

MAT and Capital Gains

Provisions relating to Minimum Alternate Tax

Section 115JB provides that in the case of a company, if the tax payable on the total income as computed under the Income-tax Act in respect of any previous year relevant to the assessment year commencing on or after April 1 2001, is less than seven and one-half per cent of its book profit, such book profit shall be deemed to be the total income of the assessee and the tax payable for the relevant previous year shall be seven and one-half per cent of such book profit.

Since the credit for MAT paid under section 115 JB has been introduced from the assessment year 2006-07 by the Finance Act, 2005, and the period for availing the MAT credit is proposed to be increased from five years to seven years, it is proposed to amend sub-section (1) of the said section to provide that if the income-tax payable on the total income as computed under the Income-tax Act in respect of any previous year relevant to the assessment year commencing on or after April 1, 2007 is less than ten percent of its book profit, such book profit shall be deemed to be the total income of the assessee and the tax payable for the relevant previous year shall be ten per cent of such book profit.

The Explanation to sub-section (2) of section 115JB says that "book profit" means the net profit as shown in the profit and loss account for the

relevant previous year, prepared in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956, and as increased or reduced by certain adjustments as specified in the said Explanation. The aforesaid Explanation, *inter alia*, provides that the book profit shall be increased by the amount or amounts of expenditure relatable to any income referred to in section 10, if any such amount is debited to the profit and loss account and it shall be reduced by the amount of income referred to in the said section 10 if any such amount is credited to the profit and loss account.

It is further proposed to amend clause (f) of the aforesaid Explanation to provide that the book profit shall be increased by the amount or amounts of expenditure relatable to any income referred to in section 10 (excluding the income referred to in clause (38) thereof) or section 10A or section 10B or section 11 or section 12, and to also amend clause (ii) of the said Explanation to provide that the book profit shall be reduced by the amount of income referred to in section 10 (excluding the income referred to in clause (38) thereof) or section 10A or section 10B or section 11 or section 12. It is also proposed to amend the provisions of sub-section (38) of section 10 so as to provide that income by way of long-term capital gains of a company shall be taken into account in computing the book profit under section

115JB and for payment of income-tax under that section.

Under the normal provisions of the Income-tax Act, claim of higher depreciation on account of revaluation of assets is not allowed. However, companies do resort to revaluation of assets to claim such higher depreciation. With a view to plug the leakage of revenue on account of claim of higher depreciation through revaluation of assets by certain companies, it is proposed to insert a new clause (g) in the aforesaid Explanation so as to provide that the book profit shall be increased by the amount of depreciation debited to the profit and loss account and to also insert a new clause (iia) in the said Explanation so as to provide that the amount of depreciation claimed in the profit and loss account, excluding the claim of depreciation on account of revaluation of assets, shall be reduced from the book profit. With a view to avoid double taxation on this account, it is also proposed to insert a new clause (iib) in the said Explanation so as to provide that the amount withdrawn from revaluation reserve and credited to the profit and loss account, to the extent it does not exceed the amount of depreciation on account of revaluation of assets referred to in the proposed new clause (iia), shall be reduced from the book profit.

ICAI's Guidance Note

The ICAI in its Guidance note on treatment of reserve created on revaluation

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of fixed assets has suggested that depreciation is required to be provided with reference to the total value of the fixed assets as appearing in the account after revaluation. However, for certain statutory purposes e.g., dividends, managerial remuneration etc., only depreciation relatable to the historical cost of the fixed assets to be provided out of the current profits of the company. In the circumstance, the additional depreciation related to revaluation may be adjusted against "Revaluation Reserve" by transfer to Profit and Loss Account. In other words, as per the requirements of Part II of Schedule VI of the Companies Act, the company will have to provide the depreciation on the total book value of the fixed assets (including the increased amount as a result of revaluation) in the Profit and Loss Account of the relevant period, and thereafter the company can transfer an amount equivalent to the additional depreciation from the Revaluation Reserve. Such transfer from Revaluation Reserve should be shown in the Profit and Loss Account separately and an appropriate note by way of disclosure would be desirable. Such a disclosure would appear to be in consonance with the requirement of Part I of Schedule VI to the Companies Act, prescribing disclosure of write-up in the value of fixed asset for the first five years after revaluation.

If a company has transferred the difference between the revalued figure and the book value of fixed assets to the "Revaluation Reserve" and has charged the additional depreciation related thereto to its Profit and Loss Account, it is possible to transfer an amount equivalent to accumulated additional depreciation from the revaluation reserve to the

Profit and Loss Account or to the General Reserve, as the circumstances may permit, provided suitable disclosure is made in the accounts as recommended in the guidance note.

The revaluation Reserve is not available for payment of dividends. This view is also supported by the Companies (Declaration of Dividend out of Reserves) Rules, 1975. Similarly, accumulated losses or arrears of depreciation should not be set off against Revaluation Reserve. However, the revaluation reserve can be utilised for adjustment of the additional depreciation on the increased amount due to revaluation from year or on the retirement of the relevant fixed assets.

Alternatively, the ICAI has also suggested that the revaluation of fixed assets is normally done in order to bring into books the replacement cost of such assets. This is a healthy trend as it recognises the importance of retaining sufficient funds through additional depreciation in the business for replacement of fixed assets. As such, it will be prudent not to charge the additional depreciation against revaluation reserve, though this may result in reduction of distributable profits. This practice would also give a more realistic appraisal of the company's operations in an inflationary situation.

However, due to the amendment proposed, it would be mandatory now to follow the first option while working out "book profit" under section 115JB of the Act.

Enhancing the period for carry forward of MAT credit

Sub-section (1) of Section 115JAA provides that where any amount of tax is paid under section 115JA by a com-

pany for any assessment year, then credit in respect of the tax so paid shall be allowed in accordance with the provisions of the said section 115JAA. Sub-section (1A) of section 115JAA provides for a similar provision with regard to any amount of tax paid under section 115JB for the assessment year commencing on April 1, 2006 and any subsequent year. Sub-section (2) of section 115JAA provides that the tax credit to be allowed under sub-section (1) shall be the difference of the tax paid for any assessment year under section 115JA or section 115JB, as the case may be, and the amount of tax payable under the normal provisions of the Income-tax Act. Sub-section (3) of section 115JAA provides that the amount of credit determined under sub-section (2) shall be carried forward and set off in accordance with the provisions of sub-sections (4) and (5) of the said section, but such carry forward shall not be allowed beyond the fifth assessment year immediately succeeding the assessment year in which the tax credit becomes allowable under sub-section (1) of the said section.

To provide relief to assesses, being companies, who pay MAT under section 115JB for any assessment year beginning on or after April 1, 2006, it is proposed to amend the provisions of section 115JAA so as to provide that the amount of tax credit determined shall be allowed to be carried forward and set off for seven assessment years immediately succeeding the assessment year in which the tax credit becomes allowable under the said section.

Credit for payment of Minimum Alternate Tax (MAT)

Under the existing provisions of sections 234A, 234B

and 234C, the assessee is held liable to pay simple interest at the rate of one per cent for every month or part of a month for default in furnishing return of income, for default in payment of advance tax and for deferment of advance tax respectively. For the purposes of computing interest, credit for advance tax paid and tax deducted or collected at source is allowed. MAT credit under section 115JAA, relief of tax under section 90 and deduction from income-tax payable under section 91 are not taken into account while charging interest under the aforesaid sections. Under section 140A too, interest is paid on shortfall of advance tax and for delay in furnishing return of income. Representations have been

made that the tax credit allowed under section 115JAA is no different from tax paid in advance and credit should be given against the tax liability, determined as a result of assessment, while calculating interest payable by the assessee under sections 234A, 234B and 234C. On similar grounds, credit for taxes paid in a country outside India has also been requested so that interest is not charged on an amount equivalent to taxes paid outside India.

It is therefore proposed to provide for—

- (a) reduction of tax credit allowed to be set off under section 115JAA from the tax on the total income; and
- (b) reduction of the amount of tax relief allowed under

section 90 and 90A, and deduction from the Indian income tax payable, allowed under section 91, from the tax on the total income.

The credit for the above is also proposed to be allowed under section 140A for the purposes of calculation of tax and interest before furnishing the return of income.

It is further proposed to provide that interest is to be charged on the amount of the tax on the total income as determined under sub-section (1) of section 143, and where a regular assessment is made, on the total income determined under the regular assessment.

These amendments will be effective from the assessment year 2007-2008. □

PHOTOGRAPH



The then President, ICAI, Mr. Kamlesh S. Vikamsey presents a memento to the Maharashtra Chief Minister Mr. Vilasrao Deshmukh on the occasion of the foundation laying ceremony for the ICAI Bhawan & Centre of Excellence in the financial district Bandra-Kurla Complex in the heart of Mumbai on 25th January 2006.