Advanced Diploma in Corporate Taxation, NALSAR

Paper-4: Sector Specific Deductions

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By – CHIRAG WADHWA, CA, LLB

Overview

Deductions vs Exemptions

Sec 80LA

Sec 80IAC

Sec 80-IBA

Sec 80M

Sec 80JJAA & Sec 80JJA

Sec 80I

Sec 80-IA

Sec 80-IAB

Sec 80-IB

Basics

Deduction v Exemption:

- Inclusion in GTI?
- Whether an exemption can be considered as a deduction? Refer **Yokogawa India Ltd [2017] 77 taxmann.com 41 (SC) - A**fter amendment to section 10A by Finance Act, 2000 with effect from 1-4-2001, said section has become a provision for deduction but stage of deduction would be while computing gross total income of eligible undertaking under Chapter IV of Act and not at stage of computation of total income under Chapter VI of Act.
- Illustrations of Exemptions and Deductions
- **Undertaking v. Assessee – Eg: To Overrule Yokogawa India (supra) – Amendment made by Finance Act 2017 -** Section 10AA of the Act provides deduction from the total income of an assessee, in respect of profits and gains arising from Unit operating in SEZ, subject to fulfilment of certain conditions. In various cases, courts have taken a view that the deduction under Section 10AA is allowed from the total income of the undertaking and not from the total income of the assessee.In order to remove this ambiguity, it is clarified that the deduction shall be allowed from the total income of the assessee and the deduction under section 10AA in no case shall exceed the said total income
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Basics

Deduction under Chapter VI-A:
Divided into 4 parts:

Part A – General – Section 80A to Section 80B
Part B – Deductions in respect of certain payments – Section 80C to Section 80GGC
Part C – Deduction in respect of certain incomes – Section 80HH to Section 80RRB
Part CA – Deductions in respect of other incomes – Section 80TTA to Section 80TTB
Part D – Other Deductions – Section 80U

The amount of deduction under Chapter VI-A shall no exceed GTI (Sec 80A(2))

Section 80AB – Deductions only with respect to income included in GTI. Has an overriding effect over other sections under Chapt VI-A. *Income specific!!*

Sec 80AC – Timely return filing mandatory

Basics

Controversy with respect to Losses:
Sec 10A etc v. Section 80AB

IPCA Laboratory Ltd v. DCIT, (2004) 266 ITR 521 (SC)

The deduction is available only when profits are there in the STP unit. If there is no profit or gain, the section would not come into play. Positive income is a must to invoke the applicability of this section. If there is a loss the assessee would not be entitled to deduction in the light of the Supreme Court's decision in *IPCA Laboratory Ltd.* v. *Dy. CIT* [2004] 266 ITR 521/135 Taxman 594 decided in the context of deduction under section 80HHC. Though it said that if there is a loss or profit under manufacturing and trading unit, both are to be taken into consideration and only if there is a profit after adjustment of loss *inter se*, the deduction would be available on positive profit but in a case of overall loss from export the assessee would not be entitled to any deduction.

Basics

the deduction on income of STP unit is allowed on the amount of its profits and gains without set off of losses and carry forward of losses and unabsorbed depreciation, because of the language used in the sections 10A, 10AA, 10B and 10BB, *viz.*, " a deduction of such profits and gains as are derived by an undertaking .... **shall be allowed from the total income of the assessee"**. It is such profits and gains as are derived by an undertaking alone and not as abated by the losses or depreciation of other units/sources of the assessee. On the other hand, the losses of the STP unit, undertaking or eligible business can be set off under sections 70, 71 and 72 of the Act in the absence of any prohibition in sub-section (6) of section 10A and similar provisions of sections 10AA,10B and 10BA, except those of losses as pertained to the period prior to 1-4-2001 and from which date the section is amended and converted into a deduction provision.

On account of section 80AB – the losses are to be set off

Basics

Sec 80AB
Deductions are to be calculated with reference to the net income as computed in accordance with the provisions of the Act, and not with reference to the gross amount of such income.

The restriction imposed by this section is aimed at ensuring that the deductions do not exceed the net income under a particular source.

Thus, while computing the income eligible for deduction under this section, the loss of one eligible unit is to be set off against the profits of another such unit.
Also Refer Synco Industries Ltd v. AO, (2008) 299 ITR 444(SC) - *Sub-section (1) of section 80A lays down that while computing the total income of an assessee, deductions specified in sections 80C to 80U shall be allowed from his gross total income.*
This section has introduced a new concept of 'gross total income' as distinguished from the 'total income', i.e., the net or taxable income. Clause (5) of section 80B defines the expression 'gross total income' to mean the total income computed in accordance with the provisions of the Act before making any deductions under Chapter VI-A. It follows, therefore, that deductions under Chapter VI-A can be given only if the gross total income is positive and not negative.

Basics

Derived from vs attributable:

CIT v. Meghalaya Steels Ltd., (2016) 67 taxmann.com 158 (SC)

The "profits and gains" spoken of by Sections 80-IB and 80-IC have reference to net profit. And net profit can only be calculated by deducting from the sale price of an article all elements of cost which go into manufacturing or selling it. Thus understood, it is clear that profits and gains are derived from the business of the assessee, namely profits arrived at after deducting manufacturing cost and selling costs reimbursed to the assessee by the Government concerned.

[**Held:** transport subsidy, interest subsidy and power subsidy received by an assessee from the Government were profit and gains derived from the business eligible to deduction under section 80 IB]

Basics

Derived from vs attributable:

It is evident that section 80-IB provides for allowing of deduction in respect of profits and gains derived from the eligible business. The words "derived from" is narrower in connotation as compared to the words "attributable to". In other words, by using the expression "derived from", Parliament intended to cover sources not beyond the first degree. In the present batch of cases, the controversy which arises for determination is: whether the DEPB credit/ Duty drawback receipt comes within the first degree sources? ***... in our view, DEPB/Duty Drawback are incentives which flow from the Schemes framed by Central Government or from Section 75 of the Customs Act, 1962, hence, incentives profits are not profits derived from the eligible business under Section 80-IB.***
[**For the purpose of:** section 80IB read with sections 80I and 80IA of the Income-tax Act, 1961 providing for deduction in respect of profits & gains derived from eligible business]
[Liberty India v. CIT, (2009) 183 TAXMAN 349 (SC), (2009) 317 ITR 218 (SC), (2009) 225 CTR 233 (SC)]

Basics

Derived from vs attributable:

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[Liberty India v. CIT, (2009) 183 TAXMAN 349 (SC), (2009) 317 ITR 218 (SC), (2009) 225 CTR 233 (SC)]

Basics

Derived from vs attributable:

The word "derived" has been construed as far back in 1948 by the Privy Council in CIT v. Raja Bahadur Kamakhaya Narayan Singh [1948] 16 ITR 325when it said:

"The word 'derived' is not a term of art. Its use in the definition indeed demands an enquiry into the genealogy of the product. But the enquiry should stop as soon as the effective source is discovered. In the geneological tree of the interest land indeed appears in the second degree, but the immediate and effective source is rent, which has suffered the accident of non-payment. And rent is not land within the meaning of the definition." (p. 328)

This definition was approved and reiterated in 1955 by a Constitution Bench of this Court in the decision of Mrs. Bacha F. Guzdar v. CIT [1955] 27 ITR 1. It is clear, therefore, that ***the word 'derived from' in section 80HH of the Income-tax Act, 1961 must be understood as something which has direct or immediate nexus with the appellant's industrial undertaking.***

[**For the purpose of:** section 80HH of the Income-tax Act, 1961 which provided for deduction in respect of profits and gains "derived from" manufacture or production of articles of things]

[**Held:** interest on the deposit made with Electricity Board cannot be said to be profits & gains "derived" from the industrial undertaking]

[Pandian Chemicals Ltd. v. CIT, (2003) 129 TAXMAN 539 (SC), (2003) 262 ITR 278 (SC), (2003) 183 CTR 99 (SC)

Basics

Derived from vs attributable:

…There must be, for the application of the words 'derived from', a direct nexus between the profits and gains and the industrial undertaking. *In the instant case the nexus is not direct but only incidental. The industrial undertaking exports processed sea food. By reason of such export, the Export Promotion Scheme applies. There under, the assessee is entitled to import entitlements, which it can sell. The sale consideration there from cannot, in our view, be held to constitute a profit and gain derived from the assessees' industrial undertaking.*

[**For the purpose of:** section 80HH of the Income-tax Act, 1961]

[CIT v. Sterling Foods, (1999) 104 TAXMAN 204 (SC), (1999) 237 ITR 579 (SC), (1999) 153 CTR 439 (SC)]

Basics

Derived from vs attributable:

Cambay Electric Supply Industrial Co. Ltd. v. *CIT* [1978] 113 ITR 84 (SC), (OBSERVATIONS IN Meghalaya Steel case):

"As regards the aspect emerging from the expression "attributable to" occurring in the phrase "profits and gains attributable to the business of" the specified industry (here generation and distribution of electricity) on which the learned Solicitor General relied, it will be pertinent to observe that the Legislature has deliberately used the expression "attributable to" and not the expression "derived from". It cannot be disputed that the expression "attributable to" is certainly wider in import than the expression "derived from". Had the expression "derived from" been used it could have with some force been contended that a balancing charge arising from the sale of old machinery and buildings cannot be regarded as profits and gains derived from the conduct of the business of generation and distribution of electricity. In this connection it may be pointed out that whenever the Legislature wanted to give a restricted meaning in the manner suggested by the learned Solicitor General it has used the expression "derived from", as for instance in s. 80J. In our view since the expression of wider import, namely, "attributable to" has been used, the Legislature intended to cover receipts from sources other than the actual conduct of the business of generation and distribution of electricity."

Basics

Derived from vs attributable: CBDT Circular No 39/2016, dated 29.11.2016

The issue whether revenue receipts such as transport, power and interest subsidies received by an Industrial Undertaking/ eligible business are part of profits and gains of business derived from its business activities within the meaning of sections 80-IB/ 80-IC of the Income-tax Act, 1961 (hereinafter referred to as "the Act") and thus eligible for claim of corresponding deduction under Chapter VI-A of the Act has been a contentious one. Such receipts are often treated as 'Income from other sources' by the Assessing Officers.

The Hon'ble Supreme Court in its judgment dated 9.3.2016 in the case of Meghalaya Steels Ltd in CA No . 7622 of 2014 (NJRS citation 20 16-LL-0309-15) and other cases has held that the subsidies of transport, power and interest given by the Government to the Industrial Undertaking are receipts which have been reimbursed for elements of cost relating to manufacture/sale of the products. Thus, there is a direct nexus between profit and gains of the industrial undertaking / business and reimbursement of such business subsidies. Accordingly, such subsidies are part of profits and gains of business derived from the Industrial Undertaking and are not to be included under the head 'Income from other sources'. Therefore, deduction is admissible under section 80-IB/80-IC of the Act on such revenue receipts derived from the Industrial Undertaking.

In view of the above, it is a settled position that revenue subsidies received from the Government towards reimbursement of cost of production/manufacture or for sale of the manufactured goods are part of profits and gains of business derived from the Industrial Undertaking/eligible business, and are thus, admissible for applicable deduction under Chapter VI-A of the Act.

Job work

Who is entitled?

The Punjab and Haryana High Court in *CIT v Impel Forge and Allied Industries Ltd.* 326 ITR 27, (2009) 183 Taxman 38 (P&H) has held that a job worker is entitled to the deduction because "*the assessee is at liberty to do manufacture for itself or for others*"

CIT v. Ambuja Ginning Pressing and Oil Co. (P) Ltd, (2011) 15 taxmann.com 273 (Guj)

The only dispute is as to whether the assessee is entitled to deductions in relation to the manufacturing activities carried out by it by way of job work for other manufacturers. On a plain reading of the provisions of section 80-IA, it is apparent that the same lays down that an assessee whose gross total income includes profits and gains derived from any business of an industrial undertaking to which the section applies, shall, while computing the total income of the assessee be allowed a deduction as laid down under the said provision. In the facts of the instant case, the assessee carries on the activity of processing of cotton and manufacturing cotton seed oil and oil cakes. The assessee in the year under consideration, inter alia, *carried on such manufacturing activities by way of job work for other manufacturers. It, therefore, cannot be said that the job work done by the assessee on account of others was not a manufacturing activity carried out by the industrial undertaking. Consequently, it cannot be said that the income derived therefrom was not income derived from the industrial undertaking. Whether the assessee carries on the manufacturing activity on its own behalf or on behalf of others on job work basis, the income derived therefrom, is income from the industrial undertaking and, therefore, would be entitled to allowance of deduction under section 80-IA*

Employ

Meaning of the term Employ

The Allahabad High Court has rightly held that the word ‘employ’, being a legal term of art, contemplates **a contract of service -** *Venus Auto P. Ltd v CIT* 321 ITR 504

The words 'to employ' would take colour from associated words and expressions such as 'worker', 'industrial undertaking' used in the section. The employee is one who works for others for hire. The employer is one who employs services of other persons. In the context of the section, therefore, 'employee' will include only such workers who are directly employed by the assessee. If the employer is an assessee, only then the deduction can be claimed. The word 'employee' has been used in the sense of contract of service and not contract for service. Thus, the artisans and karigars from whom the work is got done on contract basis, job basis or per piece basis are not workers employed by the assessee and they cannot be counted for finding out the minimum number of stipulated workers - *R & P Exports* v. *CIT* [2005] 146 Taxman 404 (All.)/*Venus Auto (P.) Ltd.* v. *CIT* [2010] 321ITR504 (All.).

Employ

Meaning of the term Employ (Contra)

Contract labourers must be counted as 'workers' - The term employed by the statute is 'employs' twenty or more workers. The plain dictionary meaning of 'employ' is to use the services of a person in return for payment. The Tribunal would therefore be right in law in holding that, where the assessee had the ultimate control over the affairs of the establishment which comprised more than 20 workers through the contractor, the statutory requirement had been met with, and that the assessee was entitled to the deduction - *CIT* v. *Prithviraj Bhoorchand* [2005] 280 ITR 94 (Guj.).

Condition imposed under section 80-IB(2)(iv) is that assessee must employ ten or more workers in manufacturing process/production of articles or things and it is immaterial whether workers were employed directly or by hiring workers from a contractor - *CIT* v. *Jyoti Plastic Works (P.) Ltd.* [2011] 203 Taxman 546/16 taxmann.com 172 (Bom.)/*CIT* v. *Nanda Mint and Pine Chemicals Ltd.* [2012] 25 taxmann.com 118/*Sai Computers (P.) Ltd.* v. *Jt. CIT* [2015] 61 taxmann.com 268 (All.).

Contractual workers, working under control of assessee, are to be counted for purpose of section 80-IA - *Sai Computers (P.) Ltd.* v. *Jt. CIT* [2015] 61 taxmann.com 268 (All.)

Reconstruction/Split up

SPLITTING UP OR 'RECONSTRUCTION' - Reconstruction of business involves the idea of substantially the same persons carrying on substantially the same business. Where the new industrial undertakings are separate and independent production units in the sense that the commodities produced or the results achieved are commercially tangible products and the undertakings can be carried on separately without complete absorption and losing their identity in the old business, they are not to be treated as business formed by reconstruction of the old business. Use by the assessee of the articles produced in its existing business or the concept of expansion are not decisive tests. The fact that an assessee by establishment of a new industrial undertaking expands his existing business would not on that score deprive him of the benefit. Every new creation in business is some kind of expansion and advancement. The true test is not whether the new industrial undertaking connotes expansion of the existing business of the assessee but whether it is all the same a new and identifiable undertaking separate and distinct from the existing business. There must be a new emergence of a physically separate unit which may exist on its own as a viable industrial unit. An undertaking is formed out of the existing business if the physical identity with the old unit is preserved. The new activity may produce the same commodities of the old business or it may produce some other distinct marketable products, even commodities which may feed the old business. These products may be consumed by the assessee in his old business or may be sold in the open market. One thing is certain that the new undertaking must be an integrated unit by itself - *Textile Machinery Corporation Ltd.* v. *CIT* [1977] 107 ITR 195 (SC)/*CIT* v. *Orient Paper Mills Ltd.* [1989] 176 ITR 110 (SC). [*See* also *CIT* v. *Mahaan Foods Ltd.* [2009] 177 Taxman 274 (Delhi).]

Reconstruction/Split up

The expression 'splitting up' of the business already in existence indicates a case where the integrity of a business earlier in existence is broken up and different sections of the activities previously conducted are carried on independently - *CIT* v. *Hindustan General Industries Ltd.* [1982] 137 ITR 851 (Delhi).

The words 'splitting up' or 'reconstruction' of the business already in existence necessarily suggests the splitting up or reconstruction of the existing business of the assessee. The words 'of the assessee' have necessarily to be read into the sub-section - *Electronic Corporation of India Ltd.* v. *CIT* [1985] 151 ITR 381 (AP).

Take-over of firm by company is not reconstruction - Where under an agreement a company took over the business of a partnership firm by allotting shares to its partner, the take-over did not amount to 'reconstruction' - *CIT* v. *Gaekwar Foam & Rubber Co. Ltd.* [1959] 35 ITR 662 (Bom.).

Succession or sale does not amount to reconstruction - If a new business has come into existence by virtue of succession or sale, the question of reconstruction does not arise at all - *CIT* v. *Devson Ltd.*/*CIT* v. *Kashmir Fruit and Chemical Industries* [1975] 98 ITR 311 (J&K).

When a partnership firm is converted into a private limited company, (converted under Part IX of the Companies Act, 1956) there is no splitting of a business already in existence.
[**For the purpose of:** section 10A of the Income-tax Act, 1961 providing bar on "splitting" or reconstruction of a business already in existence]
[Kumaran Stystems (P) Ltd. v. ACIT, (2007) 14 SOT 1 (Chennai) (URO)]

Reconstruction/Split up

In order to hold that there is a splitting up of a business already in existence, there must be some material to hold that either some asset of an existing business is divided and another business is set up from such splitting up of assets, or that the two businesses are the same and one formed was an integral part of the earlier one and it was only a question of breaking up of the same business. It implies a unity of control in regard to two businesses, i.e., earlier one in existence and a new one which is brought into existence. *While clause (ii) of sub-s. (4) of s. 80J may comprehend transfer of machinery or plant previously used for any purpose and which may belong to an outsider also, clause (i) implies such a transfer and setting up of another business by splitting up of the assets of the earlier one in existence. In a case, where the same person carries on business and brings into existence another business of the same nature by the user of the assets belonging to the earlier business, it may be said that the unity of control continues and the business brought into existence is a part of the earlier existing business. There being no tangible evidence of transfer of any assets from an earlier business to the new business, a conclusion cannot be reached that a new business is formed by the splitting up of the business already in existence.*

[**For the purpose of:** section 80J of the Income-tax Act, 1961 providing that the deduction under the said section would not be available to a business formed by "splitting" up of a business already in existence]

[T. Satish U. Pai v. CIT, (1979) 119 ITR 877 (Kar)]

Reconstruction/Split up

The word "reconstruction" is not defined in the Act but has received judicial interpretation. In In re South African Supply and Cold Storage Co. [1904] 2 Ch 268 (Ch D) Buckley J., dealing with the meaning of the word "reconstruction" in a company matter, observed as follows (page 286):

"What does 'reconstruction' mean ? To my mind it means this. An undertaking of some definite kind is being carried on, and the conclusion is arrived at that it is not desirable to kill that undertaking, but that it is desirable to preserve it in some form, and to do so, not by selling it to an outsider who shall carry it on—that would be a mere sale—but in some altered form to continue the undertaking in such a manner as that the persons now carrying it on will substantially continue to carry it on. It involves, I think, that substantially the same business shall be carried on and substantially the same persons shall carry it on. But it does not involve that all the assets shall pass to the new company or resuscitated company, or that all the shareholders of the old company shall be shareholders in the new company or resuscitated company. Substantially the business and the persons interested must be the same."

This concept of reconstruction was accepted by the Bombay High Court in Commissioner of Income-tax v. Gaekwar Foam and Rubber Co. Ltd. [1959] 35 ITR 662 (Bom) dealing with section 15C of the Act. While adverting to the passage which we have just quoted the Bombay High Court observed as follows in the above decision (page 671):

"Now fully appreciating the distinction which counsel for the revenue has sought to make between the case of a reconstruction of a company and the case of reconstruction of a business, these observations, as we read them, are equally illuminating in the context of reconstruction of a business already in existence in the case of a newly established industrial undertaking."

[Textile Machinery Corporation Ltd. v. CIT, (1977) 107 ITR 195 (SC)]

Reconstruction/Split up

The Delhi High Court also in Commissioner of Income-tax v. Ganga Sugar Corporation Ltd. [1973] 92 ITR 173 (Delhi) accepted the above concept of "reconstruction" in the following passage (page 179, 180): "We have given the matter our earnest consideration and are of the view that in the reconstruction of a business, as in the reconstruction of a companv. there is an element of transfer of assets and of some change, however partial or restricted it may be, of ownership of the assets. The transfer, however, need not be of all the assets. It is none the less imperative that there should be continuity and preservation of the old undertaking though in an altered form. The concept of reconstruction of business would not be attracted when a company which is already running one industrial unit sets up another industrial unit. The new industrial unit would not lose its separate and independent identity even though it has been set up by a company which is already running an industrial unit before the setting up of the new unit."

We endorse the above views with regard to reconstruction of business.

Reconstruction of business involves the idea of substantially the same persons carrying on substantially the same business.

[**For the purpose of:** section 15C of the Income-tax Act, 1922 (corresponding to section 80J of the Income-tax Act, 1961)]

[Textile Machinery Corporation Ltd. v. CIT, (1977) 107 ITR 195 (SC)]

Reconstruction/Split up

The expression 'reconstruction', in the context in which it is used, denotes that the original business or under taking continues to exist, without its identity being lost or abandoned. The concept, no doubt, visualized changes, but the changes must be constructive. They shall not result in the extinction of the existing business. In short, even after the reconstruction, the undertaking must continue to carry on the same business, on the other hand the under taking in order to qualify for the benefit must be new and identifiable, distinct and different from the existing business.
[**For the purpose of:** section 80J of the Income-tax Act, 1961]
[CIT v. Travancore Rayons Ltd., (1987) 33 TAXMAN 304 (KER), (1987) 164 ITR 134 (Ker), (1986) 50 CTR 51 (Ker)]

The term "reconstruction" implies that the identity of the business should not be lost, and substantially the same business should be carried on by substantially the same persons. If the business is sold or if its very nature is changed, it will not be a case of reconstruction.
[**For the purpose of:** section 80J of the Income-tax Act, 1961]
[CIT v. Shanker Gold Storage, (1982) 9 TAXMAN 253 (All), (1982) 138 ITR 286 (All), (1982) 28 CTR 277 (All)]

Reconstruction/Split up

The term 'reconstruction, is to be seen and considered in the light of 'splitting up'. Otherwise also, as per the dictionary meaning of 'reconstruction', as given in Judicial Dictionary by K. J. Iyer, Eighth Edition 1980, the word 'reconstruction' is expressed by synonymous 'rebuild'. ***Thus, if there is change of ownership from one person to another but the business continued to be the same, it cannot be said that the undertaking is formed as a result of reconstruction.***

[**For the purpose of:** section 10B of the Income-tax Act, 1961]

[Tech Books Electronics Services (P.) Ltd. v. ACIT, (2006) 100 ITD 125 (Del)]

80IB

Section 80-IB provides for deduction from gross total income of any profits and gains derived from any business referred to in sub-sections (3) to (11B). The following industrial undertakings are eligible for deduction under this section:

(a)small scale industries into manufacturing and production

(b)undertaking in industrially backward State and North-Eastern Region

(c)ship

(d)hotels

(e)cold storage plants and cold chains

(f)mineral oil and natural gas

(g)housing projects

(h)scientific research and development

(i)processing, preservation and packing of food items

(j)multiplex theatre

(k)convention centre

(l)hospitals in rural and specified areas.

80JJAA

Profits and gains derived : The term 'derived' has been explained in a number of judgments involving interpretation of section 80J/80-I/80-IA etc. It may be noted, however, that unlike other sections, section 80JJAA does not link the deduction to quantum of profits and gains derived from industrial undertaking. For the purpose of this section, it is sufficient that the gross total income includes profits and gains derived from business and once this condition is satisfied, the ultimate deduction is based on additional employee cost incurred.

In absence of any specific prohibition, the deduction could exceed the profits and gains derived from business, as long as the deductions under Chapter VIA of the Act do not exceed the gross total income [section 80A(2)].

Whether profession covered?

(a)business does not include profession for the purposes of section 28(*va*) [*Satya Kant Khosla* v. *ITO* [2015] 63 taxmann.com 293 (Delhi - Trib.); *Dr. K. Premraj* v. *Dy. CIT* [2014] 41 taxmann.com 81 (Chennai - Trib.)]

(b)business includes profession for the purposes of section 9(1)(*i*) [*Barendra Prasad Ray* v. *ITO* [1981] 129 ITR 295/6 Taxman 19 (SC)

(c) business does not include profession for the purposes of section 32(1)(*iv*) [*G. K. Choksi & Co.* v. *CIT* [2007] 295 ITR 376/165 Taxman 299 (SC)]

80M

A domestic company receiving dividend from another domestic company or foreign company or business trust ("specified entities") is eligible for deduction under section 80M of the Act from the dividend received; for the purpose, the recipient domestic company needs to distribute[1] the dividend one month prior to the due date of filing of return of income; the deduction would be restricted to the extent of dividend "distributed"; and once the deduction is allowed, it would not be allowed in any other previous year.

o illustrate, a domestic company has received dividend of Rs. 1,00,000; it can avail of the deduction to the extent of the amount distributed; it distributes dividend of Rs. 1,00,000; the dividend is distributed before September 30 (that is, one month prior to the due date of filing return of income, which, in its case, is 31st October); thus, it would be eligible for the deduction to the extent of Rs. 1,00,000 under section 80M.

Suppose, in the above case:

♦the company distributes dividend of Rs. 75,000; in that case, the deduction available would be Rs. 75,000 and not Rs. 1,00,000; accordingly, it may be liable to pay tax on Rs. 25,000;

♦the company declares dividend before September 30; however, it could distribute dividend only in second week of October; in such a case, since the dividend is not distributed within the time limit specified, the company would not be eligible for deduction.

♦The deduction is available only to a domestic company in respect of dividends from specified entities. 'Domestic company' has been defined in section 2(22A) as 'an Indian company' or 'any other company which, in respect of its income liable to tax under the Income-tax Act has made prescribed arrangements for declaration and payment within India of the dividend payable out of such income'.

80M

Deduction is available only from dividends received from specified entities; in other words, any dividend received from any person other than specified entities (say co-operative society) would not be eligible for deduction under section 80M; likewise, dividend received by a co-operative society in respect of shares held by it in a company is not eligible for deduction under section 80M;

Dividend income received by a domestic company, when included in total income, will have to be computed as per the provisions of the Act and accordingly, the net amount thereof is included in gross total income; the deduction under section 80M would be available with reference to such net dividend; consider the above illustration and assuming that the company had incurred interest expenditure and the allowable amount was 20% of the dividend received; accordingly, dividend income included in the gross total income of the recipient company would be Rs. 80,000 [(Rs. 1,00,000) -20% of Rs. 1,00,000] and it would get deduction under section 80M with reference to Rs. 80,000 and restricted to Rs. 80,000, although, in the first example, the company has distributed Rs. 1,00,000 by way of dividend;

as noted earlier and explained in the illustration, the deduction is available only when the dividend is distributed; in other words, mere declaration of the dividend is not sufficient for claiming the deduction. Further, the dividend will have to be distributed one month before the due date of filing return

80M

The deduction is available only if gross total income includes dividend income. For the purpose of the then section 80M, the larger Bench of the Supreme Court in *Distributors (Baroda) (P.) Ltd.* v. *Union of India* [1985] 22 Taxman 49 overruled its own decision in *Cloth Traders (P.) Ltd.* v. *CIT* [1979] 1 Taxman 335 (SC) and held that the deduction required to be allowed under sub-section (1) of section 80M is liable to be calculated with reference to the amount of dividend computed in accordance with the provisions of the Act and forming part of the gross total income.

Further, section 80AB provides that for the purpose of computing a deduction under Part C of Chapter VIA (including section 80M) the amount of income of that nature as computed in accordance with the provisions of this Act (before making any deduction under this Chapter *i.e.,* Chapter VIA Part C) shall alone be deemed to be the amount of income of that nature which is derived or received by the assessee and which is included in his gross total income. Thus, the deduction under section 80M is allowable on the net dividend income included in the computation.

The question whether deduction has to be given to a company on the reduced dividend income remaining after setting off the loss was addressed in a Circular, issued by the CBDT. It clarifies that in the case of an assessee being a company, where a part of the dividend income is utilized for setting off loss under any other head, relief under section 80M, is to be allowed on the dividend income before such set off subject to the overall limit imposed by section 80A(2).

80M

Company can receive its own dividend as beneficiary of trust and claim deduction - There is no bar for a company receiving its own dividend in its capacity as beneficiary of a specific trust and claiming deduction under section 80M in respect of such dividend [CIT v. Trustees, T Stanes & Co. Ltd., Staff Pension Fund [1993] 71 Taxman 136 (Mad.); CIT v. T Stanes & Co. Ltd., Staff Pension Fund [1995] 216 ITR 433 (Mad.)].

Deemed dividend received on reduction of share capital of company under section 2(22)(d) is dividend for purposes of deduction under section 80M [CIT v. Jai Hind Investment Industries (P.) Ltd. [1992] 62 Taxman 316 (Cal.)].

Where a part of the dividend income is utilized for setting off loss under any other head, relief under section 80M is to be allowed on the dividend income before such set off subject to the overall limit imposed by section 80A(2) [*CIT* v. *Bhoruka Investments (P.) Ltd.* [1993] 70 Taxman 169 (Cal.)]

Where net income after set off of current year's losses and carried forward losses/depreciation is a negative figure, deduction cannot be allowed [CIT v. Bengal Assam Steamship Co. Ltd. [1985] 22 Taxman 356 (Cal.); CIT v. Mercantile Bank Ltd. [1987] 32 Taxman 426 (Bom.); G. Atherton & Co. v. CIT [1986] 28 Taxman 405 (Cal.); G. Atherton & Co. v. CIT 1989 Tax LR 13 (Cal.)]

80-IAC

The deduction will be available if all the following conditions are satisfied:
(a)The assessee is an eligible start-up; that is,
(i)it is a company or a Limited Liability Partnership (LLP);
(ii)it is incorporated on or after 1-4-2016 but before 31.3.23;
(iii)the total turnover of its business does not exceed Rs. 100 crore in any of the previous years from 2016-17 to 2022-23;
(iv)it holds a certificate of eligible business from the Inter-Ministerial Board of Certification as notified in the Official Gazette by the Central Government.
(b)The assessee is carrying on eligible business;
(c)Profits and gains are derived from eligible business;
(d)The gross total income of the assessee includes the profits and gains derived from eligible business;
(e)The start-up is not formed by splitting up, or the reconstruction, of a business already in existence

The assessee shall be allowed a deduction of an amount equal to 100% of the profits and gains derived from such business
3 consecutive years out of 10 yrs from incorporation

80-IAB

Sections 80-IA, 80-IAB, etc., provide for deduction of profits and gains derived from the industrial undertaking. Unlike these sections, section 80-IBA(1) provides for deduction in respect of profits and gains derived from "such business", that is, profits and gains derived from the "business" of developing and building housing projects. In this connection, the following observations in Asstt. CIT v. Kunal Printers Ltd. [2005] 2 SOT 414 (Ahd.) are apposite:

"The word "business" is a word of wide amplitude so as to cover any trade, industry or any act of adventure in the nature of trade where as the word "industry" is a word of very limited meaning. Whenever the Legislature had intended to give benefit of deductions to the wider extent of income and not only to the income derived from Industrial undertaking, it has used the expression like "profit attributed to". Now we find that to give more extended benefit the statute has used the word "income derived from business of Industrial Undertaking". Thus Legislature certainly wants to give benefit of deduction not only to the income derived from industrial undertaking but to all sort of income which is derived from business of industrial undertaking. In the instant case, deduction claimed by the assessee is under section 80-IA, therefore, we are persuaded to take broader meaning of word "derived from business of industrial undertaking". The word business is a word is wide amplitude and does not restrict to purely carrying out of the industrial undertaking."

80-IAB

In the context of section 80-IB(7), it has been held in Kumarakom Lake Resort Pvt. Ltd. v. Asstt. CIT ITA No. 240-242/Coch/2015 that the term 'profits and gains derived from the business of such hotel' has wider meaning than the term 'profits and gains derived from an undertaking'.

In view of the above and on a plain reading, it appears that the expression profits and gains derived from the 'business of developing and building housing project' is wider than profits derived from developing and building housing projects and would include all profits where the source is the business of developing and building housing project [Also seeJindal Drugs Ltd. v. Asstt. CIT [ITA Nos. 2592, 4342 of 2008 decided on 20-11-2015] (Mum.) where it was held that for the purpose of section 80-IB, interest on fixed deposits with bank as a guarantee for the purpose of issue of letter of credit was to be included in profits and gains 'derived' from eligible business].

Further, in the context, it appears that the assessee would be entitled to a deduction on entire profits and gains derived from the business, including the profits from the shop and commercial establishment portion of the project [see CIT v. Brahma Associates [2011] 9 taxmann.com 289/333 ITR 289 (Bom); CIT v. Sarkar Builders [2015] 57 taxmann.com 313/375 ITR 392 (SC)].

80-IAB

Incentives for affordable rental housing projects

♦To help migrant labourers and to promote affordable rentals, the Finance Act, 2021 inserts sub-section (1A) in section 80-IBA to allow deduction under the section to the rental housing projects. Accordingly, if the gross total income of an assessee includes any profit and gains derived from the business of developing and building rental housing project, then he is allowed 100% deduction in respect of profits and gains derived from such business, subject to fulfilment of the conditions specified in the notification to be issued by the Central Government.

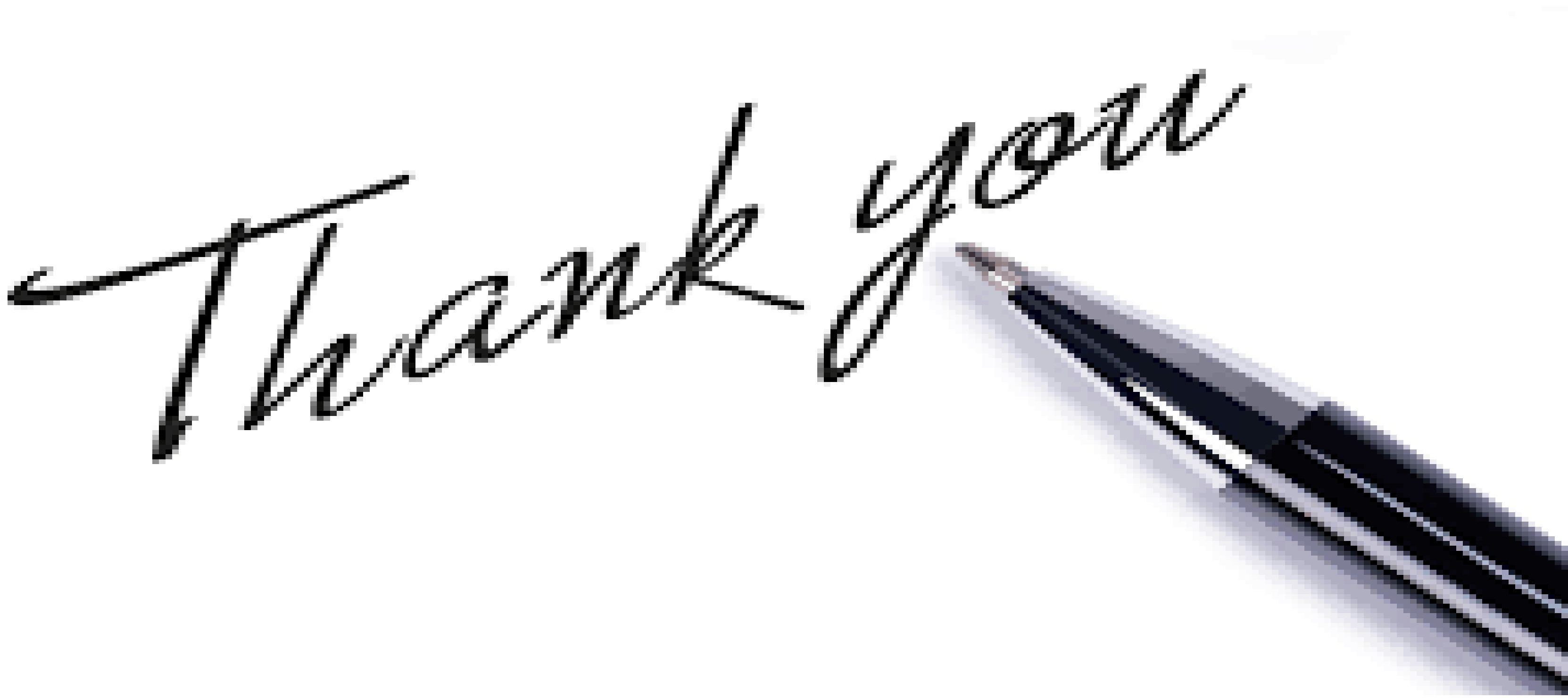
♦Definition of "rental housing project": Clause (da) is inserted in section 80-IBA(6) to define "rental housing project" to mean:

(a)a project which is notified by the Central Government in the Official Gazette on or before 31-3-2022; and

(b)fulfils such conditions as may be specified in the said notification.

Deduction under section 80-IBA(1A) can be claimed in respect of profit and gains derived from the business of developing and building rental housing project. The Central Government will notify rental housing project and the related conditions; thus, unless the notification is issued, it will not be clear as to whether such income includes profit arising on sale of housing unit or rent income or both. Even if the profits are charged under different heads, it may constitute business income [CIT v. Cocanada Radhaswami Bank Ltd. [1965] 57 ITR 306 (SC); Western States Trading Co. (P.) Ltd. v. CIT [1971] 80 ITR 21 (SC)].


Questions?



CA CHIRAG WADHWA –

w.chiragwadhwa@gmail.com

+91 - 9167389639