

CORPORATE TAXATION CERTAIN ISSUES

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THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

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VIRTUAL MEETING

***I AM THE COUNTRY'S DRAFTSMAN,
I DRAFT THE COUNTRY'S LAWS,
FOR MOST OF THE LITIGATION,
I AM THE CAUSE!***

AS QUOTED BY RETD.JUSTICE SMT. SUJATA MANOHAR

CORPORATE TAXATION – CERTAIN ISSUES

OVER VIEW:

- OPTIONAL TAX REGIME
- DIVIDEND – SECTION 2(22)
- DEMERGER – ACCOUNTING, REPORTING AND INCOME TAX
- DEDUCTION – SECTION 80M
- PROFESSION CARRIED ON BY A CORPORATE ENTITY AND EFFECT ON SECTION 44ADA

OPTIONAL TAX REGIME

CORPORATE TAXATION – CERTAIN ISSUES

S.115BA: Certain manufacturing companies (registered after 1.4.2016) - 25%

S.115BAA: Certain domestic companies (AY 2020-21 onwards)– 22%

S.115BAB: New manufacturing (specified) companies (1.10.2019)– 15%



25%

Section 115BA:

- **Domestic manufacturing company**
- A Y 2017-18 onwards
- At the option of the company
- **Tax @ 25% plus applicable surcharge and Education cess**
- Company to be **set-up and registered after 1-4-2016**
- 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.
- **Option to be exercised by filing Form 10IB before the due date of filing the return of income. Once exercised option cannot be withdrawn**

CORPORATE TAXATION – CERTAIN ISSUES

Total Income has been computed WITHOUT any Deduction under:

- S.10AA : Income from Unit under SEZ
- S. 32(1)(iia) : Additional Depreciation for additions to Fixed Assets
- S. 32AC: Investment allowance New P&M between AY 2014-15 to 2016-17
- S. 32 AD: Accelerated depreciation for units in notified backward areas
- S. 33AB : Tea / Coffee/ Rubber Development Account
- S. 33ABA: Site Restoration Fund
- S. 35(1)(ii): R&D expenses – Weighted Deduction to research association for scientific research
- S. 35(1)(iia): R&D Expenses – payment to a company which has main object as scientific research (approved).

CORPORATE TAXATION – CERTAIN ISSUES

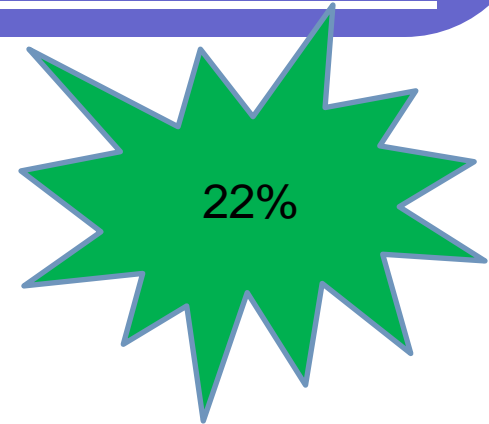
- S. 35(1)(iii): R&D Expenses – payment to research association for research in social science or statistical research.
- S. 35 (2AA): Weighted Deduction in respect of payments for R&D to Universities/IIT/ Approved Scientific Research Institutes.
- S. 35 (2AB): Weighted Deduction in respect of expenses on In-House R&D units
- S. 35AC: Expenditure on eligible projects and schemes
- S. 35AD: Any expenditure (including capital expenditure)on specified business – infrastructure facility
- S. 35CCC:Weighted deduction on expenses related to Agricultural Extension project

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- S. 35CCD: Weighted deduction on Skill Development Project
- Chapter VI A Deductions in respect of certain incomes – S. 80H To S.80TTB - except S.80JJAA (expenditure in incremental employment)
- Depreciation u/s 32 – to be allowed as per prescribed rates.
- ALL EXCLUSIONS HAVE TO BE OPTED – NO CHERRY PICKING.

Section 115BAA:

- Domestic company (any activity)
- A Y 2020-21 onwards
- At the option of the company
- **Tax @ 22% plus applicable surcharge and Education cess**
- **If company fails to satisfy conditions of subsection 2, concessional rate will not apply for the said year and all subsequent years**
- **Option to be exercised by filing Form 10IC before the due date of filing the return of income.**
- **Option once exercised cannot be withdrawn**



Section 115BAA:

- Conditions mentioned in the Slides 7, 8 and 9, shall apply mutatis mutandis
- For A Y 2021-22 onwards entire Ch VI A Deductions (except S80JJA and S 80M) shall not be allowed. **Special concessions of Covid-19 of first quarter payments and their benefits in AY 2020-21 should be claimed.**
- Claim for S.80LA in respect of unit in International Financial Service Centre conditions to be satisfied subject to slide 7, 8 and 9
- Losses arising from the claim of specified deductions/ exemptions which are not to be claimed.
- Business Losses or depreciation brought forward or carried forward from section 72A also will not be allowed to be set off.
- Depreciation of current year to be claimed and allowed.
- **MAT and MAT credit provisions shall not apply to such a company.**

15%

Section 115BAB:

- **New Domestic manufacturing company**
- **A Y 2020-21 onwards – New company set up or registered on or after 1st October 2019**
- **Tax @ 15% plus applicable surcharge and Education cess**
- **If no Manufacturing, and all other conditions satisfied, tax @ 22%**
- **If AO is of opinion that owing to close connection between co and any other person, course of business is so arranged, that more than ordinary profits accrue to the company, AO shall estimate the profits on reasonably deemed basis and tax the excess profits @ 30%**
- **Short term Capital Gains of assets on which no depreciation is allowable, shall be @ 22%**
- **Further conditions to be satisfied , else taxed at 30% □**

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SECTION 115 BAB: Conditions that need to be satisfied:

- Company set up and registered on or after 1st October 2019
- Commencement of manufacturing or production of article or thing before 31st March 2023
- Business of generation of electricity permitted
- Business not formed by splitting up, or reconstruction, of a business already in existence
- Does not use any machinery or plant previously used for any other purpose (Ratio of 80:20 permitted)
- Machinery or plant used outside India permitted, subject to:
 - Not used in India
 - Imported into India
 - No depreciation allowed in India on such plant or machinery
- Does not use any building previously used as hotel or convention centre on which S.80-ID has been claimed or allowed.
- And

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- Company is not engaged in any other business, other than business of manufacture or production of article or thing and research in relation to, or distribution of such article or thing manufactured or produced by it.
- Company should NOT be engaged in manufacture of:
 - Development of computer software in any form or in any media
 - Mining
 - Conversion of marble blocks or similar items into slabs
 - Bottling of gas into cylinder
 - Printing of books or production of cinematograph film
 - Specified business as may be notified by Central Government.
- In case of any specific difficulty in implementation of above CBDT has power to issue guidelines and same have to be laid before Parliament.
- In case provisions of Specified Domestic Transaction apply, ALP principles will apply.

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- **Option to be exercised by filing Form 10ID before the due date of filing the FIRST return of income.**
- **Option once exercised cannot be withdrawn by assessee**
- Claims mentioned in the Slide 7, 8 and 9 shall not be allowed. NO CHERRY PICKING
- For A Y 2021-22 onwards entire Ch VI A Deductions (except S80JJAA and S 80M) shall not be allowed.
- Losses arising from the claim of specified deductions/ exemptions which are not to be claimed.
- Business Losses or depreciation brought forward or carried forward from section 72A also will not be allowed to be set off.
- Depreciation u/s 32 of current year will be allowed at prescribed rates

DIVIDEND

DIVIDEND

Section 2(22) "dividend" includes—

any distribution by a company of **accumulated profits**, or to the extent of accumulated profits (whether capitalised or not) :

- **if such distribution entails the release by the company to its shareholders of all or any part of the assets** of the company ;
- of **debentures**, debenture-stock, or deposit certificates in any form, whether with or without interest, and any distribution to **its preference shareholders** of shares by way of bonus;
- to the shareholders, **immediately before its liquidation**,
- **on the reduction of its capital**

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- any payment by a company, not being a company in which the public are substantially interested,
- of any sum by way of **advance or loan to a shareholder**,
- being a person who is the beneficial owner of shares holding not less than **ten per cent** of the voting power,
- or to any **concern in which such shareholder** is a member or a partner and in which **he has a substantial interest (20% of voting power)**
- or any payment by any such company on behalf, or **for the individual benefit, of any such shareholder**, to the extent to which the company in either case possesses accumulated profits;

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But **Dividend** does **not include**:

- a distribution made in accordance with **liquidation proceedings or winding up** proceedings, where the holder of the share is not entitled to participate in the surplus assets;
- distribution is attributable to the capitalised profits of the company **representing bonus shares** allotted to its equity shareholders
- any **advance or loan made** to a shareholder or the said concern by a company **in the ordinary course of its business**, where the **lending of money is a substantial part of the business** of the company

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- any dividend paid by a company which is set off by the company against the whole or any part of **any sum previously paid by it and treated as a dividend** within the meaning of deemed dividend, to the extent to which it is so set off;
- buy back of shares under section 77A of Companies Act 2013
- **any distribution of shares pursuant to a DEMERGER by the resulting company to the shareholders of the demerged company (whether or not there is a reduction of capital in the demerged company).**

DEMERGER

DEMERGER

Section 2(19AA) "demerger", in relation to companies, means:

- the **transfer**, pursuant to a scheme of arrangement under sections 391 to 394 of the Companies Act, 1956 (1 of 1956),
- by a demerged company of its one or more **undertakings** to any resulting company in such a manner that:
 - all the property of the undertaking, being transferred by the demerged company, immediately before the demerger, becomes the property of the resulting company by virtue of the demerger
 - all the liabilities relating to the undertaking, being transferred by the demerged company, immediately before the demerger, become the liabilities of the resulting company by virtue of the demerger
 - the property and the liabilities of the undertaking or undertakings being transferred by the demerged company are transferred at values appearing in its books of account immediately before the demerger in accordance with IndAs Rules 2015

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- the resulting company issues, in consideration of the demerger, its shares to the shareholders of the demerged company on a proportionate basis (except where the resulting company itself is a shareholder of the demerged company)
- the shareholders holding not less than three-fourths in value of the shares in the demerged company (other than shares already held therein immediately before the demerger, or by a nominee for, the resulting company or, its subsidiary) become share-holders of the resulting company or companies by virtue of the demerger
 - the transfer of the undertaking is on a going concern basis
 - the demerger is in accordance with the conditions, if any, notified under sub-section (5) of section 72A by the Central Government in this behalf.

(19AAA) "**demerged company**" means the company whose undertaking is transferred, pursuant to a demerger, to a resulting company;

ACCOUNTING AND REPORTING OF DEMERGER:

- The accounting entries in the books of transferor company are required to be passed according to IndAS 10,
- Recording the sale of assets and transfer of liabilities from transferor company to demerged company at book value and the balance as the Profit on sale of the undertaking, which is credited to P&L Account of discontinued operations under exceptional item.
- The sales consideration is the value of the demerged company shares issued to the shareholders of transferor company.
- The resultant profit(after deduction of the transaction cost) is to be transferred to “Retained Earnings” in the Balance Sheet and an equivalent amount is subtracted as deemed distribution of dividend to the Shareholders from the same, thereby nullifying the increase in the Accumulated Reserves of the transferor company.
- The said adjustment will be reflected in “Statement of Changes in Equity”.

Accounting treatment mentioned in slide 21 will lead to following issues in Tax Assessment:

a. Transfer of Assets and Capital Gains to transferor company –

Section 47. Nothing contained in section 45 shall apply to the following transfers :—

(vib) any transfer, in a demerger, of a capital asset by the demerged company to the resulting company, if the resulting company is an Indian company;

Clause (vib) inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

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b. Section - 115JB, Income-tax Act, 1961 – (Minimum Alternate Tax applicable to Companies)

Section 115JB (2A) For a company whose financial statements are drawn up in compliance to the Indian Accounting Standards specified in Annexure to the Companies (Indian Accounting Standards) Rules, 2015, the book profit as computed in accordance with Explanation 1 to sub-section (2) shall be further—

(d) decreased by all amounts or aggregate of the amounts credited to the statement of profit and loss on distribution of non-cash assets to shareholders in a demerger in accordance with Appendix A of the Indian Accounting Standards 10

c. As the accounting treatment is affecting the “accumulated profits” whether the transferor company will attract the provisions of DDT or TDS u/s 194

As discussed in Slide 18 the definition of Dividend does not cover the distribution of shares of the demerged company upon the Demerger of an undertaking.

Once dividend is not attracted, neither DDT nor TDS u/s 194 will be attracted/

DEDUCTION U/S 80 M

Section 80M.(1)

- Where the gross total income of a **domestic company**
- includes **any income by way of dividends** from any other **domestic company or a foreign company or a business trust**, there shall, in accordance with and subject to the provisions of this section, be allowed in computing the total income of such domestic company,
- **a deduction of an amount equal to so much of the amount of income by way of dividends received** from such other domestic company or foreign company or business trust
- **as does not exceed the amount of dividend distributed by it on or before the due date.**

(2) no deduction shall be allowed in respect of such amount in any other previous year.

"due date" means the date one month prior to the date for furnishing the return of income under sub-section (1) of section 139.

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Dividend Recd:	Gross	TDS	Gross	TDS	Gross	TDS
Indian co	80	8	80	8	80	8
Foreign Co	20	2	20	2	20	2
Distributed	150		90		70	
deduction u/s 80M	100		90		70	
taxable	0		10		30	
indian rate	0	0	30 or 20 or 10	8	30 or 20 or 10	8
115BBD @15%	0	0	0 or 15?	1.5	0 or 15	0 or 1.5 or 2
tds credit indian		8		8		8
tds foreign		0 or 2		1.5 or 2		0 or 1.5 or 2

**PROFESSION CARRIED ON BY A CORPORATE ENTITY AND
EFFECT ON SECTION 44ADA**

Section 44ADA.

- Notwithstanding anything contained in [sections 28](#) to [43C](#),
- in the case of **an assessee**, being a **resident in India**,
- who is engaged in a profession referred to in sub-section (1) of [section 44AA](#)
- whose total gross receipts do not exceed Rs. 50 lakhs in a previous year,
- a sum equal to **fifty per cent of the total gross receipts** of the assessee in the previous year on account of such profession **or, as the case may be, a sum higher** than the aforesaid sum claimed to have been earned by the assessee, shall be deemed to be the profits and gains of such profession chargeable to tax under the head "Profits and gains of business or profession".
- deduction allowable under the provisions of [sections 30](#) to [38](#) shall, for the purposes of sub-section (1), be deemed to have been already given full effect to

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- WDV of any asset used for the purposes of profession shall be deemed to have been calculated **as if the assessee had claimed and had been actually allowed**
- an assessee who claims that his profits and gains from the profession are **lower than the profits and gains specified in sub-section (1)** and whose total income exceeds the maximum amount which is not chargeable to income-tax, **shall be required to keep and maintain such books of account and other documents as required under sub-section (1) of section 44AA and get them audited and furnish a report of such audit as required under section 44AB.**]

Questions that come up:

- a. Can a corporate entity fall within the provisions of this section?
- b. Can a corporate entity claim that no books of accounts have been maintained for tax purpose, but under the Companies Act, these are duly audited?
- c. Cost –wise how effective it is for a corporate entity with that turnover to survive
- d. Is there a legal bar on a company to fall within 44ADA?

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QUESTIONS?
CHAT BOX?
OFF LINE?
ON LINE?

Thank you for a patient hearing!