Finance (No.2) Act, 2004

Section 115 - Power to remove difficulties

O, interest or long-term capital gains of an infrastructure capital company, shall be taken into account in computing the book profit and income-tax payable under section 115JB."; (h) after clause (36), the following shall be inserted with effect from the 1st day of April, 2005, namely- '(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 agricultural land, where-- (i) such land is situate in any area referred to in item (a) or item (b) of sub-clause (iii) of clause (14) of (S.2); (ii) such land, during the period of two years immediately preceding the date of transfer, was being used for agricultural purposes by such Hindu undivided family or individual or a parent of his; (iii) such transfer is 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 1st day of April, 2004. Explanation.--For the purposes of this clause, the expression "compensation or consideration" includes the compensation or consideration enhanced or further enhanced by any court, tribunal or other authority; (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 oriented fund 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. Explanation.--for the purposes of this clause, "equity oriented fund" means a fund-
O or sub-section (2) of section 115R of the Income-tax Act, the tax shall be charged and paid at the rate as specified in those sections and shall be increased by a surcharge for purposes of the Union, calculated at the rate of two and one-half per cent. of such tax. (5) In cases in which tax has to be deducted under (S.193), (S.194), (S.194A), (S.194B), (S.194BB), (S.194D) and (S.195 of the Income Tax Act, 1961) at the rates in force, the deductions shall be made at the rates specified in Part II of the First Schedule and shall be increased, by a surcharge for purposes of the Union, calculated in each case, in the manner provided therein. (6) In cases in which tax has to be deducted under (S.194C), (S.194E), (S.194EE), (S.194F), (S.194G), (S.194H), (S.194-I), (S.194J), (S.194LA), (S.196B), (S.196C) and (S.196D of the Income-tax Act, 1961) the deductions shall be made at the rates specified in those sections and shall be increased by a surcharge for purposes of the Union, calculated,-- (a) in the case of every individual, Hindu undivided family, association of persons and body of individuals, whether incorporated or not, at the rate of ten per cent. of such tax where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds eight hundred and fifty thousand rupees; (b) in the case of every co-operative society, firm, local authority and company, at the rate of two and one-half per cent. of such tax; (c) in the case of every artificial juridical person referred to in sub-clause (vii) of clause (31) of (S.2 of the Income Tax Act, 1961), at the rate of ten per cent of such tax. (7) In cases in which tax has to be collected under the proviso to (S.194B of the Income Tax Act, 1961) the collection shall be made at the rates specified in Part II of the First Schedule, and shall be increased, by a surcharge for purposes of the Union, calculated in the manner provided therein. (8) In cases in which tax has to be collected under (S.206C of the Income Tax Act, 1961), the collection shall be made at the rates specified in that section and shall be increased by a surcharge for purposes of the Union, calculated,-- (a) in the case of every individual, Hindu undivided family, association of persons and body of individuals, whether incorporated or not, at the rate of ten per cent. of such tax where the amount or the aggregate of such amounts collected, and subject to the collection, exceeds eight hundred and fifty thousand rupees; (b) in the case of every co-operative society, firm, local authority and company, at the rate of two and one-half per cent. of such tax; (c) in the case of every artificial juridical person referred to in sub-clause(vii) of clause (31) of (S.2 of the Income-tax Act, 1961) at the rate of ten per cent. of such tax. (9) Subject to the provisions of sub-section (10), in cases in which income-tax has to be charged under Sub-section (4) of (S.172) or sub-section (2) of (S.174) or (S.174A) or (S.175) or sub-section (2) of (S.176 of the Income-tax Act, 1961 or

deducted from, or paid on, income chargeable under the head "Salaries" under (S.192) of the said Act or in which the "advance tax" payable under Chapter XVII-C of the said Act has to be computed at the rate or rates in force, such income-tax or, as the case may be, "advance tax" shall be so charged, deducted or computed at the rate or rates specified in Part III of the First Schedule and such tax as reduced by the rebate of income-tax calculated under Chapter VIII-A of the said Act shall be increased by a surcharge for purposes of the Union, calculated in each case in the manner provided therein: Provided that in cases to which the provisions of Chapter XII or Chapter XII-A or (S.115JB) or sub-section (1A) of (S.161) or (S.164) or (S.164A) or (S.167B of the Income-tax Act, 1961) apply, "advance tax" shall be computed with reference to the rates imposed by this sub-section or the rates as specified in that Chapter or section, as the case may be: Provided further that the amount of "advance tax" computed in accordance with the provisions of (S.111A) or (S.112 of the Income-tax Act, 1961) shall be increased by a surcharge for purposes of the Union as provided in Paragraph A, B, C, D or E, as the case may be, of Part III of the First Schedule: Provided also that in respect of any income chargeable to tax under (S.115A), (S.115AB), (S.115AC), (S.115ACA), (S.115AD), (S.115B), (S.115BB), (S.115BBA), (S.115E) and (S.115JB of the Income-tax Act, 1961) "advance tax" computed under the first proviso shall be increased by a surcharge for purposes of the Union, calculated,-- (a) in the case of every individual, Hindu undivided family, association of persons and body of individuals, whether incorporated or not, at the rate of ten per cent. of "advance tax" where the total income exceeds eight hundred and fifty thousand rupees; (b) in the case of every co-operative society, firm, local authority and company, at the rate of two and one-half per cent. of such "advance tax"; (c) in the case of every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act, at the rate of ten per cent. of such "advance tax". (10) In cases to which, Paragraph A of Part III of the First Schedule applies, where the assessee has, in the previous year or, if by virtue of any provision of the Income-tax Act, income-tax is to be charged in respect of the income of a period other than the previous year, in such other period, any net agricultural income exceeding five thousand rupees, in addition to total income and the total income exceeds fifty thousand rupees, then, in charging income-tax under sub-section (2) of (S.174) or (S.174A) or (S.175) or sub-section (2) of (S.176) of the said Act or in computing the "advance tax" payable under Chapter XVII-C of the said Act, at the rate or rates in force,-- (a) the net agricultural income shall be taken into account, in the manner provided in clause (b) [that is to say, as if the net agricultural income were comprised in the total income after the first fifty thousand rupees of the total income but without being liable to tax], only for the purpose of charging or computing such income-tax or, as the case may be, "advance tax" in respect of the total income; and (b) such income-tax or, as the case may be, "advance tax" shall be so charged or computed as follows- (i) the total income and the net agricultural income shall be aggregated and the amount of income-tax or "advance tax" shall be determined in respect of the aggregate income at the rates specified in the said Paragraph A, as if such aggregate income were the total income; (ii) the net agricultural income shall be increased by a sum of fifty thousand rupees, and the amount of income-tax or "advance tax" shall be determined in respect of the net agricultural income as so increased at the rates specified in the said Paragraph A, as if the net agricultural income were the total income; (iii) the amount of income-tax or "advance tax" determined in accordance with sub-clause (i) shall be reduced by the amount of income-tax or, as the case may be, "advance tax" determined in accordance with sub-clause (ii) and the sum so arrived at shall be the income-tax or, as the case may be, "advance tax" in respect of the total income: Provided that the amount of income-tax or "advance tax" so arrived at, as reduced by the rebate of income-tax calculated under Chapter VIII-A of the said Act, shall be increased by a surcharge for purposes of the Union calculated in each case, in the manner provided therein. (11) The amount of income-tax as specified in sub-sections (4) to, (10) and as increased by a surcharge for purposes of the Union calculated in the manner provided therein, shall be further increased by an additional surcharge for purposes of the Union, to be called the "Education Cess on Income-tax", so as to fulfil the commitment of the Government to provide and finance universalised quality basic education, calculated at the rate of two per cent. of such income-tax and surcharge. (12) For the purposes of this section and the First Schedule,-- (a) "domestic company" means an Indian company or any other company which, in respect of its income liable to income-tax under the Income-tax Act for the assessment year commencing on the 1st day of April, 2004, has made the prescribed arrangements for the declaration and payment within India of the dividends (including dividends on preference shares) payable out of such income; (b) "insurance commission" means any remuneration or reward, whether by way of commission or other wise, for soliciting or procuring insurance business (including business relating to the continuance, renewal or revival of policies of insurance); (c) "net agricultural income", in relation to a person, means the total amount of agricultural income, from whatever source derived, of that person computed in accordance with the rules contained in Part IV of the First Schedule; (d) all other words and expressions used in this section and the First Schedule but not defined in this sub-section and defined in the Income-tax Act shall have the meanings respectively assigned to them in that Act