

Finance Act, 1982

Section 18 - Insertion of New Section 80Hhb

In the Income-tax Act, after section 80HHA, the following section shall be inserted with effect from the 1st day of April, 1983, namely :-

'80HHB. Deduction in respect of profits and gains from projects outside India. -

(1) Where the gross total income of an assessee being an Indian company or a person (other than a company) who is resident in India includes any profits and gains derived from the business of -

(a) the execution of a foreign project undertaken by the assessee in pursuance of a contract entered into by him, or

(b) the execution of any work undertaken by him and forming part of a foreign project undertaken by any other person in pursuance of a contract entered into by such other person,

with the Government of a foreign State or any statutory or other public authority or agency in a foreign State, or a foreign enterprise, 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 twenty-five per cent. thereof :

Provided that the consideration for the execution of such project or, as the case may be, of such work is payable in convertible foreign exchange.

(2) For the purposes of this section, -

(a) "convertible foreign exchange" means foreign exchange which is for the time being treated by the Reserve Bank of India as convertible foreign exchange for the purposes of the Foreign Exchange Regulation Act, 1973 (46 of 1973), and any rules made thereunder;

(b) "foreign project" means a project for -

(i) the construction of any building, road, dam, bridge or other structure outside India;

(ii) the assembly or installation of any machinery or plant outside India;

(iii) the execution of such other work (of whatever nature) as may be prescribed.

(3) The deduction under this section shall be allowed only if the following conditions are fulfilled, namely :-

(i) the assessee maintains separate accounts in respect of the profits and gains derived from the business of the execution of the foreign project, or, as the case may be, of the work forming part of the foreign project undertaken by him and, where the assessee is a person other than an Indian company or a co-operative society, such accounts 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;

(ii) an amount equal to twenty-five per cent. of the profits and gains referred to in sub-section (1) is debited to the profits and loss account of the previous year in respect of which the deduction under this section is to be allowed and credited to a reserve account (to be called the "Foreign Projects Reserve Account") to be utilised by the assessee during a period of five years next following for the purposes of his business other than for distribution by way of dividends or profits;

(iii) an amount equal to twenty-five per cent. of the profits and gains referred to in sub-section (1) is brought by the assessee in convertible foreign exchange into India, in accordance with the provisions of the Foreign Exchange Regulation Act, 1973 (46 of 1973), and any rules made thereunder, within a period of six months from the end of the previous year referred to in clause (ii) or, where the Commissioner is satisfied (for reasons to be recorded in writing) that the assessee is, for reasons beyond his control, unable to do so within the said period of six months, within such further period as the Commissioner may allow in this behalf :

Provided that where the amount credited by the assessee to the Foreign Projects Reserve Account in pursuance of clause (ii) or the amount brought into India by the assessee in pursuance of clause (iii) or each of the said amounts is less than twenty-five per cent. of the profits and gains referred to in sub-section (1), the deduction under that sub-section shall be limited to the amount so credited in pursuance of clause (ii) or the amount so brought into India in pursuance of clause (iii), whichever is less.

(4) If at any time before the expiry of five years from the end of the previous year in which the deduction under sub-section (1) is allowed, the assessee utilises the amount credited to the Foreign Projects Reserve Account for distribution by way of dividends or profits or for any other purposes which is not a purpose of the business of the assessee, the deduction originally allowed under sub-section (1) shall be deemed to have been wrongly allowed, and the Income-tax Officer may, notwithstanding anything contained in this Act, re-compute the total income of the assessee for the relevant previous year and make the necessary amendment; and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the end of the previous year in which the money was so utilised.

(5) Notwithstanding anything contained in any other provisions of this Chapter under the heading "C - Deductions

in respect of certain incomes"; no part of the consideration or of the income comprised in the consideration payable to the assessee for the execution of a foreign project referred to in clause (a) of sub-section (1) or of any work referred to in clause (b) of that sub-section shall qualify for deduction for any assessment year under any such other provision.'
