

Webathon Series

Decoding Income Tax Law

Exempt Income under Income Tax Act

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Exempt income

Section 10 – In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included -

(1) Agricultural income;

The Constitution of India

Article 246 : Subject matter of laws made by parliament and by legislatures of state

Seventh schedule :

List -1 : Union List

Item no 82 : Taxes on income other than agricultural income

List -II : State list

Item no : 46 ; Taxes on agricultural income .

Article 366(1) : Agricultural Income means Agricultural income as defined for the purpose of enactments relating to Indian Income Tax

Article 274 : Prior recommendation of President requires to bills effecting taxation in which stated are interest.

Agricultural Income 2(1A)

(a) Any rent or revenue derived from land which is situated in India and is used for agricultural purposes,

(b) Any income derived from such land by—

(i) Agriculture; or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market; or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in paragraph (ii) of this sub-clause.

(c) Any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any process mentioned in paragraphs (ii) and (iii) of sub-clause (b) is carried on:

2(1A) (a) Income derived from Land

(a) Any rent or revenue derived from land which is situated in India and is used for agricultural purposes,

- Rent or revenue should be derived from land.
- Such land should be situated in India.
- The land should be used for agricultural purposes.

2 (25A) "India" means the territory of India as referred to in article 1 of the Constitution, its territorial waters, seabed and subsoil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976), and the air space above its territory and territorial waters;]

The land should be used for agricultural purposes

CIT v Raja Benoy Kumar Sahas Roy (1957) 32 ITR 466 (SC)

Held that the land is said to be used for agricultural purpose where the following two types of operations are carried out on such land :

(a) Basic Operations: These involve cultivation of the ground, in the sense of tilling of the land, sowing of the seeds, planting and similar operations on the land. Such basic operations demand the expenditure of human labour and skill upon the land itself and further they are directed to make the crop sprout from the land.

(b) Subsequent Operations: After the crop sprouts from the land, there are subsequent operations which have to be resorted to by the agriculturists for the efficient production of the crop such as, weeding, digging the soil around the growth, removal of undesirable growths, prevention of the crop from insects and pests and from depredation by cattle and tending, cutting, etc.

(b) Any income derived from such land by—

(i) Agriculture; or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market; or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in paragraph (ii) of this sub-clause.

Section 2(1A)(b)

(1) Any income derived by **agriculture** from land situated in India and used for agricultural purpose.

Income derived from agricultural land :

- (i) Standing crop or the raw produce after harvest, sold by the agriculturists himself;
- (ii) Crop used by the cultivator for *his own consumption*;
- (iii) Crop used as raw material by the cultivator in his business;

Section 2(1A)(b) cont.....

(2) Any income derived by a cultivator or receiver of rent in kind of any process ordinarily employed to render the produce raised or received by him to make it fit to be taken to market.

The produce raised from the land may not have a market in its native form.

It may become necessary to perform a process on the produce to make it marketable or saleable.

Such process may be called “marketing process or agricultural process”

The gain in the value of the produce by such marketing process or agricultural process is income from agriculture.

If marketing process is performed on agricultural produce which could be sold without such process as the produce was itself marketable, the income attributable to the process shall not be agricultural income

Section 2(1A)(b) Conti...

(3) Any income derived from the sale by a cultivator or receiver of rent in kind of the produce raised or received by him in respect of which no process has been performed other than a process of the nature as referred in (2) above.

- Any other processes have been performed,
- The sale proceeds will have to be disintegrated to find out that part of it which constitutes agricultural income

Section 2(1A)(c)

Any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any process mentioned in paragraphs (ii) and (iii) of sub-clause (b) is carried on :

Provided that—

(i) the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator, or the receiver of rent-in-kind, by reason of his connection with the land, requires as a dwelling house, or as a store-house, or other out-building, and

(ii) the land is either assessed to land revenue in India or is subject to a local rate assessed and collected by officers of the Government as such or where the land is not so assessed to land revenue or subject to a local rate, it is not situated—

Section 2(1A)(c)

Any income attributable to a building (a farmhouse)

- (i) Building should be owned and occupied by the landholder if he receives rent or revenue from the land. And in the case of a cultivator or *landholder* receiving rent in kind, it is enough that the building is occupied by him
- (ii) Building should be on or in the immediate vicinity of land situated in India which is used for agricultural purposes.
- (iii) Building should be required by the occupier (i.e., receiver of rent or revenue or the cultivator or receiver of rent in kind) by reason of his connection with the agricultural land as:
 - (a) Dwelling house;
 - (b) Store house;
 - (c) Other out building.
- (iv) The land should be assessed to land revenue or a local rate. however, if it is not assessed to land revenue or local rate then such land should be situated outside urban area.

Agricultural land in India not being land situated

S. No.	Area (Distance Aerially)	Population
1.	Within Jurisdiction of Municipality/ Cantonment Board	< 10 Thousand
2.	< 2 Kilometer from local limit	> 10 Thousand < One Lakh
3.	< 6 Kilometer from local limit	> One Lakh < 10 Lakh
4.	< 8 Kilometer from local limit	> 10 Lakh

Explanation 1.—

For the removal of doubts, it is hereby declared that revenue derived from land shall not include and shall be deemed never to have included any income arising from the transfer of any land referred to in item (a) or item (b) of sub-clause (iii) of clause (14) of this section.

Section 2(14) – Capital Asset

- (a) Property of any kind held by an assessee, ;
- (b) Any securities;
- (c) any unit linked insurance policy

but does not include-

- i)**
- ii)**
- iii) Agriculture land in India, not being land situate-**

Section 2(14) – Capital Asset conti...

- (a) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a “population” of not less than ten thousand; or
- (b) in any area within the distance, measured aerially, -
 - (I) not being more than two kilometers, from the local limits of any municipality or cantonment board referred to in item (n) and which has a population of more than ten thousand but not exceeding one lakh; or
 - (II) being more than six kilometers, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than one lakh but not exceeding ten lakh; or

Section 2(14) – Capital Asset conti.....

(III) being more than eight kilometers, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten lakh.

- *Explanation.* —for the purposes of this sub-clause, “population” means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year;

Memorandum Bill 1989

MEASURES for RATIONALISATION

Clarificatory amendment of provisions relating to agricultural income.

22. Prior to 1st April, 1970, capital gains arising from transfer of agricultural land was not subjected to tax, as agricultural land was excluded from the definition of "capital asset" in section 2(14) of the Income-tax Act. By virtue of amendment of sub-clause(iii) of clause (14) of section 2 with effect from 1st April, 1970, agricultural land situated in any area comprised within the jurisdiction of a Municipality or Cantonment Board (having a population of not less than ten thousand) or in any area outside the limits of any Municipality or Cantonment Board (having a population of not less than ten thousand) up to a maximum distance of 8 Kms. from such limits as notified by the Central Government was included within the definition of "capital asset" and hence, any gain arising from the transfer of such agricultural land was brought within the purview of capital gains taxation. **Certain Courts have, however, held that profits from the sale of agricultural land constitute "agricultural income" and, therefore, it is exempt from tax under section 10 of the Income-tax Act. Some Courts have held that such income is taxable. The settlement of the judicial controversy by a decision of the Supreme Court may take a long time. Till then, uncertainty in law would not be desirable.**

Therefore, as a measure of rationalisation, it is proposed to clarify by way of insertion of an Explanation that capital gains arising from the transfer of the aforesaid agricultural land will not constitute "revenue" within the meaning of section 2(1A) of the Income-tax Act

This amendment will take effect retrospectively from 1st April, 1970, and will, accordingly, apply in relation to the assessment-year 1970-71 and subsequent years.

(Clause 3)

Explanation 3. : For the purposes of this clause, any income derived from saplings or seedlings grown in a nursery shall be deemed to be agriculture income.

Agriculture Income

- Income from toddy
- Grass is grown by human effect by tilling, sowing, planting, or any particular kind of seeds or cutting or by any similar operation.
- Income from growing flowers & creepers.
- Compensation received from an insurance co. on account of damage of crop.
- Leasing out of agriculture land.
- Compensation for requisitioning agriculture land.
- Rent from orchards.
- Connotes not merely the raising of grain and food products for men and animals but also raising of all commercial crops, e.g., the cultivation of a casuarina plantation, tea, coffee, tobacco, cotton, sugar-cane, toddy-trees, rubber, jute, hemp and indigo.

Non-Agriculture Income

- Income from sale of forest, trees, wild grass, fruit, and flower grown spontaneously without human effort.
- Income from brick making.
- Income from poultry farming
- Income from breeding of livestock.
- Interest on arrears of rent in respect of agriculture land.
- Harvest crop on purchase land.

Computation as per Rules given in Part IV of Schedule 1 of Finance Act

Particular	Section	Rules
Rent or Revenue derived from land	2(1A)(a)	Rule-1 Computing as Income From other Source [Section 57 to 59 Apply]
Income by way of agriculture or processing of agricultural process	2(1A)(b)	Rule-2 Computing as Income from Business or Profession [Section 30,31,32,36,37,38,40,40A (excluding 40A(3) & 4) 41,43,43A, 43B, 43C Apply]
Income derived from building used as dwelling House	2(1A)(c)	Rule-3 computing as Income from House Property [Section 23 to 27 Apply]
Partly Agricultural & partly non-Agricultural		Rule-4 Income Tax Rules 7A, 7B & 8 Apply

Nature of Income	Income tax Rule Applicable	Amount of Agricultural income	Amount of non-agriculture income i.e., business income
Income from sale of tea <i>grown and manufactured</i> by the assessee in India	Rule 8	60% of such income	40% of such income
Income derived from the <i>sale</i> of centrifuged latex or cenex or latex based crepes (such as pale latex crepe) or brown crepes (such as estate brown crepe, re-miled crepe, smoked blanket crepe or flat bark crepe) or technically specified block rubbers manufactured or processed from field latex or coagulum obtained from rubber plants <i>grown</i> by the seller in India.	Rule 7A	65% of such income	35% of such income
Income derived from the sale of coffee <i>grown and cured</i> by the seller in India	Rule 7B	75% of such income	25% of such income
Income derived from the sale of coffee <i>grown, cured, roasted and grounded</i> by the seller in India, with or without mixing chicory or other flavoring ingredients	Rule 7B(1A)	60% of such income	40% of such income

Computation as per Rules given in Part IV of Schedule 1 of Finance Act

Rules	Particular
Rule-5 Assessee Member of AOP /BOI	<ul style="list-style-type: none">• AOP/ BOI either have no income or income below taxable amount not-chargeable to Tax but have Agriculture Income/Loss.• Income or Loss will be computed as per the rules.• Share of Assessee in Agricultural Loss/Income . So computed shall be regarded as agricultural income or loss of the Assessee
Rule-6	<ul style="list-style-type: none">• Loss under any source of Agricultural income allowed to set-off in the same year against other sources of Agricultural income.• Not allowed set off if that Agricultural Loss of Assessee in his share of AOP/BOI
Rule-7	Allowed deduction of Tax levied by a State Govt. on Agricultural Income

Computation as per Rules given in Part IV of Schedule 1 of Finance Act

Rules	Particular
Rule-8(1)	Unabsorbed Loss from Agriculture Activity during the previous years relevant to the A.Y. 2013-14 to 2020-21 will be set-off against agriculture income of A.Y. 21-22 in chronological order.
Rule-8(2)	The Unabsorbed Loss from Agriculture of A.Y. 13-14 to 20-21 to be considered for payment of Advance Tax during the F.Y. 2021-22 (A.Y. 22-23).
Rule-9	Net result computation of agricultural income from various source is a loss. That Loss will be disregarded and Net agricultural income shall be NIL.
Rule-10	Agricultural Income of Assessee will be rounded off to Nearest Multiple of Rs. 10/- (Similar to Section 288A)
Rule-11	To Assessee Agricultural Income/Loss, AO have same power as under Income Tax Act for Assessment of Total Income.

Sum received – by member – from HUF

Section 10 – In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included –

- (2) Subject to the provisions of sub-section (2) of section 64
any sum received by an **individual as a member** of a Hindu undivided family,
- where such sum has been paid out of the income of the family,
 - or,
 - in the case of any impartible estate, where such sum has been paid out of the income of the estate belonging to the family;

Section 64(2) –

Where, in the case of an individual being a member of a Hindu undivided family, any property having been the separate property of the individual has, at any time after the 31st day of December, 1969, been converted by the individual into property belonging to the family through the act of impressing such separate property with the character of property belonging to the family or throwing it into the common stock of the family or been transferred by the individual, directly or indirectly, to the family otherwise than for adequate consideration (the property so converted or transferred being hereinafter referred to as the converted property), then, notwithstanding anything contained in any other provision of this Act or in any other law for the time being in force, for the purpose of computation of the total income of the individual under this Act for any assessment year commencing on or after the 1st day of April, 1971,-

section 64(2) Conti.....

- (a) the individual shall be deemed to have transferred the converted property, through the family, to the members of the family for being held by them jointly;
- (b) The income derived from the converted property, or any part thereof shall be deemed to arise to the individual and not to the family;
- (c)

Provided that the income referred to in clause (b) or clause (c) shall, on being included in the total income of the individual, be excluded from the total income of the family or, as the case may be, the spouse of the individual.

Section 10 – In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included –

(2A) In the case of a person being a partner of a firm which is separately assessed as such, his share in the total income of the firm.

Explanation- For the purposes of this clause, the share of a partner in the total income of a firm separately assessed as such shall, notwithstanding anything contained in any other law, be an amount which bears to the total income of the firm the same proportion as the amount of his share in the profits of the firm in accordance with the partnership deed bears to such profits;

Section 2(23) –

- (i) “Firm” shall have the meaning assigned to it in the Indian Partnership Act, 1932 (9 of 1932), and shall include a limited liability partnership as defined in the Limited Liability Partnership Act, 2008 (6 of 2009);

- (i) “Partner” shall have the meaning assigned to it in the Indian Partnership Act, 1932 (9 of 1932), and shall include, —
 - (a) any person who, being a minor, has been admitted to the benefits of partnership; and
 - (b) a partner of a limited liability partnership as defined in the Limited Liability Partnership Act, 2008 (6 of 2009);

SECTION 10(2A) – SHARE INCOME OF PARTNER FROM

Interpretation of provision of section 10(2A) in cases where income of the firm is exempt – A reference has been received in the Board in connection with the interpretation of provisions of section 10(2A) seeking clarification as to what will be the amount exempt in the hands of the partners of a partnership firm in cases where the firm has claimed exemption/deduction under chapter III or VI-A of the Act.

It is clarified that 'total income' of the firm for clause (2A) of section 10, as interpreted contextually, includes income which is exempt or deductible under various provisions of the Act. It is, therefore, further clarified that the income of a firm is to be taxed in the hands of the firm only and the same can under no circumstances be taxed in the hands of its partners. Accordingly, the entire profit credited to the partners' accounts in the firm would be exempt from tax in the hands of such partners, even if the income chargeable to tax becomes NIL in the hands of the firm on account of any exemption or deduction as per provisions of the Act. –

Circular no. 8/2014, dated 31/03/2014.

Buy back of share – 10(34A) and 46A and 115QA

in hand of shareholder

Capital Gain 46A –

Subject to provision of section 48.

- Difference between (cost of acquisition and value of consideration received)
- Deemed to Capital Gain
- In the year of purchase by company

Section 10 clause (34A) : any income arising to an assessee, being a shareholder, on account of buy back of shares by the company as referred to in section 115QA

- Income arising to shareholder.
- On A/c of buy back of shareholder.
- By Co. referred in section 115QA.

Buy back of share :

In the hand of Company

Section 115QA –

- (i) "buy-back" means purchase by a company of its own shares in accordance with the provisions of any law for the time being in force relating to companies ;
- (ii) "distributed income" means the consideration paid by the company on buy-back of shares as reduced by the amount, which was received by the company for issue of such shares, determined in the manner as may be prescribed

Notwithstanding anything –

- In addition to income tax chargeable in respect of total income of a Domestic Co.
- Any amount distributed income by Co. on buy back of shares shall be charged to tax.
- Liable to Additional income tax @ 20% on distributed income. Plus, surcharge and Cess



Any Question's?



Thanks