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Clarification in respect of brought forward losses on account of additional depreciation and MAT credit for company exercising lower rate of tax section 115BAA

CBDT clarification in respect of allowability of brought forward *losses on account of additional depreciation and MAT credit* for company opting section 115BAA of the Act

Background

The President of India promulgated "The Taxation Law (Amendment) Ordinance, 2019" (Ordinance 2019) on 20 September, 2019, inserting new sections 115BAA and 115BAB in the Income-tax Act, 1961 (the Act), for lower rate of corporate tax for the financial year ending 31 March 2020, relevant to the Assessment Year 2020-21, and also for lowering the rate of Minimum Alternate Tax (MAT) under section 115JB of the Act.

The CBDT vide circular no. 29 of 2019 dated 2 October, 2019, has issued clarification with respect to brought forward unabsorbed losses relating to additional depreciation and MAT credit where a company exercises an option to lower rate of tax under section 115BAA of the Act.

Section 115BAA so inserted, *inter alia*, provides that -

- a domestic company shall, at its option, pay tax at a lower rate of 22 percent for any previous year relevant to the Assessment Year beginning on or after 1 April 2020, subject to certain conditions, including that the total income should be computed without claiming specified deduction or exemption;
- the option is required to be exercised by the company before the due date of furnishing return of income; and
- the option, once exercised, cannot be subsequently withdrawn and shall apply to all subsequent assessment years.
- Provisions of MAT under section 115JB of the Act shall not apply to a person who has exercised the option under section 115BAA of the Act.

Clarification was sought by stakeholders on following issues relating to exercise of option under section 115BAA of the Act:

- Allowability of brought forward loss on account of additional depreciation; and
- Allowability of brought forward MAT credit.

The CBDT has now clarified that:

- The newly inserted section 115BAA *inter alia* provides that the total income shall be computed
 - without claiming any deduction under section 32(1)(ia) (additional depreciation) as provided in section 115BAA(2)(i) of the Act and
 - without set-off of any loss carried forward from earlier Assessment Year, if the same is attributable, *inter alia*, to additional depreciation.
- A domestic company opting under section 115BAA of the Act shall not be allowed to claim set-off of any brought forward loss on account of additional depreciation for an Assessment Year for which the option has been exercised and for any subsequent Assessment Year.

- As the provisions of section 115JB relating to levy of MAT shall not be applicable to a domestic company exercising option to tax at lower rate under section 115BAA of the Act, the tax credit under section 115JAA for MAT paid by the domestic company, shall not be available consequent to exercising the option.
- As there is no timeline within which the option under section 115BAA can be exercised, a domestic company having brought forward losses on account of additional depreciation or brought forward MAT credit, may, if it so desires, exercise the option under section 115BAA after setting off the losses so accumulated or utilising the MAT credit against the regular tax payable under the taxation regime existing prior to the promulgation of Ordinance, 2019.

Comment

The clarification is provided by way of a circular issued by the Central Board of Direct Taxes.

Section 32(2) of the Act provides that the brought forward unabsorbed depreciation including additional depreciation shall be deemed to be part of the allowance for the year. The Ordinance 2019 restricts deduction for additional depreciation where the company opts for lower rate of tax under section 115BAA and so accordingly the unabsorbed brought forward additional depreciation should not be allowed deduction during the year.

However, Ordinance 2019 promulgated by the President of India has not amended the provisions of section 115JAA of the Act to restrict such MAT credit.

Source: Circular No. 29/2019 (F.No.142/20/2019-TPL) dated 2 October 2019



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