

Finance (No.2) Act, 2009

Section 13 - Insertion of new section 35AD: After section 35AC of the Income-tax Act, the following section shall be inserted with

1) An assessee shall be allowed a deduction in respect of the whole of any expenditure of capital nature incurred, wholly and exclusively, for the purposes of any specified business carried on by him during the previous year in which such expenditure is incurred by him. (2) This section applies to the specified business which fulfils all the following conditions, namely (i) it is not set up by splitting up, or the reconstruction, of a business already in existence; (ii) it is not set up by the transfer to the specified business of machinery or plant previously used for any purpose; (iii) where the business is of the nature referred to in sub-clause (iii) of clause (c) of sub-section (8), such business,- (a) is owned by a company formed and registered in India under the Companies Act, 1956 (1 of 1956) or by a consortium of such companies or by an authority or a board or a corporation established or constituted under any Central or State Act; (b) has been approved by the Petroleum and Natural Gas Regulatory Board established under sub-section (1) of section 3 of the Petroleum and Natural Gas Regulatory Board Act, 2006 (19 of 2006) and notified by the Central Government in the Official Gazette in this behalf; (c) has made not less than one-third of its total pipeline capacity available for use on common carrier basis by any person other than the assessee or an associated person; and (d) fulfils any other condition as may be prescribed. (3) The assessee shall not be allowed any deduction in respect of the specified business under the provisions of Chapter VIA under the heading "C.-Deductions in respect of certain incomes". (4) No deduction in respect of the expenditure referred to in sub-section (1) shall be allowed to the assessee under any other section in any previous year or under this section in any other previous year. (5) The provisions of this section shall apply to the specified business referred to in sub-section (2) if it commences its operations,- (a) on or after the 1st day of April, 2007, where the specified business is in the nature of laying and operating a cross-country natural gas pipeline network for distribution, including storage facilities being an integral part of such network; and (b) on or after the 1st day of April, 2009, in all other cases not falling under clause (a). (6) The assessee carrying on the business of the nature referred to in clause (a) of sub-section (5) shall be allowed, in addition to deduction under sub-section (1), a further deduction in the previous year relevant to the assessment year beginning on the 1st day of April, 2010, of an amount in respect of expenditure of capital nature incurred during any earlier previous year, if- (a) the business referred to in clause (a) of sub-section (5) has commenced its operation at any time during the period beginning on or after the 1st day of April, 2007 and ending on the 31st day of March, 2009; and (b) no deduction for such amount has been allowed or is allowable to the assessee in any earlier previous year. (7) The provisions contained in sub-section (6) of section 80A and the provisions of sub-sections (7) and (10) of section 80-IA shall, so far as may be, apply to this section in respect of goods or services or assets held for the purposes of the specified business. (8) For the purposes of this section,- (a) an "associated person", in relation to the assessee, means a person,- (i) who participates, directly or indirectly, or through one or more intermediaries in the management or control or capital of the assessee; (ii) who holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in the capital of the assessee; (iii) who appoints more than half of the Board of directors or members of the governing board, or one or more executive directors or executive members of the governing board of the assessee; or (iv) who guarantees not less than ten per cent of the total borrowings of the assessee; (b) "cold chain facility" means a chain of facilities for storage or transportation of agricultural and forest produce, meat and meat products, poultry, marine and dairy products, products of horticulture, floriculture and apiculture and processed food items under scientifically controlled conditions including refrigeration and other facilities necessary for the preservation of such produce; (c) "specified business" means the any one or more of the following business, namely (i) setting up and operating a cold chain facility; (ii) setting up and operating a warehousing facility for storage of agricultural produce; (iii) laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such

network. (d) 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- (i) such machinery or plant was not, at any time prior to the date of the installation by the assessee, used in India; (ii) such machinery or plant is imported into India from any country outside India; and (iii) 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; (e) where in the case of a specified business, any machinery or plant or any part thereof previously used for any purpose is transferred to the specified 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 such business, then, for the purposes of clause (ii) of sub-section (2), the condition specified therein shall be deemed to have been complied with; (f) any expenditure of capital nature shall not include any expenditure incurred on the acquisition of any land or goodwill or financial instrument.

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