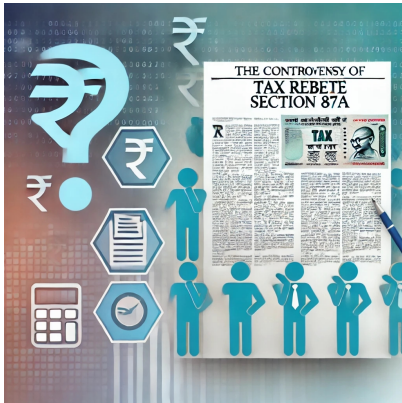




THE CONTROVERSY OF TAX REBATE SECTION 87A

Description

INCOME TAX

THE CONTROVERSY OF TAX REBATE SECTION 87A

SUDHIR HALAKHANDI

Section 87A of the Income Tax Act provides a rebate of ₹25,000 if the income of an individual taxpayer is less than ₹7 lakh under the New Taxation regime. We will discuss the significant issue related to this section. It is written in very simple language and covering at present only short-term capital gain so that one can understand the controversy. Though the problem is related to all the incomes which are taxable under special rates excluding the incomes which are specifically excluded rebate under section 87A by their own original section

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The Issue:

Currently, most of the taxpayers have both short-term and long-term capital gains from shares. While the provision of taxation of long-term capital gains on shares clearly state within its respective sections 112A that the rebate under Section 87A is not applicable, and this is being followed without dispute but there is no such explicit restriction for short-term capital gains under section 111A. Consequently, the ₹25,000 rebate under Section 87A was being granted for short-term capital gains as well, and there was no controversy regarding this until July 5, 2024 on it. The Taxpayers has claimed this deduction of Rs. 25000.00 with respect to short term capital gain on shares and till 5th July 2024 it was also supported by Income tax utility on e-filing site of the Income tax Department.

Now the controversy and Change in Utility:

Until July 5, 2024, taxpayers, and the Income Tax portal utility both accepted that the rebate under Section 87A was applicable on short-term capital gains, and taxpayers were filing their returns accordingly. However, on July 5, 2024, a sudden change in the Income Tax utility was made, disallowing the ₹25,000 rebate on short-term capital gains from shares. This abrupt and unexpected change has led to confusion and inconvenience, especially since many taxpayers had already filed their returns considering the rebate and lakhs are ready to file their returns in next upcoming days.

Legal Standpoint:

Legally, the provision states that if a taxpayer's total income under the new tax regime is up to ₹7 lakh, they are eligible for a rebate of ₹25,000. The general interpretation of this provision, when introduced in the Finance Act 2023, was that any taxpayer with a total income up to ₹7 lakh under the new regime would get the rebate of Rs. 25000.00 or the amount of tax payable whichever is Less. The Income Tax utility initially followed this interpretation until the unexpected and abrupt change on July 5, 2024. Up to 5th July 2024 the procedure of following this action on the IT portal was correct and there was not room for controversy in it.

Current Situation and Response:

The recent change in the utility on 5th July 2024 contradicts the original intention of the law and has created unnecessary confusion. As per social media reports the CA Institute- The ICAI has submitted a memorandum to the Ministry of Finance requesting the reinstatement of the pre-July 5, 2024, situation. Additionally, as per various social media reports the Bombay Chartered Accountants Society has also expressed the same opinion.

Special Rates and Rebate Applicability:

When a taxpayer opts for the new tax regime, their entire income is considered under this regime. Even if a special rate of 15% applies to short-term capital gains, the taxpayer remains under the new tax regime, which is the basic requirement of this Rebate under section 87A. Unlike the section dealing with long-term capital gains on shares i.e. Section 112A, the section 111A dealing with short-term capital gains does not explicitly disallow the rebate under Section 87A. This is also applicable on all other incomes which are taxable under special rates.

Examining the Proviso:

Let's also look at the proviso that restricts the rebate under Section 87A:

Provided that where the total income of the Assessee is chargeable to tax under sub-section 115BAC , and the total Income—

(a). Does not exceed seven hundred thousand rupees , the Assessee shall be entitled to a deduction from the amount of Income Tax (as computed before allowing for the deductions under this chapter) on his total income with which he is chargeable for any assessment year , on an amount equal to one hundred percent of such income tax or an amount equal to twenty-five thousand rupees , whichever is less.

This is very clear provision and this proviso has two parts :-

1. The Total income of the Assessee is chargeable to tax under subsection 115BAC- It means Assessee has given his income to be assessed under default scheme and not opted out of this scheme by opting to the Normal or old taxation scheme and
2. The total income does not exceed seven hundred thousand rupees- Here total income means total income of the Assessee as per income tax Act, 1961.

The first part is the total income is chargeable to tax under section 115BAC and this clearly means an Assessee who has opted for this default scheme of Taxation as mentioned above. It is very clear from the wordings of this Section and also this was followed by all the experts and even the IT portal so there was no room for controversy in it and there is no need to go beyond it so search any other meaning of it.

The second part is the total income of the Assessee does not exceed Rs. 7 Lakhs.

Here in the second part **“it is not written that Such Income”** and it has mentioned **“the total income”** (and not such total income) and the meaning of total income is given in Section 2(45) hence it is clear that the intention of the Law is that the Assessee has opted for default taxation scheme (By not opting out of this scheme) and if his total income as per section 2(45) read with section 5 of the income tax Act, 1961 does not exceed Rs. 7 lakhs then he shall be eligible for a deduction of Rs say 25000.00.

The definition of Total income is given in Section 2(45) and let us see section 2(45) :-

“Total Income Means the total amount of income referred to in Section 5 ,Computed in the manner laid down in this Act.

Please go through Section 5 and short-term capital gain from shares are also part of Total income along with all other incomes including long term capital gains on Shares.

Hence it is clear that both long term and short-term capital gains on shares are part of total Income and unless otherwise mentioned no other meaning of Total income can be taken.

Why blocking Rebate 87A is justified in case of long-term capital Gain on Shares

Section 112 A

Section 112 A is related to the special rates of Tax on Long term capital gain on shares and section 112A(6) has restricted the rebate under section 87A here . Let us see the Section 112A(6) :-

Where the total income of an assessee includes any long-term capital gain referred to in sub section (1) , the rebate under section 87A shall be allowed from the income tax on the total income as reduced by tax payable on such capital gains.

No Such restriction is provided with respect to short term Capital Gain on Shares

Section 111A

The tax on special rates on short term capital gain on shares is given in Section 111A of the Income tax Act, 1961 and in this section no restriction for allowability of Rebate under section 111A is given in this section hence the rebate under section 87A is available for short term capital gain on shares.

1. Rebate under section 87A – Intention of Law

Let us See Memorandum to Finance Bill 2023 which introduced the Proviso to Section 87 A :-

Under the provisions of Section 87A of the Act, an assessee , being an individual resident in India , having total Income not exceeding Rs. 5 lakhs , is provided a rebate of 100 per cent of the amount of Income Tax payable i.e. an Individual having income till Rs. 5 Lakh is not required to pay any tax.

2 . From Assessment year 2024-25 onwards , an assessee , being an individual resident in India whose total income is chargeable to tax under the proposed subsection (1A) of section 115BAC , shall now be entitled to a rebate of 100 per cent of the amount of income tax payable on a total income not exceeding Rs. 7 lakhs.

No intention of restricting the rebate under section 87A on short term capital gain on shares or any other income chargeable to special rates has not been mentioned in the memorandum . It has only mentioned that in new scheme the rebate is enhanced to Total Income of Rs. 7 Lakhs and Tax Rs. 25000.

Let us see the part of Budget speech of the Hon. Finance Minister :-

146. The first one concerns rebate . Currently , those with the Income up to 5 Lakhs do not pay any income tax both old and New regime . I propose to increase the Rebate limit to Rs.7 lakhs in the New Tax regime. Those persons in the new Tax regime , with income up to Rs. 7 Lakhs will not have to pay any tax.

What happened on 5th July 2024

Nothing New happened on 5th July 2024 and no change in law was made on that date hence it is unjustified to restrict the rebate of Section 87A on short term capital gain on shares without any change in law since Lakhs of Assesses has already filed their returns. This is first instance that a justified rebate has been restricted by the IT utility without any change in law on that particular date hence it appears that it is a problem of interpretation of a proviso of a particular section and it appears that it is based on wrong interpretation of Law as explained above. The Utility should be corrected as soon as possible and further the Taxpayers must be given more time to file their return because lot of time has been wasted due to this and other IT portal related problems.

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