

Finance Act 1976

Section 10 - Insertion of New Sections 44c and 44d

In the Income-tax Act, in Chapter IV-D, after section 44B, the following sections shall be inserted, with effect from the 1st day of June, 1976, namely :-

44C. Deduction of head office expenditure in the case of non-residents. - Notwithstanding anything to the contrary contained in sections 28 to 43A, in the case of an assessee, being a non-resident, no allowance shall be made, in computing the income chargeable under the head "Profits and gains of business or profession", in respect of so much of the expenditure in the nature of head office expenditure as is in excess of the amount computed as hereunder, namely :-

- (a) an amount equal to five per cent. of the adjusted total income; or
- (b) an amount equal to the average head office expenditure; or
- (c) the amount of so much of the expenditure in the nature of head office expenditure incurred by the assessee as is attributable to the business or profession of the assessee in India,

whichever is the least :

Provided that in a case where the adjusted total income of the assessee is a loss, the amount under clause (a) shall be computed at the rate of five per cent. of the average adjusted total income of the assessee.

Explanation : For the purposes of this section, -

(i) "adjusted total income" means the total income computed in accordance with the provisions of this Act, without giving effect to the allowance referred to in this section or in sub-section (2) of section 32 or the deduction referred to in section 32A or section 33 or section 33A or the first proviso to clause (ix) of sub-section (1) of section 36 or any loss carried forward under sub-section (1) of section 72 or sub-section (2) of section 73 or sub-section (1) of section 74 or sub-section (3) of section 74A or the deductions under Chapter VIA;

(ii) "average adjusted total income" means, -

(a) in a case where the total income of the assessee is assessable for each of the three assessment years immediately preceding the relevant assessment year, one-third of the aggregate amount of the adjusted total income in respect of the previous years relevant to the aforesaid three assessment years;

(b) in a case where the total income of the assessee is assessable only for two of the aforesaid three assessment years, one-half of the aggregate amount of the adjusted total income in respect of the previous years relevant to the aforesaid two assessment years;

(c) in a case where the total income of the assessee is assessable only for one of the aforesaid three assessment years, the amount of the adjusted total income in respect of the previous year relevant to that assessment year;

(iii) "average head office expenditure" means, -

(a) in a case where any expenditure in the nature of head office expenditure has been allowed as a deduction in computing the income of the assessee chargeable under the head "Profits and gains of business or profession" in respect of each of the three previous years relevant to the assessment years commencing on the 1st day of April, 1974, the 1st day of April, 1975, and the 1st day of April, 1976, one-third of the aggregate amount of the expenditure so allowed;

(b) in a case where such expenditure has been so allowed only in respect of two of the aforesaid three previous years, one-half of the aggregate amount of the expenditure so allowed;

(c) in a case where such expenditure has been so allowed only in respect of one of the aforesaid three previous years, the amount of the expenditure so allowed;

(iv) "head office expenditure" means executive and general administration expenditure incurred by the assessee outside India, including expenditure incurred in respect of -

- (a) rent, rates, taxes, repairs or insurance of any premises outside India used for the purposes of the business or profession;
- (b) salary, wages, annuity, pension, fees, bonus, commission, gratuity, perquisites or profits in lieu of or in addition to salary, whether paid or allowed to any employee or other person employed in, or managing the affairs of, any office outside India;
- (c) travelling by any employee or other person employed in, or managing the affairs of, any office outside India; and
- (d) such other matters connected with executive and general administration as may be prescribed.

44D. Special provisions for computing income by way of royalties, etc., in the case of foreign companies. - Notwithstanding anything to the contrary contained in sections 28 to 44C, in the case of an assessee, being a foreign company, -

(a) the deductions admissible under the said sections in computing the income by way of royalty or fees for technical services received from an India concern in pursuance of an agreement made by the foreign company with the Indian concern before the 1st day of April, 1976, shall not exceed in the aggregate twenty per cent. of the gross amount of such royalty or fees as reduced by so much of the gross amount of such royalty as consists of lump sum consideration for the transfer outside India of, or the imparting of information outside India in respect of, any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process or trade mark or similar property;

(b) no deduction in respect of any expenditure or allowance shall be allowed under any of the said sections in computing the income by way of royalty or fees for technical services received from an Indian concern in pursuance of an agreement made by the foreign company with the Indian concern after the 31st day of March, 1976.

Explanation : For the purposes of this section, -

- (a) "fees for technical services" shall have the same meaning as in Explanation to clause (vii) of sub-section (1) of section 9;
 - (b) "foreign company" shall have the same meaning as in section 80B;
 - (c) "royalty" shall have the same meaning as in the Explanation to clause (vi) of sub-section (1) of section 9;
 - (d) royalty received from an Indian concern in pursuance of an agreement made by a foreign company with the Indian concern after the 31st day of March, 1976, shall be deemed to have been received in pursuance of an agreement made before the 1st day of April, 1976, if such agreement is deemed, for the purposes of the proviso to clause (vi) of sub-section (1) of section 9, to have been made before the 1st day of April, 1976..
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