Finance Act 1997

Section 40 - (3) The written down value of any asset used for the purpose of the business referred to in sub-section

In section 10 of the Income-tax Act, with effect from the 1st day of April, 1998, - (a) after clause (6B), the following clause shall be inserted, namely :- '(6BB) Where in the case of the Government of a foreign State or a foreign enterprise deriving income from an Indian company engaged in the business of operation of aircraft, as a consideration of acquiring an aircraft or an aircraft engine (other than payment for providing spares, facilities or services in connection with the operation of leased aircraft) on lease under an agreement entered into after the 31st day of March, 1997, and approved by the Central Government in this behalf and the tax on such income is payable by such Indian company under the terms of that agreement to the Central Government, the tax so paid. Explanation. - For the purposes of this clause, the expression "foreign enterprise" means a person who is a non-resident,'; (b) in clause (15), in sub-clause (iv), after item (i), in the Explanation, after clause (b), the following clause shall be inserted, namely :- "(ba) the business of providing telecommunication services; or"; (c) in clause (15A), after the words "under an agreement", the words, figures and letters "entered into before the 1st day of April, 1997 and" shall be inserted. (d) in clause (17), in sub-clause (iii), for the words "six hundred rupees per month", the words "two thousand rupees per month" shall be substituted; (e) in clause (23F), in the Explanation, in clause (c), for the words "engaged in the", the words "engaged in the business of generation or generation and distribution of electricity or any other form of power or business of providing telecommunication services or in the" shall be substituted; (f) in clause (23G), - (i) the words, brackets, figures and letters, "which fulfils the conditions specified in sub-section (4A) of section 80-IA" shall be omitted; (ii) in the Explanation, for clause (c), the following clause shall be substituted, namely :- '(c) "infrastructure facility" means - (i) a road, highway, bridge, airport, port, rail system or any other public facility of a similar nature as may be notified by the Board in this behalf in the Official Gazette, which fulfils the conditions specified in sub-section (4A) of section 80-IA; (ii) a water supply project, irrigation project, sanitation and sewerage system which fulfils the conditions specified in sub-section (4A) of section 80-IA; (iii) a project for generation or generation and distribution of electricity or any other form of power where such project starts generating power on or after the 1st day of April, 1993; (iv) a project for providing telecommunication services on or after the 1st day of April, 1995;'; (g) clauses (26AA) and (28) shall be omitted. (h) after clause (32), the following clause shall be inserted, namely :- "(33) any income by way of dividends referred to in section 115-O;". Section 4 - Amendment Of Section 16 In section 16 of the Income-tax Act, for clauses (i) and (ia), the following shall be substituted with effect from the 1st day of April, 1998, namely :- "(i) a deduction of a sum equal to thirty-three and one-third per cent. of the salary or twenty thousand rupees, whichever is less. Explanation. - For the removal of doubts, it is hereby declared that where, in the case of an assessee, salary is due from, or paid or allowed by, more than one employer, the deduction under this clause shall be computed with reference to the aggregate salary due, paid or allowed to the assessee and shall in no case exceed the amount specified under this clause;" Section 5 - Amendment Of Section 35 In section 35 of the Income-tax Act, after sub-section (2AA), the following sub-section shall be inserted with effect from the 1st day of April, 1998, namely :- "(2AB) (1) Where a company engaged in the business of manufacture or production of any drugs, pharmaceuticals, electronic equipment, computers, telecommunication equipment, chemicals or any other article or thing notified by the Board incurs any expenditure on scientific research (not being expenditure in the nature of cost of any land or building) on in house research and development facility as approved by the prescribed authority, then, there shall be allowed a deduction of a sum equal to one and one-fourth times of the expenditure so incurred. (2) No deduction shall be allowed in respect of the expenditure mentioned in clause (1) under any other provision of this Act. (3) No company shall be entitled for deduction under clause (1) unless it enters into an agreement with the prescribed authority for co-operation in such research and development facility and for audit of the accounts maintained for that facility. (4) The prescribed authority shall submit its report in relation to the approval of the said facility to the Direct-General in such form and within such time as may be prescribed." Section 6 - Insertion Of New Section 35ABB After section 35AB of the Income-tax Act, the following section shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 1996, namely :- '35ABB. Expenditure for obtaining licence to operate telecommunication services. - (1) In respect of any expenditure, being in the nature of capital expenditure, incurred for acquiring any right to operate telecommunication services and for which payment has actually been made to obtain a licence, there shall, subject to and in accordance with the provisions of this section, be allowed for each of the relevant previous years, a deduction equal to the appropriate fraction of the amount of such expenditure. Explanation. - For the purposes of this section, - (i) "relevant previous year" means the previous years beginning with the previous year in which the licence fee is actually paid and the subsequent previous year or years during which the licence, for which the fee is paid, shall be in force; (ii) "appropriate fraction" means the fraction the numerator of which is one and the denominator of which is the total number of the relevant previous years; (iii) "payment has actually been made" means the actual payment of expenditure irrespective of the previous year in which the liability for the expenditure was incurred according to the method of accounting regularly employed by the assessee. (2) Where the licence is transferred and the proceeds of the transfer (so far as they consist of capital sums) are less than the expenditure incurred remaining unallowed, a deduction equal to such expenditure remaining unallowed, as reduced by the proceeds of the transfer, shall be allowed in respect of the previous year in which the licence is transferred. (3) Where the whole or any part of the licence is transferred and the proceeds of the transfer (so far as they consist of capital sums) exceed the amount of the expenditure incurred remaining unallowed, so much of the excess as does not exceed the difference between the expenditure incurred to obtain the licence and the amount of such expenditure remaining unallowed shall be chargeable to income-tax as profits and gains of the business in the previous year in which the licence has been transferred. Explanation. - Where the licence is transferred in a previous year in which the business is no longer in existence, the provisions of this sub-section shall apply as if the business is in existence in that previous year. (4) Where the whole or any part of the licence is transferred and the proceeds of the transfer (so far as they consist of capital sums) are not less than the amount of expenditure incurred remaining unallowed, no deduction for such expenditure shall be allowed under sub-section (1) in respect of the previous year in which the licence is transferred or in respect of any subsequent previous year or years. (5) Where a part of the licence is transferred in a previous year and sub-section (3) does not apply, the deduction to be allowed under sub-section (1) for expenditure incurred remaining unallowed shall be arrived at by - (a) subtracting the proceeds of transfer (so far as they consist of capital sums) from the expenditure remaining unallowed; and (b) dividing the remainder by the number of relevant previous years which have not expired at the beginning of the previous year during which the licence is transferred. (6) Where, in a scheme of amalgamation, the amalgamating company sells or otherwise transfers the licence to the amalgamated company (being an Indian company), - (i) the provisions of sub-sections (2), (3) and (4) shall not apply in the case of the amalgamating company; and (ii) the provisions of this section shall, as far as may be, apply to the amalgamated company as they would have applied to the amalgamating company if the latter had not transferred the licence.'. Section 7 - Amendment Of Section 36 In section 36 of the Income-tax Act, - (a) in sub-section (1), - (i) in clause (vii), in the proviso, for the words "a bank", the words "an assessee" shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 1992; (ii) in clause (viii), with effect from the 1st day of April, 1998, - (A) for the words "special reserve created", the words "special reserve created and maintained" shall be substituted; (B) in the Explanation, for clause (d), the following clause shall be substituted, namely :- '(d) "infrastructure facility" shall have the meaning assigned to it in clause (23G) of section 10.'; (b) in sub-section (2), for clause (v), the following clause shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 1992, namely :- "(v) where such debt or part of debt relates to advances made by an assessee to which clause (viia) of sub-section (1) applies, no such deduction shall be allowed unless the assessee has debited the amount of such debt or part of debt in that previous year to the provision for bad and doubtful debts account made under that clause.". Section 8 - Amendment Of Section 37 In section 37 of the Income-tax Act, sub-sections (2), (3), (4) and (5) shall be omitted with effect from the 1st day of April, 1998. Section 9 - Amendment Of Section 41 In section 41 of the Income-tax Act, with effect from the 1st day of April, 1998, - (a) after sub-section (4), the following sub-section shall be inserted, namely :- "(4A) Where a deduction has been allowed in respect of any special reserve created and maintained under clause (viii) of sub-section (1) of section 36, any amount subsequently withdrawn from such special reserve shall be deemed to be the profits and gains of business or profession and accordingly be chargeable to income-tax as the income of the previous year in which such amount is withdrawn Explanation. - Where any amount is withdrawn from the special reserve in a previous year in which the business is no longer in existence, the provisions of this sub-section shall apply as if the business is in existence in that previous year."; (b) in sub-section (5), for the words, brackets and figure "or sub-section (4)", the words, brackets, figures and letter ", sub-section (4), or sub-section (4A)" shall be substituted. Section 10 - Amendment Of Section 44AA In section 44AA of the Income-tax Act, in sub-section (2) in clause (ii), for the words "during such previous year,", the following shall be substituted with effect from the 1st day of April, 1998, namely :- "during such previous year; or (iii) where the profits and gains from the business are deemed to be the profits and gains of the assessee under section 44AD or section 44AE or section 44AF, as the case may be, and the assessee has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, during such previous year,". Section 11 - Amendment Of Section 44AB In section 44AB of the Income-tax Act, in clause (b), for the words "previous year,", the following shall be substituted with effect from the 1st day of April, 1998, namely :- "previous year, or (c) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AD or section 44AE or section 44AF, as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year,". Section 12 - Amendment Of Section 44AD In section 44AD of the Income-tax Act, - (i) in sub-section (2), the following proviso shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 1994, namely :- "Provided that where the assessee is a firm, the salary and interest paid to its partners shall be deducted from the income computed under sub-section (1) subject to the conditions and limits specified in clause (b) of section 40."; (ii) sub-section (5) shall be omitted. Section 13 - Amendment Of Section 44AE In section 44AE of the Income-tax Act, - (i) in sub-section (3), the following proviso shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 1994, namely :- "Provided that where the assessee is a firm, the salary and interest paid to its partners shall be deducted from the income computed under sub-section (1) subject to the conditions and limits specified in clause (b) of section 40."; (ii) sub-section (6) shall be omitted. Section 14 - Insertion Of New Section 44AF After section 44AE of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 1998, namely :- '44AF. Special provisions for computing profits and gains of retail business. - (1) Notwithstanding anything to the contrary contained in sections 28 to 43C, in the case of an assessee engaged in retail trade in any goods or merchandise, a sum equal to five per cent. of the total turnover in the previous year on account of such business or, as the case may be, a sum higher than the aforesaid sum as declared by the assessee in his return of income shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession": Provided that nothing contained in this sub-section shall apply in respect of an assessee whose total turnover exceeds an amount of forty lakh rupees in the previous year. (2) Any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of sub-section (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed : Provided that where the assessee is a firm, the salary and interest paid to its partners shall be deducted from the income computed under sub-section (1) subject to the conditions and limits specified in clause (b) of section 1) shall be deemed to have been calculated as if the assessee had claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant assessment years. (4) The provisions of sections 44AA and 44AB shall not apply in so far as they relate to the business referred to in sub-section (1) and in computing the monetary limits under those sections, the total turnover, or, as the case may be, the income from the said business shall be excluded.' Section 15 - Amendment Of Section 44B In section 44B of the Income-tax Act, after sub-section (2), the following Explanation shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 1976, namely :- "Explanation. - For the purposes of this sub-section, the amount referred to in clause (i) or clause (ii) shall include the amount paid or payable or received or deemed to be received, as the case may be, by way of demurrage charges and handling charges or any other amount of similar nature." Section 16 - Amendment Of Section 47 In section 47 of the Income-tax Act, after clause (x), the following clauses shall be inserted with effect from the 1st day of April, 1998, namely :- '(xi) any transfer made on or before the 31st day of December, 1997, by a person (not being a company) of a capital asset being membership of a recognised stock exchange to a company in exchange for shares allotted by that company to the transferor. Explanation. - For the purposes of this clause, the expression "membership of a recognised stock exchange" means the membership of a stock exchange in India which is recognised under the provisions of the Securities Contract (Regulation) Act, 1956 (42 of 1956); (xii) any transfer of a capital asset, being land of sick industrial company, made under a scheme prepared and sanctioned under section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), where such sick industrial company is being managed by its workers' co-operative : Provided that such transfer is made during the period commencing from the previous year in which the said company has become a sick industrial company under sub-section (1) of section 17 of that Act and ending with the previous year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses. Explanation. - For the purposes of this clause, "net worth" shall have the meaning assigned to it in clause (ga) of sub-section (1) of section 3 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986).'. Section 17 - Amendment Of Section 47A Section 47A of the Income-tax Act shall be renumbered as sub-section (1) thereof and after sub-section (1) as so renumbered, the following sub-section shall be inserted with effect from the 1st day of April, 1998, namely :- '(2) Where at any time, before the expiry of a period of three years from the date of the transfer of a capital asset referred to in clause (xi) of section 47, any of the shares allotted to the transferor in exchange for a membership in a recognised stock exchange are transferred, the amount of profits and gains not charged under section 45 by virtue of the provisions contained in clause (xi) of section 47 shall, notwithstanding anything contained in the said clause, be deemed to be the income chargeable under the head "Capital gains" of the previous year in which such shares are transferred.' Section 18 - Amendment Of Section 48 In section 48 of the Income-tax Act, after the second proviso, the following proviso shall be inserted with effect from the 1st day of April, 1998, namely :- "Provided also that nothing contained in the second proviso shall apply to the long-term capital gain arising from the transfer of a long-term capital asset being bond or debenture other than capital indexed bonds issued by the Government.". Section 19 - Amendment Of Section 55 In section 55 of the Income-tax Act, with effect from the 1st day of April, 1998, - (a) in sub-section (1), in clause (b) in sub-clause (1), after the words "goodwill of a business", the words "or a right to manufacture, produce or process any article or thing" shall be inserted; (b) in sub-section (2), in clause (a), after the words "being goodwill of a business", the words "or a right to manufacture, produce or process any article or thing," shall be inserted. Section 20 - Amendment Of Section 57 In section 57 of the Act, in clause (iia), for the words "twelve thousand rupees", the words "fifteen thousand rupees" shall be substituted with effect from the 1st day of April,