

Finance Act, 1983

Section 36 - Insertion of New Chapter Xii-a

In the Income-tax Act, after Chapter XII, the following Chapter shall be inserted with effect from the 1st day of June, 1983, namely :-

'CHAPTER XII-A

Special Provisions Relating To Certain Incomes Of Non-Residents

115c. Definitions. - In This Chapter, Unless The Context Otherwise Requires, -

- (a) "convertible foreign exchange" means foreign exchange which is for the time being treated by the Reserve Bank of India as convertible foreign exchange for the purposes of the Foreign Exchange Regulation Act, 1973 (46 of 1973), and any rules made thereunder;
- (b) "foreign exchange asset" means any specified asset which the assessee has acquired or purchased with, or subscribed to in, convertible foreign exchange;
- (c) "investment income" means any income derived from a foreign exchange asset;
- (d) "long-term capital gains" means income chargeable under the head "Capital gains" relating to a capital asset, being a foreign exchange asset which is not a short-term capital asset;
- (e) "non-resident Indian" means an individual, being a citizen of India or a person of Indian origin who is not a "resident".

Explanation : A person shall be deemed to be of Indian origin if he, or either of his parents or any of his grand-parents, was born in undivided India;

(f) "specified asset" means any of the following assets, namely :-

- (i) shares in Indian company;
- (ii) debentures issued by an Indian company which is not a private company as defined in the Companies Act, 1956 (1 of 1956);
- (iii) deposits with an Indian company which is not a private company as defined in the Companies Act, 1956 (1 of 1956);
- (iv) any security of the Central Government as defined in clause (2) of section 2 of the Public Debt Act, 1944 (18 of 1944);
- (v) such other assets as the Central Government may specify in this behalf by notification in the Official Gazette.

115D. Special provision for computation of total income of non-residents. -

(1) No deduction in respect of any expenditure or allowance shall be allowed under any provision of this Act in computing the investment income of a non-resident Indian.

(2) Where in the case of an assessee, being a non-resident Indian, -

- (a) the gross total income consists only of investment income or income by way of long-term capital gains or both, no deduction shall be allowed to the assessee under Chapter VI-A;
- (b) the gross total income includes any income referred to in clause (a), the gross total income shall be reduced by the amount of such income and the deductions under Chapter VI-A shall be allowed as if the gross total income as so reduced were the gross total income of the assessee.

115E. Tax on investment income and long-term capital gains. -

(1) Where the total income of an assessee, being a non-resident Indian, consists only Of investment income or income by way of long-term capital gains or both, the tax payable by him on his total income shall be the amount of income-tax

calculated on such total income at the rate of twenty per cent. of such income as increased by a surcharge for purposes of the Union at the rate of twelve and half per cent. of such income-tax.

(2) Where the total income of an assessee, being a non-resident Indian includes any income of the nature referred to in sub-section (1), the tax payable by him on his total income shall be -

(i) the aggregate of the income-tax and surcharge payable by him in accordance with the provisions of sub-section (1) on income of the nature referred to in that sub-section included in the total income; plus

(ii) the amount of income-tax chargeable on the total income as reduced by the amount of income of the nature referred to in sub-section (1), had total income so reduced been his total income.

115F. Capital gains on transfer of foreign exchange assets not to be charged in certain cases. -

(1) Where, in the case of an assessee being a non-resident Indian, any long-term capital gains arise from the transfer of a foreign exchange asset (the asset so transferred being hereafter in this section referred to as the original asset), and the assessee has, within a period of six months after the date of such transfer, invested or deposited the whole or any part of the net consideration in any specified asset or in an Account referred to in clause (4A), or in any savings certificates referred to in clause (4B), of section 10 (such specified asset or such deposit in the Account aforesaid or such saving certificates being hereafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say, -

(a) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45;

(b) if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of acquisition of the new asset bears to the net consideration shall not be charged under section 45.

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

(i) "cost", in relation to any new asset, being a deposit referred to in clause (4A) of section 10 or referred to in sub-clause (iii), or specified under sub-clause (v), of clause (f) of section 115C, means the amount of such deposit;

(ii) "net consideration", in relation to the transfer of the original asset, means the full value of the consideration received or accruing as a result of the transfer of such asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.

(2) Where the new 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 under section 45 on the basis of the cost of such new asset as provided in clause (a) or, as the case may be, clause (b) of sub-section (1) 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 new asset is transferred or converted (otherwise than by transfer) into money.

115G. Return of income not to be filed in certain cases. -

It shall not be necessary for a nonresident Indian to furnish under sub-section (1) of section 139 A return of his income if -

(a) his total income in respect of which he is assessable under this Act during the previous year consisted only of investment income or income by way of long-term capital gains or both; and

(b) the tax deductible at source under the provisions of Chapter XVII-B has been deducted from such income.

115H. Benefit under Chapter to be available in certain cases even after the assessee becomes resident. -

Where a person, who is a non-resident Indian In Any previous year, becomes assessable as resident in India in respect of the total income of any subsequent year, he may furnish to the Income-tax Officer a declaration in writing along with his return of income under section 139 for the assessment year for which he is so assessable, to the effect that the provisions of this Chapter shall continue to apply to him in relation to the investment income derived from any foreign exchange asset being an asset of the nature referred to in sub-clause (ii) or sub-clause (iii) or sub-clause (iv) or sub-clause (v) of clause (f) of section 115C; and if he does so, the provisions of this Chapter shall continue to apply to him in relation to such income for that assessment year and for every subsequent assessment year until the transfer or conversion (otherwise than by transfer) into money of such assets.

115-I. Chapter not to apply if the assessee so chooses. -

A non-resident Indian may elect not to be governed by the provisions of this Chapter for any assessment year by furnishing to the Income-tax Officer his return of income for that assessment year under section 139 together with a declaration in writing to the effect that the provisions of this Chapter shall not apply to him for that assessment year and if he does so, the provisions of this Chapter shall not apply to him for that assessment year his total income for that assessment year shall be computed and tax on such total income shall be charged in accordance with the other provisions of this Act.'
