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Finance Act 1999

Section 50 - Substitution of New Sections for Section 80-ia

For section 80-IA of the Income-tax Act, the following sections shall be substituted with effect from the 1st day of April, 2000, namely :-

80-IA. Deductions in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development ,etc.

(1) Where the gross total income of an assessee includes any profits and gains derived from any business of an industrial undertaking or an enterprise referred to in sub-section (4) (such business being hereinafter referred to as the eligible business), there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to hundred per cent. of profits and gains derived from such business for the first five assessment years commencing at any time during the periods as specified in sub-section (2) and thereafter, twenty-five per cent. of the profits and gains for further five assessment years : Provided that where the assessee is a company, the provisions of this sub-section shall have effect as if for the words "twenty-five per cent.", the words "thirty per cent." had been substituted.

(2) The deduction specified in sub-section (1) may, at the option of the assessee, be claimed by him for any ten consecutive assessment years out of fifteen years beginning from the year in which the undertaking or the enterprise develops and begins to operate any infrastructure facility or starts providing telecommunication service or develops an industrial park or generates power or commences transmission or distribution of power :

Provided that where the assessee begins operating and maintaining any infrastructure facility referred to in clause (b) of Explanation to clause (i) of sub-section (4), the provisions of this sub-section shall have effect as if for the words "fifteen years", the words "twenty years" had been substituted.

(3) This section applies to any industrial undertaking which fulfils all the following conditions, namely :-

(i) it is not formed by splitting up, or the reconstruction, of a business already in existence :

Provided that this condition shall not apply in respect of an industrial undertaking which is formed as a result of the re-establishment, re-construction or revival by the assessee of the business of any such industrial undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section;

(ii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose.

Explanation 1. - For the purposes of clause (ii), any machinery or plant which was used outside India by any person other than the assessee shall not be regarded as machinery or plant previously used for any purpose, if the following conditions are fulfilled, namely :-

(a) such machinery or plant was not, at any time previous to the date of the installation by the assessee, used in India;

(b) such machinery or plant is imported into India from any country outside India; and

(c) no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of this Act in computing the total income of any person for any period prior to the date of the installation of machinery or plant by the assessee.

Explanation 2. - Where in the case of an industrial undertaking, any machinery or plant or any part thereof previously used for any purpose is transferred to a new business and the total value of the machinery or plant or part so transferred does not exceed twenty per cent. of the total value of the machinery or plant used in the business, then, for the purposes of clause (ii) of this sub-section, the condition specified therein shall be deemed to have been complied with.

(4) This section applies to -

(i) any enterprise carrying on the business of (i) developing, (ii) maintaining and operating or (iii) developing, maintaining and operating any infrastructure facility which fulfils all the following conditions, namely :-

(a) it is owned by a company registered in India or by a consortium of such companies;

(b) it has entered into an agreement with the Central Government or a State Government or a local authority or any other statutory body for (i) developing, (ii) maintaining and operating or (iii) developing, maintaining and operating a new infrastructure facility subject to the condition that such infrastructure facility shall be

transferred to the Central Government, State Government, local authority or such other statutory body, as the case may be, within the period stipulated in the agreement;

(c) it has started or starts operating and maintaining the infrastructure facility on or after the 1st day of April, 1995 : Provided that where an infrastructure facility is transferred on or after the 1st day of April, 1999 by an enterprise which developed such infrastructure facility (hereafter referred to in this section as the transferor enterprise) to another enterprise (hereafter in this section referred to as the transferee enterprise) for the purpose of operating and maintaining the infrastructure facility on its behalf in accordance with the agreement with the Central Government, State Government, local authority or statutory body, the provisions of this section shall apply to the transferee enterprise as if it were the enterprise to which this clause applies and the deduction from profits and gains would be available to such transferee enterprise for the unexpired period during which the transferor enterprise would have been entitled to the deduction, if the transfer had not taken place. Explanation. -For the purposes of this clause, "infrastructure facility" means, -

(a) a road, bridge, airport, port, inland waterways and inland ports, 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;

(b) a highway project including housing or other activities being an integral part of the highway project; and

(c) a water supply project, irrigation project, sanitation and sewerage system.;

(ii) any undertaking which has started or starts providing telecommunication services whether basic or cellular, including radio paging, domestic satellite service or network of trunking and electronic data interchange services at any time on or after the 1st day of April, 1995 but before the 31st day of March, 2000.

Explanation. - For the purposes of this clause, "domestic satellite" means a satellite owned and operated by an Indian company for providing telecommunication service.

(iii) any undertaking which develops, develops and operates or maintains and operates an industrial park notified by the Central Government in accordance with the scheme framed and notified by that Government for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2002 :

Provided that in a case where an undertaking develops an industrial park on or after the 1st day of April, 1999 and transfers the operation and maintenance of such industrial park to another undertaking (hereafter in this section referred to as the transferee undertaking) the deduction under sub-section (1), shall be allowed to such transferee undertaking for the remaining period in the ten consecutive assessment years in a manner as if the operation and maintenance were not so transferred to the transferee undertaking;

(iv) an industrial undertaking which, -

(a) is set up in any part of India for the generation or generation and distribution of power if it begins to generate power at any time during the period beginning on the 1st day of April, 1993 and ending on the 31st day of March, 2003;

(b) starts transmission or distribution by laying a network of new transmission or distribution lines at any time during the period beginning on the 1st day of April, 1999 and ending on the 31st day of March, 2003 :

Provided that the deduction under this section to an industrial undertaking under sub-clause (b) shall be allowed only in relation to the profits derived from laying of such network of new lines for transmission or distribution.

(5) Notwithstanding anything contained in any other provision of this Act, the profits and gains of an eligible business to which the provisions of sub-section (1) apply shall, for the purposes of determining the quantum of deduction under that sub-section for the assessment year immediately succeeding the initial assessment year or any subsequent assessment year, be computed as if such eligible business were the only source of income of the assessee during the previous year relevant to the initial assessment year and to every subsequent assessment year up to and including the assessment year for which the determination is to be made.

(6) Notwithstanding anything contained in sub-section (4), where housing or other activities are an integral part of the highway project and the profits of which are computed on such basis and manner as may be prescribed, such profit shall not be liable to tax where the profit has been transferred to a special reserve account and the same is actually utilised for the highway project excluding housing and other activities before the expiry of three years following the year in which such amount was transferred to the reserve account; and the amount remaining unutilised shall be chargeable to tax as income of the year in which such transfer to reserve account took place.

(7) Where the assessee is a person other than a company or a co-operative society, the deduction under sub-section (1) from profits and gains derived from an industrial undertaking shall not be admissible unless the accounts of the industrial undertaking for the previous year relevant to the assessment year for which the deduction is claimed have been audited by an accountant, as defined in the Explanation below sub-section (2) of section 288, and the assessee furnishes, along with his return of income, the report of such audit in the prescribed form duly signed and verified by

such accountant.

(8) Where any goods held for the purposes of the eligible business are transferred to any other business carried on by the assessee, or where any goods held for the purposes of any other business carried on by the assessee are transferred to the eligible business and, in either case, the consideration, if any, for such transfer as recorded in the accounts of the eligible business does not correspond to the market value of such goods as on the date of the transfer, then, for the purposes of the deduction under this section, the profits and gains of such eligible business shall be computed as if the transfer, in either case, had been made at the market value of such goods as on that date : Provided that where, in the opinion of the Assessing Officer, the computation of the profits and gains of the eligible business in the manner hereinbefore specified presents exceptional difficulties, the Assessing Officer may compute such profits and gains on such reasonable basis as he may deem fit.

Explanation. - For the purposes of this sub-section, "market value", in relation to any goods, means the price that such goods would ordinarily fetch on sale in the open market.

(9) Where any amount of profits and gains of an industrial undertaking or of an enterprise in the case of an assessee is claimed and allowed under this section for any assessment year, deduction to the extent of such profits and gains shall not be allowed under any other provisions of this Chapter under the heading "C. -Deductions in respect of certain incomes", and shall in no case exceed the profits and gains of such eligible business of industrial undertaking or enterprise, as the case may be.

(10) Where it appears to the Assessing Officer that, owing to the close connection between the assessee carrying on the eligible business to which this section applies and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the assessee more than the ordinary profits which might be expected to arise in such eligible business, the Assessing Officer shall, in computing the profits and gains of such eligible business for the purposes of the deduction under this section, take the amount of profits as may be reasonably deemed to have been derived therefrom.

(11) The Central Government may, after making such inquiry as it may think fit, direct, by notification in the Official Gazette, that the exemption conferred by this section shall not apply to any class of industrial undertaking or enterprise with effect from such date as it may specify in the notification.

(12) Where any undertaking of an Indian company which is entitled to the deduction under this section is transferred, before the expiry of the period specified in this section, to another Indian company in a scheme of amalgamation or demerger -

(a) no deduction shall be admissible under this section to the amalgamating or the demerged company for the previous year in which the amalgamation or the demerger takes place; and

(b) the provisions of this section shall, as far as may be, apply to the amalgamated or the resulting company as they would have applied to the amalgamating or the demerged company if the amalgamation or demerger had not taken place.

80-IB Deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings.

(1) Where the gross total income of an assessee includes any profits and gains derived from any business referred to in sub-sections (3) to (11) (such business being hereinafter referred to as the eligible business), there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to such percentage and for such number of assessment years as specified in this section.

(2) This section applies to any industrial undertaking which fulfils all the following conditions, namely :-

(i) it is not formed by splitting up, or the reconstruction, of a business already in existence :

Provided that this condition shall not apply in respect of an industrial undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such industrial undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section;

(ii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose;

(iii) it manufactures or produces any article or thing, not being any article or thing specified in the list in the Eleventh Schedule, or operates one or more cold storage plant or plants, in any part of India :

Provided that the condition in this clause shall, in relation to a small scale industrial undertaking or an industrial undertaking referred to in sub-section (4) shall apply as if the words "not being any article or thing specified in

the list in the Eleventh Schedule" had been omitted.

Explanation 1. - For the purposes of clause (ii), any machinery or plant which was used outside India by any person other than the assessee shall not be regarded as machinery or plant previously used for any purpose, if the following conditions are fulfilled, namely :-

(a) such machinery or plant was not, at any time previous to the date of the installation by the assessee, used in India;

(b) such machinery or plant is imported into India from any country outside India; and

(c) no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of this Act in computing the total income of any person for any period prior to the date of the installation of the machinery or plant by the assessee.

Explanation 2. - Where in the case of an industrial undertaking, any machinery or plant or any part thereof previously used for any purpose is transferred to a new business and the total value of the machinery or plant or part so transferred does not exceed twenty per cent. of the total value of the machinery or plant used in the business, then, for the purposes of clause (ii) of this sub-section, the condition specified therein shall be deemed to have been complied with;

(iv) in a case where the industrial undertaking manufactures or produces articles or things, the undertaking employs ten or more workers in a manufacturing process carried on with the aid of power, or employs twenty or more workers in a manufacturing process carried on without the aid of power.

(3) The amount of deduction in the case of an industrial undertaking shall be twenty-five per cent. (or thirty per cent. where the assessee is a company), of the profits and gains derived from such industrial undertaking for a period of ten consecutive assessment years (or twelve consecutive assessment years where the assessee is a co-operative society) beginning with the initial assessment year subject to the fulfilment of the following conditions, namely :-

(i) it begins to manufacture or produce, articles or things or to operate such plant or plants at any time during the period beginning from the 1st day of April, 1991 and ending on the 31st day of March, 1995 or such further period as the Central Government may, by notification in the Official Gazette, specify with reference to any particular undertaking;

(ii) where it is an industrial undertaking being a small scale industrial undertaking, it begins to manufacture or produce articles or things or to operate its cold storage plant [not specified in sub-section (4) or sub-section (5)] at any time during the period beginning on the 1st day of April, 1995 and ending on the 31st day of March, 2000.

(4) The amount of deduction in the case of an industrial undertaking in an industrially backward State specified in the Eighth Schedule shall be hundred per cent. of the profits and gains derived from such industrial undertaking for five assessment years beginning with the initial assessment year and thereafter twenty-five per cent. (or thirty per cent. where the assessee is a company) of the profits and gains derived from such industrial undertaking :

Provided that the total period of deduction does not exceed ten consecutive assessment years (or twelve consecutive assessment years where the assessee is a co-operative society) subject to fulfilment of the condition that it begins to manufacture or produce articles or things or to operate its cold storage plant or plants during the period beginning on the 1st day of April, 1993 and ending on the 31st day of March, 2000 :

Provided further that in the case of such industries in the North-Eastern Region, as may be notified by the Central Government, the amount of deduction shall be hundred per cent. of profits and gains for a period of ten assessment years, and the total period of deduction shall in such a case not exceed ten assessment years.

(5) The amount of deduction in the case of an industrial undertaking located in such industrially backward districts as the Central Government may, having regard to the prescribed guidelines, by notification in the Official Gazette, specify in this behalf as industrially backward district of category 'A' or an industrially backward district of category 'B' shall be, -

(i) hundred per cent. of the profits and gains derived from an industrial undertaking located in a backward district of category 'A' for five assessment years beginning with the initial assessment year and thereafter, twenty-five per cent. (or thirty per cent. where the assessee is a company) of the profits and gains of an industrial undertaking :

Provided that the total period of deduction shall not exceed ten consecutive assessment years or where the assessee is a co-operative society, twelve consecutive assessment years :

Provided further that the industrial undertaking begins to manufacture or produce articles or things or to operate its cold storage plant or plants at any time during the period beginning on the 1st day of October, 1994 and ending on the 31st day of March, 2000;

(ii) hundred per cent. of the profits and gains derived from an industrial undertaking located in a backward district of category 'B' for three assessment years beginning with the initial assessment year and thereafter, twenty-five per

cent. (or thirty per cent. where the assessee is a company) of the profits and gains of an industrial undertaking :

Provided that the total period of deduction does not exceed eight consecutive assessment years (or where the assessee is a co-operative society, twelve consecutive assessment years) :

Provided further that the industrial undertaking begins to manufacture or produce articles or things or to operate its cold storage plant or plants at any time during the period beginning on the 1st day of October, 1994 and ending on the 31st day of March, 2000.

(6) The amount of deduction in the case of the business of a ship shall be thirty per cent. of the profits and gains derived from such ship for a period of ten consecutive assessment years including the initial assessment year provided that the ship -

(i) is owned by an Indian company and is wholly used for the purposes of the business carried on by it;

(ii) was not, previous to the date of its acquisition by the Indian company, owned or used in Indian territorial waters by a person resident in India; and

(iii) is brought into use by the Indian company at any time during the period beginning on the 1st day of April, 1991 and ending on the 31st day of March, 1995.

(7) The amount of deduction in the case of any hotel shall be -

(a) fifty per cent. of the profits and gains derived from the business of such hotel for a period of ten consecutive years beginning from the initial assessment year as is located in a hilly area or a rural area or a place of pilgrimage or such other place as the Central Government may, having regard to the need for development of infrastructure for tourism in any place and other relevant considerations, specify by notification in the Official Gazette and such hotel starts functioning at any time during the period beginning on the 1st day of April, 1990 and ending on the 31st day of March, 1994 or beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2001 :

Provided that nothing contained in this clause shall apply to a hotel located at a place within the municipal jurisdiction (whether known as a municipality, municipal corporation, notified area committee or a cantonment board or by any other name) of Calcutta, Chennai, Delhi or Mumbai, which has started or starts functioning on or after the 1st day of April, 1997 and before the 31st day of March, 2001 :

Provided further that the said hotel is approved by the prescribed authority for the purpose of this clause in accordance with the rules made under this Act and where the said hotel is approved by the prescribed authority before the 31st day of March, 1992, shall be deemed to have been approved by the prescribed authority for the purpose of this section in relation to the assessment year commencing on the 1st day of April, 1991;

(b) thirty per cent. of the profits and gains derived from the business of such hotel as is located in any place other than those mentioned in sub-clause (a) for a period of ten consecutive years beginning from the initial assessment year if such hotel has started or starts functioning at any time during the period beginning on the 1st day of April, 1991 and ending on the 31st day of March, 1995 or beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2001 :

Provided that nothing contained in this clause shall apply to a hotel located at a place within the municipal jurisdiction (whether known as a municipality, municipal corporation, notified area committee, town area committee or a cantonment board or by any other name) of Calcutta, Chennai, Delhi or Mumbai, which has started or starts functioning on or after the 1st day of April, 1997 and before the 31st day of March, 2001;

(c) the deduction under clause (a) or clause (b) shall be available only if -

(i) the business of the hotel is not formed by the splitting up, or the reconstruction, of a business already in existence or by the transfer to a new business of a building previously used as a hotel or of any machinery or plant previously used for any purpose;

(ii) the business of the hotel is owned and carried on by a company registered in India with a paid-up capital of not less than five hundred thousand rupees;

(iii) the hotel is for the time being approved by the prescribed authority :

Provided that any hotel approved by the prescribed authority before the 1st day of April, 1999 shall be deemed to have been approved under this sub-section.

(8) The amount of deduction in the case of any company carrying on scientific research and development shall be hundred per cent. of the profits and gains of such business for a period of five assessment years beginning from the

initial assessment year if such company -

(a) is registered in India;

(b) has the main object of scientific and industrial research and development;

(c) is for the time being approved by the prescribed authority at any time before the 1st day of April, 1999.

(9) The amount of deduction to an undertaking which begins commercial production or refining of mineral oil shall be hundred per cent. of the profits for a period of seven consecutive assessment years including the initial assessment year :

Provided that where the undertaking is located in North-Eastern Region, it has begun or begins commercial production of mineral oil before the 1st day of April, 1997 and where it is located in any part of India, it begins commercial production of mineral oil on or after the 1st day of April, 1997 :

Provided further that where the undertaking is engaged in refining of mineral oil, it begins refining on or after the 1st day of October, 1998.

(10) The amount of profits in case of an undertaking developing and building housing projects approved by a local authority, shall be hundred per cent. of the profits derived in any previous year relevant to any assessment year from such housing project if, -

(a) such undertaking has commenced or commences development and construction of the housing project on or after the 1st day of October, 1998 and completes the same before the 31st day of March, 2001;

(b) the project is on the size of a plot of land which has a minimum area of one acre; and

(c) the residential unit has a maximum built-up area of one thousand square feet where such residential unit is situated within the cities of Delhi or Mumbai or within twenty-five kilometres from the municipal limits of these cities and one thousand and five hundred square feet at any other place.

(11) Notwithstanding anything contained in clause (iii) of sub-section (2) and sub-sections (3), (4) and (5), the amount of deduction in a case of industrial undertaking deriving profit from the business of setting up and operating a cold chain facility for agricultural produce, shall be hundred per cent. of the profits and gains derived from such industrial undertaking for five assessment years beginning with the initial assessment year and thereafter, twenty-five per cent. (or thirty per cent. where the assessee is a company) of the profits and gains derived from the operation of such facility in a manner that the total period of deduction does not exceed ten consecutive assessment years (or twelve consecutive assessment years where the assessee is a co-operative society) and subject to fulfilment of the condition that it begins to operate such facility on or after the 1st day of April, 1999 but before the 31st day of March, 2003.

(12) Where any undertaking of an Indian company which is entitled to the deduction under this section is transferred, before the expiry of the period specified in this section, to another Indian company in a scheme of amalgamation or demerger -

(a) no deduction shall be admissible under this section to the amalgamating or the demerged company for the previous year in which the amalgamation or the demerger takes place; and

(b) the provisions of this section shall, as far as may be, apply to the amalgamated or the resulting company as they would have applied to the amalgamating or the demerged company if the amalgamation or demerger had not taken place.

(13) The provisions contained in sub-section (5) and sub-sections (7) to (12) of section 80-IA shall, so far as may be, apply to the eligible business under this section.

(14) For the purposes of this section, -

(a) "cold chain facility" means a chain of facilities for storage or transportation of agricultural produce under scientifically controlled conditions including refrigeration and other facilities necessary for the preservation of such produce;

(b) "hilly area" means any area located at a height of one thousand metres or more above the sea level;

(c) "initial assessment year" -

(i) in the case of an industrial undertaking or cold storage plant or ship or hotel, means the assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce articles or things, or to operate its cold storage plant or plants or the cold chain facility or the ship is first brought into use

or the business of the hotel starts functioning;

(ii) in the case of a company carrying on scientific and industrial research and development, means the assessment year relevant to the previous year in which the company is approved by the prescribed authority for the purposes of sub-section (8);

(iii) in the case of an undertaking engaged in the business of commercial production or refining of mineral oil referred to in sub-section (9), means the assessment year relevant to the previous year in which the undertaking commences the commercial production or refining of mineral oil;

(d) "North-Eastern Region" means the region comprising the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura;

(e) "place of pilgrimage" means a place where any temple, mosque, gurdwara, church or other place of public worship of renown throughout any State or States is situated;

(f) "rural area" means any area other than -

(i) an area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee or by any other name) or a cantonment board and which has a population of not less than ten thousand according to the preceding census of which relevant figures have been published before the first day of the previous year; or

(ii) an area within such distance not being more than fifteen kilometres from the local limits of any municipality or cantonment board referred to in sub-clause (i), as the Central Government may, having regard to the stage of development of such area including the extent of, and scope for, urbanisation of such area and other relevant considerations specify in this behalf by notification in the Official Gazette;

(g) "small-scale industrial undertaking" means an industrial undertaking which is, as on the last day of the previous year, regarded as a small-scale industrial undertaking under section 11B of the Industries (Development and Regulation) Act, 1951 (65 of 1951).'.