections shall be inserted with effect from the 1st day of April, 2020, namely:—

'115BAA. Tax on income of certain domestic companies

(1) Notwithstanding anything contained in this Act but subject to the provisions of this Chapter, other than those mentioned under section 115BA and section 115BAB, the income-tax payable in respect of the total income of a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2020, shall, at the option of such person, be computed at the rate of twenty-two per cent., if the conditions contained in sub-section (2) are satisfied:

Provided that where the person fails to satisfy the conditions contained in sub-section (2) in any previous year, the option shall become invalid in respect of the assessment year relevant to that previous year and subsequent assessment years

and other provisions of the Act shall apply, as if the option had not been exercised for the assessment year relevant to that previous year and subsequent assessment years.

(2) For the purposes of sub-section (1), the total income of the company shall be computed,—

(i) without any deduction under the provisions of section 10AA or clause (iia) of sub-section (1) of section 32 or section 32AD or section 33AB or section 33ABA or sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) or sub-section (2AB) of section 35 or section 35AD or section 35CCC or section 35CCD or under any provisions of Chapter VI-A under the heading "C.—Deductions in respect of certain incomes" other than the provisions of section 80JJAA;

(ii) without set off of any loss carried forward or depreciation from any earlier assessment year, if such loss or depreciation is attributable to any of the deductions referred to in clause (i);

(iii) without set off of any loss or allowance for unabsorbed depreciation deemed so under section 72A, if such loss or depreciation is attributable to any of the deductions referred to in clause (i); and

(iv) by claiming the depreciation, if any, under any provision of section 32, except clause (iia) of sub-section (1) of the said section, determined in such manner as may be prescribed.

(3) The loss and depreciation referred to in clause (ii) and clause (iii) of sub-section (2) shall be deemed to have been given full effect to and no further deduction for such loss or depreciation shall be allowed for any subsequent year:

Provided that where there is a depreciation allowance in respect of a block of asset which has not been given full effect to prior to the assessment year beginning on the 1st day of April, 2020, corresponding adjustment shall be made to the written down value of such block of assets as on the 1st day of April, 2019 in the prescribed manner, if the option under sub-section (5) is exercised for a previous year relevant to the assessment year beginning on the 1st day of April, 2020.

(4) In case of a person, having a Unit in the International Financial Services Centre, as referred to in sub-section (1A) of section 80LA, which has exercised option under sub-section (5), the conditions contained in sub-section (2) shall be modified to the extent that the deduction under section 80LA shall be available to such Unit subject to fulfilment of the conditions contained in the said section.

Explanation.—For the purposes of this sub-section, the term "Unit" shall have the same meaning as assigned to it in clause (zc) of section 2 of the Special Economic Zones Act, 2005 [28 of 2005].

(5) Nothing contained in this section shall apply unless the option is exercised by the person in the prescribed manner on or before the due date specified under sub-section (1) of section 139 for furnishing the returns of income for any previous year relevant to the assessment year commencing on or after the 1st day of April, 2020 and such option once exercised shall apply to subsequent assessment years:

Provided that in case of a person, where the option exercised by it under section

115BAB has been rendered invalid due to violation of conditions contained in sub-clause (ii) or sub-clause (iii) of clause (a), or clause (b) of sub-section (2) of said section, such person may exercise option under this section:

Provided further that once the option has been exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year.

115BAB. Tax on income of new manufacturing domestic companies.

(1) Notwithstanding anything contained in this Act but subject to the provisions of this Chapter, other than those mentioned under section 115BA and section 115BAA, the income-tax payable in respect of the total income of a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2020, shall, at the option of such person, be computed at the rate of fifteen per cent., if the conditions contained in sub-section (2) are satisfied:

Provided that where the total income of the person, includes any income, which has neither been derived from nor is incidental to manufacturing or production of an article or thing and in respect of which no specific rate of tax has been provided separately under this Chapter, such income shall be taxed at the rate of twenty-two per cent. and no deduction or allowance in respect of any expenditure or allowance shall be allowed in computing such income:

Provided further that the income-tax payable in respect of the income of the person deemed so under second proviso to sub-section (6) shall be computed at the rate of thirty per cent.:

Provided also that the income-tax payable in respect of income being short term capital gains derived from transfer of a capital asset on which no depreciation is allowable under the Act shall be computed at the rate of twenty-two per cent.:

Provided also that where the person fails to satisfy the conditions contained in sub-section (2) in any previous year, the option shall become invalid in respect of the assessment year relevant to that previous year and subsequent assessment years and other provisions of the Act shall apply to the person as if the option had not been exercised for the assessment year relevant to that previous year and subsequent assessment years.

(2) For the purposes of sub-section (1), the following conditions shall apply, namely:—

(a) the company has been set-up and registered on or after the 1st day of October, 2019, and has commenced manufacturing or production of an article or thing on or before the 31st day of March, 2023 and,—

(i) the business is not formed by splitting up, or the reconstruction, of a business already in existence:

Provided that this condition shall not apply in respect of a company, business of which is formed as a result of the re-establishment, reconstruction or revival by the person of the business of any such undertaking as is referred to in section 33B, in the circumstances and within the period specified in the said section;

(ii) does not use any machinery or plant previously used for any purpose.

Explanation 1.—For the purposes of sub-clause (ii), any machinery or plant which was used outside India by any other person shall not be regarded as machinery or plant previously used for any purpose, if the following conditions are fulfilled, namely:—

(A) such machinery or plant was not, at any time previous to the date of the installation used in India;

(B) such machinery or plant is imported into India from any country outside India; and

(C) no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of this Act in computing the total income of any person for any period prior to the date of the installation of machinery or plant by the person.

Explanation 2.—Where in the case of a person, any machinery or plant or any part thereof previously used for any purpose is put to use by the company and the total value of such machinery or plant or part thereof does not exceed twenty per cent. of the total value of the machinery or plant used by the company, then, for the purposes of sub-clause (ii) of this clause, the condition specified therein shall be deemed to have been complied with;

(iii) does not use any building previously used as a hotel or a convention centre, as the case may be, in respect of which deduction under section 80-ID has been claimed and allowed.

Explanation.—For the purposes of this sub-clause, the expressions "hotel" and "convention centre" shall have the meanings respectively assigned to them in clause (a) and clause (b) of sub-section (6) of section 80-ID;

(b) the company is not engaged in any business other than the business of manufacture or production of any article or thing and research in relation to, or distribution of, such article or thing manufactured or produced by it.

Explanation.—For the removal of doubts, it is hereby clarified that the business of manufacture or production of any article or thing referred to in clause (b) shall not include business of,—

(ii) mining;

(iii) conversion of marble blocks or similar items into slabs;

(iv) bottling of gas into cylinder;

(v) printing of books or production of cinematograph film; or

(vi) any other business as may be notified by the Central Government in this behalf; and

(c) the total income of the company has been computed,—

(i) without any deduction under the provisions of section 10AA or clause (ia) of sub-section (1) of section 32 or section 32AD or section 33AB or section 33ABA or sub-clause (ii) or sub-clause (ia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) or sub-section (2AB) of section 35 or section 35AD or section 35CCC

or section 35CCD or under any provisions of Chapter VI-A under the heading "C.—Deductions in respect of certain incomes" other than the provisions of section 80JJAA;

(ii) without set off of any loss or allowance for unabsorbed depreciation deemed so under section 72A where such loss or depreciation is attributable to any of the deductions referred to in sub-clause (i).

Explanation.—For the removal of doubts, it is hereby clarified that in case of an amalgamation, the option under sub-section (7) shall remain valid in case of the amalgamated company only and if the conditions contained in sub-section (2) are continued to be satisfied by such company; and

(iii) by claiming the depreciation under the provision of section 32, except clause (iia) of sub-section (1) of the said section, determined in such manner as may be prescribed.

(3) The loss referred to in sub-clause (ii) of clause (c) of sub-section (2) shall be deemed to have been given full effect to and no further deduction for such loss shall be allowed for any subsequent year.

(4) If any difficulty arises regarding fulfilment of the conditions contained in sub-clause (ii) or sub-clause (iii) of clause (a) of sub-section (2) or clause (b) of said sub-section, as the case may be, the Board may, with the approval of the Central Government, issue guidelines for the purpose of removing the difficulty and to promote manufacturing or production of article or thing using new plant and machinery.

(5) Every guideline issued by the Board under sub-section (4) shall be laid before each House of Parliament, and shall be binding on the person, and the income-tax authorities subordinate to it.

(6) Where it appears to the Assessing Officer that, owing to the close connection between the person to which this section applies and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the person more than the ordinary profits which might be expected to arise in such business, the Assessing Officer shall, in computing the profits and gains of such business for the purposes of this section, take the amount of profits as may be reasonably deemed to have been derived therefrom:

Provided that in case the aforesaid arrangement involves a specified domestic transaction referred to in section 92BA, the amount of profits from such transaction shall be determined having regard to arm's length price as defined in clause (ii) of section 92F:

Provided further that the amount, being profits in excess of the amount of the profits determined by the Assessing Officer, shall be deemed to be the income of the person.

(7) Nothing contained in this section shall apply unless the option is exercised by the person in the prescribed manner on or before the due date specified under sub-section (1) of section 139 for furnishing the first of the returns of income for any previous year relevant to the assessment year commencing on or after 1st day of

April, 2020 and such option once exercised shall apply to subsequent assessment years:

Provided that once the option has been exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year.

Explanation.—For the purposes of section 115BAA and this section, the expression "unabsorbed depreciation" shall have the meaning assigned to it in clause (b) of sub-section (7) of section 72A.'

5. Amendment of section 115JAA.

In section 115JAA of the Income-tax Act, after sub-section (7), the following sub-section shall be inserted with effect from the 1st day of April, 2020, namely:—

"(8) The provisions of this section shall not apply to a person who has exercised the option under section 115BAA."

6. Amendment of section 115JB.

In section 115JB of the Income-tax Act, with effect from the 1st day of April, 2020, — (a) in sub-section (1), the following proviso shall be inserted, namely:—

"Provided that for the previous year relevant to the assessment year commencing on or after the 1st day of April, 2020, the provisions of this sub-section shall have effect as if for the words "eighteen and one-half per cent." occurring at both the places, the words "fifteen per cent." had been substituted.";

(b) for sub-section (5A), the following sub-section shall be substituted, namely:— "(5A) The provisions of this section shall not apply to,—

(i) any income accruing or arising to a company from life insurance business referred to in section 115B;

(ii) a person who has exercised the option referred to under section 115BAA or section 115BAB."

7. Amendment of section 115QA.

In section 115QA of the Income-tax Act, in sub-section (1), the following proviso shall be inserted and shall be deemed to have been inserted with effect from the 5th day of July, 2019, namely:—

"Provided that the provisions of this sub-section shall not apply to such buy-back of shares (being the shares listed on a recognised stock exchange), in respect of which public announcement has been made on or before the 5th day of July, 2019 in accordance with the provisions of the Securities and Exchange Board of India (Buy-back of Securities) Regulations, 2018 made under the Securities and Exchange Board of India Act, 1992 [15 of 1992].

CHAPTER III

AMENDMENTS IN THE FINANCE (NO. 2) ACT, 2019

8. Amendment of Act No. 23 of 2019.

In section 2 of the Finance (No. 2) Act, 2019 [hereafter in this Chapter referred to as the Finance (No. 2) Act], in sub-section (9), with effect from the 1st day of April, 2019,—

(a) in the second proviso, for the words "First Schedule", the words, figures and letters "First Schedule, except in case of a domestic company whose income is chargeable to tax under section 115BAA or section 115BAB of the Income-tax Act" shall be inserted and shall be deemed to have been inserted;

(b) in the third proviso,—

(i) in clause (a) for the words "the Income-tax Act" the words, figures and letters "the Income-tax Act, not having any income under section 115AD of the Income-tax Act" shall be inserted and shall be deemed to have been inserted;

(ii) after clause (a), the following clause shall be inserted and shall be deemed to have been inserted, namely:—

'(aa) in the case of individual or every association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act having income under section 115AD of the Income-tax Act,—

(i) at the rate of ten per cent. of such "advance tax", where the total income exceeds fifty lakh rupees, but does not exceed one crore rupees;

(ii) at the rate of fifteen per cent. of such "advance tax", where the total income exceeds one crore rupees but does not exceed two crore rupees;

(iii) at the rate of twenty-five per cent. of such "advance tax", where the total income [excluding the income of the nature referred to in clause (b) of sub-section (1) of section 115AD of the Income-tax Act] exceeds two crore rupees but does not exceed five crore rupees;

(iv) at the rate of thirty-seven per cent. of such "advance tax", where the total income [excluding the income of the nature referred to in clause (b) of sub-section (1) of section 115AD of the Income-tax Act] exceeds five crore rupees;

(v) at the rate of fifteen per cent. of such "advance tax", where the total income [including the income of the nature referred to in clause (b) of sub-section (1) of section 115AD of the Income-tax Act] exceeds two crore rupees but is not covered in sub-clauses (iii) and (iv):

Provided that in case where the total income includes any income chargeable under clause (b) of sub-section (1) of section 115AD of the Income-tax Act, the rate of surcharge on the advance tax calculated on that part of income shall not exceed fifteen per cent.;;

(iii) in clause (c), in the opening portion, for the words "domestic company", the words, figures and letters "domestic company except such domestic company whose income is chargeable to tax under section 115BAA or section 115BAB of the Income-tax Act," shall be inserted and shall be deemed to have been inserted;

(c) in the fourth proviso, for the words, brackets and letter "in (a) above", the words, brackets and letters "in (a) and (aa) above" shall be substituted;

(d) after the eighth proviso, the following proviso shall be inserted, namely:—

"Provided also that in case of every domestic company whose income is chargeable to tax under section 115BAA or section 115BAB of the Income-tax Act, the advance tax computed under the first proviso shall be increased by a surcharge, for the purposes of the Union, calculated at the rate of ten per cent. of such "advance tax".".

9. Amendment of Part II of First Schedule.

In the First Schedule of the Finance (No. 2) Act,—

(A) in PART II, under the sub-heading "Surcharge on income-tax", in paragraph (i), in clause (a), with effect from the 1st day of April, 2019,—

(i) in sub-clauses I and II, after the words "aggregate of such incomes", the brackets, words, figures and letters "(including the income under the provisions of section 111A and section 112A of the Income-tax Act)" shall be inserted and shall be deemed to have been inserted;

(ii) in sub-clauses III and IV, after the words "aggregate of such incomes", the brackets, words, figures and letters "(excluding the income under the provisions of section 111A and section 112A of the Income-tax Act)" shall be inserted and shall be deemed to have been inserted;

(iii) after sub-clause IV, the following sub-clause shall be inserted and shall be deemed to have been inserted, namely:—

"V. at the rate of fifteen per cent. of such tax, where the income or aggregate of the such incomes (including income under the provisions of section 111A and section 112A of the Income-tax Act) paid or likely to be paid and subject to the deduction exceeds two crore rupees, but is not covered under sub-clauses III and IV):

Provided that in case where the total income includes any income chargeable under section 111A and section 112A of the Income-tax Act, the rate of surcharge on the amount of Income-tax deducted in respect of that part of income shall not exceed fifteen per cent.;";

(B) in PART III, in Paragraph A, under the sub-heading "Surcharge on income-tax", after the opening portion,—

(i) in clauses (a) and (b), after the words "having a total income", the brackets, words, figures and letters "(including the income under the provisions of section 111A and section 112A)" shall be inserted;

(ii) in clauses (c) and (d), after the words "having a total income", the brackets, words, figures and letters "(excluding the income under the provisions of section 111A and section 112A)" shall be inserted;

(iii) after clause (d) and before the proviso, the following clause shall be inserted, namely:—

"(e) having a total income (including income under the provisions of section 111A and section 112A) exceeding two crore rupees, but is not covered under clauses (c)

and (d), shall be applicable at the rate of fifteen per cent. of such income-tax:

Provided that in case where the total income includes any income chargeable under section 111A and section 112A of the Income-tax Act, the rate of surcharge on the amount of Income-tax computed in respect of that part of income shall not exceed fifteen per cent.;"

10. Repeal and savings.

(1) The Taxation Laws (Amendment) Ordinance, 2019 [Ord. 15 of 2019] is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of this Act.