

Finance Act 1965

Section 9 - Insertion of New Section 33a

After section 33 of the Income tax Act, the following section shall be inserted, namely :

33A. Development allowance. (1) In respect of planting of tea bushes on any land in India owned by an assessee who carries on business of growing and manufacturing tea in India a sum by way of development allowance equivalent to

(i) where tea bushes have been planted on any land not planted at any time with tea bushes or on any land which had been previously abandoned, forty per cent. of the actual cost of planting; and

(ii) where tea bushes are planted in replacement of tea bushes that have died or have become permanently useless on any land already planted, twenty per cent. of the actual cost of planting,

shall, subject to the provisions of this section, be allowed as a deduction in respect of the third succeeding previous year next following the previous year in which the land is prepared for planting or replanting, as the case may be :

Provided that no deduction under clause (i) shall be allowed unless the planting has commenced after the 31st day of March, 1965, and no deduction shall be allowed under clause (ii) unless the planting has commenced after the 31st day of March, 1965, and been completed before the 1st day of April, 1970.

(2) Where the total income of the assessee assessable for the assessment year relevant to the third succeeding previous year next following the previous year in which the land has been prepared [the total income for this purpose being computed after making the allowance under sub section (1) or sub section (1A) or clause (ii) of sub section (2) of section 33 but without making any allowance under sub section (1) of this section] is nil or is less than the full amount of the development allowance calculated at the rates specified in sub section (1)

(i) the sum to be allowed by way of development allowance for that assessment year under sub section (1) shall be only such amount as is sufficient to reduce the said total income to nil; and

(ii) the amount of the development allowance, to the extent to which it has not been allowed as aforesaid, shall be carried forward to the following assessment year, and the development allowance to be allowed for the following assessment year shall be such amount as is sufficient to reduce the total income of the assessee assessable for that assessment year, computed in the manner aforesaid, to nil, and the balance of the development allowance, if any, still outstanding shall be carried forward to the following assessment year and so on, so

however, that no portion of the development allowance shall be carried forward for more than eight assessment years immediately succeeding the assessment year in which the deduction was first allowable.

Explanation : Where for any assessment year development allowance is 'to be allowed in accordance with the provisions of sub section (2) in respect of more than one previous year, and the total income of the assessee assessable for that assessment year [the total income for this purpose being computed after making the allowance under sub section (1A) or clause (ii) of sub section (2) of section 33 but without making any allowance under sub section (1) of this section] is less than the amount of the development allowance due to be made in respect of that assessment year, the following procedure shall be followed, namely :

(i) the allowance under clause (ii) of sub section (2) of this section shall be made before any allowance under clause (i) of that sub section is made; and

(ii) where an allowance has to be made under clause (ii) of sub section (2) of this section in respect of amounts carried forward from more than one assessment year, the amount carried forward from an earlier assessment year shall be allowed before any amount carried forward from a later assessment year.

(3) The deduction under sub section (1) shall be allowed only if the following conditions are fulfilled, namely :

(i) the particulars prescribed in this behalf have been furnished by the assessee;

(ii) an amount equal to seventy five per cent. of the development allowance to be actually allowed is debited to the profit and loss account of the relevant previous year and credited to a reserve account to be utilised by the assessee during a period of eight years next following for the purposes of the business of the undertaking, other than

(a) for distribution by way of dividends or profits; or

(b) for remittance outside India as profits or for the creation of any asset outside India; and

(iii) such other conditions as may be prescribed.

(4) If any such land is sold or otherwise transferred by the assessee to any person at any time before the expiry of eight years from the end of the previous year in which the deduction under sub section (1) was allowed, any allowance under this section shall be deemed to have been wrongly made for the purposes of this Act, and the provisions of sub section (5A) of section 155 shall apply accordingly :

Provided that this sub section shall not apply

(i) where the land is sold or otherwise transferred by the assessee to the Government, a local authority, a corporation established by a Central, State or Provincial Act or a

Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956); or

(ii) where the sale or transfer of the land is made in connection with the amalgamation or succession referred to in sub section (5) or sub section (6).

(5) Where in a scheme of amalgamation, a company (hereinafter in this sub section referred to as the predecessor) sells or otherwise transfers to the company formed in pursuance of the predecessors amalgamation with that company (hereinafter in this sub section referred to as the successor) any land in respect of which development allowance has been allowed to the predecessor under sub section (1),

(a) the successor shall continue to fulfil the conditions mentioned in sub section (3) in respect of the reserve created by the predecessor and in respect of the period within which such land shall not be sold or otherwise transferred and in default of any of these conditions, the provisions of sub section (5A) of section 155 shall apply to the successor as they would have applied to the predecessor had it committed the default;

(b) the balance of development allowance, if any, still outstanding to the predecessor in respect of such land shall be allowed to the successor in accordance with the provisions of sub section (2), so however, that the total period for which the balance of development allowance shall be carried forward in the assessments of the predecessor and the successor shall not exceed the period of eight years specified in sub section (2) and the successor shall be treated as the assessee in respect of such land for the purposes of this section.

Explanation : For the purposes of this sub section, "amalgamation" shall have the meaning assigned to it in the Explanation to sub section (3) of section 33.

(6) Where a firm is succeeded to by a company in the business carried on by it as a result of which the firm sells or otherwise transfers to the company any land on which development allowance has been allowed, the provisions of clauses (a) and (b) of sub section (5) shall, so far as may be, apply to the firm and the company.

Explanation : The provisions of this sub section shall apply if the conditions laid down in the Explanation to sub section (4) of section 33 are fulfilled.

(7) For the purposes of this section, "actual cost of planting" means the aggregate of

(i) the cost of preparing the land;

(ii) the cost of seeds, cutting and nurseries;

(iii) the cost of planting and replanting; and

(iv) the cost of upkeep thereof for the previous year in which the land has been prepared and the three successive previous years next following such previous year,

reduced by that portion of the cost, if any, as has been met directly or indirectly by any other person or authority :

Provided that where such cost exceeds twelve thousand five hundred rupees per hectare in respect of land situate in a hilly area or exceeds ten thousand rupees per hectare in any other area, then the excess shall be ignored.

(8) The Board may, having regard to the elevation and topography, by general or special order, declare any areas to be hilly areas for the purposes of this section and such order shall not be questioned before any court of law or any other authority..