



## Taxability of Compensation Received on Compulsory Acquisition of Land – Issues

### Exemption from Income Tax-By virtue of Acts other than Income Tax Act 1961

Dr. S. P. Agrawal\*

G. D. Dubey\*\*

Development is continuous process. Development depends on development of infrastructure such as road, water, electricity and availability of industrial land for industries. For that purpose, government or other persons acquires land and pay compensation to the land owners to create land bank for Industrial Growth. There were various disputes related to compensation payable resulting in resistance from farmers/land owners.

To overcome the above problem and streamline the acquisition of land smoothly, Central Government has passed the **Right To Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLAAR Act)**. Here in this paper, the provisions related to acquisition of land is not discussed. Only, the provisions related to taxability of compensation received on compulsory acquisition of land is elaborated in detail.

#### **Taxability of compensation received on acquisition of agricultural land-**

Under the Income Tax Act' 1961, any gain arising out of transfer of capital assets is treated as Capital Gain and is taxable under the head of Capital Gain.

Section 45 of the Income Tax Act' 1961 deals about the taxability of capital gain which is as under:-

*“45(1) Any profits or gains arising from the transfer of a capital asset effected in the previous year shall, save as otherwise provided in sections 53, 54, 54B, 54D, 54E, 54EA, 54EB, 54F, 54G and 54H be chargeable to Income-Tax under the head of “Capital Gain”, and shall be deemed to be the income of the previous year in which the transfer took place”.*

---

\*Professor, Faculty of Commerce, B. H. U., Varanasi – 221 005

\*\* Chartered Accountant, Varanasi



Thus any income arising out of the transfer of capital assets is taxable as capital gain. **Section 2(14)** defines the capital assets as below :-

*“2(14) (a) Property of any kind held by an assessee, whether or not connected with his business or profession.*

*(b) Any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992 (15 of 1992)*

**But does not include-**

*(i). Any stock-in-trade [other than the securities referred to in sub clause (b)], consumable stores of raw materials held for the purposes of his business or profession.*

*(ii). Personal effects that is to say, moveable property (including wearing apparel and furniture) held for personal use by the assessee or any member of his family dependent on him, but excludes-*

*(a) Jewelry*

*(b) Archaeological Collections*

*(c) Drawings*

*(d) Paintings*

*(e) Sculptures*

*(f) Any work of art*

*Explanation 1- for the purpose of this sub-clause, “jewellery” includes-*

*(a) Ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stone and whether or not worked or sewn into any wearing apparel.*

*(b) Precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel.*

*(iii) “agricultural land in India, not being land situate-*

*(a) In any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand; or*

*(b) in any area within the distance, measured aerially,-*

*(i) not being more than two kilometers, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten thousand but not exceeding one lakh; or*

*(ii) not being more than six kilometers, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than one lakh but not exceeding ten lakh; or*



(iii) *not being more than eight kilometers, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten lakh*

*Explanation – For the purposes of this sub-clause, “population” means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year;*

(iv) *6 ½ per cent Gold Bonds, 1977, or 7 per cent Gold Bonds, 1980, or National Defence Gold Bonds, 1980, issued by the Central Government;*

(v) *Special Bearer Bonds, 1991, issued by the Central Government;*

(vi) *Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 or deposit certificates issued under the Gold Monetization Scheme, 2015 notified by the Central Government”.*

Thus under the Income–Tax Act’ 1961 an agriculture land is not regarded as capital asset and the gain on transfer of agriculture land is not taxable.

W.e.f- 01.04.2005, by virtue of insertion of sub-section 37 in section 10 of Income Tax Act’ 1961 gain arising out of transfer of agriculture land is exempted. Provision of section 10(37) is as under:

*“10(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 agriculture land, where-*

*(i) Such land suitable 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 agriculture purposes by such Hindu Undivided Family or individual or a parent of his;*

*(iii) Such transfer 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 1<sup>st</sup> day of April, 2004*

**Explanation:-** *For the purposes of this clause, the expression “compensation or consideration” includes the compensation or consideration enhanced by any court, tribunal or other authority”*

Thus the capital gain arising to an individual or HUF from compulsory acquisition of an agricultural land is exempt from Income Tax subject to fulfillment of certain conditions



But the above exemption is available only to Individual & HUF for compulsory acquisition of agriculture land only.

**Exemption of gain of other assets on compulsory acquisition: -**

The exemption as prescribed under section 10(37) is limited to exemption of gain arising out of transfer of agricultural land by an Individual & HUF. But by virtue of **Section 96 of Right To Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013(RFCTLAAR Act)**, the exemption provided is much wider. Provision of section 96 of RFCTLAAR Act is as under:

*“Section 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 under Section 46 and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same”*

Thus by virtue of this provision, no income tax liability arise on any compensation received on compulsory acquisition of asset covered under this Act, except under section 46.

A number of confusionarises about the taxability and exemption of this compensation received as no specific exemption is provided under Income-Tax Act, 1961. The issue has been clarified by CBDT vide circular no.36/2016 dated 25<sup>th</sup> October’2016 Clause 3 of circular classifies the issue which is as under:-

*“3.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 RFCTLARR Act, the exemption provided under section 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-agriculture 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 RFCTLAAR 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 any compensation received under RFCTLAAR Act’2013 except under section 46 of the Act is exempt from Capital Gain under Income Tax Act.

But again controversy arise in case of compensation received by companies on which MAT is applicable u/s 115JB. If the taxable income of a company is much lower than the book profit and tax payable at normal rate on taxable profit is lower than the tax as per MAT,then MAT under section 115JB of the Income-Tax Act’ 1961 is payable. The provision of this section is as under:-



***“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 eighteen and one-half 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 eighteen and one-half percent”*

To derive at the book profit on which MAT is calculated, certain items are added to the profit derived from books of accounts. Similarly, certain items are deducted to derive the book profit.

Among the various items deductible for calculation of book profit, item (ii) as prescribed in section 115JB is as under:

*“(ii) The amount of income to which any of the provisions of Section 10 other than the provisions contained in clause (38) thereof or section 11 or section 12 apply, any such amount is credited to the profit and loss account; or*

By virtue of above provisions all the incomes which are exempted under section 10 and credited to profit and loss account are deductible to calculate the book profit except mentioned under section 10(38). Thus all the items covered and exempted u/s 10 except section 10(38) does not attract MAT. Therefore it is essential to analyse the items covered u/s 10(38) which is as under.

*“10(38) Any Income arising from the transfer of a long-term capital asset, being an equity share in a company or a unit of an equity share in a company or a unit of an equity oriented fund [ or a unit of business trust] where-*

*(a) The transaction of sale of such equity share or unit is entered into on or after the date on which chapter VII of the Finance (No.2) Act, 2004 comes into force ; and*

*(b) Such transaction is chargeable to securities transaction tax under that Chapter”*

Thus Section 10(38) exempt the income from transfer of securities subject to fulfillment of certain condition, but this income attracts MAT.

The deductible list does not include amount received as compensation covered section 96 of RFLTAAR Act'2013.

Due to above, one interpretation can be taken that section 115 specifically provides the item to be deducted from profit to derive the book profit to calculate the MAT. No other item can be deducted other than provided specifically in the Section 115JB. As the gain under section 96 of RFLTAAR Act is not mentioned in the deduction list of section 115JB of Income Tax Act'1961, it should not be deducted from book profit to calculate the MAT. Thus MAT should be applicable to this gain arising out of compulsory acquisition.



But second interpretation is that since section 96 of RFCTLAAR Act specifically exempt the gain from income tax. It provides that-

*“No income Tax or stamp duty shall be levied on any award or agreement made under this Act, except under section 46 and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same”*

Since MAT is also a Tax leviable under Income Tax Act, it is an income tax and should be exempt from MAT.

Thus, there is different interpretation in this provision of exemption which leaves scope for the litigation. The issue can be decided by Honorable Courts. However it is expected from the government to come out with clarification about the applicability of MAT on gain arising due to compensation received under RFCTLAAR Act and exempted under Section 96 of the Act.

## **Reference**

- 1. Income Tax Act’ 1961**
- 2. The Right To Fair Compensation and Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 (RFCTLAAR)**
- 3. Circular No.36/2016 dated 25/10/2016 issued by CBDT Department of Revenue, Ministry of Finance, Government of India**