

## Finance Act 1975

### Section 6 - Amendment of Section 40a

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In section 40A of the Income-tax Act, -

(a) after sub-section (6), the following sub-section shall be inserted, and shall be deemed to have been inserted, with effect from the 1st day of April, 1973, namely :-

"(7)(a) Subject to the provisions of clause (b), no deduction shall be allowed in respect of any provision (whether called as such or by any other name) made by the assessee for the payment of gratuity to his employees on their retirement or on termination of their employment for any reason.

(b) Nothing in clause (a) shall apply in relation to -

(i) any provision made by the assessee for the purpose of payment of a sum by way of any contribution towards an approved gratuity fund, or for the purpose of payment of any gratuity, that has become payable during the previous year;

(ii) any provision made by the assessee for the previous year relevant to any assessment year commencing on or after the 1st day of April, 1973, but before the 1st day of April, 1976, to the extent the amount of such provision does not exceed the admissible amount, if the following conditions are fulfilled, namely :-

(1) the provision is made in accordance with an actuarial valuation of the ascertainable liability of the assessee for payment of gratuity to his employees on their retirement or on termination of their employment for any reason;

(2) the assessee creates an approved gratuity fund for the exclusive benefit of his employees under an irrevocable trust, the application for the approval of the fund having been made before the 1st day of January, 1976; and

(3) a sum equal to at least fifty per cent. of the admissible amount, or where any amount has been utilised out of such provision for the purpose of payment of any gratuity before the creation of the approved gratuity fund, a sum equal to at least fifty per cent. of the admissible amount as reduced by the amount so utilised, is paid by the assessee by way of contribution to the approved gratuity fund, before the 1st day of April, 1976, and the balance of the admissible amount or, as the case may be, the balance of the admissible amount as reduced by the amount so utilised, is paid by the assessee by way of such contribution before the 1st day of April, 1977.

Explanation 1 : For the purpose of sub-clause (ii) of clause (b) of this sub-section, admissible amount means the amount of the provision made by the assessee for the payment of gratuity to his employees on their retirement or on termination of their employment for any reason, to the extent such amount does not exceed an amount calculated at the rate of eight and one-third per cent. of the salary [as defined in clause (h) of rule 2 of Part A of the Fourth Schedule] of each employee entitled to the payment of such gratuity for each year of his service in respect of which such provision is made.

Explanation 2 : For the removal of doubts, it is hereby declared that where any provision made by the assessee for the payment of gratuity to his employees on their retirement or on termination of their employment for any reason has been allowed as a deduction in computing the income of the assessee for any assessment year, any sum paid out of such provision by way of contribution towards an approved gratuity fund or by way of gratuity to any employee shall not be allowed as a deduction in computing the income of the assessee of the previous year in which the sum is so paid.";

(b) after sub-section (7) as so inserted, the following sub-section shall be inserted, with effect from the 1st day of April, 1976, namely :-

(8) Where the assessee, being a company (other than a banking company or a financial company), incurs any

expenditure by way of interest in respect of any deposit received by it, fifteen per cent. of such expenditure shall not be allowed as a deduction.

Explanation : In this sub-section, -

(a) "banking company" means a company to which the Banking Regulation Act, 1949 (10 of 1949), applies and includes any bank or banking institution referred to in section 51 of that Act;

(b) "deposit" means any deposit of money with, and includes any money borrowed by, a company, but does not include any amount received by the company -

(i) from the Central Government or any State Government or any local authority, or from any other source where the repayment of the amount is guaranteed by the Central Government or a State Government;

(ii) from the Government of a foreign State, or from a citizen of a foreign State, or from any institution, association or body (whether incorporated or not) established outside India;

(iii) as a loan from a banking company or from a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank);

(iv) as a loan from any institution or body specified in the list in the Tenth Schedule or such other institution or body as the Central Government may, having regard to the nature and objects of the institution or body, by notification in the Official Gazette, specify in this behalf;

(v) from any other company;

(vi) from an employee of the company by way of security deposit;

(vii) by way of security or as an advance from any purchasing agent, selling agent or other agent in the course of, or for the purpose of, the business of the company or as advance against orders for the supply of goods or for the rendering of any service;

(viii) by way of subscription to any share, stock, bond or debenture (such bond or debenture being secured by a charge or a lien on the assets of the company) pending the allotment of the said share, stock, bond or debenture, or by way of advance payment of any moneys uncalled and unpaid upon any shares in the company, if such moneys are not repayable in accordance with the articles of association of the company;

(ix) as a loan from any person where the loan is secured by the creation of a mortgage, charge or pledge of any assets of the company (such loan being hereafter in this sub-clause referred to as the relevant loan) and the amount of the relevant loan, together with the amount of any other prior debt or loan secured by the creation of a mortgage, charge or pledge of such assets, is not more than seventy-five per cent. of the price that such assets would ordinarily fetch on sale in the open market on the date of creation of the mortgage, charge or pledge for the relevant loan;

(c) "financial company" means -

(i) a hire-purchase finance company, that is to say, a company which carries on, as its principal business, hire-purchase transactions or the financing of such transactions; or

(ii) an investment company, that is to say, a company which carries on, as its principal business, the acquisition of shares, stock, bonds, debentures, debenture stock, or securities issued by the Government or a local authority, or other marketable securities of a like nature; or

(iii) a housing finance company, that is to say, a company which carries on, as its principal business, the business of financing of acquisition or construction of houses, including acquisition or development of land in connection therewith;

(iv) a loan company, that is to say, a company [not being a company referred to in sub-clauses (i) to (iii)] which carries on, as its principal business, the business of providing finance, whether by making loans or advances or otherwise;

(v) a mutual benefit finance company, that is to say, a company which carries on, as its principal business, the business of acceptance of deposits from its members and which is declared by the Central Government under section 620A of the Companies Act, 1956 (1 of 1956), to be a Nidhi or Mutual Benefit Society;

(vi) a miscellaneous finance company, that is to say, a company which carries on exclusively, or almost exclusively, two or more classes of business referred to in the preceding sub-clauses..

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