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SERVICE TAX

IMPACT OF SERVICE TAX ON CAB ARRANGEMENTS IN A HOTEL/RESTAURANT

Contributed by Venkata Krishna Rao B & Vetted by CA Sri Harsha |

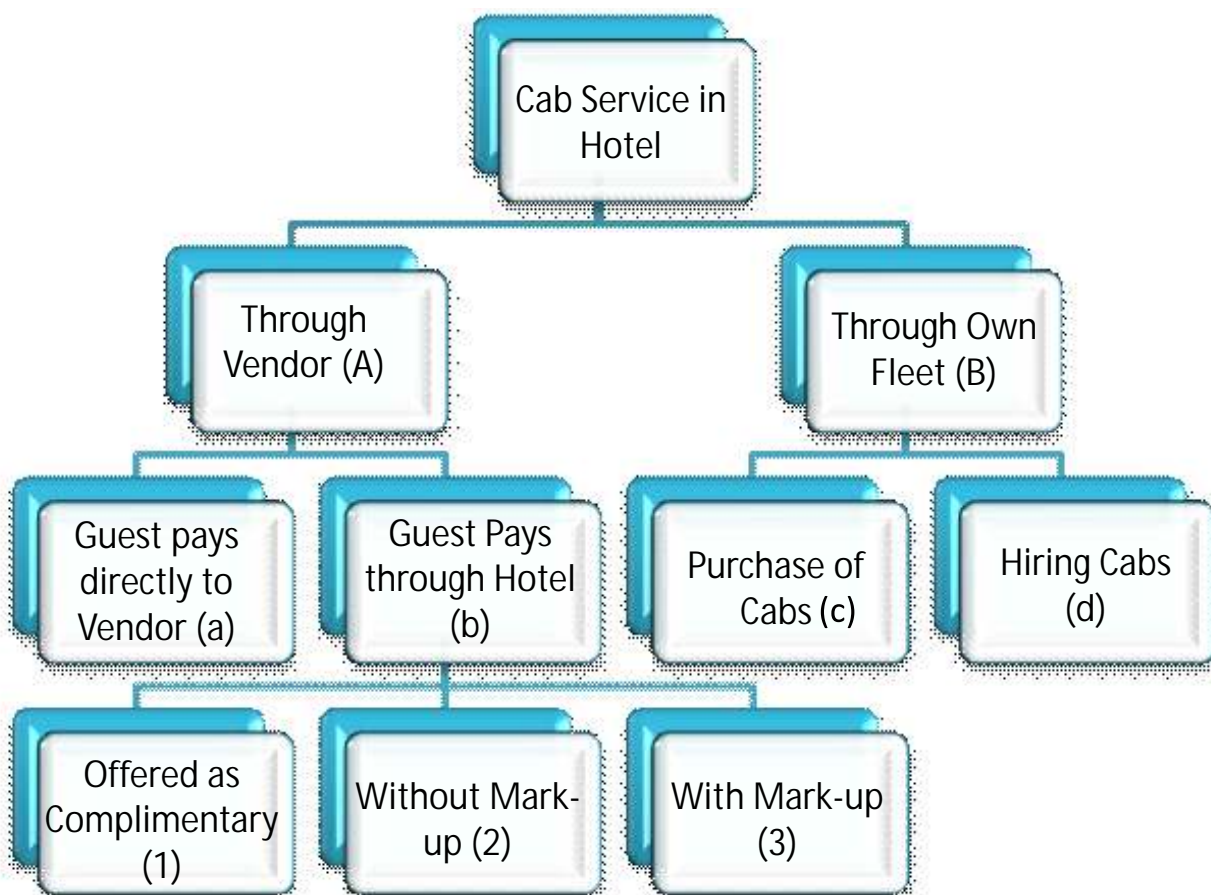
In India, the Hotel & Restaurant Approval & Classification Committee (HRACC), a division under Ministry of Tourism is entrusted with the activity of classification of the Hotels into either Star Category Hotels (5 Star Deluxe, 5 Star, 4 Star, 3 Star, 2 Star & 1 Star) or Heritage Category Hotels (Heritage Grand, Heritage Classic & Heritage Basic) by inspecting & assessing the hotels based on the facilities and services offered.

As per 'Guidelines for Classification of Hotels' issued by Ministry of Tourism (Hotel & Restaurant Division), 'Paid Transportation on call' is compulsory in hotels of 3 Star & above and Heritage Hotels. However, in order to provide the customer a greater luxury and to stay ahead in the competition, even hotels below 3 star rating are also providing transportation on call that is facility of making the cab available on call.

Here, in this article I would like to discuss the different options available for a Hotel to provide cab facilities to their guests and respective implications under Service Tax law.

Different options available to a Hotel for providing Cab services:

Any Star Hotel and other establishment alike Hotel business may have an option to choose one of the following ways for providing cab services to their Guests.



From the above picture, it is clearly evident the various alternatives available for the hotel for provision of cab to their guests. The hotel may appoint a vendor through which such services are provided or the hotel may maintain own fleet of vehicles either by purchasing or hiring of such cabs. Now that we have understood the various alternatives available, we shall proceed with discussion regarding the implications under service tax law.

A. Through Vendor:

In this model, the hotel/restaurant appoints a vendor who sits at the reception for facilitating the booking of cab to the customers. It may also happen in certain cases, the hotel/restaurant books the cab using the online facility of the vendor. It is important to note that the hotel/restaurant only facilitates the provision of booking the cab but does not have any ownership/possession of such cabs.

There might be two instances regarding the payment of cab charges by the guest. In some hotels/restaurants, the guest pays the cab charges directly to the vendor. In other cases, it might happen that, the hotel/restaurant recovers such cab charges through their bill and pays the same at actuals to the vendor. Now, let us see the implications under service tax under the two said instances.

a) Guest pays directly to Vendor:

In this methodology, as stated above, hotel / restaurant does not charge any amount in their billings made to the guest (i.e., just acts as a facilitator between vendor and Guest). And also, hotel/restaurant shall not charge any amount for such facilitation service between vendor and guest. The guest pays cab charges directly to the vendor.

Implications under service tax on such model:

Since there is no revenue generated by such facilitation provided by the hotel/restaurant, there shall not be any implications under service tax for the hotel/restaurant. However, if the hotel/restaurant is charging any rentals from the vendor for the space provided at the reception, the same shall be subjected to service tax under 'renting of immovable property'.

b) Guest pays through Hotel:

In this methodology, the hotel/restaurant provides the facility of on call booking and charges the guest towards the cab charges in the bill along with the accommodation services. Or it also might happen that the guest does not pay any specific amount towards cab services (in cases of complimentary services).

Implications under service tax on such model:

In such a methodology, there might be different instances which require examination under service tax laws. The hotel/restaurant might offer the facility of cab to the guest as complimentary (as a part of the package), or charge the actuals from the guest and pay the same to the vendor or pay to the vendor after deducting the commission/fee. Now, we shall proceed with the implications under service tax for the instances mentioned above.

1) Offered as Complimentary:

It is the need of the hour for the hotels/restaurants to come up with various complimentary packages to attract the guests and stay ahead in the business. So, the hotel/restaurants might offer facility of pick and drop as part of the package taken by the guest. In such cases, there shall not be any specific consideration towards the cab services. However, the hotel/restaurant ends up paying to the vendor such cab charges.

Taxability:

In such methodology, since the hotel/restaurant is providing one or more services to the guest as a bundle, the taxability of the consideration shall be decided based upon the principles of interpretation as provided in Section 66F of Finance Act, 1994. Vide sub-section (3)(a) of Section 66F, if various elements of service are naturally bundled in the ordinary course of business, it shall be treated as provision of single service which gives the bundle essential character. In the instant case, the accommodation service assumes the essential character of the bundle and accordingly the rate of service tax applicable to the accommodation service shall be applied on the entire consideration received from the guest.

Reverse/Partial Charge:

Further, the hotel/restaurant shall be subjected to service tax on the expenses paid to the vendor under the reverse/partial charge mechanism subject to the conditions specified under Notification No 30/2012-ST dated 20.06.2012.

However, it is worth noting that the hotel/restaurant can absolve from payment of service tax under reverse/partial charge mechanism, if such hotel/restaurant takes a stand that they are also engaged in the similar line of business, because of the reason that Notification No 30/2012-ST dated 20.06.2012 specifies that reverse/partial charge mechanism shall not be applicable if the service receiver and service provider are engaged in the similar line of business. However, the challenge to the hotel/restaurant would be to convince authorities that they are also engaged in similar line of business.

2) Without Mark-Up:

In this methodology, the hotel/restaurant books the cab for the guest and collects the cab charges from the guest in addition to the accommodation bill. However, the hotel/restaurant shall reimburse the same to the vendor without charging or retaining any amount. It is only to facilitate the guest a single point of payment is being provided.

Taxability:

In such a methodology, the hotel/restaurant can claim exemption from payment of service tax in the capacity of pure agent subject to the conditions specified under Rule 5(2) of Service Tax (Determination of Value) Rules, 2006. The hotel/restaurant shall collect the cab charges plus service tax from the guest and pays the same to the vendor.

Reverse/Partial Charge:

Further, since the nature of expenses is of reimbursable, there shall not be any liability on the hotel/restaurant under reverse/partial charge mechanism. However, the authorities might object such stand taken by the hotel/restaurant and demand service tax under reverse/partial charge mechanism.

3) With Mark-Up:

In this methodology, the hotel/restaurant books the cab for the guest and collects the cab charges from the guest in addition to the accommodation bill. The hotel/restaurant shall charge an additional amount apart from what is required to be paid to the vendor from the guest for provision of service.

Taxability:

In such a methodology, the taxability of the consideration shall be decided in light of Section 66F (2) of Finance Act, 1994, since the provision of cab facility cannot be said to be bundled with the accommodation service. In such a case, the hotel/restaurant shall charge service tax on the value of cab charges as under:

- a. Charge service tax on 100% of the value without availing any abatement;
 - b. Charge service tax on 40% of the value after availing the abatement
- a. Charge service tax on 100% of the value without availing any abatement:

If the hotel/restaurant decides to charge service tax without availing abatement, then they can avail the cenvat credit of excise duty paid on capital goods and inputs and service tax paid on input services without any restrictions.

- b. Charge service tax on 40% of the value after availing the abatement:

If the hotel/restaurant decides to avail abatement as per S No 9 of Notification No 26/2012-ST dated 20.06.2012, then service tax has to be charged on 40% of the value of services towards provision of cab. The value of 60% can be taken as abatement subject to a condition that credit of inputs, capital goods and input services (other than mentioned below) shall not be availed.

Credit of Input services pertaining to renting of motor vehicle:

The hotel/restaurant can avail the service tax paid on the input services of the vendor in the following manner:

- If the vendor is charging service tax on 100% value – then 40% of service tax can be taken as credit;
- If the vendor is charging service tax on 40% value – then 100% of service tax can be taken as credit.

Reverse/Partial Charge for the Hotel/Restaurant:

Further, the reverse/partial charge mechanism as mentioned vide 'Offered as Complimentary' holds good.

Reverse/Partial Charge for the Corporate Guest:

However, if the hotel/restaurant is other than body corporate and the guest is body corporate (billed to company cases), then there exists a liability under reverse/partial charge mechanism in the hands of the body corporate guest. Hence, body corporate guest is required to pay service tax on the cab charges remitted to the hotel/restaurant. In such a case, the hotel/restaurant who is other than body corporate and charges service tax on abated value need not collect service tax, since the obligation to pay service tax is on the corporate guest.

If the hotel/restaurant is other than body corporate and charges service tax on the non-abated value, then hotel/restaurant has to collect and pay 50% of the service tax and the remaining 50% shall be paid by the corporate guest.

B. Through Own Fleet:

In this model, the hotel/restaurant instead of sourcing cabs from a 3rd party, may maintain own fleet of vehicles either by purchase of motor vehicles or hiring the motor vehicles from 3rd party. Now, let us see the implications under service tax under the two said instances.

c) Purchase of Motor Vehicles:

In this model, the hotel/restaurant purchases motor vehicles for provision of cab facility to their guest. The hotel/restaurant shall obtain registration under 'rent-a-cab' service and file returns accordingly.

Taxability:

The following are the options available for the hotel/restaurant to charge service tax when they provide cab services and collects amount from their guest:

- 1) Charge service tax on 100% of the value without availing any abatement;
- 2) Charge service tax on 40% of the value after availing the abatement

1. Charge service tax on 100% of the value without availing any abatement:

If the hotel/restaurant decides to charge service tax without availing abatement, then they can avail the cenvat credit of excise duty paid on capital goods and inputs and service tax paid on input services without any restrictions.

Eligibility of Excise Duty paid on Motor Vehicles as Cenvat Credit:

The credit of excise duty paid on the purchase of motor vehicles shall be eligible as cenvat credit on capital goods, only if such motor vehicle is used for providing of output service as mentioned in the definition of 'capital goods' as per Rule 2(a) of Cenvat Credit Rules, 2004. One of the services mentioned therein is the usage for transportation of passengers. Since, in the instant case, the guest can be called as passengers, the credit of excise duty paid shall be eligible as cenvat credit under capital goods.

2. Charge service tax on 40% of the value after availing the abatement:

If the hotel/restaurant decides to avail abatement as per S No 9 of Notification No 26/2012-ST dated 20.06.2012, then service tax has to be charged on 40% of the value of services towards provision of cab. The value of 60% can be taken as abatement subject to a condition that credit of inputs, capital goods and input services shall not be availed.

Reverse/Partial Charge for the Hotel/Restaurant:

It is very important to maintain the vehicles in an efficient condition to provide timely services to the guests. Hence, it is mandatory for the hotel/restaurant to get the vehicles maintained periodically by sending the vehicles to authorised service stations.

In such a scenario, if the hotel/restaurant is a body corporate and such authorised service station is other than body corporate, then the hotel/restaurant shall be obliged to pay service tax under works contract services by virtue of partial reverse charge mechanism. The hotel/restaurant can either pay service tax to the extent of 50% on 70% of the value of the bill of authorised service station or pay 50% on the labour portion of the bill of authorised service station.

Reverse/Partial Charge for the Corporate Guest:

However, if the hotel/restaurant is other than body corporate and the guest is body corporate (billed to company cases), then there exists a liability under reverse/partial charge mechanism in the hands of the body corporate guest. Hence, body corporate guest is required to pay service tax on the cab charges remitted to the hotel/restaurant. In such a case, the hotel/restaurant who is other than body corporate and charges service tax on abated value need not collect service tax, since the obligation to pay service tax is on the corporate guest.

If the hotel/restaurant is other than body corporate and charges service tax on the non-abated value, then hotel/restaurant has to collect and pay 50% of the service tax and the remaining 50% shall be paid by the corporate guest.

d) Hiring of Motor Vehicles:

Under this model, the hotel/restaurant instead of purchasing the motor vehicles, opt for hiring of the same from 3rd party. The vendor shall leave the car at the disposal of the hotel/restaurant and collects periodical rentals from the later.

Taxability:

The following are the options available for the hotel/restaurant to charge service tax when they provide cab services and collect amount from their guest:

- 3) Charge service tax on 100% of the value without availing any abatement;
 - 4) Charge service tax on 40% of the value after availing the abatement
- a. Charge service tax on 100% of the value without availing any abatement:

If the hotel/restaurant decides to charge service tax without availing abatement, then they can avail the credit of excise duty paid on capital goods and inputs and service tax paid on input services without any restrictions.

- b. Charge service tax on 40% of the value after availing the abatement:

If the hotel/restaurant decides to avail abatement as per S No 9 of Notification No 26/2012-ST dated 20.06.2012, then service tax has to be charged on 40% of the value of services towards provision of cab. The value of 60% can be taken as abatement subject to a condition that credit of inputs, capital goods and input services (other than mentioned below) shall not be availed.

Credit of Input services pertaining to renting of motor vehicle:

The hotel/restaurant can avail the service tax paid on the input services of the vendor in the following manner:

- If the vendor is charging service tax on 100% value – then 40% of service tax can be taken as credit;
- If the vendor is charging service tax on 40% value – then 100% of service tax can be taken as credit.

Recent Amendment in Finance Bill, 2016 vide Notification No 8/2016-ST dated 01.03.16:

It so happens that the vendor shall provide the motor vehicle on hire to the hotel/restaurants and collect the rentals from the later. The cost pertaining to the fuel and other services might not get added to the consideration (because they will be on the account of hotel/restaurant), but the vendor might charge service tax on 40% of the value of rentals as per S No 9 of Notification No 26/2012-ST dated 20.06.2012.

In order to curb such practices, an explanation is inserted to include the fair market value of all goods (including fuel) and services provided by service recipient in the gross amount charged in order to claim abatement of 60% of the value.

This article is contributed by Venkata Krishna Rao B, Intern of SBS and Company LLP. The author can be reached at venkatakrishnab@sbsandco.com

PROJECT FINANCE

TYPES OF BANK FINANCE IN INDIA

Contributed by Jhansi D & Vetted by CA Rajesh |

➤ Cash Credit:

Banks require that a security be offered up as collateral on the account in exchange for cash. This security can be a tangible asset, such as stock in hand, raw materials or some other commodity. The credit limit extended on the cash credit account is normally a percentage of the value of the security offered. Interest is charged not on the sanctioned amount but on the utilized amount.

➤ Corporate Term Loan:

A loan from a bank for a specific amount that has a specified repayment schedule and a floating interest rate. Term loans almost always mature between one and 10 years.

Banks tend to classify into two:

- Intermediaries
- Long terms

- Intermediate-term loans usually run less than three years, and are generally repaid in monthly instalments from a business's cash flow.

- Long-term loans can run for as long as 10 or 20 years and include additional requirements such as collateral and limits on the amount of additional financial commitments the business may take on.

This helps the company in funding

- Ongoing business expansion,
- Repaying high cost debt,
- Technology up gradation,
- R&D expenditure
- Implementing early Retirement Scheme
- Supplementing working capital

The Corporate term loan has also structured under FCNR(B) scheme as well, with the option of switching the currency denomination at the end of the interest periods.

Advantages:

- Of global interest rates trends vis-à-vis domestic rates to minimize the debt cost.
- May carry fixed/floating rates

➤ Trade Finance:

Trade finance signifies financing for trade, and it concerns both domestic and international trade transactions. A trade transaction requires a seller of goods and services as well as a buyer. Various intermediaries such as banks or financial institutions can facilitate these transactions by financing the trade.

Facilities provided by Bank:

- Intermediaries – banks can act as intermediaries for documents & funds flow in international transactions as transfer through banks is more secure.
- Pre-shipment loans – this is working capital for purchasing raw materials, processing & packaging of export commodities. Most common form is packing credit where the exporter gets concessional interest rates.
- Post-shipment loans – these loans help exporters bridge their funding requirements when they export on deferred payment basis i.e. credit.

Examples:

- o Bill Discounting
- o Forfaiting
- o Factoring
- o Bill discounting & factoring can also happen for domestic transactions.
- o Bank has recourse to the seller since in case of non-payment by the buyer after credit period expiration; the seller must compensate the bank.
- o Bill discounting is always with recourse.
- o In factoring, a bank can discount bills with/without recourse & even with partial recourse. This is called Assignment of Receivables.
- International trade payment mechanisms:
 - o Letter of credit
 - o Cash in advance – buyer pays seller before shipment of goods.
 - o Open account or credit – this means that payment is made on an agreed upon future date. This is very risky for a seller unless he has very strong relationship with the buyer or the buyer has excellent credit rating. There are no guarantees & collecting payment often becomes a tedious affair.
 - o Cash Management Services (CMS) – It has no credit risk for the bank. It is a pure administrative service for the corporate. The client maintains only one account with the bank. Cash management encompasses receivables management, payables management & liquidity management. Banks are using better technologies for cash management by connecting to ERP systems.

➤ Letter of Credit:

A letter of credit is also called Documentary Credit (DC). The bank lends its guarantee of payment to the buyer. The bank also guarantees payment to the seller provided he ships the goods & complies with the terms of agreement. Here seller takes credit risk on the bank instead of buyer.

Types of Letter of Credit:

➤ First stage-

- o Recoverable letter of credit
- o Standby Letter of credit
- o Irrecoverable letter of credit

➤ Second stage-

- o Confirmed letter of credit
- o Unconfirmed letter of credit
- o Back-to-Back letter of credit
- o Clean letter of credit

➤ Structured Finance:

The Financing techniques tailored to special needs or constraints of issuers or investors & Solving problems that are not easily solved by conventional financing techniques.

It is a sector of finance to transfer risk by using complex legal and corporate entities.

The essence of structured finance activities is the pooling of economic assets (e.g. loans, bonds, mortgages) and subsequent issuance of a prioritized capital structure of claims, known as tranches, against these collateral pools.

Examples:

- Project Appraisals
- Underwriting/Syndication of corporate loans & project loans
- Secondary purchase and sale of loan products
- Mergers
- Hedging of currency & interest rate exposures

This article is contributed by Jhansi D, Intern of SBS and Company LLP. The author can be reached at jhansid@sbsandco.com

INCOME TAX

HRA & 80GG UNDER INCOME TAX ACT, 1961

Contributed by Md Sameer Hussain & Vetted by CA Ramprasad |

- 1) Meaning: It is an allowance provided by the employer to his employee as a part of salary to meet the cost of rented house taken by the employee for his stay.
- 2) Governing section: Sec 10(13A) of the Income tax act, 1961.
- 3) Taxability provisions:
 - a) Conditions:
 - i) HRA exemption can be claimed only if employee stays in a rented house and pays rent for the house.
 - ii) The rented premises must not be owned by him otherwise the whole amount which he has received as HRA will be fully taxable.
 - iii) The deduction will be available only for the period during which the rented house is occupied by the employee and not for any period after that.
 - b) Taxability: The amount of exemption of HRA is to be considered minimum of the following three.
 - i) Actual HRA received from Employer
 - ii) Rent paid (minus) 10% of salary*
 - iii) 50% of salary* if employee lives in metro city** or 40% salary if employee lives in non-metro city

Here,

* Salary means (Basic Pay + DA + Fixed percentage of commission on turnover).

**Metropolitan cities are Mumbai, Delhi, Chennai, and Calcutta.

- 4) Other points:
 - a) Exemption is available even if the house is owned by close relative (Wife or husband or father or mother) and for which rent is paid by employee through bank transfer.
 - b) To avail exemption there is no requirement that the employee should not own a house.
- 5) Examples:
 - a) X resides in Mumbai and he gets Rs.7,00,000 as basic salary. He receives Rs. 2,00,000 as HRA. Rent paid by him is Rs. 1,50,000. Then HRA exemption will be calculated as follows.
Solution: As per the above formula minimum of 3 is the amount of exemption. so,
 - (i) Actual HRA received = 2,00,000
 - (ii) Rent paid minus 10% of salary = 1,50,000 - 70,000 = 80,000
 - (iii) 50% of salary = 7,00,000 * 50% = 3,50,000
 Minimum of the above is 80,000.
So taxable HRA = Actual HRA received – Exemption = 2,00,000 - 80,000 = 1,20,000.

b) Suppose in the above problem rent paid is 80,000 and basic salary is 10,00,000 then

(i) Actual HRA received = 2,00,000

(ii) Rent paid (minus) 10% of salary = $80,000 - 1,00,000 = (20,000)$

(iii) 50% of salary = $10,00,000 * 50\% = 5,00,000$

Minimum of the above is (20,000) by which it can be understood that no HRA exemption is available.

The entire amount received as HRA from employer is taxable.

Deduction in respect of Rent paid, If HRA is not received (U/S 80GG)

1) Chargeability: Sec 80GG of the Income tax act, 1961.

2) Applicability: Individuals & HUF

3) Conditions: Upon satisfaction of the following conditions an assessee is allowed deduction under Sec 80GG.

- a) Assessee shall be self-employed and/or a salaried person who is not in receipt of HRA at any time during the previous year.
- b) He or his spouse or minor child or HUF of which he is member should not own any residential accommodation at the place where he ordinarily resides or performs duties of his office or employment or carries on his business or profession or
- c) Owned by the assessee at any other place, but the value of which is not determined under sec 23(2)(a) or Sec 23(4)(a) as the case may be [i.e. Annual Value as Nil].

If all the above conditions were satisfied the employee should give declaration in form 10BA to claim deduction u/s 80GG

4) Amount of deduction: The lower of the 3 is the amount eligible for deduction under Sec 80GG.

- a) Rent paid (minus) 10 percent of Adjusted total income
- b) 2000 per month (Limit has been increased to Rs 5000/- per month from AY 2017-18 as per proposed Budget 2016)
- c) 25 percent of the Adjusted total income

i) "Adjusted Total income" Means

Gross total Income (minus) Long term capital Gain (minus) Short term Capital Gain u/s 111A (minus) Deductions u/s 80C to 80U (Except 80GG) (minus) any Foreign Income u/s 115A or 115D.

- Sec 111A: If an assessee has a short term capital gain arising from transfer of equity shares of a company or unit of an equity oriented fund and such transaction had occurred on or after the date on which Chapter VII of the Finance Act, 2004 comes into force and such transaction is chargeable to Securities transaction tax under that chapter then the amount of Income tax calculated on Short term capital gain is 15 Percent.

- Sec 115D: This section says that in case of assessee being Non-resident Indian, no deductions of chapter VI-A should be allowed if his gross total income consist of only income from investment or income from long term capital gains or both.

This section also says that if Gross total income includes any income referred above then the gross total income shall be reduced by the amount of such income and deductions under chapter VI-A are allowed as if the gross total income so reduced were the gross total income of the assessee.

Examples:

- d) Let Mr X is a salaried employee of PQR Ltd in Hyderabad having income from salary as 8,00,000 (HRA is not provided by the employer). He pays Rs 10,000 as rent per month. He also had a Long term capital gain of Rs 2,00,000. Deduction under section 80C is 1,00,000. He owns a residential house in Vizag which is being let out. Can Mr X claim deduction under Sec 80GG?

Solution: Mr X is a salaried employee and he does not own any residential accommodation in place of his employment but he owns at other place i.e. Vizag which is being let-out so Mr X can claim deduction under 80GG.

Amount of deduction as per above provisions is calculated as follows:

Gross total income = 8,00,000 + 2,00,000 = 10,00,000.

i) $1,20,000 - (10,00,000 - 2,00,000 - 1,00,000) * 10\% = 50,000$

ii) $2000 * 12 = 24,000$

iii) $7,00,000 * 25\% = 1,75,000$

Lower of the above three is 24,000. So amount of deduction under Sec 80GG is 24,000.

- e) Suppose in the example (a) if Mr X does not Let out the property at Vizag and showing GAV of his house as Nil?

Solution: Mr X cannot claim exemption under sec 80GG since he shows his GAV at Nil i.e. the house is shown as self occupied property.

- f) Suppose in the example (a) HRA is provided by the employer to Mr X then?

Solution: Mr X cannot claim deduction under Sec 80GG since he is receiving HRA from the employer.

Let Mr X is a salaried employee who had worked for PQR Ltd in Hyderabad for 11 months having income from salary as 8,00,000 (HRA is not provided by the employer) and remaining months for XYZ Ltd for a salary of 20,000 per month (Including HRA). He pays Rs 10,000 as rent per month. He also had a Long term capital gain of Rs 2,00,000. Deduction under section 80C is 1,00,000. He owns a residential house in Vizag which is being let out. Can Mr X claim deduction under Sec 80GG?

Solution: Mr X cannot claim deduction under Sec 80GG since he received HRA for the previous year from the 2nd Employer.

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Hyderabad: 6-3-900/6-9, #103 & 104, Veeru Castle, Durganagar Colony, Panjagutta, Hyderabad, Telangana

Kurnool: No. 302, 3rd Floor, V V Complex, 40/838, R.S. Road, Near SBI Main Branch, Kurnool, Andhra Pradesh

Nellore: 16-6-259, 1st Floor, Near Santi Sweets Opp: SBI ATM, Vijayamahal Centre, SPSR Nellore, Andhra Pradesh

Tada: 8-3-425/2, Flat No. 202, 2nd Floor, Bigsun Avenue, Near SRICITY, TADA, SPSR Nellore Dist, Andhra Pradesh

Visakhapatnam: # 39-20-40/6, Flat No.7, Sai Yasoda Apartments, Madhavadhara, Visakhapatnam (Urban), Vizag, Andhra Pradesh

Bengaluru: B104, RIRCO, Santosh Apartments, Wind Tunnel Road, Murugeshpalya, Old Airport Road, Bangalore – 560017, Karnataka.

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