

### **Deduction in respect of expenditure on specified business.**

**35AD.** (1) An assessee shall be allowed a deduction in respect of the whole of any expenditure of capital nature incurred, wholly and exclusively, for the purposes of any specified business carried on by him during the previous year in which such expenditure is incurred by him:

**Provided** that the expenditure incurred, wholly and exclusively, for the purposes of any specified business, shall be allowed as deduction during the previous year in which he commences operations of his specified business, if—

- (a) the expenditure is incurred prior to the commencement of its operations; and
- (b) the amount is capitalised in the books of account of the assessee on the date of commencement of its operations.

(1A) Where the specified business is of the nature referred to in sub - clause (i) or sub-clause (ii) or sub-clause (v) or sub-clause (vii) or sub-clause (viii) of clause (c) of sub-section (8) and has commenced its operations on or after the 1st day of April, 2012, the deduction under sub-section (1) shall be allowed of an amount equal to one and one-half times of the expenditure referred to therein.;<sup>1</sup>

(2) This section applies to the specified business which fulfils all the following conditions, namely :—

- (i) it is not set up by splitting up, or the reconstruction, of a business already in existence;
- (ii) it is not set up by the transfer to the specified business of machinery or plant previously used for any purpose;
- (iii) where the business is of the nature referred to in sub-clause (iii) of clause (c) of sub-section (8), such business,—
  - (a) is owned by a company formed and registered in India under the Companies Act, 1956 (1 of 1956) or by a consortium of such companies or by an authority or a board or a corporation established or constituted under any Central or State Act;
  - (b) has been approved by the Petroleum and Natural Gas Regulatory Board established under sub-section (1) of section 3 of the Petroleum and Natural Gas Regulatory Board Act, 2006 (19 of 2006) and notified by the Central Government in the Official Gazette in this behalf;
  - (c) has made not less than such proportion of its total pipeline capacity as specified by regulations made by the Petroleum and Natural Gas Regulatory Board established under sub-section (1) of section 3 of the Petroleum and Natural Gas Regulatory Board Act, 2006 (19 of 2006) available for use on common carrier basis by any person other than the assessee or an associated person; and
  - (d) fulfils any other condition as may be prescribed.

(3) Where a deduction under this section is claimed and allowed in respect of the specified business for any assessment year, no deduction shall be allowed under the provisions of Chapter

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<sup>1</sup> inserted with effect from the 1st day of April, 2013

VI-A under the heading “C.—Deductions in respect of certain incomes” in relation to such specified business for the same or any other assessment year.

(4) No deduction in respect of the expenditure referred to in sub-section (1) shall be allowed to the assessee under any other section in any previous year or under this section in any other previous year.

(5) The provisions of this section shall apply to the specified business referred to in sub-section (2) if it commences its operations,—

- (a) on or after the 1st day of April, 2007, where the specified business is in the nature of laying and operating a cross-country natural gas pipeline network for distribution, including storage facilities being an integral part of such network; [\*\*\*]
- (aa) on or after the 1st day of April, 2010, where the specified business is in the nature of building and operating a new hotel of two-star or above category as classified by the Central Government;
- (ab) on or after the 1st day of April, 2010, where the specified business is in the nature of building and operating a new hospital with at least one hundred beds for patients;
- (ac) on or after the 1st day of April, 2010, where the specified business is in the nature of developing and building a housing project under a scheme for slum redevelopment or rehabilitation framed by the Central Government or a State Government, as the case may be, and which is notified by the Board in this behalf in accordance with the guidelines as may be prescribed; and

**The following clauses (ad) and (ae) shall be inserted after clause (ac) of sub-section (5) of section 35AD by the Finance Act, 2011, w.e.f. 1-4-2012:**

- (ad) on or after the 1st day of April, 2011, where the specified business is in the nature of developing and building a housing project under a scheme for affordable housing framed by the Central Government or a State Government, as the case may be, and notified by the Board in this behalf in accordance with the guidelines as may be prescribed;
- (ae) on or after the 1st day of April, 2011, in a new plant or in a newly installed capacity in an existing plant for production of fertilizer;
- “(af) on or after the 1st day of April, 2012, where the specified business is in the nature of setting up and operating an inland container depot or a container freight station notified or approved under the Customs Act, 1962;
- (ag) on or after the 1st day of April, 2012, where the specified business is in the nature of bee-keeping and production of honey and beeswax;
- (ah) on or after the 1st day of April, 2012, where the specified business is in the nature of setting up and operating a warehousing facility for storage of sugar; and”;<sup>2</sup>

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<sup>2</sup> Omitted with effect from 1<sup>st</sup> day of April, 2013

(b) on or after the 1st day of April, 2009, in all other cases not falling under any of the above clauses.<sup>3</sup>

(6) The assessee carrying on the business of the nature referred to in clause (a) of sub-section (5) shall be allowed, in addition to deduction under sub-section (1), a further deduction in the previous year relevant to the assessment year beginning on the 1st day of April, 2010, of an amount in respect of expenditure of capital nature incurred during any earlier previous year, if—

- (a) the business referred to in clause (a) of sub-section (5) has commenced its operation at any time during the period beginning on or after the 1st day of April, 2007 and ending on the 31st day of March, 2009; and
- (b) no deduction for such amount has been allowed or is allowable to the assessee in any earlier previous year.

(6A) Where the assessee builds a hotel of two-star or above category as classified by the Central Government and subsequently, while continuing to own the hotel, transfers the operation thereof to another person, the assessee shall be deemed to be carrying on the specified business referred to in sub-clause (iv) of clause (c) of sub-section (8);<sup>4</sup>

(7) The provisions contained in sub-section (6) of section 80A and the provisions of sub-sections (7) and (10) of section 80-IA shall, so far as may be, apply to this section in respect of goods or services or assets held for the purposes of the specified business.

(8) For the purposes of this section,—

- (a) an “associated person”, in relation to the assessee, means a person,—
  - (i) who participates, directly or indirectly, or through one or more intermediaries in the management or control or capital of the assessee;
  - (ii) who holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in the capital of the assessee;
  - (iii) who appoints more than half of the Board of directors or members of the governing board, or one or more executive directors or executive members of the governing board of the assessee; or
  - (iv) who guarantees not less than ten per cent of the total borrowings of the assessee;
- (b) “cold chain facility” means a chain of facilities for storage or transportation of agricultural and forest produce, meat and meat products, poultry, marine and dairy products, products of horticulture, floriculture and apiculture and processed food items under scientifically controlled conditions including refrigeration and other facilities necessary for the preservation of such produce;
- (c) “specified business” means any one or more of the following business, namely :—
  - (i) setting up and operating a cold chain facility;
  - (ii) setting up and operating a warehousing facility for storage of agricultural produce;

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<sup>3</sup> Substituted with effect from 1<sup>st</sup> day of April, 2013

<sup>4</sup> Inserted with effect from the 1st day of April, 2011

- (iii) laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network;
- (iv) building and operating, anywhere in India, a hotel of two-star or above category as classified by the Central Government;
- (v) building and operating, anywhere in India, a hospital with at least one hundred beds for patients;
- (vi) developing and building a housing project under a scheme for slum redevelopment or rehabilitation framed by the Central Government or a State Government, as the case may be, and notified by the Board in this behalf in accordance with the guidelines as may be prescribed;

**The following sub-clauses (vii) and (viii) shall be inserted after sub-clause (vi) of clause (c) of sub-section (8) of section 35AD by the Finance Act, 2011, w.e.f. 1-4-2012 :**

- (vii) developing and building a housing project under a scheme for affordable housing framed by the Central Government or a State Government, as the case may be, and notified by the Board in this behalf in accordance with the guidelines as may be prescribed;
  - (viii) production of fertilizer in India;
  - (ix) setting up and operating an inland container depot or a container freight station notified or approved under the Customs Act, 1962;
  - (x) bee-keeping and production of honey and beeswax;
  - (xi) setting up and operating a warehousing facility for storage of sugar;<sup>5</sup>
- (d) 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—
- (i) such machinery or plant was not, at any time prior to the date of the installation by the assessee, used in India;
  - (ii) such machinery or plant is imported into India from any country outside India; and
  - (iii) 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 installation of the machinery or plant by the assessee;
- (e) where in the case of a specified business, any machinery or plant or any part thereof previously used for any purpose is transferred to the specified business and the total value of the machinery or plant or part so transferred does not exceed twenty per cent of the total value of the machinery or plant used in such business, then, for the purposes of clause (ii) of sub-section (2), the condition specified therein shall be deemed to have been complied with;

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<sup>5</sup> Inserted with effect from the 1st day of April, 2013

(f) any expenditure of capital nature shall not include any expenditure incurred on the acquisition of any land or goodwill or financial instrument.