JUDICIAL AND STATUTORY UPDATE FOR NOVEMBER, 2020 EXAMINATION

LATEST IN JUDICIARY

1. SESHASAYEE STEELS PVT LTD (SUPREME COURT)

The assessee gave possession of his plot to Builder to construct flats. The assessee gave power of attorney to builder to sell the flats after they were constructed. There were some disputes between builder and assessee. There was a compromise agreement between assessee and builder and sales consideration was reduced by ₹ 50 lakhs from ₹ 6.10 crores to ₹ 5.60 crores. Five post-dated cheques were issued by builder to assessee-company and it was agreed that last cheque shall be presented by assessee when assessee issues Discharge Certificate to builder.

Supreme Court's Decision: The Supreme Court held that, in this case, the assessee's rights in the said immovable property were extinguished on the receipt of the last cheque, as also that the compromise deed could be stated to be a transaction which had the effect of transferring the immovable property in question. Accordingly, the transaction fell under section 2(47) of the Income-tax Act, 1961. Hence, it is a transfer in relation to the capital asset and capital gains tax liability would be attracted.

2. CHETAK ENTERPRISES PVT LTD (SUPREME COURT)

Facts of the case: An erstwhile partnership firm entered into an agreement with the Rajasthan State Government for construction of road and collection of road toll tax. The construction of road was completed by the said firm on March 27, 2010 and the same was inaugurated on April 1, 2010. The firm was converted into a private limited company on March 28, 2010, viz., the assessee, under the Companies Act, 1956. Upon conversion, intimation was given to the Chief Engineer (Roads), P.W.D., Rajasthan, Jaipur who cancelled the registration of the firm and granted a fresh registration code to the assessee-company. For A.Y. 2012-13, the Assessing Officer declined the claim of the assessee-company under section 80-1A.

Issue: The issue under consideration is if the relevant criteria laid down under section 80-IA(4)(i) are fulfilled by a company, which has succeeded a firm upon its conversion into a private limited company, whether company can claim deduction.

Supreme Court's Observations: The Supreme Court is the effect of conversion of the firm into a company under section 575 of the Companies Act, 1956, was that all the properties of the firm, in law, vested in the company and the firm ceased to exist and assumed the status of a company after its registration as a company. A priori, it followed that the business was carried on by the enterprise owned by a company registered in India. As the construction of the road was completed on March 27, 2010 and the same was inaugurated on April 1, 2010, after which toll tax was being collected by the assessee-company, **it can be inferred that the assessee is an enterprise carrying on business of (i) developing, (ii) maintaining and operating or (iii) developing, maintaining and operating any infrastructure facility. Further, the State Government had granted sanction to the company and the original agreement entered into with the firm**

automatically stood converted in favour of the assessee-company, which came into existence on March 28, 2010.

Supreme Court's Decision: The Supreme Court held that the assessee-company qualified for the deduction under section 80-IA being an enterprise carrying on the stated business pertaining to infrastructure facility and owned by a company registered in India on the basis of the agreement executed with the State Government to which the assessee-company has succeeded in law after conversion of the partnership firm into a company.

3. DALMIA POWER LTD (SUPREME COURT)

The assessee company had entered into amalgamation agreement with 9 companies and 9 companies were amalgamated with assessee-company. Amalgamation scheme was approved by NCLT on 22.04.2018 w.e.f. 01.04.2015.

The assessee filed revised return for previous year 31.03.2016 on 30.06.2018 incorporating the results of 9 amalgamating companies which had shown a loss of ₹ 50 crores. The original returns of assessee company and amalgamating companies were filed on due date. The department took the plea that revised returns were filed beyond the time period provided in section 139(5) and therefore losses cannot be carried forward.

Department took the plea that assessee has not taken condonation from CBDT as per CBDT circular and hence losses cannot be carried forward.

Supreme Court's Decision: The Supreme Court held that, the Department was required to receive the revised returns of income for A.Y. 2016-17 and assess the income of the assessee taking into account the schemes of arrangement and amalgamation as sanctioned by the NCLT for the following reasons:

(a) Section 139(5) would not apply since the revised returns were not filed by the assessee on account of any omission or wrong statement in the original return. The delay was due to the time taken to obtain sanction of the schemes from NCLT. It was an impossibility for the assessee-companies to have filed the revised returns for A.Y. 2016-17 before the due date of March 31, 2017, since NCLT passed the last orders sanctioning the schemes only on April 22, 2018;

(b) CBDT approval would not be applicable where the assessee had restructured its business, and filed a revised return of income with the prior approval and sanction of the NCLT.

Supreme Court held that assessee can carry forward the losses even if there is no condonation from CBDT.

4. GENPACT INDIA PVT LTD (SUPREME COURT)

Is appellate remedy by way of appeal before Commissioner (Appeals) under section 246A available to a company denying its liability to pay additional income-tax at the rate of 20% on the distributed income under section 115QA?

Facts of the case: On September 10, 2013, a scheme of arrangement was approved by the Delhi High Court pursuant to which the assessee bought back

7,50,000 shares at the rate of ₹ 35,000 per share for a total consideration of ₹ 2,625 crores from its holding company. In its return for A.Y. 2014-15, it declared the details of the transaction but denied the liability to pay any tax under section 115QA. Pursuant to notice under section 143(2), an assessment order was passed rejecting the assessee's contention that the transaction was not a buyback in terms of section 115QA but a buy-back pursuant to a scheme approved by the High Court, and holding the assessee liable to pay tax at 20% under section 115QA on the distributed income of ₹ 2,625 crores.

The assessee filed a writ petition against this portion of the assessment order. The Department submitted that since the remedy of appeal was available to the assessee, the writ petition should not be entertained. The assessee submitted that the demand under section 115QA could not be considered as forming part of the assessment order and it must be something separate from the order of assessment.

Relevant provisions of the Income-tax Act, 1961: As per section 246A(1)(a), any assessee aggrieved against, *inter alia*, any one of the following orders may appeal to Commissioner (Appeals):

- **An order against the assessee, where the assessee denies his liability to be assessed under this Act, or**

Supreme Court's Decision: The Supreme Court held that any determination under section 115QA, be it regarding quantification of the liability or the question whether such company is liable or not, **would fall within the ambit of the first postulate referred to hereinabove i.e., "an order against the assessee, where the assessee denies his liability to be assessed under this Act"**. The computation and extent of liability determined under the provisions of section 115QA would squarely get covered under the said expression. Accordingly, an appeal under section 246A to Commissioner (Appeals) would be maintainable against the determination of liability under section 115QA.

5. SUNIL VASUDEVA AND OTHERS (SUPREME COURT)

Does High Court has inherent power to review its own order to correct a mistake apparent from record?

Already covered by Supreme Court judgement in MEGHALAYA STEELS PVT LTD GIVEN IN MODULES.

1. Faceless-Assessment Scheme, 2019

♦ ANALYSIS OF FACELESS-ASSESSMENT SCHEME, 2019 ♦

E-ASSESSMENT CENTERS AND UNITS

- National E-assessment Centre (NEC)
- Regional E-Assessment Centre (REC)
  - Assessment Units
  - Verification Units
  - Technical Units
  - Review Units

FUNCTIONS OF UNITS	
Assessment Units	**Verification Units**
• Identification of points or issues • Seeking information / clarification • Analysing the material furnished by the assessee	• Enquiry and cross verification • Examination of books of account and witnesses • Recording of statements • Other functions that may be required for verification purpose
Technical Units	**Review Units**
• Technical assistance • Advice on legal, accounting, forensic, information technology, valuation, transfer pricing, data analytics, management or other technical matter	• Review of draft assessment order • Checking whether the relevant and material evidence is on record, relevant points of facts and law are duly incorporated, applicable judicial decisions have been considered; and • Other functions necessary for review purpose

- Service of Notice by National E-Assessment Centre under section 143(2) mentioning the issue in respect of which his case is selected for assessment
- The Tax Payer should respond to the notice within 15 days to National E-Assessment Centre
- The National E-assessment centre will assign the case to a specific assessment unit in any one Regional e-assessment Centre through automated allocation system
- The assessment unit may request the National E-assessment centre for:
  - information, documents, evidences as required; and / or
  - conducting enquiry or verification by verification unit; and / or
  - seeking technical assistance from technical unit

- The National E-assessment centre will communicate to:
  - Taxpayer for information / documents and evidence; and / or
  - Verification Unit for conducting enquiry or verification. The Verification Unit shall be selected through Automated Allocation System (AAS); and / or
  - Technical Unit for technical assistance. The Technical Unit shall be selected through AAS
- Assessment unit will prepare DRAFT assessment order in writing, either accepting or modifying the returned income of the taxpayer, after considering all the relevant material on record and send it to National E-assessment Centre along with the details of penalty proceedings to be initiated if any
- On receipt of draft assessment order, the National E-assessment centre will decide based on risk management strategy and automated examination tool:
  - Finalise and serve copy of the said order to the Taxpayer and initiate penalty proceedings if any; or
  - Issue Show cause notice to the assessee for modification of any adjustment to returned income; or
  - Assign the draft order to the Review Unit. The Review Unit shall be selected through AAS
- Review Unit will review the draft assessment order and intimate the National E-assessment Centre of its concurrence with it or suggest suitable modification
- On receipt of concurrence, the National E-assessment Centre will (a) Finalise the order and serve on the tax payer, or (b) issue show cause notice to the tax payer
- On receipt of modifications, the National E-assessment Centre will send the modifications suggested by the review unit to the assessment unit
- The Assessment unit will prepare the FINAL DRAFT assessment order and send to National E-assessment Centre
- On receipt of Final Draft assessment order, the National E-assessment Centre will:
  - Finalise the order and serve on the assessee; or
  - Issue show cause notice to the tax payer
- Where show cause notices is issued, the taxpayer should respond within the stipulated timeline to the National E-assessment Centre
- If show cause notice is not responded to, the National E-assessment Centre will finalise the order and serve on the taxpayer
- If showcause notice is responded to, the National E-assessment Centre will send the response to the assessment unit and follow the procedure as mentioned above
- Upon receiving the REVISED draft assessment order, the National E- assessment Centre will:

- In case no modification is made prejudicial to the interest of taxpayer, finalise the assessment order and serve to the taxpayer; or
- In case modification is made, follow the procedure for issue of showcause notice to the taxpayer and deal with the response received from the taxpayer as per the procedure mentioned above

➢ The National E-assessment Centre after completion of assessment transfer (all the electronic records of the case to the Assessing Officer having jurisdiction over such case for –

- imposition of penalty
- collection and recovery of demand
- rectification of mistake
- giving effect to appellate orders
- submission of remand report or any other report
- for prosecution and filing of complaint before the court

➢ The National E-assessment Centre at any stage of the assessment if necessary, transfer the case to the Assessing Officer having jurisdiction over such case

KEY TAKE AWAYS

➢ New e-assessment scheme will give greater transparency and accountability

➢ National E-assessment center will take a decision on the draft assessment order based on risk management strategy and automated examination tool

➢ Opportunity is given to assessee for personal hearing through Video Conferencing

➢ All communication will be in electronic mode

➢ Communication will be sent on Emails, SMS and mobile app

➢ Technical glitches may hamper the smooth functioning in view of the voluminous data

➢ No exception is given for lax tax payers or those who have complex business mix

➢ Presently, no limit is prescribed on video conferencing. VC can be requested any number of time

➢ Assessee is required to file the response. Assessee can ask for adjournment

➢ Further, partial submission of details can also be filed

➢ It is only the identity of the AO which is not known by the assessee. But AO will have all the details of the assessee.

2. Insertion of New Section

SECTION 115BAA

Tax on Income of Certain Domestic Companies

(1) Notwithstanding anything contained in this Act but **subject to the provisions of this Chapter**, other than those mentioned under section 115BAB, the income-tax payable in respect of a domestic company, for any previous year relevant to the assessment year 2020-21 and subsequent years, shall, **at the option of such person**, be computed at the rate of 22%, if the conditions contained in sub-section (2) are satisfied:

Provided that where the person fails to satisfy the conditions contained in sub-section (2) in any previous year, **the option shall become invalid in respect of the assessment year relevant to that previous year and subsequent assessment years** and other provisions of the Act shall apply, as if the option had not been exercised for the assessment year relevant to that previous year and subsequent assessment years.

(2) **For the purposes of sub-section (1), the total income of the company shall be computed,—**

(i) without any deduction under the provisions of section 10AA or section 32 (1)(iia) or section 32AD or section 33AB or section 35(1)(ii)/ (iia)/(iii)/(2AA)/(2AB) or section 35AD or section 35CCC or section 35CCD or under any provisions of **Chapter VI-A under the heading "C-Deductions in respect of certain incomes" other than the provisions of section 80JJAA;**

(ii) **without set off of any loss carried forward or depreciation** from any earlier assessment year, if such loss or depreciation **is attributable to any of the deductions referred to in clause (i) above;**

(iii) without set off of any loss or allowance for unabsorbed depreciation **deemed so under section 72A, if such loss or depreciation is attributable to any of the deductions referred to in clause (i) above;** and

(iv) **by claiming the depreciation, if any, under any provision of section 32**, except clause (iia) of sub-section (1) of the said section.

(3) The loss and depreciation referred to in **clause (ii) and clause (iii)** of sub-section (2) above shall **be deemed to have been given full effect to and no further deduction** for such loss or depreciation shall be allowed **for any subsequent year**:

Provided that where there is a depreciation allowance in respect of a block of asset which has not been given full effect to prior to the assessment year 2020-21, corresponding adjustment shall be made to the written down value of such block of assets as on the 1st day of April, 2019 in the prescribed manner, if the option under sub-section (5) is exercised for a previous year relevant to the assessment year 2020-21.

(4) In case of a person, having a Unit in the International Financial Services Centre, as referred to in section 80LA(1A), which has exercised option under sub-section

(5), the conditions contained in sub-section (2) shall be modified to the extent that the **deduction under section 80LA shall be available to such Unit**.

(5) Nothing contained in this section shall apply **unless the option is exercised by** the person in the prescribed manner **on or before the due date specified under section 139(1)** for furnishing the returns of income for any previous year relevant to the assessment year commencing on or after the 1st day of April, 2020 **and such option once exercised shall apply to subsequent assessment years**:

Provided that in case of a person, where the option exercised by it under section 115BAB has been rendered invalid due to violation of conditions contained in sub-clause (ii) or sub-clause (iii) of clause (a), or clause (b) of sub-section (2) of said section, such person may exercise option under this section:

Provided further that once the option has been exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year.

♦ ANALYSIS OF SECTION 115BAA ♦

New section 115BAA has been inserted by the Taxation Laws (Amendment) Act, 2019, **providing for concessional rates of tax and exemption from minimum alternate tax (MAT) in respect of domestic companies with effect from A.Y. 2020-21**.

Paraphrasing, the provision shall apply if all the following conditions are fulfilled:

1. **Eligibility Criteria**

The assessee is any domestic company;

2. **Conditions to be fulfilled**

The total income of the assessee is computed:

(i) **Without any exemption or deduction under the provisions of:**

- Section 10AA [Exemption for SEZ units]
- Section 32(1)(iia) [Additional depreciation @ 20%]
- Section 32AD [Investment in new plant or machinery in notified backward areas – Deduction @ 15%]
- Section 33AB [Tea, Coffee or Rubber development account]
- Section 35(1)(ii)/(iia)/(iii) [Deduction for payment to any research association, company, university etc. for undertaking scientific research or social science or statistical research]
- Section 35(2AA) [Deduction @ 150% of payment to a National Laboratory or University or IIT or approved specified person for scientific research]
- Section 35(2AB) [Deduction @ 150% to Companies which are Engaged in Business of Bio Technology or Manufacture or Production of Specified Articles for Conducting in House Scientific Research]
- Section 35AD [Investment linked deduction]

- Section 35CCC [Expenditure on Agricultural Extension Project – Deduction @ 150%]
- Section 35CCD [Expenditure on Skill Development Project – Deduction @ 150%]
- **Chapter VI-A, except:**
  - **Section 80JJAA** [Deduction for additional employee cost]
  - **Section 80LA** (in case of unit located in IFSC)

(ii) without set off of any loss carried forward from any earlier assessment year if such loss is attributable to any of the deductions referred above.

(iii) loss or allowance for unabsorbed depreciation deemed so under section 72A if such loss or depreciation is attributable to any of the deductions referred above.

(iv) after considering depreciation under section 32 [other than depreciation under section 32(1)(iia)].

The loss and depreciation referred to in clause (ii) and (iii) shall be deemed to have been already given full effect to and no further deduction for such loss and depreciation shall be allowed for any subsequent year **i.e., such loss and depreciation shall lapse**.

3. **Exercise of Option**

The option to pay tax as per this section is exercised in prescribed form on or before the due date specified under section 139(1) for furnishing of return of income for assessment year 2020-21 or any subsequent assessment year.

Provided that once such option is exercised for any assessment year, the same shall apply to all subsequent assessment years. Therefore, the option so exercised cannot be withdrawn by the assessee subsequently for the same or any other previous year.

If the aforesaid conditions are fulfilled, the assessee shall have an option to pay income-tax @ 22% and it shall be increased further by a surcharge of 10% and health & education cess of 4%. (Effective tax rate = 25.168%)

4. **Tax Rate Subject to provisions of Chapter XII**

This section over-rides the entire Income-tax Act but is subject to the provisions of Chapter XII. Therefore, the following incomes shall not be taxed at 22% but at the rates specified therein:

	PARTICULARS	TAX RATE
1.	**Capital Gains:**	
	STCG referred to in **Section 111A**	15%
	LTCG referred to in **Section 112**	10% or 20% as applicable
	LTCG referred to in **Section 112A**	10%
2.	Profits and Gains of Life Insurance Business – **Section 115B**	12.5%
3.	Lottery Income – **Section 115BB**	30%

4.	Certain dividends received from foreign companies – **Section 115BBD**	15%
5.	Unexplained Cash-credits – **Section 115BBE**	78% (60% + 25% + 4%)
6.	Income from Patent – **Section 115BBF**	10%
7.	Income from Transfer of Carbon Credits – **Section 115BBG**	10%

The above rates shall be increased by a surcharge of 10% and health & education cess of 4%.

5. On failure to satisfy the conditions mentioned in (Point 2) above, the option exercised would be **invalid** in respect of the assessment year relevant to that previous year and subsequent assessment years. Consequently, the other provisions of the Act would apply to the person as if the option had not been exercised for the assessment year relevant to that previous year and subsequent assessment years.

6. Where there is a depreciation allowance under section 32(1)(iia) in respect of a block of asset which has not been given full effect to prior to A.Y. 2020-21, corresponding adjustment shall be made to the WDV of such block of assets as on 1.4.2019 in the prescribed manner, if option for section 115BAA is exercised for P.Y. 2019-20 relevant to A.Y. 2020-21. [For example, in case of an asset acquired and put to use for less than 180 days in P.Y. 2018-19, the effect of balance additional depreciation to be allowed in P.Y. 2019-20 will be made in the WDV of the block as on 1.4.2019, if option for section 115BAA is exercised for P.Y. 2019-20.]

7. **MAT not to apply**

   If assessee opts for section 115BAA, then provisions of MAT i.e. section 115JB shall not apply.

8. **Brought forward MAT credit cannot be set-off against income tax computed under section 115BAA**. If a company has brought forward MAT credit, it can first exhaust the MAT credit, and thereafter opt for section 115BAA in a subsequent previous years. If company opts for this section, **MAT credit will lapse**.

9. Where the option exercised by a company under section 115BAB has been rendered invalid due to violation of conditions contained in sub-clause (ii) or sub-clause (iii) of clause (a), or clause (b) of sub-section (2) of said section, **such person may exercise option under this section**. Accordingly, such company may pay tax @ 22% instead of 15% if it so desires.

10. **Other deductions not mentioned in Point 2 shall be available**

    All other deductions which are not mentioned in Point 2 shall be available.

11. **Surcharge of 10% shall apply irrespective of the amount of total income.**

1. **A domestic company which would exercise option for availing benefit of lower tax rate under section 115BAA shall not be allowed to claim set off of any brought forward loss on account of additional depreciation or brought forward MAT credit for an Assessment Year for which the option has been exercised and for any subsequent Assessment Year.**

1.1 **Further as there is no time line within which option under section 115BAA can be exercised, it may be noted that 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 after set off of the losses so accumulated and/or the said credit after utilising.**

3. Insertion of New Section

SECTION 115BAB

Tax on Income of New Manufacturing Domestic Companies

(1) Notwithstanding anything contained in this Act **but subject to the provisions of this Chapter**, other than those mentioned under section 115BAA, the income-tax payable in respect of the total income of a domestic company, for any previous year relevant to the assessment year 2020-21 and subsequent assessment years, shall, at the option of such person, be computed at the **rate of 15%**, if the conditions contained in sub-section (2) are satisfied:

Provided that where the total income of the person, includes any income, which **has neither been derived from nor is incidental to manufacturing or production of an article or thing** and in respect of which no specific rate of tax has been provided separately under this Chapter, such income shall be taxed at **the rate of 22%** and **no deduction or allowance in respect of any expenditure or allowance shall be allowed in computing such income**:

Provided further that the income-tax payable in respect of the income of the person deemed so **under second proviso to sub-section (6) shall be computed at the rate of 30%**:

Provided also that the income-tax payable in respect of income being **short term capital gains derived from transfer of a capital asset on which no depreciation is allowable under the Act shall be computed at the rate of 22%**:

Provided also that where the person fails to satisfy the conditions contained in sub-section (2) in any previous year, the **option shall become invalid in respect of the assessment year relevant to that previous year and subsequent assessment years and other provisions** of the Act shall apply to the person as if the option had not been exercised for the assessment year relevant to that previous year and subsequent assessment years.

(2) **For the purposes of sub-section (1), the following conditions shall apply, namely:—**

(a) the company has been set-up and registered **on or after the 1st day of October, 2019**, and has commenced manufacturing or production of an article or thing on or before **the 31st day of March, 2023** and,—

(i) **the business is not formed by splitting up, or the reconstruction, of a business already in existence:**

EXCEPTION GIVEN IN SECTION 80-IB SHALL APPLY HERE ALSO

(ii) **does not use any machinery or plant previously used for any purpose.**

TWO EXCEPTIONS GIVEN IN SECTION 80-IB SHALL APPLY HERE ALSO

(iii) **does not use any building previously used as a hotel or a convention centre, as the case may be, in respect of which deduction under section 80-ID has been claimed and allowed.**

(b) **the company is not engaged in any business other than the business of manufacture or production of any article or thing and research in relation to, or distribution of, such article or thing manufactured or produced by it.**

Explanation— For the removal of doubts, it is hereby clarified that the **business of manufacture or production** of any article or thing referred to in clause (b) **shall not include business of,—**

(i) development of computer software in any form or in any media;
(ii) mining;
(iii) conversion of marble blocks or similar items into slabs;
(iv) bottling of gas into cylinder;
(v) printing of books or production of cinematograph film; or
(vi) any other business as may be notified by the Central Government in this behalf; and

(c) the total income of the company has been computed,—

(i) without any deduction under the provisions of section 10AA or section 32 (1)(iia) or section 32AD or section 33AB or section 35(1)(ii)/(iia)/(iii)/(2AA)/(2AB) or section 35AD or section 35CCC or section 35CCD or under any provisions of **Chapter VI-A under the heading "C-Deductions in respect of certain incomes" other than the provisions of section 80JJAA;**

(ii) without set-off of any loss or allowance for unabsorbed depreciation deemed so under section 72A where such loss or depreciation is attributable to any of the deductions referred to in sub-clause (i).

(iii) by claiming the depreciation under the provision of section 32, except clause (iia) of sub-section (1) of the said section.

(3) The loss referred to in sub-clause (ii) of clause (c) of sub-section (2) shall be deemed to have been given full effect to and no further deduction for such loss shall be allowed for any subsequent year.

(6) Where it appears to the Assessing Officer that, owing to the close connection between the person to which this section applies and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them **produces to the person more than the ordinary profits which might be expected to arise in such business**, the Assessing Officer shall, in computing the profits and gains of such business for the purposes of this section, **take the amount of profits as may be reasonably deemed to have been derived therefrom**:

Provided that in case the aforesaid arrangement involves a specified domestic transaction referred to in section 92BA, the amount of profits from such transaction shall be determined having regard to arm's length price as defined in section 92F(ii):

Provided further that the amount, being profits in excess of the amount of the profits determined by the Assessing Officer, shall be deemed to be the income of the person.

(7) Nothing contained in this section shall apply unless the option is exercised by the person in the prescribed manner on or before the due date specified under sub-section (1) of section 139 for furnishing the first of the returns of income for any previous year relevant to the assessment year commencing on or after 1st day of April, 2020 and such option once exercised shall apply to subsequent assessment years:
Provided that once the option has been exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year.

♦ ANALYSIS OF SECTION 115BAB ♦

New section 115BAB has been inserted by the Taxation Laws (Amendment) Act, 2019, providing for concessional rates of tax and exemption from minimum alternate tax (MAT) in respect of domestic companies with effect from A.Y. 2020-21.

The conditions mentioned in Section 115BAA as discussed above shall apply *mutatis mutandis* with the following exceptions and modifications:

1. **Eligibility Criteria**

This section shall apply only to those companies which have been set-up and **registered on or after the 1st day of October, 2019** and have commenced manufacturing or production of an article or **thing on or before the 31st day of March, 2023. Provided that –**

(a) the business is not formed by splitting up, or the reconstruction, of a business already in existence **[Exception given in section 80-IB shall also apply here.]**

(b) it is not set up by the transfer to the specified business of machinery or plant previously used for any purpose; [i.e. new plant & machinery should be used] **[Two exceptions given in section 80-IB shall also apply here.]**

(c) does not use any building previously used as a hotel or a convention centre, as the case may be, in respect of which deduction under section 80-ID has been claimed and allowed.

(d) the company is not engaged in any business other than the business of manufacture or production of any article or thing and research in relation to, or distribution of, such article or thing manufactured or produced by it.

The business of manufacture or production of any article or thing shall not include business of,—

(i) development of computer software;
(ii) mining;
(iii) conversion of marble blocks or similar items into slabs;
(iv) bottling of gas into cylinder;
(v) printing of books or production of cinematograph film; or

2. **Conditions to be fulfilled**

Same as given in Analysis of section 115BAA, Point 2(ii) shall not apply since it is a new company and shall not have any carried forward loss or depreciation.

3. **Exercise of Option**

The option to pay tax as per this section is exercised in the prescribed form on or before the due date specified under section 139(1) for **furnishing of the very first return of income after the incorporation of the company.**

If the aforesaid conditions (in addition to conditions mentioned in Section 115BAA) are fulfilled, the assessee shall have an option to pay income-tax

- **@ 15% on such income derived from or incidental to business referred to in 1(d) above,**
- **@ 22% on other income**

and it shall be increased further by a surcharge of 10% and health & education cess of 4% in all cases irrespective of amount of total income.

4. **Tax Rate subject to provisions of Chapter XII**

Same as section 115BAA

5. Same as Section 115BAA.

6. Not applicable as New Company.

7. Same as section 115BAA.

8. Not applicable as New Company.

9. Where a company opts for section 115BAB but option becomes invalid because of

(i) condition of not using new plant and machinery or / and

(ii) condition that building is used for which section 80-ID was claimed or / and

(iii) carries on business other than manufacture or production of any articles or things.

then such company can opt for section 115BAA.

10. Same as section 115BAA

11. Same as section 115BAA

12. **SPECIAL TAX RATES FOR CERTAIN INCOMES FOR COMPANIES OPTING FOR SECTION 115BAA**

	Nature of Income	Tax Rate	Remarks
1.	Short term capital gains from transfer of non-depreciable assets	22%	15% Tax Rate shall apply if short term capital gains arises from transfer of depreciable asset
2.	Assessee shows more than ordinary profits. Ordinary profits = ₹ 200 lakhs Profits shown = ₹ 300 lakhs	More than ordinary profits to be taxed @ 30%. In example ₹ 100 lakhs to be taxed @ 30%	Ordinary profits i.e., ₹ 200 lakhs to be taxed at rate of 15%
3.(a) (b)	Income from House Property Income from other sources not covered by Chapter XII	Taxed @ 22%	No deductions of any expenditure or allowance shall be allowed. Income shall be taxed on Gross Basis @ 22%.

4. Amendment in Rule 6DD

RULE 6DD

Cases and Circumstances In Which Payment In A Sum Exceeding Ten Thousand Rupees May Be Made Otherwise Than By An Account Payee Cheque Drawn On A Bank Or Account Payee Bank Draft or Use of Electronic Clearing System Through a Bank Account or through such electronic mode as may be prescribed in Rule 6ABBA.

Rule 6DD provided that no disallowance under section 40A(3) shall be made and no payment shall be deemed to be the profits and gains of business or profession under section 40A(3A) where any payment or aggregate of payments made to a person in a day in a sum exceeding ₹10,000 is made otherwise than by an **account payee** cheque drawn on a bank or **account payee** bank draft **or use of electronic clearing system through a bank account or through such electronic mode as may be prescribed in Rule 6ABBA,** in certain cases and circumstances specified therein. Clause (i) of the said rule read as under:—

– where the payment was required to be made on a day on which the banks were closed either on account of holiday or strike;

This clause has been omitted w.e.f 29.01.2020.

5. New Rule inserted to provide prescribed modes of electronic payment.

RULE 6ABBA

Other Electronic Modes

The following shall be the other electronic modes for the purposes of section 13A, section 35AD, sub-section (3), sub-section (3A), proviso to sub-section (3A) and sub-section (4) of section 40A, Section 43, section 43CA, section 44AD, section 50C, second proviso to sub-clause (b) of clause (x) of sub-section (2) of section 56, section 80JJAA, section 269SS, section 269ST and section 269T, namely:-

(a) Credit Card;
(b) Debit Card;
(c) Net Banking;
(d) IMPS (Immediate Payment Service);
(e) UPI (Unified Payment Interface);
(f) RTGS (Real Time Gross Settlement);
(g) NEFT (National Electronic Funds Transfer); and
(h) BHIM (Bharat Interface for Money) Aadhar Pay;

6. CAP on Surcharge Rate on Certain Incomes of Individuals and HUFs

TAX RATES IN CASE OF INDIVIDUALS OR HUF

I(A) In case of every individual other than the individual referred to in I(B) and I(C) or in case of Hindu Undivided Family: (Resident as well as Non-resident)

	Total Income	***Rates of Income Tax***
(1)	Where the total income does not exceed ₹ 2,50,000	NIL
(2)	Where the total income exceeds ₹2,50,000 but does not exceed ₹5,00,000	5% of the amount by which the total income exceeds ₹ 2,50,000
(3)	Where the total income exceeds ₹5,00,000 but does not exceed ₹10,00,000	₹ 12,500 plus 20% of the amount by which the total income exceeds ₹5,00,000
(4)	Where the total income exceeds ₹10,00,000	₹ 1,12,500 plus 30% of the amount by which the total income exceeds ₹10,00,000

I(B) In case of every individual, being a <u>resident in India</u>, who is of the age of 60 years or more but less than 80 years at any time during the previous year:

	Total Income	***Rates of Income Tax***
(1)	Where the total income does not exceed ₹3,00,000	NIL

(2)	Where the total income exceeds ₹3,00,000 but does not exceed ₹5,00,000	5% of the amount by which the total income exceeds ₹ 3,00,000
(3)	Where the total income exceeds ₹5,00,000 but does not exceed ₹10,00,000	₹ 10,000 plus 20% of the amount by which the total income exceeds ₹5,00,000
(4)	Where the total income exceeds ₹10,00,000	₹ 1,10,000 plus 30% of the amount by which the total income exceeds ₹10,00,000

I (C) In case of every individual, being a <u>resident in India</u>, who is of the age of 80 years or more at any time during the previous year:

	Total Income	***Rates of Income Tax***
(1)	Where the total income does not exceed ₹5,00,000	NIL
(2)	Where the total income exceeds ₹5,00,000 but does not exceed ₹10,00,000	20% of the amount by which the total income exceeds ₹ 5,00,000
(3)	Where the total income exceeds ₹10,00,000	₹ 1,00,000 plus 30% of the amount by which the total income exceeds ₹10,00,000

<u>KEY NOTES:</u>

1. The tax rates given in I(A) above are for residents as well as non-residents.

2. The tax rates given in I(B) and I(C) are for a resident individual. Therefore, in case of a senior citizen or super senior citizen being a non-resident, the tax rates given in I(A) shall apply.

3. ***Surcharge on Income-tax (Residents and Non-Residents)***

Where total income does not include capital gains referred to in section 111A and/or section 112A.

The income tax on total income shall, in case of every **individual or HUF**, be increased by a **surcharge of**

(a) 10% of such income tax where the total income exceeds ₹50,00,000 but does not exceed ₹1 crore.

(b) 15% of such income tax, ***if the total income exceeds ₹ 1 crore but does not exceed ₹ 2 crores.***

(c) 25% of such Income Tax, if the total income exceeds *₹ 2 crores but does not exceed ₹ 5 crores.*

(d) 37% of such Income Tax, if the total income exceeds *₹ 5 crores.*

Where total income includes Capital Gains referred to in section 111A and /or section 112A then, surcharge shall be as under:

	TOTAL INCOME	SURCHARGE
(i)	Does not exceed ₹ 50 lakhs	No surcharge
(ii)	Exceeds ₹ 50 lakhs but does not exceed ₹ 1 crore	10% surcharge on income tax
(iii)	Exceeds ₹ 1 crore but does not exceed ₹ 2 crores	15% surcharge on income tax
(iv)	Exceeds ₹ 2 crores	
	A. On tax computed on Capital Gains under section 111A & 112A	15%
	B. On tax computed on **Total Income – Capital Gains under section 111A & 112A** **If Total Income – Capital Gains under section 111A & 112A**	
	(a) is upto ₹ 2 crores	15%
	(b) is above ₹ 2 crores but upto ₹ 5 crores	25%
	(c) Above ₹ 5 crores	37%

Example 1: Non Resident/ Resident Individual

P/G/B/P	1,00,00,000
LTCG 112A	51,00,000
STCG 111A	60,00,000
Total Income	**2,11,00,000**

Computation of Tax

Tax on LTCG of 112A	5, 00,000
Tax on STCG of 111A	9, 00,000
Tax on 1,00,00,000	28,12,500
Total Tax	**42,12,500**

Surcharge

Surcharge 15% on 14,00,000	2,10,000
Surcharge 15% on 28,12,500	4,21,875
	48,44,375
Add: 4% cess	1,93,775
Total Tax liability	**50,38,150**

Example 2: Non Resident/ Resident individual

P/G/B/P	2,50,00,000
LTCG of 112A	3,01,00,000
STCG of 111A	1,00,00,000
Total Income	**6,51,00,000**
Tax on LTCG of 112A	30,00,000

Tax on STCG of 111A	15,00,000
Tax on 2,50,00,000	73,12,500
Total Tax	**118,12,500**
Surcharge 15% on 45,00,000	6,75,000
Surcharge 25% on 73,12,500	18,28,125
	1,43,15,625
Add: 4% cess	5,72,625
Total Tax liability	**1,48,88,250**

7. New Rule inserted prescribing manner of making PAN operative.

Section 139AA (Quoting of Aadhaar Number) provided that where a person who has been allotted PAN and who is eligible to obtain Aadhaar number, fails to intimate such Aadhaar Number to the prescribed authority, by 31.03.2021* (Linking of PAN and Aadhaar), his PAN shall be made inoperative after the said date in such manner as may be prescribed. Rule 114AAA has been inserted prescribing such manner.

Rule 114AAA. Manner of making permanent account number inoperative.—

(1) Where a person, who has been allotted the permanent account number as on the 1st day of July, 2017 and is required to intimate his Aadhaar number under sub-section (2) of section 139AA, has failed to intimate the same on or before the 31st day of March, 2021, the permanent account number of such person shall **become inoperative immediately after the said date** for the purposes of furnishing, intimating or quoting under the Act.

(2) Where a person, whose **permanent account number has become inoperative** under sub-rule (1), is required to furnish, intimate or quote his permanent account number under the Act, **it shall be deemed that he has not furnished, intimated** or **quoted the permanent account number**, as the case may be, in accordance with the provisions of the Act, and he shall be liable for **all the consequences under the Act** for not furnishing, intimating or quoting the permanent account number.

(3) Where the person referred to in sub-rule (1) has **intimated his Aadhaar number** under sub-section (2) of section 139AA **after the 31st day of March, 2021**, his permanent account number shall **become operative from the date of intimation** of Aadhaar number for the purposes of furnishing, intimating or quoting under the Act and provisions of sub-rule (2) shall not be applicable from such date of intimation.

8. Central Government notifies "specified securities for the purposes of section 47(viiab)(d) [Notification No. 16/2020, dated 05-03-2020]

Section 47(viiab)(a)(b)(c) provides that any transfer of a capital asset, being bond or Global Depository Receipt referred to in section 115AC(1) or rupee denominated bond of an Indian company or **a derivative**, made by a **non-resident** on a recognised stock exchange **located in any International Financial Services Centre (IFSC)** would

* Due-date of Linking of PAN and Aadhaar extended to 31.3.2021.

not be considered as transfer for attracting capital gains tax, where the consideration for such transfer is paid or payable in foreign Currency.

Further, section 47(viiab)(d) provides that any transfer of a capital asset, being such other securities as may be notified by the Central Government in this behalf, made by a non-resident on a recognised stock exchange located in any IFSC would not be considered as transfer for attracting capital gains tax, where the consideration for such transfer is paid or payable in foreign currency.

Accordingly, the Central Government has, vide this notification, specified the following securities:

(i) foreign currency denominated bond;

(ii) unit of a Mutual Fund;

(iii) unit of a business trust;

(iv) foreign currency denominated equity share of a company:

(v) unit of Alternative Investment Fund,

which are listed on a recognised stock exchange located in any International Financial Services Centre in accordance with the regulations made by the SEBI under the Securities and Exchange Board of India Act 1992 or the International Financial Services Centres Authority under the International Financial Services Centres Authority Act 2019, as the case may be.

9. Amendment in Rule 17C to include investment made by National Payments Corporation of India in its subsidiary companies as a permissible form of investment by a charitable trust [Notification No. 15/2020, dated 05-03-2020]

Rule 17C prescribes the other permissible forms or modes of investment or deposits as per section 11(5) of the 85% income accumulated for a period of upto 5 years, if any, by a charitable or religious trust or institution.

The CBDT has, vide this notification, inserted clause (va) in Rule 17C to include, within its scope, investment made by a person, authorised under section 4 of the Payment and Settlement Systems Act, 2007, in the equity share capital or bonds or debentures of a company –

(A) which is engaged in operations of retail payments system or digital payments settlement or similar activities in India and abroad and is approved by the Reserve Bank of India for this purpose, and

(B) in which at least 51% of equity shares are held by National Payments Corporation of India.

10. Information to be furnished where tax is not deductible or deductible at lower rate under section 194N [Notification No. 98/2019, dated 18.11.2019]

The proviso to section 194N (TDS on Cash Withdrawals) provides that no tax is, however, required to be deducted at source on any payment made to –

(i) the Government

(ii) any banking company or co-operative society engaged in carrying on the business of banking or a post-office

(iii) any business correspondent of a banking company or co-operative society engaged in carrying on the business of banking, in accordance with the RBI guidelines.

(iv) any white label ATM operator of a banking company or co-operative society engaged in carrying on the business of banking, in accordance with the authorisation issued by the RBI under the Payment and Settlement Systems Act, 2007.

(v) such other person or class of persons notified by the Central Government in consultation with the RBI.

The CBDT has, vide this notification, inserted clause (ix) in Rule 31A(4) to provide that the deductor, at the time of preparing statement of tax deducted at source, shall furnish the particulars of amount paid or credited even on which **tax was not deducted in view of the exemption provided in point no. (iii) or (iv) above or in view of the Notification No. 80/2019, dated 15.10.2019 issued under point (v) above. (Full Fledged Money Changers (FFMC) or the authorised dealers) (Covered in Summary Module)**

11. Time limit, form and manner of depositing tax deducted at source under section 194M prescribed [Notification No. 98/2019, dated 18.11.2019]

Section 194M, inserted with effect from 1.9.2019, provides for deduction of tax at source @ 5% by an individual or a HUF responsible for paying any sum during the financial year to any resident –

(i) for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract; or

(ii) by way of commission (not being insurance commission referred to in section 194D) or brokerage, or

(iii) by way of fees for professional services.

Only individuals and HUFs (other than those who are required to deduct income tax as per the provisions of section 194C or 194H or 194J) are required to deduct tax in respect of the above sums payable during the financial year to a resident, if the aggregate of such sums, credited or paid, exceed ₹ 50 lakhs.

Consequent to insertion of section 194M, the CBDT has, vide this notification, amended Rule 30, 31 and 31A to specify the time limit for depositing the tax deducted at source, challan-cum-statement, certificate for deduction of tax at source.

As per the amendment, the person deducting the sum as per the provisions of section 194M shall pay the same to the credit of the Central Government within 30 days from the end of the month in which deduction is made accompanied by a challan-cum-statement in Form No. 26QD and shall within a further period of 15 days from such due-date furnish a certificate of such deduction in Form No. 16D to the payee after generating and downloading it from the specified web portal.

10-2-2020 194M
30-3-2020 Deposit
14-4-2020 16D

12. Permissible electronic modes of payment for the purpose of section 269SU prescribed [Notification No. 105/2019, dated 30.12.2019]

Every person, carrying on business, if his total sales, turnover or gross receipts, as the case may be, in business exceeds ₹ 50 crores rupees during the immediately preceding previous year shall provide facility for accepting payment through prescribed electronic modes, in addition to the facility for other electronic modes of payment, if any, being provided by such person.

Accordingly, the CBDT has, vide this notification, inserted **Rule 119AA** to prescribe the following electronic modes payment, namely –

(i) Debit Card powered by RuPay;

(ii) Unified Payments Interface (UPI) (BHIM-UPI); and

(iii) Unified Payments Interface Quick Response Code (UPI QR Code) (BHIM-UPI QR Code).

SECTION 269SU

Acceptance of Payment through Prescribed Electronic Modes

Every person, carrying on business, shall provide facility for accepting payment through prescribed electronic modes, in addition to the facility for other electronic modes, of payment, if any, being provided by such person, if his total sales, turnover or gross receipts, as the case may be, in business exceeds **fifty crore rupees during the immediately preceding previous year**.

(Inserted by Finance Act, 2019, w.e.f. 01.11.2019)

SECTION 271DB

Penalty for Failure to Comply with Provisions of Section 269SU

(1) If a person who is required to provide facility for accepting payment through the prescribed electronic modes of payment referred to in section 269SU, fails to provide such facility, he shall be liable to pay, by way of penalty, a sum of five thousand rupees, for every day during which such failure continues:

Provided that no such penalty shall be imposable if such person proves that there were good and sufficient reasons for such failure.

(2) Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner of Income-tax

(Inserted by the Finance Act, 2019, w.e.f. 01.11.2019)

NO PENALTY SHALL BE LEVIED IF THE SPECIFIED PERSON INSTALLS AND OPERATIONALISES THE FACILITIES ON OR BEFORE 31st JANUARY, 2020

CIRCULAR NO.32/2019 [DATED 30-12-2019]

ACCEPTANCE OF PAYMENT THROUGH PRESCRIBED ELECTRONIC MODES - CLARIFICATION IN RESPECT OF PRESCRIBED ELECTRONIC MODES UNDER SAID SECTION

CIRCULAR NO. 12/2020 [DATED 20-5-2020]

2. Representations have been received stating that the above requirement of mandatory facility for payments through the prescribed electronic modes is generally applicable in B2C (Business to Consumer) businesses, which directly deal with retail customers. Moreover, since the prescribed electronic modes have a maximum payment limit per transaction or per day they are not so relevant to B2B (Business to Business) businesses, which generally receive large payments through other electronic modes of payment such as NEFT or RTGS. Mandating such businesses to provide the facility for accepting payments through prescribed electronic modes would cause administrative inconvenience and impose additional costs.

3. In view of the above, it is hereby clarified that the provisions of section 269SU of the Act shall not be applicable to a specified person having only B2B transactions (i.e. no transaction with retail customer/consumer) if at least 95% of aggregate of all amounts received during the previous year, including amount received for sales, turnover or gross receipts, are by Any mode other than cash.

13. Rule 10DA r/w Section 92D amended.

Rule 10DA which prescribes, the requisite information to be furnished in prescribed form, (Master file) subject to the thresholds of the consolidated group revenue and the international transaction is amended to provide for the rate of exchange for the calculation of the value in rupees of the consolidated group revenue in foreign currency.

Note: As per Rule 10DA, Part B of Master file shall be furnished where conditions mentioned in sub-rule(1) of the said rule are satisfied. One of the conditions is that the consolidated group revenue of the international group shall exceed INR ₹ 500 crores. However, prior to the amendment in Rule 10DA, it was not clear as to which rate for conversion shall be used if the consolidated group revenue is available in foreign currency.

The Amendment in Rule 10DA accordingly provides that such rate of exchange shall be the telegraphic transfer buying rate of such foreign currency on the last day of the accounting year, i.e., the year for which the accounts are prepared by the entity as per the reporting standards applicable.

Also, now such information shall be furnished to the Director General of Income-tax (Risk Assessment) himself instead of a Joint Commissioner to be appointed by him earlier.

14. Time-limit for repatriation of excess money or part thereof and manner of computation of interest on excess money not repatriated prescribed.
Discussed in an earlier YouTube lecture.

15. Exemption to Residents of unauthorised colonies in NCT of Delhi from Section 56(2)(x) on account of regularisation of the colonies.
Discussed in Summary Module already.

Summary 56(2)(x)