DAY 11 - Section 115A-[Effective from A.Y. 2014-15]

Practical

Raj Inc., USA, entered into an agreement to provide technical services to Bhambani Ltd, Indian company. This agreement was approved by Central Government.

During concerned previous year, Raj Inc. estimates following:-

Receipts :- 50 Lakhs

Expenditure: - 20 Lakhs

Head Office Expenditure : -Rs. 5 Lakhs.

It seeks your advice, whether to open permanent establishment in India or not?

Before, we go to the solution, lets comprehend amendment first.

Section 115 A (1) (b)

(a) Royalties and fees for technical services under an agreement made on or after 1st April, 1976 are governed by this section.

(b) Up to 31-03-2003, this section was applicable to only foreign company.

(c) W.e.f. 01-04-03, this section is applicable to every non-resident including foreign company provided assessee is not covered by section 44DA. (that means there is no permanent establishment in India)

(d) This section is applicable if:-

i. *the agreement is with the Government of India; or*

ii. *the agreement is with Indian concern and approved by the Central Government; or*

iii. *the agreement relates to a matter included in the industrial policy; or*

iv. *the agreement relates to consideration for transfer of all or any rights in respect of copyright in any book on a subject referred to in the proviso to section 115 A(1A) to the Indian concern or in respect of computer software referred to in second proviso to section 115 A(1A) to a person resident in India.*

(e) Once income is covered by this section, the assessee is not entitled to claim any deduction under the head "PGBP" or "IFOS". However, assessee can claim deduction under section 80 C to 80 U.

(f) Rate of tax applicable :-

	Date of agreement	Tax Rates applicable upto A.Y. 2013-14	**Tax Rates applicable w.e.f. A.Y. 2014-15**
(i)	After 31.3.1976 but on or before 31.5.1997	30%	**25%**
(ii)	After 31.5.1997 but on or before 31.5.2005	20%	**25%**
(iii)	On or after 1.6.2005	10%	**25%**

(g) *Further, section 90 (2) provides that if there is a Double Tax Avoidance Agreement (DTAA) with any other country then the provisions of DTAA or provisions of Income Tax Act whichever are more beneficial to assessee shall be applied. Therefore, if DTAA with a particular country provides tax rate of 15% then tax shall be calculated at the rate of 15% and not at the rate of 25%.*

Section 44DA

Conditions:-

(a) The taxpayer is a foreign company or non-resident non-corporate-assessee who carries on a business through a permanent establishment situated in India.

(b) The taxpayer is in receipt of income by way of royalty or fees for technical services.

(c) The aforesaid royalty or technical fees is received from Government or an Indian concern in pursuance of an agreement made by the taxpayer with the Government or the Indian concern after March 31, 2003.

(d) The right, property or contract in respect of which the royalties or fees for technical services are earned shall be **effectively connected with permanent establishment.**

CONSEQUENCES:–

If above conditions is satisfied then, non-resident assesseee is entitled to claim following additional deduction by virtue of Section 44DA.

(a) Deduction will be allowed in respect of any expenditure or allowance, which is wholly and exclusively incurred for the business of permanent establishment in India.

(b) Deduction will be allowed in respect of amounts, if any, paid by the permanent establishment to its head office or to any of its other offices.

Further conditions to be observed by the assessee:-

- The taxpayer shall keep and maintain books of account in accordance with the provisions contained in section 44AA.
- The books of account should be audited by a chartered accountant and the audit report should be submitted along with the return of income.

Solution

Computation if there is a Permanent Establishment in India	Computation if there is no Permanent Establishment in India
1) Section 44DA Applicable	1) Section 115A (1) (b) applicable
2) While determining total income deduction for expenses incurred is available under the head PBGP	2) While determining total income deduction for expenses incurred is not available under the head PBGP
3) Total Income = Rs. 50 Lakhs – 25lakhs – 5 Lakhs) = Rs. 25 Lakh	3) Total Income = Rs. 50 lakh
4) Tax Rate applicable -40% being foreign company	4) Tax Rate applicable-25% as per section 115A(1)(b)
5) Tax liability =40% of Rs.25 Lakhs+ 3% Education Cess on tax =Rs.10 Lakhs + Rs. 0.30 lakhs =Rs.10.30 Lakhs	5) Tax Liability =25% of Rs. 50 Lakhs + 3% Education Cess on Tax =Rs. 12.50 Lakhs + Rs. 0.375 Lakhs = Rs. 12.875 Lakhs

In order to reduce tax burden in India, Raj. Inc. USA is advised to open permanent establishment in India.

Readers are advised to download three more files on amendment. These files you can see on CA CLUB website on 24th May evening.