

Finance Act 1978

Section 13 - Amendment of Section 54e

In section 54E [as directed to be inserted by section 13 of the Finance (No. 2) Act, 1977 (29 of 1977)] of the Income-tax Act, -

(a) in sub-section (1),

(i) in Explanation 1, -

(1) in the opening portion, after the words "For the purposes of this sub-section", the words, brackets and figure "and sub-section (3)" shall be inserted;

(2) in clause (v), the words, figures and letters ", where the investment in such shares is made before the 1st day of March, 1978" shall be inserted at the end;

(3) after clause (v), the following clause shall be inserted, namely :-

"(va) equity shares forming part of any eligible issue of capital where the investment in such shares is made after the 28th day of February, 1978;"

(ii) Explanation 2 shall be renumbered as Explanation 4 and before the Explanation as so renumbered, the following Explanations shall be inserted, namely :-

Explanation 2 : "Eligible issue of capital" shall have the meaning assigned to it in sub-section (3) of section 80CC.

Explanation 3 : An assessee shall not be deemed to have invested the full value of the consideration or any part thereof in any equity shares referred to in clause (va) of Explanation 1, unless the assessee has subscribed to or purchased the shares in the manner specified in sub-section (4) of section 80CC.;

(b) after sub-section (1), the following sub-section shall be inserted, namely :-

"(1A) Where the assessee deposits after 27th day of April; 1978, the full value of the consideration or any part thereof received or accruing as a result of the transfer of the original asset in any new asset, being a deposit referred to in clause (vi) of Explanation 1 below sub-section (1), the cost of such new asset shall not be taken into account for the purposes of that sub-section unless the following conditions are fulfilled, namely :-

(a) the assessee furnishes, along with the deposit, a declaration in writing, to the bank or the co-operative society referred to in the said clause (vi) with

which such deposit is made, the effect that the assessee will not take any loan or advance on the security of such deposit during a period of three years from the date on which the deposit is made;

(b) the assessee furnishes, along with the return of income for the assessment year relevant to the previous year in which the transfer of the original asset was effected or within such further time as may be allowed by the Income-tax Officer, a copy of the declaration referred to in clause (a) duly attested by an officer not below the rank of sub-agent or manager of such bank or an officer of corresponding rank of such co-operative society,

(1B) Where on the fulfilment of the conditions specified in sub-section (1A), the cost of the new asset referred to in that sub-section is taken into account for the purposes of sub-section (1), the assessee shall, within a period of ninety days from the expiry of the period of three years reckoned from the date of such deposit, furnish to the Income-tax Officer a certificate from the officer referred to in clause (b) of sub-section (1A) to the effect that the assessee has not taken any loan or advance on the security of such deposit during the said period of three years.";

(c) in sub-section (2), the following Explanation shall be inserted at the end, namely :-

"Explanation : Where the assessee deposits after the 27th day of April, 1978, the full value of the consideration or any part thereof received or accruing as a result of the transfer of the original asset in any new asset, being a deposit referred to in clause (vi) of Explanation 1 below sub-section (1), and such assessee takes any loan or advance on the security of such deposit, he shall be deemed to have converted (otherwise than by transfer) such deposit into money on the date on which such loan or, advance is taken.";

(d) after sub-section (2), the following sub-sections shall be inserted, namely :-

(3) Where the transfer of the original asset is by way of compulsory acquisition under any law or where the full value of the consideration for the transfer of the capital asset is determined or approved by the Central Government or the Reserve Bank of India, and the compensation awarded for such acquisition or, as the case may be, the full value of the consideration so determined or approved is enhanced by any court, tribunal or other authority, then, so much of the capital gain, computed under section 48 by taking the compensation or consideration as so enhanced as the full value of the consideration received or accruing as a result of such transfer, as is attributable to the enhancement of the compensation or consideration (hereafter in this sub-section referred to as the unadjusted capital gain) shall, if the assessee has, within a period of six months after the date of receipt of the additional compensation or, as the case may be, the additional consideration, invested or deposited the whole or any part of such additional compensation or consideration in any specified asset (hereafter in this section referred to as the relevant asset), be dealt with in the following manner, that is

to say, -

(a) if the cost of the relevant asset is not less than the additional compensation or consideration, the whole of the unadjusted capital gain shall not be charged under section 45;

(b) if the cost of the relevant asset is less than the additional compensation or consideration, so much of the unadjusted capital gain as bears to the whole of the unadjusted capital gain the same proportion as the cost of acquisition of the relevant asset bears to the additional compensation or consideration shall not be charged under section 45.

Explanation : For the purposes of this sub-section, -

(i) "additional compensation" shall have the meaning assigned to it in clause (1) of the Explanation to sub-section (2) of section 54;

(ii) "additional consideration", in relation to the transfer of any capital asset the consideration for which was determined or approved by the Central Government or the Reserve Bank of India, means the difference between the amount of consideration for such transfer as enhanced by any court, tribunal or other authority and the amount of consideration which would have been payable if such enhancement had not been made;

(iii) "cost", in relation to any relevant asset, being a deposit referred to in clause (vi) of Explanation 1 below sub-section (1), means the amount of such deposit;

(iv) the capital gain attributable to the enhancement by any court, tribunal or other authority of the compensation for the compulsory acquisition of any capital asset or of the consideration for the transfer of any capital asset as determined or approved by the Central Government or the Reserve Bank of India shall be deemed to be so much of the capital gain arising from the transfer of the capital asset as bears to the whole of the capital gain as computed u/s. 48 by taking the compensation or consideration as so enhanced as the full value of the consideration received or accruing as a result of the transfer, the same proportion as the amount of additional compensation or consideration bears to the compensation or consideration as so enhanced.

(4) Where the relevant asset is transferred, or converted (otherwise than by transfer) into money, within a period of three years from the date of its acquisition, the amount of capital gain arising from the transfer of the original asset not charged u/s. 45 on the basis of the cost of such relevant asset as provided in clause (a) or, as the case may be, clause (b), of sub-section (3) shall be deemed to be income chargeable under the head

"Capital gains" relating to capital assets other than short-term capital assets of the previous year in which the relevant asset is transferred or converted (otherwise than by transfer) into money.

Explanation : Where the assessee deposits after the 27th day of April, 1978, the whole or any part of the additional compensation or, as the case may be, the additional consideration referred to in sub-section (3) in any relevant asset, being a deposit referred to in clause (vi) of Explanation 1 below sub-section (1), and such assessee takes any loan or advance on the security of such deposit, he shall be deemed to have converted (otherwise than by transfer) such deposit into money on the date on which such loan or advance is taken.

(5) Where the assessee deposits the whole or any part of the additional compensation or, as the case may be, the additional consideration referred to in sub-section (3) in any relevant asset, being a deposit referred to in clause (vi) of Explanation 1 below sub-section (1), the provisions of sub-section (1A) and (1B) shall apply in relation to such deposit as they apply in relation to the deposit referred to in the said sub-sections.

(6) Where the cost of the equity shares referred to in clause (va) of Explanation 1 below sub-section (1) is taken into account for the purposes of clause (a) or clause (b) of sub-section (1) or clause (a) or clause (b) of sub-section (3), a deduction with reference to such cost shall not be allowed under section 80CC.