

Finance Act 1976

Section 8 - Insertion of New Section 32a

After section 32 of the Income-tax Act, the following section shall be inserted, namely :-

32A. Investment allowance. - (1) In respect of a ship or an aircraft or machinery or plant specified in sub-section (2), which is owned by the assessee and is wholly used for the purposes of the business carried on by him, there shall, in accordance with and subject to the provisions of this section, be allowed a deduction, in respect of the previous year in which the ship or aircraft was acquired or the machinery or plant was installed or, if the ship, aircraft, machinery or plant is first put to use in the immediately succeeding previous year, then, in respect of that previous year, of a sum by way of investment allowance equal to twenty-five per cent. of the actual cost of the ship, aircraft, machinery or plant to the assessee :

Provided that no deduction shall be allowed under this section in respect of -

- (a) any machinery or plant installed in any office premises or any residential accommodation, including any accommodation in the nature of a guest-house;
- (b) any office appliances or road transport vehicles;
- (c) any ship, machinery or plant in respect of which the deduction by way of development rebate is allowable under section 33; and
- (d) any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any one previous year.

(2) The ship or aircraft or machinery or plant referred to in sub-section (1) shall be the following, namely :-

- (a) a new ship or new aircraft acquired after the 31st day of March, 1976, by an assessee engaged in the business of operation of ships or aircraft;
- (b) any new machinery or plant installed after the 31st day of March, 1976 -
 - (i) for the purposes of business of generation or distribution of electricity or any other form of power; or
 - (ii) for the purposes of business of construction, manufacture or production of any one or more of the articles or things specified in the list in the Ninth Schedule; or
 - (iii) in a small-scale industrial undertaking for the purposes of business of manufacture or production of any other articles or things.

Explanation : For the purposes of this sub-section and sub-section (4), -

- (1) "new ship" or "new aircraft" or "new machinery or plant" shall have the same meanings as in the Explanation to clause (vi) of sub-section (1) of section 32;
- (2) an industrial undertaking shall be deemed to be a small-scale industrial undertaking, if the aggregate value of the machinery and plant (other than tools, jigs, dies and moulds) installed, as on the last day of the previous year, for the purposes of the business of the undertaking does not exceed ten lakh rupees; and for this purposes the value of any machinery or plant shall be, -
 - (a) in the case of any machinery or plant owned by the assessee, the actual cost thereof to the assessee; and
 - (b) in the case of any machinery or plant hired by the assessee, the actual cost thereof as in the case of the owner of such machinery or plant.

(3) Where the total income of the assessee assessable for the assessment year relevant to the previous year in which the ship or aircraft was acquired or the machinery or plant was installed, or, as the case may be, the immediately succeeding previous year [the total income for this purposes being computed after deduction of the allowances

under section 33 and section 33A, but without making any deduction under sub-section (1) of this section or any deduction under Chapter VIA] is nil or is less than the full amount of the investment allowance, -

(i) the sum to be allowed by way of investment 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 investment allowance, to the extent to which it has not been allowed as aforesaid, shall be carried forward to the following assessment year, and the investment 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 investment allowance, if any, still outstanding shall be carried forward to the following assessment year and so on, so, however, that no portion of the investment allowance shall be carried forward for more than eight assessment years immediately succeeding the assessment year relevant to the previous year in which the ship or aircraft was acquired or the machinery or plant was installed or, as the case may be, the immediately succeeding previous year.

Explanation : Where for any assessment year, investment allowance is to be allowed in accordance with the provisions of this sub-section in respect of any ship or aircraft acquired or any machinery or plant installed in more than one previous year, and the total income of the assessee assessable for that assessment year [the total income for these purposes being computed after deduction of the allowances under section 33 and section 33A, but without making any deduction under sub-section (1) of this section or any deduction under Chapter VIA] is less than the aggregate of the amounts due to be allowed in respect of the assets aforesaid for that assessment year, the following procedure shall be followed, namely :-

(a) the allowance under clause (ii) shall be made before any allowance under clause (i) is made; and

(b) where an allowance has to be made under clause (ii) 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.

(4) 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 in respect of the ship or aircraft or machinery or plant;

(ii) an amount equal to seventy-five per cent. of the investment allowance to be actually allowed is debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account (to be called the "Investment Allowance Reserve Account") to be utilised -

(a) for the purposes of acquiring, before the expiry of a period of ten years next following the previous year in which the ship or aircraft was acquired or the machinery or plant was installed, a new ship or a new aircraft or new machinery or plant [other than machinery or plant of the nature referred to in clause (a), (b) and (d) of the proviso to sub-section (1)] for the purposes of the business of the undertaking; and

(b) until the acquisition of a new ship or a new aircraft or new machinery or plant as aforesaid, for the purposes of the business of the undertaking other than for distribution by way of dividends or profits or for remittance outside India as profits or for the creation of any asset outside India :

Provided that this clause shall have effect in effect in respect of a ship as if for the word "seventy-five", the word "fifty" had been substituted.

Explanation : Where the amount debited to the profit and loss account and credited to the Investment Allowance Reserve Account under this sub-section is not less than the amount required to be so credited on the basis of the amount of deduction in respect of investment allowance claimed in the return made by the assessee under section 139, but a higher deduction in respect of the investment allowance is admissible on the basis of the total income as proposed to be computed by the Income-tax Officer under section 143, the Income-tax Officer shall, by notice in writing in this behalf, allow the assessee an opportunity to credit within the time specified in the notice or within such further time as the Income-tax Officer may allow, a further amount to the Investment Allowance Reserve Account out of the profits and gains of the previous year in which such notice is served on the assessee or of the immediately preceding previous

year, if the accounts for that year have not been made up; and, if the assessee credits any further amount to such account within the time aforesaid, the amount so credited shall be deemed to have been credited to the Investment Allowance Reserve Account of the previous year in which the deduction is admissible and such amount shall not be taken into account in determining the adequacy of the reserve required to be credited by the assessee in respect of the previous year in which such further credit is made :

Provided that such opportunity shall not be allowed by the Income-tax Officer in a case where the difference in the total income as proposed to be computed by him and the total income as returned by the assessee arises out of the application of the proviso to sub-section (1) of section 145 or sub-section (2) of that section or the omission by the assessee to disclose his income fully and truly.

(5) Any allowance made under this section in respect of any ship, aircraft, machinery or plant shall be deemed to have been wrongly made for the purposes of this Act, -

(a) if the ship, aircraft, machinery or plant 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 it was acquired or installed; or

(b) if at any time before the expiry of ten years from the end of the previous year in which the ship or aircraft was acquired or the machinery or plant was installed, the assessee does not utilise the amount credited to the reserve account under sub-section (4) for the purposes of acquiring a new ship or a new aircraft or new machinery or plant [other than machinery or plant of the nature referred to in clauses (a), (b) and (d) of the proviso to sub-section (1)] for the purposes of the business of the undertaking; or

(c) if at any time before the expiry of the ten years aforesaid, the assessee utilises the amount credited to the reserve account under sub-section (4) for distribution by way of dividends or profits or for remittance outside India as profits or for the creation of any assets outside India or for any other purpose which is not a purpose of the business of the undertaking,

and the provisions of sub-section (4A) of section 155 shall apply accordingly :

Provided that nothing in clause (a) shall apply -

(i) where the ship, aircraft, machinery or plant 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 ship, aircraft, machinery or plant is made in connection with the amalgamation or succession, referred to in sub-section (6) or sub-section (7).

(6) Where, in a scheme of amalgamation, the amalgamating company sells or otherwise transfers to the amalgamated company any ship, aircraft, machinery or plant, in respect of which investment allowance has been allowed to the amalgamating company under sub-section (1), -

(a) the amalgamated company shall continue to fulfil the conditions mentioned in sub-section (4) in respect of the reserve created by the amalgamating company and in respect of the period within which such ship, aircraft, machinery or plant shall not be sold or otherwise transferred and in default of any of these conditions, the provisions of sub-section (4A) of section 155, shall apply to the amalgamated company as they would have applied to the amalgamating company had it committed the default; and

(b) the balance of investment allowance, if any, still outstanding to the amalgamating company in respect of such ship, aircraft, machinery or plant, shall be allowed to the amalgamated company in accordance with the provisions of sub-section (3), so, however, that the total period for which the balance of investment allowance shall be carried forward in the assessments of the amalgamating company and the amalgamated company shall not exceed the period of eight years specified in sub-section (3) and the amalgamated company shall be treated as the assessee in respect of such ship, aircraft, machinery or plant for the purposes of this section.

(7) 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 ship, aircraft, machinery or plant, the provisions of clauses (a) and (b) sub-section (6) shall, so far as may be, apply to the firm and the company.

Explanation : The provisions of this sub-section shall apply only where -

(i) all the property of the firm relating to the business immediately before the succession becomes the

property of the company;

(ii) all the liabilities of the firm relating to the business immediately before the succession become the liabilities of the company; and

(iii) all the shareholders of the company were partners of the firm immediately before the succession.

(8) The Central Government, if it considers necessary or expedient so to do, may, by notification in the Official Gazette, direct that the deduction allowable under this section shall not be allowed in respect of any ship or aircraft acquired or any machinery or plant installed after such date, not being earlier than three years from the date of such notification, as may be specified therein.

(9) For the removal of doubts, it is hereby declared that the deduction under sub-section (1) shall not be denied by reason only that the amount debited to the profits and loss account of the relevant previous year and credited to the Investment Allowance Reserve Account exceeds the amount of the profit of such previous year (as arrived at without making the deposit aforesaid), in accordance with the profit and loss account..
