

Finance (No. 2) Act, 1980

Section 16 - Insertion of New Section 80-i

In the Income-tax Act, after section 80HHA, the following section shall be inserted with effect from the 1st day of April, 1981, namely :-

'80-I. Deduction in respect of profits and gains from industrial undertakings after a certain date, etc. -

(1) Where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking or a ship or the business of a hotel, to which this section applies, 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 per cent. thereof :

Provided that in the case of an assessee, being a company, the provisions of this sub-section shall have effect as if for the words "twenty per cent.", the words "twenty-five per cent." had been substituted.

(2) This section applies to any industrial undertaking which fulfils all the following conditions, namely :-

(i) it is not formed by the splitting up, or the reconstruction, of a business already in existence;

(ii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose;

(iii) it manufactures or produces any article or thing, not being any article or thing specified in the list in the Eleventh Schedule, or operates one or more cold storage plant or plants, in any part of India, and begins to manufacture or produce articles or things or to operate such plant or plants, at any time within the period of four years next following the 31st day of March, 1981, or such further period as the Central Government may, by notification in the Official Gazette, specify with reference to any particular industrial undertaking;

(iv) in a case where the industrial undertaking manufactures or produces articles or things, the undertaking employs ten or more workers in a manufacturing process carried on with the aid of power, or employs twenty or more workers in a manufacturing process carried on without the aid of power :

Provided that the condition in clause (i) shall not apply in respect of any industrial undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such industrial undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section :

Provided further that the condition in clause (iii) shall, in relation to a small-scale industrial undertaking, apply as if the words "not being any article or thing specified in the list in the Eleventh Schedule" had been omitted.

Explanation 1 : For the purpose of clause (ii) of this sub-section, 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 the following conditions are fulfilled, namely :-

- (a) such machinery or plant was not, at any time previous to the date of the installation by the assessee, used in India;
- (b) such machinery or plant is imported into India from any country outside India; and
- (c) 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.

Explanation 2 : Where in the case of an industrial undertaking, any machinery or plant or any part thereof previously used for any purpose is transferred to a new business and the total value of machinery or plant or part so transferred does not exceed twenty per cent. of the total value of the machinery or plant used in the business, then, for the purposes of clause (ii) of this sub-section, the condition specified therein shall be deemed to have been complied with.

Explanation 3 : For the purposes of this sub-section, "small-scale industrial undertaking" shall have the same meaning as in clause (b) of the Explanation below sub-section (8) of section 80HHA.

- (3) This section applies to any ship, where all the following conditions are fulfilled, namely :-
 - (i) it is owned by an Indian company and is wholly used for the purposes of the business carried on by it;
 - (ii) it was not, previous to the date of its acquisition by the Indian company, owned or used in Indian territorial waters by a person resident in India; and
 - (iii) it is brought into use by the Indian company at any time within the period of four years next following the 1st day of April, 1981.
- (4) This section applies to the business of any hotel, where all the following conditions are fulfilled, namely :-
 - (i) the business of the hotel is not formed by the splitting up, or the reconstruction, of a business already in existence or by the transfer to a new business of a building previously used as a hotel or of any machinery or plant previously used for any purpose;
 - (ii) the business of the hotel is owned and carried on by a company registered in India with a paid-up capital of not less than five hundred thousand rupees;
 - (iii) the hotel is for the time being approved for the purposes of this sub-section by the Central Government;
 - (iv) the business of the hotel starts functioning after the 31st day of March, 1981, but before the 1st day of April, 1985.
- (5) The deduction specified in sub-section (1) shall be allowed in computing the total income in respect of the assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce articles or things, or to operate its cold storage plant or plants or the ship is first brought into use or the business of the hotel starts functioning (such assessment year being hereafter in this section referred to as the initial assessment year) and each of the seven assessment years immediately succeeding the initial assessment year :

Provided that in the case of an assessee, being a co-operative society, the provisions of this sub-section shall have effect as if for the words "seven assessment years", the words "nine assessment years" had been substituted.

- (6) Notwithstanding anything contained in any other provision of this Act, the profits and gains of an industrial undertaking or a ship or the business of a hotel to which the provisions of sub-section (1) apply shall, for the purposes of determining the quantum of deduction under

sub-section (1) for the assessment year immediately succeeding the initial assessment year or any subsequent assessment year, be computed as if such industrial undertaking or ship or the business of the hotel were the only source of income of the assessee during the previous years relevant to the initial assessment year and to every subsequent assessment year up to and including the assessment year for which the determination is to be made.

(7) Where the assessee is a person other than a company or a co-operative society, the deduction under sub-section (1) from profits and gains derived from an industrial undertaking shall not be admissible unless the accounts of the industrial undertaking for the previous year relevant to the assessment year for which the deduction is claimed 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.

(8) Where any goods held for the purposes of the business of the industrial undertaking or the hotel or the operation of the ship are transferred to any other business carried on by the assessee, or where any goods held for the purposes of any other business carried on by the assessee are transferred to the business of the industrial undertaking or the hotel or the operation of the ship and, in either case, the consideration, if any, for such transfer as recorded in the accounts of the business of the industrial undertaking or the hotel or the operation of the ship does not correspond to the market value of such goods as on the date of the transfer, then, for the purposes of the deduction under this section, the profits and gains of the industrial undertaking or the business of the hotel or the operation of the ship shall be computed as if the transfer, in either case, had been made at the market value of such goods as on that date :

Provided that where, in the opinion of the Income-tax Officer, the computation of the profits and gains of the industrial undertaking or the business of the hotel or the operation of the ship in the manner hereinbefore specified presents exceptional difficulties, the Income-tax Officer may compute such profits and gains on such reasonable basis as he may deem fit.

Explanation : In this sub-section, "market value", in relation to any goods, means the price that such goods would ordinarily fetch on sale in the open market.

(9) Where it appears to the Income-tax Officer that, owing to the close connection between the assessee carrying on the business of the industrial undertaking or the hotel or the operation of the ship to which this section applies and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the assessee more than the ordinary profits which might be expected to arise in the business of the industrial undertaking or the hotel or the operation of the ship, the Income-tax Officer shall, in computing the profits and gains of the industrial undertaking or the hotel or the ship for the purposes of the deduction under this section, take the amount of profits as may be reasonably deemed to have been derived therefrom.

(10) The Central Government may, after making such inquiry as it may think fit, direct, by notification in the Official Gazette, that the exemption conferred by this section shall not apply to any class of industrial undertakings with effect from such date as it may specify in the notification.'.