CONVERSION OF INDIAN BRANCH OF A FOREIGN BANK INTO A SUBSIDIARY COMPANY

SECTION 115JG: CONVERSION OF AN INDIAN BRANCH OF FOREIGN COMPANY INTO SUBSIDIARY INDIAN COMPANY

1. Where a foreign company is engaged in the business of banking in India
   - through its branch situate in India and
   - such branch is converted into a subsidiary company thereof, being an Indian company ('Indian subsidiary company')
   - in accordance with the scheme framed by the RBI,
   - then,
   - notwithstanding anything contained in the Act and subject to the conditions as may be notified in this behalf,—

(i) the capital gains arising from such conversion shall not be chargeable to tax in the assessment year relevant to the previous year in which such conversion takes place;

(ii) - the provisions of this Act relating to treatment of unabsorbed depreciation,
- set off or carry forward and set off of losses,
- MAT credit

of the branch of foreign company shall apply to the subsidiary company as they applied to foreign company.

2. The above tax benefits shall be available if following conditions are satisfied—

(a) all the assets and liabilities of the Indian branch immediately before conversion become the assets and liabilities of the Indian subsidiary company;

(b) the foreign company or its nominees shall hold the whole of the share capital of the Indian subsidiary company during the period beginning from the date of conversion and ending on the last day of the previous year in which the conversion took place and continue to hold the shares of Indian subsidiary company carrying not less than 51% of the voting power for a period of five years immediately succeeding the said previous year;

(c) the foreign company does not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in the Indian subsidiary company;

(d) the asset and liabilities of the Indian branch are transferred to the Indian subsidiary company at values appearing in the books of account of the Indian branch immediately before its conversion

Note: Any change in the value of assets consequent to their revaluation would not be considered while determining the value of the assets.

3. In case of **failure to comply with any of the conditions** specified in the scheme of RBI, all the provisions of this Act shall apply to the foreign company and the said Indian subsidiary company **without any benefit, exemption or relief**.

4. The relief shall be withdrawn by passing a rectification order under section 154 and 4 years shall be reckoned from end of the Previous Year in which failure taken place.

5. **Depreciation** in the year of transfer **to be apportioned** between foreign branch & Indian subsidiary company.

6. **Actual cost** of asset in the hands of Indian subsidiary company shall be the actual cost in the hands of foreign branch.

7. **WDV** in the hands of Indian subsidiary company shall be equal to WDV in the hands of foreign branch.

8. **MAT credit** of foreign branch shall be allowed to Indian subsidiary company for the balance number of years.

9. **The unabsorbed losses and depreciation** of foreign branch will **become the current year losses and depreciation of Indian subsidiary company.**

10. **Credit balance in provision for bad and doubtful debts** of foreign branch will be transferred to Indian subsidiary company.

11. **The actual cost of any capital asset on which deduction has been allowed** to the assessee under **section 35AD of the Act, shall be treated as 'nil'** for the purposes of section 43(1);

12. **Section 56(2)(X) shall not apply to the transaction of receipt of shares in the Indian subsidiary company by the foreign company on conversion of Indian branch into Indian subsidiary company.**

13. Provisions of section 35DDA (**VRS Expenditure**) shall apply to Indian subsidiary company as they would have applied to Indian branch, if conversion had not taken place.