

Finance Act, 1999

Section 38 - SUBSTITUTION OF NEW SECTION FOR SECTION 72-A - For Section 72A of the Income Tax Act-, the following section shall be

1) Where there has been an amalgamation of a company owning an industrial undertaking or a ship with another company, then, notwithstanding anything contained in any other provision of this Act, the accumulated loss and the unabsorbed depreciation of the amalgamating company shall be deemed to be the loss or, as the case may be, allowance for depreciation of the amalgamated company for the previous year in which the amalgamation was effected, and other provisions of this Act relating to set-off and carry forward of loss and allowance for depreciation shall apply accordingly. (2) Notwithstanding anything contained in sub-section (1), the accumulated loss shall not be set-off or carried forward and the unabsorbed depreciation shall not be allowed in the assessment of the amalgamated company unless the amalgamated company - (i) holds continuously for a minimum period of five years from the date of amalgamation at least three-fourths in the value of assets of the amalgamating company acquired in a scheme of amalgamation; (ii) continues the business of the amalgamating company for a minimum period of five years from the date of amalgamation; (iii) fulfils such other conditions as may be prescribed to ensure the revival of the business of the amalgamating company or to ensure that the amalgamation is for genuine business purpose. (3) In a case where any of the conditions laid down in sub-section (2) are not complied with, the set-off of loss or allowance of depreciation made in any previous year in the hands of the amalgamated company shall be deemed to be the income of the amalgamated company chargeable to tax for the year in which such conditions are not complied with. (4) Notwithstanding anything contained in any other provisions of this Act, in the case of a demerger, the accumulated loss and the allowance for unabsorbed depreciation of the demerged company shall - (a) where such loss or unabsorbed depreciation is directly relatable to the undertakings transferred to the resulting company, be allowed to be carried forward and set-off in the hands of the resulting company; (b) where such loss or unabsorbed depreciation is not directly relatable to the undertakings transferred to the resulting company, be apportioned between the demerged company and the resulting company in the same proportion in which the assets of the undertakings have been retained by the demerged company and transferred to the resulting company, and be allowed to be carried forward and set-off in the hands of the demerged company or the resulting company, as the case may be. (5) The Central Government may, for the purposes of this Act, by notification in the Official Gazette, specify such conditions as it considers necessary to ensure that the demerger is for genuine business purposes. (6) Where there has been reorganisation of business, whereby, a firm is succeeded by a company fulfilling the conditions laid down in clause (xiii) of Section 47 or a proprietary concern is succeeded by a company fulfilling the conditions laid down in clause (xiv) of Section 47 -, then, notwithstanding anything contained in any other provision of this Act, the accumulated loss and the unabsorbed depreciation of the predecessor firm or the proprietary concern, as the case may be, shall be deemed to be the loss or allowance for depreciation of the successor company for the purpose of previous year in which business reorganisation was effected and other provisions of this Act relating to set-off and carry forward of loss and allowance for depreciation shall apply accordingly: Provided that if any of the conditions laid down in the proviso to clause (xiii) or the proviso to clause (xiv) to Section 47-are not complied with, the set-off of loss or allowance of depreciation made in any previous year in the hands of the successor company, shall be deemed to be the income of the company chargeable to tax in the year in which such conditions are not complied with. (7) For the purposes of this section,- (a) "accumulated loss" means so much of the loss of the predecessor firm or the proprietary concern or the amalgamating company or the demerged company, as the case may be, under the head "Profits and gains of business or profession" (not being a loss sustained in a speculation business) which such predecessor firm or the proprietary concern or amalgamating company or demerged company, would have been entitled to carry forward and set-off under the provisions of Section 72-if the reorganisation of business or amalgamation or demerger had not taken place; (b) "unabsorbed depreciation" means so much of the

allowance for depreciation of the predecessor firm or the proprietary concern or the amalgamating company or the demerged company, as the case may be, which remains to be allowed and which would have been allowed to the predecessor firm or the proprietary concern or amalgamating company or demerged company, as the case may be, under the provisions of this Act, if the reorganisation of business or amalgamation or demerger had not taken place."

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