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Finance (No. 2) Act, 1998

Section 33 - Amendment of Section 80-hhe

In section 80-HHE of the Income-tax Act, with effect from the 1st day of April, 1999,--

(a) after sub-section (f) the following shall be inserted namely:--

"Provided that if the assessee being a company, engaged in the export out of India of computer software, issue a certificate referred to in clause (b) of sub-section (4A) that in respect of the amount of the export specified therein, the deduction under this sub-section is to be allowed to a supporting software developer, then, the amount of deduction in the case of an assessee shall be reduced by such amount which bears to the total profits derived by the assessee from the export, the same proportion as the amount of the export turnover specified in such certificate bears to the total export turnover of the assessee.

(1A) where the assessee, being a supporting software developer, has during the previous year, developed and sold computer software to an exporting company in respect of which the said company has issued a certificate under the proviso to sub-section (1) 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 of the profits derived by the assessee from the developing and selling of computer software to the exporting company in respect of which the certificate has been issued by the said company."

(b) after sub-section (3) the following sub-section shall be inserted, namely:--

"(3A) For the purposes of sub-section (1A), profits derived by a supporting software developer shall be,--

(i) in a case where the business carried on by the supporting software developer consists exclusively of developing and selling of computer software to one or more exporting companies solely engaged in exports, the profits, of such business.

(ii) in a case where the business carried on by a supporting software developer does not consist exclusively of developing and selling of computer software to one or more exporting companies, the amount which bears to the profits of the business, the same proportion as the turnover in respect of sale to the respective exporting company bears to the total turnover of the business carried on by the assessee."

(c) after sub-section (4) the following sub-section shall be inserted, namely:--

"(4A) The deduction under sub-section (1A) shall not be admissible unless the supporting software developer furnishes in the prescribed form along with his return of income,--

(i) the report of an accountant, as defined in the Explanation below sub-section (2) of section 288 certifying that the deduction has been correctly claimed on the basis of the profits of the supporting software developer in respect of sale of computer software to the exporting company; and

(ii) a certificate from the exporting company containing such particulars as may be prescribed and verified in the manner prescribed that in respect of the export turnover mentioned in the certificate, the exporting company has not claimed deduction under this section;

Provided that the certificate specified in clause (b) shall be duly certified by the auditor auditing the accounts of the exporting assessee under the provisions of this Act or under any other law."

(d) in the Explanation below sub-section (5),--

(i) in clause (b), after the words "any such programme", the words "or any customised electronic data" shall be inserted;

(ii) after clause (c) the following clause shall be inserted, namely;--

(ca) "exporting company" means a company referred to in sub-section (1) making actual export of computer software:

(iii) after clause (e), the following clause shall be inserted, namely:--

'(ca) "supporting software developer" means as Indian company or a person (other than a company) resident in India, developing and selling computer software to an exporting company for the purposes of export.'

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