

A COMPLETE ANALYSIS OF THE FINANCE ACT, 2013

PART - VII

(Chapter XV, XVII, XIX-B, XX, XXI & XXIII and the Fourth Schedule of the IT Act)

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15. CHAPTER XV – Liability in special cases

Sections 167C & 179: Explanation for the term 'Tax due'

Amendment:

- *In section 167C of the Income-tax Act, the following Explanation shall be inserted with effect from the 1st day of June, 2013, namely:—
‘Explanation.—For the purposes of this section, the expression “tax due” includes penalty, interest or any other sum payable under the Act.’*
- *In section 179 of the Income-tax Act, after sub-section (2), the following Explanation shall be inserted with effect from the 1st day of June, 2013, namely:—
—
‘Explanation.— For the purposes of this section, the expression “tax due” includes penalty, interest or any other sum payable under the Act.’*

Analysis:

This clause has been proposed to include penalties, interest or any other sum payable under the Act under the ambit of '**tax due**' in the Section 167C of the Act. This explanation clause will take effect from 01.04.2013.

Section 167C deals with the liability of partners of the limited liability partnership in case if the tax due cannot be recovered from the partners of the limited liability partnership.

This clause is proposed overcome the decision of Delhi High Court in the case of **Sanjai Ghai Vs ACIT & Ors [dated 11.10.2012]** where it was held that the term 'tax due' does not include penalty, interest or any other sum payable under the Act but only the actual income tax due under the Act

Clause 45 is identical to clause 44 of the Finance Bill, 2013 except that clause 45 inserts the explanation clause to Section 179 whereas Clause 44 includes the explanation clause to Section 167C.

Section 179 deals with the liability of directors of private limited company in case if the tax due cannot be recovered from the private limited company.

Cases referred:

Sanjai Ghai Vs ACIT & Ors [dated 11.10.2012]

The treatment of the same subject matter by using different terms - in some instances expansive and in others, restrictive, mean that the Court has to adopt a circumspect approach and limit itself to the words used in the given case (in the present case, "tax due" under Section 179) and not "travel outside them on a voyage of discovery" the petitioner cannot be made liable for anything more than the tax [defined under Section 2 (43)].

[SECTION 44 & 45 OF THE FINANCE ACT, 2013]

16. CHAPTER XVII – Collection and recovery of tax

a. Section 194-IA: Payment on transfer of certain immovable property other than agricultural land

Amendment:

After section 194-I of the Income-tax Act, the following section shall be inserted with effect from

the 1st day of June, 2013, namely:—

'194-IA. (1) Any person, being a transferee, responsible for paying (other than the person referred to in section 194LA) to a resident transferor any sum by way of consideration for transfer of any immovable property (other than agricultural land), shall, at the time of credit of such sum to the account of the transferor or at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to one per cent. of such sum as income-tax thereon.

(2) No deduction under sub-section (1) shall be made where the consideration for the transfer of an immovable property is less than fifty lakh rupees.

Explanation.— For the purposes of this section,—

(a) "agricultural land" means agricultural land in India, not being a land situate in any area referred to in items (a) and (b) of sub-clause (iii) of clause (14) of section 2;

(b) "immovable property" means any land (other than agricultural land) or any building or part of a building.'

Analysis:

The Finance Bill 2013 under this clause has proposed that purchaser of an immovable property, other than agricultural land, worth more than Rs 50 lakhs is required to withhold tax at the rate of 1% from the consideration payable to a resident transferor.

Buyers of property costing over Rs. 50 lakhs will have to comply with tax deduction procedures. According to the rules, buyers would have to go through the onerous task of obtaining tax deduction and account number, deposit the tax and file a return with the tax authorities and issue a TDS certificate to the seller.

The Bill does not make a distinction between under- construction flats or ready property

People who have bought under- construction flats costing over Rs 50 lakhs will have to deduct tax at 1% on the payments they make to the builder after 1st June. Tax will have to be deducted from the total consideration and not balance payments made after the enforcement of the Act.

The purpose of the proposal is to ensure that property transactions are reported.

The proposal will hit hard individuals who are otherwise not required to go through the procedure of obtaining tax deduction and account number, and filing a return with the tax authorities and issuing a TDS certificate

The proposal is in respect of payments only to a resident transferor. There would be no requirement for TDS in respect of purchases from a non-resident owner. These transactions are covered by Section 195. However, it is not clear, if the proposal will apply if the non-resident seller has appointed a Power of Attorney in India for the sale of property. Would the buyer be required to deduct tax? Under the new provision or under Section 195

An issue that could arise is where the purchase is done through a bank loan. It is the bank which makes the payment towards the consideration to the seller. The buyer repays the loan in installments, sometimes over 20 years, to the bank. Is the bank required to deduct the tax from the payments to the seller?

If the balance amount payable after 1st June 2013 is very minimal and does not meet the tax on the total consideration, how is the buyer required to meet the obligation of TDS. These are not made clear.

It has since been clarified that person requiring to deduct tax would not be required to obtain TAN (Tax Deduction and Collection Account Number)

Since every registration of property require the PAN details of the buyer and seller, and this would therefore be available to the tax Authorities, the new proposal seems irrelevant.

The proposal will increase the administration hassles for the Tax Department.

[SECTION 46 OF THE FINANCE ACT, 2013]

b. Section 194LD : Income by way of interest on certain bonds and Government Securities

Amendment:

After section 194LC of the Income-tax Act, the following section shall be inserted with effect from the 1st day of June, 2013, namely:—

“194LD. Income by way of interest on certain bonds and Government securities.—(1) Any person who is responsible for paying to a person being a Foreign Institutional Investor or a Qualified Foreign Investor, any income by way of interest referred to in sub-section (2), shall, at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of five per cent.

(2) The income by way of interest referred to in sub-section (1) shall be the interest payable on or after the 1st day of June, 2013 but before the 1st day of June, 2015 in respect of investment made by the payee in—

- (i) a rupee denominated bond of an Indian company ; or*
- (ii) a Government security:*

Provided that the rate of interest in respect of bond referred to in clause (i) shall not exceed the rate as may be notified by the Central Government in this behalf.

Explanation.—For the purpose of this section,—

- (a) “Foreign Institutional Investor” shall have the meaning assigned to it in clause (a) of the Explanation to section 115AD;*
- (b) “Government security” shall have the meaning assigned to it in clause (b) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);*
- (c) “Qualified Foreign Investor” shall have the meaning assigned to it in the Circular No. Cir/IMD/DF/14/2011, dated the 9th August, 2011, as amended from time to time, issued*

by the Securities and Exchange Board of India, under section 11 of the Securities and Exchange Board of India Act, 1992 (15 of 1992).”

Analysis:

This provision provides for a beneficial tax withholding rate of 5 percent for interest income earned by FIIs and QFIs from investment made in:

- a. Rupee denominated bonds of Indian currency; or
- b. A Government security.

Corresponding amendment has also been made under section 115A of the Act, governing the taxability of income.

Further, the proviso to section 194LC of the Act introduced in the original Finance Bill, 2013, wherein, beneficial tax withholding rate of 5 percent was provided on interest income earned by a non-resident/ foreign company on investment in rupee denominated long term infrastructure bonds of an Indian company through convertible foreign currency deposited in a designated bank account, has not been approved.

[SECTION 47 OF THE FINANCE ACT, 2013]

c. Section 195: Other sums

Amendment:

In section 195 of the Income-tax Act, in sub-section (1), after the word, figures and letters “section 194LC”, the words, figures and letters “or section 194LD” shall be inserted with effect from the 1st day of June, 2013;

Analysis:

This amendment has been made consequent to inclusion of Sec 194LD.

[SECTION 48 OF THE FINANCE ACT, 2013]

d. Section 196D: Income of Foreign Institutional Investors from securities

Amendment:

In section 196D of the Income-tax Act, in sub-section (1), for the words, brackets, letters and figures “any income in respect of securities referred to in clause (a) of sub-section (1) of section 115AD is payable”, the words, brackets, letters and figures “any income in respect of securities referred to in clause (a) of sub-section (1) of section 115AD, not being income by way of interest referred to in section 194LD, is payable” shall be substituted with effect from the 1st day of June, 2013;

Analysis:

This is a consequential amendment to Sec 194LD, to exclude interest referred to in Sec 194LD.

[SECTION 49 OF THE FINANCE ACT, 2013]

e. Section 204: Meaning of “person responsible for paying”

Amendment:

In section 204,—

(A) In clause (iia), for the words “authorised dealer”, the words “authorised person” shall be substituted;

(B) In the *Explanation*, for clause (b), the following clause shall be substituted, namely:—

‘(b) “authorised person” shall have the meaning assigned to it in clause (c) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999).

Analysis:

Clause (iia) of section 204 provides that the authorized dealer shall be the person responsible for remitting the amount of consideration to a non-resident for the transfer of long term capital asset or crediting such sum to his Non-resident (External) Account maintained in accordance with FERA, 1973. Consequent to the proposed substitution of the expression “FERA, 1973” with “FEMA 1999”, reference to the term “Authorised dealer” under FERA, 1973 is also proposed to be substituted with the term “Authorized person” under FEMA, 1999.

[SECTION 50 OF THE FINANCE ACT, 2013]

f. Section 206AA: Requirement to furnish Permanent Account Number

Amendment:

In section 206AA of the Income-tax Act, after sub-section (6), the following sub-section shall be inserted with effect from the 1st day of June, 2013,—

“(7) The provisions of this section shall not apply in respect of payment of interest, on long-term infrastructure bonds, as referred to in section 194LC, to a non-resident, not being a company, or to a foreign company.

Analysis:

The requirement of furnishing Permanent Account Number has been made not applicable to a non-resident not being a company, or to a foreign company, where its

income is from stipulated loan agreement and long-term infrastructure bonds. The section however has not been amended to include Sec 194LD.

[SECTION 51 OF THE FINANCE ACT, 2013]

g. Section 206C: Profits and gains from the business of trading in alcoholic liquor, forest produce, scrap etc.

Amendment:

In sub-section (1D) of section 206C of the Income-tax Act, the brackets and words “(excluding any coin or any other article weighing ten grams or less)” shall be omitted with effect from the 1st day of June, 2013.

Analysis:

The exception from collection of tax at source provided, under section 206C(1D) of the Act, on sale of coins/ other article weighing upto 10 grams has now been withdrawn.

[SECTION 52 OF THE FINANCE ACT, 2013]

17. CHAPTER XIX-B – Advance Rulings

a. Section 245N: AAR declaration of an arrangement as impermissible avoidance agreement postponed

Amendment:

In section 245N of the Income-tax Act,—

(i) in clause (a),—

(I) sub-clause (iv) shall be omitted;

(II) after sub-clause (iii), the following sub-clause shall be inserted with effect from the 1st day of April, 2015, namely:-

“(iv) a determination or decision by the Authority whether an arrangement, which is proposed to be undertaken by any person being a resident or a non-resident, is an impermissible avoidance arrangement as referred to in Chapter X-A or not.”;

(ii) in clause (b),—

(I) sub-clause (iiia) shall be omitted;

(II) in sub-clause (iii), for the word “or” occurring at the end, the word “and” shall be substituted;

(III) in sub-clause (iii), for the word “and” occurring at the end, the word “or” shall be substituted with effect from the 1st day of April, 2015;

(IV) after sub-clause (iii), the following sub-clause shall be inserted with effect from the 1st day of April, 2015, namely:—

“(iiiia) is referred to in sub-clause (iv) of clause (a); and”

Analysis:

This clause is proposed to postpone the applicability of Section 254N(a)(iv) and 245N (b)(iiiia) of the Act.

Section 245N deals with ‘advance rulings’. This definition clause lists out four ways by which the advance rulings could be made by the AAR in subsection (a); lists out four persons who can made an application to the AAR in sub-section(b) and also defines the following terms i) application; ii) Authority; iii) Chairman and iv) Member in sub-section (c), (d), (e) and (f) respectively.

The concerned sub-sections (a)(iv) and (b)(iiiia) of Section 245N defines ‘advance rulings’ as a decision taken by the AAR on whether or not the arrangement made by a person, be it a resident or non-resident, is an ‘impermissible avoidance arrangement (IAA)’? This was originally to come into effect from 01.04.2013 as IAA was part of the GAAR provisions. Since the GAAR provisions (Chapter-XA) are postponed to the AY 2016-17, the applicability of this provision will also be postponed.

[SECTION 53 OF THE FINANCE ACT, 2013]

b. Section 245R: AAR to process the application relating to determination of an arrangement as impermissible avoidance agreement postponed

Amendment:

In section 245R of the Income-tax Act, in sub-section (2), in the proviso, in clause (iii), –

(a) the words, brackets, figures and letters “or in the case of an applicant falling in sub-clause (iiiia) of clause (b) of section 245N” shall be omitted;

(b) after the words, brackets, letters and figures “clause (b) of section 245N”, the words, brackets, figures and letters “or in the case of an applicant falling in sub-clause (iiiia) of clause (b) of section 245N” shall be inserted with effect from the 1st day of April, 2015.

Analysis:

It is proposed to amend clause (iii) of proviso to Section 245R(2). The amendment is made to omit the reference to the case of an applicant falling in sub-clause (iiia) of section 245N (b) with retrospective effect from 1st April, 2013. It is further proposed to amend the said clause to insert the reference to the case of an applicant falling in sub-clause (iiia) of section 245N (b) with effect from 1st April, 2015.

This amendment has been proposed in order to enable the Authority for Advance Ruling to process the application relating to determination of whether an arrangement, which is proposed to be undertaken by any person being a resident or a non-resident, is an impermissible avoidance arrangement as referred to in Chapter X-A or not. Moreover, this amendment will affect the cases/judgments between 2013 and 2015.

[SECTION 54 OF THE FINANCE ACT, 2013]

18. CHAPTER XX – Appeals and Revision

a. Section 246A: Order passed u/s. 144BA (12) shall not be appealable before Commissioner (Appeals)

Amendment:

In section 246A of the Income-tax Act, in sub-section (1),—

(i) in clause (a),—

(I) the words, brackets, figures and letters “or an order referred to in sub-section (12) of section 144BA” shall be omitted;

(II) after the words “Dispute Resolution Panel”, the words, brackets, figures and letters “or an order referred to in sub-section (12) of section 144BA” shall be inserted with effect from the 1st day of April, 2016;

(ii) in clause (b),—

(I) the words, brackets, figures and letters “or an order referred to in sub-section (12) of section 144BA” shall be omitted;

(II) after the words “Dispute Resolution Panel”, the words, brackets, figures and letters “or an order referred to in sub-section (12) of section 144BA” shall be inserted with effect from the 1st day of April, 2016;

(iii) in clause (ba),—

(I) the words, brackets, figures and letters “or an order referred to in sub-section (12) of section 144BA” shall be omitted;

(II) the words, brackets, figures and letters “or an order referred to in sub-section (12) of section 144BA” shall be inserted at the end with effect from the 1st day of April, 2016;

(iv) in clause (c),—

(I) the words, brackets, figures and letters “except where it is in respect of an order as referred to in sub-section (12) of section 144BA” shall be omitted;

(II) the words, brackets, figures and letters “except an order referred to in sub-section (12) of section 144BA” shall be inserted at the end with effect from the 1st day of April, 2016.

Analysis:

It is proposed to amend clauses (a), (b) and (ba) of Sec. 246A (1) so as to omit the phrase “*or an order referred to in sub-section (12) of Sec 144BA*” therefrom. Similarly, clause (c) is also proposed to be amended so as to omit the phrase “*except where it is in respect of an order as referred to in sub-section (12) of section 144BA*” therefrom. This amendment will take effect retrospectively from 1st April, 2013.

The effect of this amendment is to provide that an order of assessment or reassessment passed with the approval of the Commissioner under sub-section 12 of newly inserted 144BA or any order under Sec 154 or Sec 155 passed in relation to such an order shall not be appealable before Commissioner (Appeals).

[SECTION 55 OF THE FINANCE ACT, 2013]

b. Section 252: Constitution of Appellate Tribunal

Amendment:

The Finance Act has amended this section. In section 252 of the Income-tax Act, for sub-section (3), the following subsection shall be substituted with effect from the 1st day of June, 2013, namely:—

“(3) The Central Government shall appoint—

(a) a person who is a sitting or retired Judge of a High Court and who has completed not less than seven years of service as a Judge in a High Court; or

(b) the Senior Vice-President or one of the Vice-Presidents of the Appellate Tribunal, to be the President thereof.”

Analysis:

Now, in addition to the Senior Vice-Presidents or one of the Vice Presidents, a person who is a sitting or retired judge of a High Court can be appointed as the President of the Income tax Appellate Tribunal by the Central Government, provided he has completed at least seven years of service as a judge in a High Court.

c. Section 253: Order passed u/s. 144BA (12) appealable to Appellate Tribunal

Amendment:

In section 253 of the Income-tax Act, in sub-section (1),—

(a) clause (e) shall be omitted;

(b) after clause (d), the following clause shall be inserted with effect from the 1st day of April,

2016, namely:—

“(e) an order passed by an Assessing Officer under sub-section (3) of section 143 or section

147 or section 153A or section 153C with the approval of the Commissioner as referred to in subsection (12) of section 144BA or an order passed under section 154 or section 155 in respect of such order.”.

Analysis:

It is proposed to omit clause (e) of sub-section (1) of Section 253 with retrospective effect from 1st April, 2013.

It is then further proposed to amend the said sub-section to insert clause (e) with effect from 1st April 2016, to provide that an appeal lies to the Appellate Tribunal from an order of assessment or reassessment passed with the approval of Commissioner under Sec 144BA (12) or any order under Sec 154 or Sec 155 passed in relation to such order. So, in effect, the said clause will not be operative from 2013 to 2016 and from 2016, only the amended section will apply.

19. CHAPTER XXI – Penalties Imposable

Section 271FA: Penalty for failure to furnish annual information return

Amendment:

For section 271FA of the Income-tax Act, the following section shall be substituted with effect from the 1st day of April, 2014, namely:—

“271FA. If a person who is required to furnish an annual information return under sub-section

(1) of section 285BA, fails to furnish such return within the time prescribed under sub-section (2) thereof, the income-tax authority prescribed under said sub-section (1) may direct that such person shall pay, by way of penalty, a sum of one hundred rupees for every day during which such failure continues:

Provided that where such person fails to furnish the return within the period specified in the notice issued under sub-section (5) of section 285BA, he shall pay, by way of penalty, a sum of five hundred rupees for every day during which the failure continues, beginning from the day immediately following the day on which the time specified in such notice for furnishing the return expires.”

Analysis:

Section 285BA mandates the furnishing of annual information return by the specified persons in respect of specified transactions within the time prescribed under sub-section (2). Sec 271FA provides that if a person who is required to furnish an annual information return as per Sec 285BA (1) fails to furnish it within the time period prescribed under that sub-section, the income tax authority prescribed may direct such person to pay a penalty of Rs 100 for every day of failure. This provision is now amended and the time frame is such as is prescribed in sub-section (2) thereof.

It is also proposed that when the person fails to furnish the return within the period specified in the 285BA (5) notice (period not exceeding 60 days from the date of service of such notice), he shall pay a penalty of Rs 500/- of every day of such failure, from the day immediately following the day on which the time specified in the notice expires. This will take effect from 1st April, 2014.

[SECTION 58 OF THE FINANCE ACT, 2013]

20. CHAPTER XXIII – Miscellaneous

Section 295: Power of CBDT to make rules with regard to GAAR matters and the Approving Panel

Amendment:

In section 295 of the Income-tax Act, in sub-section (2), with effect from the 1st day of April, 2016,—

(i) clause (ee) shall be renumbered as clause (e) and after clause (e) as so renumbered, the following clause shall be inserted, namely:—

“(ee) the matters specified in Chapter X-A;”;

(ii) after clause (eec), the following clause shall be inserted, namely:—

“(eed) remuneration of Chairperson and members of the Approving Panel under sub-section (18) and procedure and manner for constitution of, functioning and disposal of references by, the Approving Panel under sub-section (21) of section 144BA;”.

Analysis:

As per existing Sec 295, the Board may, subject to the control of the Central Government, by notification in the Gazette of India, make rules for carrying out the purposes of the Act. Sub-section (2) lists out the matters in respect of which the rules may be made. The amendment now authorizes the Board to make rules with respect to Chapter X-A and the constitution, procedure, functioning, disposal and remuneration of Chairperson and the members of the Approving Panel.

These amendments will take effect from 1st April, 2016.

[SECTION 59 OF THE FINANCE ACT, 2013]

21. Amendment of Fourth Schedule: Part-A: Recognised Provident Fund

Rule 3: According and withdrawal of recognition

Amendment:

In the Fourth Schedule to the Income-tax Act, in Part A, in rule 3, in sub-rule (1), in the first proviso, for the figures, letters and words “31st day of March, 2013”, the figures, letters and words “31st day of March, 2014” shall be substituted.

Analysis:

Rule 3 in Part A of the Fourth Schedule provides that the Chief Commissioner or Commissioner may accord recognition to any provident fund which, in his opinion, satisfies the conditions specified under Rule 4 of Part A of the said Fourth Schedule and any other conditions, which the Board may specify by rules and may, at any time, withdraw such recognition if, in his opinion, the provident fund contravenes any of those conditions.

The proviso to this rule provides that in a case where recognition has been accorded to any provident fund on or before 31st March, 2006 and such provident fund does not satisfy the conditions set out in clause (ea) of said rule 4, and any other conditions which the Board may specify by rules in this behalf, the recognition to such fund shall be withdrawn, if the fund does not satisfy the conditions on or before 31st March, 2012. The Finance Act 2012 amended the date to 31st March, 2013.

The amendment proposed in this budget is to extend the time limit upto 31st March, 2014. This amendment will be with retrospective effect from 1st April, 2013. As a result, further time has been granted to the Employees' Provident Fund Organisation to process applications made by establishments seeking exemption under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

[SECTION 60 OF THE FINANCE ACT, 2013]