Opting for Sec. 115BAA may lead to higher LTCG taxation – Delhi ITAT ruling

Sec. 115BAA provides for a concessional tax regime for certain domestic companies from AY 2020-21 onwards, subject to fulfillment of prescribed conditions provided therein. The total income computed as per Sec. 115BAA is chargeable to tax at base rate of 22%[1].

In a recent ruling, the SMC Bench of Delhi ITAT in Maharishi Education Corporation P. Ltd., v. ITO (ITA No.2639/DEL/2025) held that a taxpayer opting for Sec. 115BAA of the Income-Tax Act, 1961 ("the Act") is liable to tax at 22% on Long Term Capital Gains ("LTCG") instead of lower rate 20% u/s 112.

Facts

1. The assessee, a domestic company, opted for the concessional tax regime u/s 115BAA of the Act by filing the requisite Form 10IC.

2. During AY 2021–22, it earned LTCG on sale of land and applied tax rate of 20% u/s 112.

3. The Revenue contended that since the assessee had opted for taxation u/s. 115BAA, the applicable rate on LTCG should be 22%, whereas the assessee argued that the lower rate of 20% u/s 112 should apply.

Issue before ITAT

The sole issue before the Delhi ITAT pertains to the applicable tax rate on LTCG where the assessee opted for concessional tax regime u/s 115BAA. Whether the applicable rate is 22% as prescribed u/s 115BAA or 20% as specifically provided u/s 112 for LTCG.

ITAT ruling

The ITAT, without providing any detailed reasoning, concurred with the Revenue's contention and held that "*Admittedly, the assessee has opted for taxation u/s. 115BAA of the Act, hence, the rate of tax applicable in respect of total income of the assessee company is 22%.*"

Our Comments

While the ITAT order is silent on the rationale behind its decision, it may perhaps be influenced by the non obstante provision contained in Sec. 115BAA(1), without taking into account the qualifying words that follow – "***subject to the provisions of this Chapter***[2]*, other than those mentioned under section 115BA and section 115BAB*".

The expression 'subject to' qualifies the non-obstante clause in Sec. 115BAA(1) and creates an exception where specific or special rates are otherwise provided within the same Chapter. In other words, when a taxpayer opts for taxation u/s 115BAA, the concessional tax rate of 22% is to be applied to the total income, **except** in

[1] Plus applicable surcharge and cess
[2] Bold and underlined for emphasis

respect of income for which special rates are prescribed under Chapter XII – *Determination of tax in certain special cases*, which encompasses both Sec. 115BAA and Sec. 112.

Noticeably, only Sections 115BA and 115BAB are excluded from the carve-out, with no reference to provisions prescribing special tax rates for capital gains, such as Sections 111A, 112, and 112A.

It appears that the attention of the Hon'ble ITAT was not drawn to the critical aspect that Sec. 115BAA is "subject to the other provisions of Chapter XII" and that both Sec. 112 and Sec. 115BAA fall within the same Chapter XII. The fact that Sec.115BAA is expressly made *subject to the other provisions of this Chapter*, which includes Sec. 112, is a glaring one and non-consideration of an obvious statutory provision could well be regarded as a mistake apparent on record. If this glaring mistake of law is not rectified, either in a miscellaneous application moved by the assessee or suo-moto by the Tribunal, the decision may be labelled as per incuriam. *"Per incuriam" means that a decision may be regarded as not a binding precedent if it is passed without considering some obvious statutory provisions or a binding precedent.*

With the recent reduction in the LTCG tax rate to 12.5%, the difference between being taxed at 12.5% and 22% has become even more significant.

This decision has a ripple effect on other concessional tax rate provisions as well, such as Sec. 115BAB, 115BAC, 115BAE and similar provisions.

It would also be worthwhile to examine the implications under the Income-Tax Act, 2025. The position remains unchanged under the new Act, which explicitly provides that special rates applicable to capital gains override the concessional tax regime provisions. The corresponding provisions to Sec. 115BAA (Sec. 200 of the 2025 Act) and Sec. 112 (Sec. 197 of the 2025 Act) are dealt with under Chapter XIII, the former falling under Part C and the later falling under Part B of the Chapter. The opening line of Sec. 200 of the 2025 Act reads as "*Irrespective of anything contained in this Act but subject to the provisions of **Parts A, B , E** and this Part (other than sections 199[3] and 201[4]) of this Chapter,…….*" As evident, Part B (which corresponds to Sec. 111A, 112 and 112A of 1961 Act) overrides the concessional tax rate of 22%.

[3] Corresponding to Sec. 115BA of the 1961 Act

[4] Corresponding to Sec. 115BAB of the 1961 Act