

Kerala Gazette No. 41 dated 16th October 2018.

PART I

Section i



GOVERNMENT OF KERALA

Law (Legislation-Publication) Department

NOTIFICATION

No. 21912/Leg.Pbn.2/2017/Law.

Dated, Thiruvananthapuram 26th October, 2017.

The following Act of Parliament published in the Gazette of India, Extraordinary, Part II, Section I dated the 15th day of December, 2016 is hereby republished for general information. The Bill as passed by the Houses of Parliament received the assent of the President of India on the 15th day of December, 2016.

By order of the Governor,

B. G. HARINDRANATH,
Law Secretary .

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, Thursday, 15th December, 2016/Agrahayana 24, 1938 (Saka).

The following Act of Parliament received the assent of the President on the 15th December, 2016, and is hereby published for general information:—

THE TAXATION LAWS (SECOND AMENDMENT) ACT, 2016

(ACT No. 48 OF 2016)

AN

ACT

[15th December, 2016.]

further to amend the Income-tax Act, 1961 and the Finance Act, 2016.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. Short title and commencement.—(1) This Act may be called the Taxation Laws (Second Amendment) Act, 2016.

(2) Save as otherwise provided in this Act, it shall come into force at once.

CHAPTER II

INCOME-TAX

2. Amendment of section 115BBE.—In the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the Income-tax Act), in section 115BBE, for sub-section (1), the following sub-section shall be substituted with effect from the 1st day of April, 2017, namely:—

“(1) Where the total income of an assessee,—

(a) includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D and reflected in the return of income furnished under section 139; or

(b) determined by the Assessing Officer includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, if such income is not covered under clause (a), the income-tax payable shall be the aggregate of—

(i) the amount of income-tax calculated on the income referred to in clause (a) and clause (b), at the rate of sixty per cent.; and

(ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (i).”.

3. Amendment of section 271 AAB.— In the Income-tax Act, in section 271AAB,—

(I) in sub-section (I), after the words, figures and letters “the 1st day of July, 2012”, the words, brackets and figures “but before the date on which the Taxation Laws (Second Amendment) Bill, 2016 receives the assent of the President” shall be inserted;

(II) after sub-section (I), the following sub-section shall be inserted, namely:—

“(IA) The Assessing Officer may, notwithstanding anything contained in any other provisions of this Act, direct that, in a case where search has been initiated under section 132 on or after the date on which the Taxation Laws (Second Amendment) Bill, 2016 receives the assent of the President, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him,—

(a) a sum computed at the rate of thirty per cent. of the undisclosed income of the specified previous year, if the assessee—

(i) in the course of the search, in a statement under sub-section (4) of section 132, admits the undisclosed income and specifies the manner in which such income has been derived;

(ii) substantiates the manner in which the undisclosed income was derived; and

(iii) on or before the specified date—

(A) pays the tax, together with interest, if any, in respect of the undisclosed income; and

(B) furnishes the return of income for the specified previous year declaring such undisclosed income therein;

(b) a sum computed at the rate of sixty per cent. of the undisclosed income of the specified previous year, if it is not covered under the provisions of clause (a).”;

(III) in sub-section (2), after the words, brackets and figure “in sub-section (I)”, the words, brackets, figure and letter “or sub-section (IA)” shall be inserted.

4. Insertion of new section 271 AAC.— In the Income-tax Act, after section 271AAB, the following section shall be inserted with effect from the 1st day of April, 2017, namely:—

“271AAC. *Penalty in respect of certain income.*—(1) The Assessing Officer may, notwithstanding anything contained in this Act other than the provisions of section 271AAB, direct that, in a case where the income determined includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D for any previous year, the assessee shall pay by way of penalty, in addition to tax payable under section 115BBE, a sum computed at the rate of ten per cent. of the tax payable under clause (i) of sub-section (1) of section 115BBE:

Provided that no penalty shall be levied in respect of income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D to the extent such income has been included by the assessee in the return of income furnished under section 139 and the tax in accordance with the provisions of clause (i) of sub-section (1) of section 115BBE has been paid on or before the end of the relevant previous year.

(2) No penalty under the provisions of section 270A shall be imposed upon the assessee in respect of the income referred to in sub-section (1).

(3) The provisions of sections 274 and 275 shall, as far as may be, apply in relation to the penalty referred to in this section.”.

CHAPTER III

FINANCE ACT

5. Amendment of section 2.—In the Finance Act, 2016, (28 of 2016) —

(a) in Chapter II, in section 2, in sub-section (9),—

(i) in the third proviso, the figures and letters “115BBE,” shall be omitted;

(ii) after the sixth proviso, the following proviso shall be inserted, namely:—

‘Provided also that in respect of any income chargeable to tax under clause (i) of sub-section (1) of section 115BBE of the Income-tax Act, the “advance tax” computed under the first proviso shall be increased by a surcharge, for the purposes of the Union, calculated at the rate of twenty-five per cent. of such advance tax.’;

(b) Insertion of new Chapter IXA.—After Chapter IX, the following Chapter shall be inserted, namely:—

‘CHAPTER IXA

TAXATION AND INVESTMENT REGIME FOR PRADHAN MANTRI GARIB KALYAN YOJANA, 2016

199A. *Short title and commencement.*—(1) This Scheme may be called the Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016.

(2) It shall come into force on such date as the Central Government may, by notification, in the Official Gazette, appoint.

199B. *Definitions.*—In this Scheme, unless the context otherwise requires,—

(a) “declarant” means a person making the declaration under sub-section (1) of section 199C;

(b) “Income-tax Act” means the Income-tax Act, 1961(43 of 1961);

(c) “Pradhan Mantri Garib Kalyan Deposit Scheme, 2016” (hereinafter in this Chapter referred to as “the Deposit Scheme”) means a scheme notified by the Central Government in consultation with the Reserve Bank of India in the Official Gazette; and

(d) all other words and expressions used in this Scheme but not defined and defined in the Income-tax Act shall have the meanings respectively assigned to them in that Act.

199C. *Declaration of undisclosed income.*—(1) Subject to the provisions of this Scheme, any person may make, on or after the date of commencement of this Scheme but on or before a date to be notified by the Central Government in the Official Gazette, a declaration in respect of any income, in the form of cash or deposit in an account maintained by the person with a specified entity, chargeable to tax under the Income-tax Act for any assessment year commencing on or before the 1st day of April, 2017.

(2) No deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed against the income in respect of which a declaration under sub-section (1) is made.

Explanation.— For the purposes of this section, “specified entity” shall mean—

(i) the Reserve Bank of India;

(ii) any banking company or co-operative bank, to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act);

(iii) any Head Post Office or Sub-Post Office; and

(iv) any other entity as may be notified by the Central Government in the Official Gazette in this behalf.

199D. *Charge of tax and surcharge.*—(1) Notwithstanding anything contained in the Income-tax Act or in any Finance Act, the undisclosed income declared under sub-section (1) of section 199C within the time specified therein shall be chargeable to tax at the rate of thirty per cent. of the undisclosed income.

(2) The amount of tax chargeable under sub-section (1) shall be increased by a surcharge, for the purposes of the Union, to be called the *Pradhan Mantri Garib Kalyan Cess* calculated at the rate of thirty-three per cent. of such tax so as to fulfil the commitment of the Government for the welfare of the economically weaker sections of the society.

199E. *Penalty.*— Notwithstanding anything contained in the Income-tax Act or in any Finance Act, the person making a declaration under sub-section (1) of section 199C shall, in addition to tax and surcharge charged under section 199D, be liable to pay penalty at the rate of ten per cent. of the undisclosed income.

199F. *Deposit of undisclosed income.*—(1) Notwithstanding anything contained in the Income-tax Act or in any other law for the time being in force, the person making a declaration under sub-section (1) of section 199C, shall deposit an amount which shall not be less than twenty-five per cent. of the undisclosed income in the *Pradhan Mantri Garib Kalyan Deposit Scheme, 2016*.

(2) The deposit shall bear no interest and the amount deposited shall be allowed to be withdrawn after four years from the date of deposit and shall also fulfil such other conditions as may be specified in the *Pradhan Mantri Garib Kalyan Deposit Scheme, 2016*.

199G. *Manner of declaration.*—A declaration under sub-section (1) of section 199C shall be made by a person competent to verify the return of income under section 140 of the Income-tax Act, to the Principal Commissioner or the Commissioner notified in the Official Gazette for this purpose and shall be in such form and verified in such manner, as may be prescribed.

199H. *Time for payment of tax, penalty, surcharge and deposit.*—(1) The tax and surcharge payable under section 199D and penalty payable under section 199E in respect of the undisclosed income, shall be paid before filing of declaration under sub-section (1) of section 199C.

(2) The amount referred to in sub-section (1) of section 199F shall be deposited before the filing of declaration under sub-section (1) of section 199C.

(3) The declaration under sub-section (1) of section 199C shall be accompanied by the proof of deposit referred to in sub-section (1) of section 199F, payment of tax, surcharge and penalty under section 199D and section 199E, respectively.

199-I. *Undisclosed income declared not to be included in total income.*—The amount of undisclosed income declared in accordance with sub-section (1) of section 199C shall not be included in the total income of the declarant for any assessment year under the Income-tax Act.

199J. *Undisclosed income declared not to affect finality of completed assessments.*—A declarant under this Scheme shall not be entitled, in respect of undisclosed income referred to in section 199C or any amount of tax and surcharge paid thereon, to re-open any assessment or reassessment made under the Income-tax Act or the Wealth-tax Act, 1957 (27 of 1957), or to claim any set-off or relief in any appeal, reference or other proceeding in relation to any such assessment or reassessment.

199K. *Tax, etc. not refundable.*— Any amount of tax and surcharge paid under section 199D or penalty paid under section 199E shall not be refundable.

199L. *Declaration not admissible in evidence against declarant.*—Notwithstanding anything contained in any other law for the time being in force, nothing contained in any declaration made under sub-section (1) of section 199C shall be admissible in evidence against the declarant for the purpose of any proceeding under any Act other than the Acts mentioned in section 199-O.

199M. *Declaration by misrepresentation of facts to be void.*—Notwithstanding anything contained in this Scheme, where a declaration has been made by misrepresentation or suppression of facts or without payment of tax and surcharge under section 199D or penalty under section 199E or without depositing the amount in the Deposit Scheme as per the provisions of section 199F, such declaration shall be void and shall be deemed never to have been made under this Scheme.

199N. *Applicability of certain provisions of Income tax Act.*— The provisions of Chapter XV of the Income-tax Act relating to liability in special cases and of section 119, section 138 and section 189 of that Act shall, so far as may be, apply in relation to proceedings under this Scheme as they apply in relation to proceedings under the Income-tax Act.

199-O. *Scheme not to apply to certain persons.*— The provisions of this Scheme shall not apply—

(a) in relation to any person in respect of whom an order of detention has been made under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974):

Provided that—

(i) such order of detention, being an order to which the provisions of section 9 or section 12A of the said Act do not apply, has not been revoked on the report of the Advisory Board under section 8 of the said Act or before the receipt of the report of the Advisory Board; or

(ii) such order of detention, being an order to which the provisions of section 9 of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the review under sub-section (3) of section 9, or on the report of the Advisory Board under section 8, read with sub-section (2) of section 9, of the said Act; or

(iii) such order of detention, being an order to which the provisions of section 12A of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the first review under sub-section (3) of that section, or on the basis of the report of the Advisory Board under section 8, read with sub-section (6) of section 12A, of the said Act; or

(iv) such order of detention has not been set aside by a court of competent jurisdiction;

(b) in relation to prosecution for any offence punishable under Chapter IX or Chapter XVII of the Indian Penal Code (45 of 1860), the Narcotic Drugs and Psychotropic Substances Act, 1985(61 of 1985), the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Prevention of Corruption Act, 1988 (49 of 1988), the Prohibition of *Benami* Property Transactions Act, 1988(45 of 1988) and the Prevention of Money-Laundering Act, 2002 (15 of 2003);

(c) to any person notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 (27 of 1992);

(d) in relation to any undisclosed foreign income and asset which is chargeable to tax under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (22 of 2015).

199P. *Removal of doubts.*— For the removal of doubts, it is hereby declared that save as otherwise expressly provided in sub-section (1) of section 199C, nothing contained in this Scheme shall be construed as conferring any benefit, concession or immunity on any person other than the person making the declaration under this Scheme.

199Q. *Power to remove difficulties.*— (1) If any difficulty arises in giving effect to the provisions of this Scheme, the Central Government may, by order, not inconsistent with the provisions of this Scheme, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date on which the provisions of this Scheme come into force.

(2) Every order made under this section shall be laid before each House of Parliament.

199R. *Power to make rules.*—(1) The Board may, subject to the control of the Central Government, by notification in the Official Gazette, make rules for carrying out the provisions of this Scheme.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form and manner of declaration and verification to be made under section 199G; and

(b) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

(3) Every rule made under this Scheme shall be laid, as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.’.

DR. G. NARAYANA RAJU,
Secretary to the Govt. of India.