INDORE BRANCH OF CIRC OF ICAI

NEWSLETTER

March, 2023 ◗ Price ₹ 20

Chairman's Communiqué

Dear Members,

I extend warm greetings to all members of the Institute of Chartered Accountants of India (ICAI) as we embark on another month of professional excellence and growth.

March signifies a time of renewal and reflection, as we move towards the culmination of the financial year. It has been a period of immense dedication and hard work for our esteemed members, who have tirelessly contributed to the economic well-being of our nation.

In the spirit of continuous learning and development, I am pleased to announce that ICAI will be organizing a series of webinars and workshops throughout this month. These sessions will cover the latest updates in accounting standards, taxation laws, and emerging trends in the financial sector. I encourage all members to actively participate and take advantage of these opportunities for professional enrichment.

Furthermore, I am delighted to inform you that our efforts towards fostering international collaborations and partnerships are gaining momentum. In the coming weeks, we will be hosting delegations from prominent accounting bodies and regulatory authorities, paving the way for knowledge exchange and mutual cooperation. This not only enhances our global standing but also opens doors to new avenues for our members.

The March edition of the newsletter also highlights the achievements of our members in various domains. ICAI takes pride in the accomplishments of our community, and we will continue to showcase and celebrate your success stories.

As we approach the end of the financial year, I urge all members to uphold the highest standards of professional integrity and ethics. Let us collectively contribute to the growth and prosperity of our nation through our dedicated and principled approach to the practice of accountancy.

I look forward to your active participation in the upcoming events and wish each one of you a successful and fulfilling month ahead.

Best Regards,
Warm regards,
CA. Mausam Rathi
Chairman,
Indore Branch of ICAI of CIRC

SECTION 54F EXEMPTION

Income tax officer: "I can't give Section exemption for your house, as it has no living room, bedroom or even kitchen. "The assessee said: "But, it has a door, sir. A living room, bedroom or kitchen is not essential. But, a door is a must. Or else, strangers, thieves and animals would troop in. As I have the most required thing for a residence, Section exemption must be given."

What happens when a house is considered small and not granted Section 54F exemption ? The Delhi Tribunal, in a recent judgement, – ITAT rightly ruled that the assessee should get Section 54F benefit.

[2023] 153 Taxmann.com 554 - ITAT

Girish Mohan v. ACIT

The assessee got an order from the Ld CIT(A), wherein it was observed:

a. The assessee has constructed a very small residential house and land size was very big. The cost of construction is very small when compare to the price of land.

b. Assessee failed to prove that the small dwelling unit was intended to be used for residential purpose.

c. Considering the status of assessee (by seeing his returned income) it is not acceptable that assessee was intending to use the dwelling unit as his residential house.

d. It has to be assumed from the marginal heading of section 54F that the intention of legislature was to extend the benefit of exemption u/s 54 only when the property purchased by the appellant was intended to be used as residential house.

e. The exemption claimed is only restricted to the land beneath under constructed portion and no deduction for vacant portion of land. The CIT(A) allowed the deduction of 54F but restricted the deduction to constructed portion.

An appeal was filed by the assessee against the order of the ld CIT(A)-1, Gurgaon, dated 23.09.2019 for AY 2016-17, in which one ground of appeal was:

That the Ld CIT (A) has erred on facts and in law in upholding the disallowance of deduction claimed u/s. 54F.

The assessee raised ground that earlier, the AO has alleged that assessee is merely possessing a piece of land without any construction thereon and hence not entitled for deduction of 54F.

The assessee pointed out to AO about the incurring of expenses on construction of house, further assessee has also pointed out the source of those expenses. However the AO very conveniently ignored the submissions of the assessee.

The submissions of the assessee on section 54F exemption, regarding the CIT's order are as under

a. The observation of the CIT(A) that the legislature wanted that the exemption should only be allowed to an assessee who intended to use the new residential house for residence purpose is legally incorrect in as much no such requirement is mentioned in section 54F The marginal notes of section 54F and provisions of section 54F nowhere suggest that investment should be in such residential house where assessee intends to reside. This issue has been examined by the various benches of the ITAT, in the following decisions:-

(I) Mahavir Parsad Gupta v. Jt. CIT

(ii) ACIT v. Omprakash Goyal [IT Appeal No. 647 (Jp) of 2011, dated 2-2-2012]

(iii) DCIT v. Kanwal Mohan Singh Sehgal [IT Appeal No.500 (D) of 2019, dated 25-8-2022]

The next observation of the CIT(A) that the size of the constructed portion is very small and the exemptions benefits cannot be extended to the land appurtenant is also not tenable in law. Reliance can be placed on the following judgments

I. Kanwal Mohan Singh Sehgal (supra)

ii. Addl. CIT v. Narendra Mohan Uniyali

That the new investment was in fact a residential house

has been proved by assessee with following documents:

Site plan approved by Rajasthan State Govt clearly mentioned character of land is residential

A CLU (Change of Land) granted in respect of land purchased by assessee from the previous owner Omprakash Chandel

Valuation report

Water and electricity bills

TRIBUNAL FINDINGS

On careful consideration of the above rival submissions, the Tribunal said: "We note that the assessee has relied on three orders of coordinate benches of the Tribunal to support his claim of deduction u/s 54F of the Act.' In the case of Mahavir Prasad Gupta (supra) it was held that mere non-residential use would not render a property ineligible for benefit of section 54F of the Act, if it is otherwise a residential house, and the assessee if found to have constructed a residential house, whatever might be the use it had been put to, the assessee can be said to have fulfilled the conditions envisaged u/s 54F of Act.

Further, the assessee has also relied on Om Prakash Goyal (supra) case wherein it was held that when the land is purchased and building constructed thereon, it is not necessary that such construction should be on the entire plot of land.

Furthermore, the ld AR also placed reliance on the case of Kanwal Mohan Singh (supra) ITAT, Delhi Bench wherein it was held that the disallowance of deduction u/s 54F of the Act is not valid on the solitary ground that residential house is constructed on agricultural land.

Ld counsel placing reliance on the order of coordinate bench of the Tribunal [Mahavir Prasad Gupta (supra)] submitted that even non residential use of residential house would not render a property ineligible for benefit/ deduction u/s 54F of the Act. The Delhi Tribunal said it was in agreement with the said contention of ld counsel of assessee.

The ld CIT(A) also observed that the size of constructed portion is very small and the exemption benefit cannot be extended to the land appurtenant is not tenable in law. In the case of Kanwal Mohan Singh (supra) the Tribunal has relied on the order of ITAT Jaipur in the case of Shyam Sunder Makhija v. ITO wherein, it was held that the farmhouse is also a residential house and section 54F does not put any rider with direction in respect that investment in acquisition of land appurtenant to the building will not qualify.

The Tribunal noted that the site plan approved by the competent authority clearly reveals that the character of land has been mentioned as residential. The change of land (CLU) use order/ permission in respect of land purchased by the assessee from the previous owner Sh. Om Prakash reveals that the competent authority has authorized change of land use to the assessee pertaining to the land constructed by the assessee. Valuation report submitted by the assessee reveals that the valuer in his report has mentioned the property is residential. The valuer has also considered the fact that there is a water and electricity connection as per bills submitted by assessee. The valuer estimated the life of constructed house as 65 years and mentioned that walls are brick load bearing walls type, brick stepped foundation are used, there is superstructure above ground floor, brick is made of cement mortar, marble flooring is done and finishing has been done with cement plaster. These details supports contentions by the assessee that the house was not a simple dwelling house but built with strong building material which provide a long life to the structure of building/ house.

In the light of the above factual position, the Tribunal held, "we find ourselves agree with the contention of the ld counsel of the assessee based on the order of ITAT Jaipur Bench in the case of Om Prakash Goyal (supra) wherein, the Tribunal under similar facts and circumstances held that since all the conditions claiming exemption u/s 54F of the Act have been satisfied, therefore, it will futile exercise if the matter is sent back to the file of the AO particularly when all the details are placed on record from which it is established that assessee purchased the plot of land and has constructed residential unit/ house for his use." The tribunal also held that the house constructed on agricultural land or on other land does not matter, but the fact matters that the residential house is constructed. The valuation report and other documentary evidence including change of land use (CLU) certificate issued by the Haryana Govt authorities and the certificate issued by Sarpanch of Village Biranwas, Tehsil Kotkasim Distt. Alwar, Rajasthan clearly reveal that the assessee has constructed residential buildings comprising of two rooms, kitchen, toilet having electricity and water connection and a borewell with a septic tank, which was being used as residential unit. Therefore, the Tribunal added, "we are unable to agree with the basis taken by the ld CIT(A) that in proportion to the size of plot/ land the constructed portion is very small and thus, the exemption benefit u/s 54F of the Act cannot be extended to the cost of land appurtenant to the house."

Therefore, on the basis of foregoing discussion the Tribunal said: "We reach to a legal conclusion that the

assessee, for claiming deduction u/s 54F of the Act, has submitted sufficient and all possible documentary evidence under his command, before authorities below to show that the assessee purchased land, constructed a residential unit consisting of two rooms, kitchen and bathroom with electricity and water facility supported by connection of borewell and septic tank built therein. The change of land use certificate reveals that the assessee obtained permission from the competent authority before using agricultural land for the purpose of construction of residential house on entire 1.26 hectare of land. Therefore, the Tribunal held it was inclined to hold that the authorities below have erred in dismissing the claim of the assessee for deduction u/s 54F of the Act and hence, the AO is directed to allow the same to the assessee.

SIZEABLE !

A man said to friend: "I got a small house constructed and now, the income tax department is refusing to give Section 54 benefit."

The friend asked: "Why did you build a small house?"

The man said: "We have many relatives. So, if I build a sizeable house, they will all keep scampering in." !!!

The Delhi Tribunal's judgement is a welcome move. Many assesses face hardships as house constructed is held to be defective and Section 54F exemption is denied. Nothing can be more agonizing. It is hoped that Section 54F is not snatched away on such frivolous grounds, any more.

SECTION 54F & SMALL EXCUSES

In an interesting case [ACIT v. Pareshkumar Ramanlal Jani [IT Appeal No. 3022 & CO No. 308/Ahd/2014, dated 10-10-2017], the judge observed: "What has weighed in the mind of the Assessing Officer is that 'there is no kitchen and due to shrubs it is not fit for residence.' In my opinion a kitchen need not be in a separate room to be called as a residential house. Shrubs on the plot will not disentitle a person to reside in the house once such shrubs are removed."

In present Girish Mohan case, the first amazing thing was that though a house of two rooms, kitchen and bathroom existed it was held to be non-existent ! Next, it was considered too small, for getting Section 54F exemption. Not content, it was said that land appurtenant was too big and the house too small.

Let us recapitulate, what was said in Amit Gupta v. Dy. CIT case, where it has been explained, succintly:

"The requirement of section 54F is that the property should be a residential house. The expression 'residential house' has not been defined in the Act. The popular meaning of the word is a place or building used for habitation of people. It is used in contradistinction to a place which is used for the purpose of business, office, shop, etc. It is not necessary that a person should reside in the house to call it a residential house. If it is capable of being used for the purpose of residence, then the requirement of section 54F is satisfied. The fact that the asressee did not actually use the same for his residence would not disentitle him to the claim of exemption under section 54F."

There are a lot of reasons, why Section 54F exemption can be given to an assessee:

Section 54 lays a lot of emphasis on regular house, but Section 54F does not.

The word 'residential house' is nowhere defined under Income-tax Act.

The Board circular No. 667 dtd. 18.10.1993 specifies that in cases where the residential house is constructed within the specified period, the cost of such residential house can be taken to include the cost of plot also.

Long-term capital gains are specified for house construction under Section 54, but net sales consideration is to be spent on house under Section 54F, which is more exacting for the hapless assessee. Hence, a liberal approach is essential in Section 54F, than in Section 54.

SMALL HOUSE CASES

In one case, the Karnataka High Court in CIT v. M A Patel [IT Apeal No.380 of 2012] had to decide whether a small house qualifies for Section 54F exemption. The AO had stated the house was too small to exist on half acre of land and therefore, declined to grant exemption. The Tribunal favoured assessee, but Department disagreed. The High Court ruled in favour of assessee.

But, in Rita Gaur v. Dy. CIT Lucknow case it was held: "The very intention of the Legislature is that benefit can be extended only when assessee is able to prove on record that he has constructed a residential house." The mere construction of boundary wall, installation of tube-well and construction of one room would not be taken as construction of residential building and benefit under section 54F of the Act was not given to the assessee.

Surprisingly, in one instance, the income tax department was quite liberal. In ITO v. Somchand Kanji [IT Appeal No.1717 (Bang.) of 2016] there was a constructed shed of 100 Sq.ft. with ACC sheet roofing

and walls of brick and mortar and cement flooring and the assessee's employee had been staying to look after the property. The Department held that the fact that civic amenities were not available in the building constructed cannot be the basis to hold that the property in question is not a residential house. It was capable of being used as a residential house de hors these facilities. These facilities could come in due course and make the property more habitable. The section does not lay down any standards of habitation like existence of civic amenities etc.

Since there was a person already living in the structure, it can be said that it was in a habitable condition even though basic amenities such as electricity and water supply were not there. The Khata issued by the Bangalore Municipality mentions the description of the property as residential property and determined annual value at Rs.780/-.

The court held that if it is capable of being used for the purpose of residence then the requirement of section is satisfied

DOES LAND APPURTENANT GET SECTION 54 RELIEF

A comical situation arose in Girish Mohan case, when it was pointed out that only land on which building was built should get Section 54F benefit, not other land appurtenant at the spot ! This was a too hyper-technical argument.

It was also said that land appurtenant is too large and house is small in comparison.

Thankfully, in Addl. CIT v. Narendra Mohan Uniyal case, it was held that the comments of the AO to the effect that exemption u/s 54F is eligible only for construction of house is not tenable insofar as even cost of land forming part of the residential unit on which no construction is done is also eligible for exemption u/s 54F. Thus, the cost of vacant land appurtenant to and forming part of the residential unit is to be considered for claim of exemption u/s 54F even if no construction has been done on the appurtenant land.

In C. Aryama Sundaram v. CIT [2018] 97 taxmann.com 74/258 Taxman 10/4107 ITR 1 (Mad.) also the ruling was that It is the cost of the new residential house and not just the cost of construction of the new residential house, which is to be adjusted. The cost of the new residential house would necessarily include the cost of the land, the cost of materials used in the construction, the cost of labour and any other cost relatable to the acquisition and/or construction of the residential house.

A SMALL HOUSE ON AGRICULTURAL LAND ?

Another query raised in Girish Mohan case was that the house was built on agricultural land. Hence, no Section 54F exemption should be allowed. The question has been clarified in Kanwal Mohan Singh Sehgal (supra) case where it was ruled that there is no restriction or legal bar, for the claim of exemption, to make the investment in a residential house on the agricultural land.

Silly questions like why a wealthy person with many cars was using the small house need to be struck down, as in Somchand Kanji (supra) case.

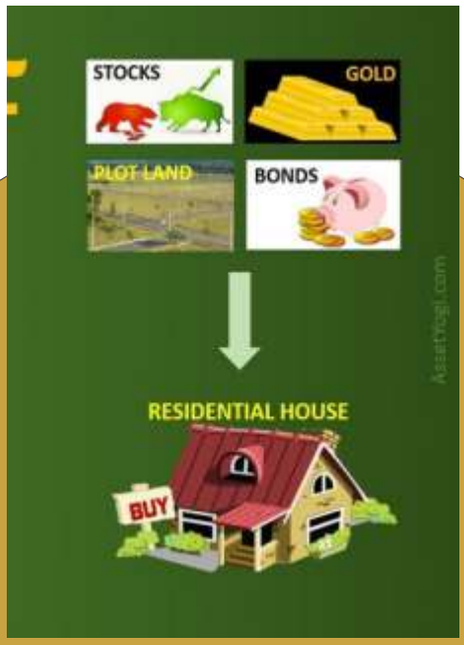
SUMMING UP

Once, a person was asked by ITO, why he built a small house and still claimed Section 54F exemption. He said: "The land appurtenant to my house contains shed, where my cattle stay, a kennel where my dogs lounge, a pool for my swimming strokes and a makeshift unit, where my watchman guards. So, the whole house is quite big."

The law does not require the residential house to be of particular size or shape or specifications and the size of open vast land is also not relevant.

In R. Satish Kumar Reddy v. ACIT [IT Appeal No. 1681 (Hyd.) of 2011, dated 18-10-2021] when the Assessing Officer said that the 8 ft x 8 ft structure could not be considered as a building / residential house, the AR reminded that a residential house can mean a 'a house or hut or super-structure, which is fit for human habitation.'

Here's a light tale about what ghosts think about Section 54F and small houses.



An Analysis of Section 115BBE of the Income Tax Act,1961.

An Analyn Any income received by an assessee in the previous year, for which the source is known and accounted, is subject to income tax under the particular head under which that source of income falls. Issues arises when the source of income is unknown or hidden from the revenue. In order to charge income tax on such unaccounted income, the parliament introduced Section 115BBE in the Income Tax Act, 1961 through the Finance Act of 2012.

History

The provisions of Sec.115BBE was held to be applicable from the assessment year 2013-2014. This section is contained in Chapter XII of the Income Tax Act,1961. The title of the section is "Tax on income referred to in section Sections 68, 69, 69A, 69B, 69C or 69D" – the specified sections. Any income falling under the above said section shall be subject to tax at a flat rate of 30%. This section has been amended by the Taxation Laws(Second Amendment) Act, 2016 with effect from 01.04.2017 applicable from assessment year 2017-18 onwards. This amendment has increased the rate of tax from 30% to 60%.

The rationale for introducing this section is to curb the practice of laundering of unaccounted money by taking advantage of basic exemption limit. The Government wanted to strike at the root of "capital build up cases" and wanted to tax such undisclosed income at a higher rate.

Post demonetisation, there were views that source of the cash that is deposited could be attributed to the specified sections voluntarily and tax could be paid on such income at the rate of 30% as per the pre amended section 115BBE and escape the rigours of penalty. (It is debatable whether the assessee could voluntarily attribute the income under the specified sections, as the specified sections falls under Chapter VI – Aggregation of Income and set off or carry forward of loss.) However, on 15.12.2016, this section was amended with effect from 01.04.2017 and the rate of tax was increased to 60%

The section does not forbid the assessee from voluntarily introducing an income from any source in the book of accounts. It only aims to charge them at higher rate.

Features of section 115BBE

After the 2016 amendment, section 115BBE has the following broad features:

1. The amendment of 2016 is prospective in nature i.e. it is applicable only from assessment year 2017-18 and onwards.
2. It deals only with the deemed income specified under section 68 to section 69D and is applicable to all the persons.
3. Income can be said to be "voluntarily included" only in case of returns filed under section 139, including 139(4) and 139(5). However, for revising the return u/s.139(5), the assessee should "discover" an omission or wrong statement in the original return of income.
4. Whether a return filed in response to a notice u/s.148 is voluntary? Return filed in response to a notice u/s.148 would be treated as though the return is filed u/s.139. But such a return cannot be termed as "voluntary" and therefore penalty can be levied at a higher rate.
5. While calculating the taxable income and tax u/s 115BBE, no basic exemption limit or deduction of any expenditure or allowance is permitted. But deduction under Chapter VI-A is not barred. Similarly set off or

carry forward of the losses is not permitted.

6. The assessee must also pay surcharge and cess irrespective of the quantum of income under the section.

Some issues in section 115BBE

The provisions of the section is said to be applicable with effect from the assessment year 2017-18. The amendment was introduced in the middle of the previous year 2016-17 on 15.12.2016. But the provisions were said to be made effective retrospectively right from 1.4.2016. Thus, even those transactions that took place before the law was in existence would be covered.

It was argued that the legislators had taken such a step to prevent the assessees who deposited cash in bank after demonetization from escaping the tax burden of 60%. Nonetheless this still appears to be a case of colourable legislation. The Supreme Court in CIT v. Vatika Township has held that legislation which modify accrued rights or which impose obligations or impose new duties or attach new disability have to be treated as prospective unless the legislative intent is clearly to give enactment a retrospective effect.

Section 68 deals with unexplained cash credit like loans, deposits etc. A question arises whether it will also apply to income which is already being taxed under any of the five heads of income. Especially in cases where the Assessing Officer rejects the explanation offered by the assessee in respect of the income falling under the five heads, it is questionable whether section 115BBE of the Act can be invoked. Keeping in view the objective of introducing section 115BBE, which was only to curb the practice of laundering of unaccounted money, it may be argued that section 115BBE of the Act is only a machinery provision to levy tax on income and it should not enlarge the ambit of section 68 of the Act to create a deeming fiction to tax any sum already credited / offered as income.It is important to note that the assessee may not always be in a position to explain the source of an income with clinching evidence. Therefore, any income which is already offered under any of the heads of income should not be brought under the purview of the specified sections.

If an assessee shows her income from embroidery works as income from "other sources" and such income is invested by her in another asset, it is possible that an Assessing Officer after rejecting the head of the income and bringing such income u/s.68, could also consider such investment as unexplained investment and make her liable u/s.69 also. For avoiding double jeopardy, it is necessary to argue that where any amount is declared by the assessee as income from other sources, there need not be any addition u/s.69 to the extent of such income utilised for the investment.

Search cases and section 115BBE -

As the return furnished u/s.153A is regarded as a return u/s.139, is it possible for the assessee to say that such a return is furnished voluntarily? If incriminating materials are seized during the course of search, such a return declaring income under specified sections cannot be treated as voluntary.

"set off of losses" – whether the amendment is prospective or retrospective? It was held by Tribunals that the amendment is prospective in nature even though the amendment states that it is clarificatory in nature.

Anomaly in the section rectified – clause 'a' of sub-section 1 is about voluntary inclusion of income from specified sections by the assessee. Clause 'b' is about the income from specified section being determined by the Assessing Officer. Sub section 2, prior to amendment read that the bar against deduction of any expenditure or set off of any losses was applicable only to the cases covered by clause 'a'. This led to an interpretation that in cases where the Assessing Officer determines the income as per clause 'b', the assessee can claim deduction of expenditure or set off of any losses. This anomaly was rectified by the amendment made in 2018, wherein now, the bar against claim of deduction of expenditure or set off of any losses would be applicable whether the income is declared by the assessee himself or determined by the Assessing Officer, in both the cases.

Penalty under 271AAC Section

271AAC provides for levy of penalty when the Assessing Officer determines during assessment or reassessment, any undisclosed deemed income referred to in specified sections. This penalty is applicable in addition to the tax payable u/s.115BBE. However, no penalty can be levied if the assesse voluntarily discloses the income under specified sections in his return filed u/s.139 and also pays tax on the said income on or before the end of the relevant previous year. For this purpose the assessment year of 2017-18 would be computed as the first assessment year.

The rate of penalty is levied at 10% of the tax on the income under specified sections determined by the Assessing Officer which is currently fixed at 60%. So it is 10% of the 60% tax payable under section 115BBE i.e., penalty is 6% of the tax. The penalty levied under section 271AAC exclude the penalty under 270A in respect of the income falling under specified sections.

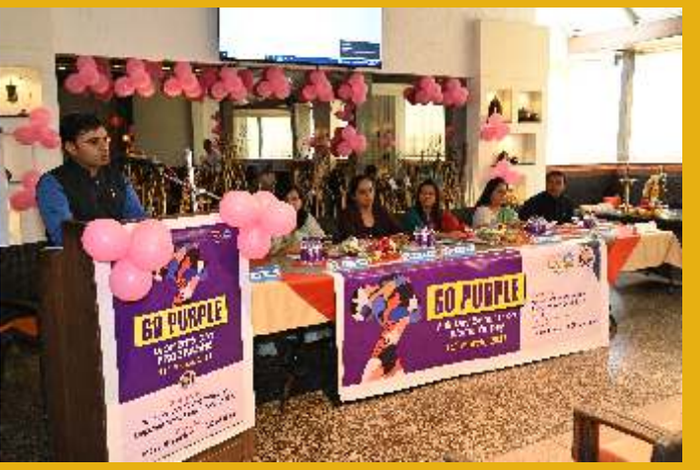
Smart Tax Planning:

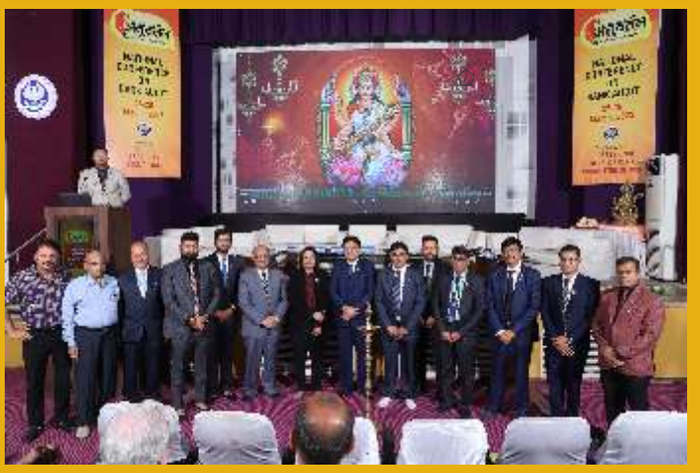
Tax planning is a technique using which one minimizes the tax outgo by maximizing all the legal avenues given in the Income tax Act. Tax laws requires that the employer deducts tax while paying the salary and remits to the Government as Tax Deducted at Source (TDS). The employees are required to furnish the investment proofs, expenditure proofs to their employers during the month of December every year. The employers, in turn, use these proofs to compute the tax liability of the employee and arrive at the TDS to be deducted in the remaining months of the financial year. If you are in the process of arranging the investment proofs and find that you are short of some investments to maximize your tax outgo. You invariably resort to making investments like LIP, Medical insurance, ELSS investments on short notice. Let us see why you shouldn't rush and invest in these just for the sake of saving taxes..

1. Life insurance policy: When you rush, you tend to invest in a life insurance policy without assessing the basic things like required insurance cover, type of policy, understating the product etc. You end up saving taxes on the basis of the premium paid, no doubt. But, the cost of investing in a wrong insurance product for years together will fairly exceed the so – called tax benefits. It pays you well in short term by way of tax benefits, but pays your agent even better.

2. Medical insurance policy: Though this investment is not so popular tax saving option like a life insurance policy, there is a growing trend where employees invest in a medical insurance (Mediclaim) product to avail both the tax benefit and the medical cover. Like in life insurance policies, when you rush and invest in a Mediclaim policy, there is a high possibility that you do so without assessing the risk cover, understanding the product, researching the market etc.

3. ELSS investments: Equity linked savings scheme (ELSS) is one of the best products available to help you invest and at the same time, help you avail the tax benefits. ELSS are schemes run by mutual fund companies where your investment will be invested in the equity market through the scheme and will be locked for 3 years. There are hundreds of ELSS schemes available in our





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