

Amortisation of certain preliminary expenses.

35D. (1) Where an assessee, being an Indian company or a person (other than a company) who is resident in India, incurs, after the 31st day of March, 1970, any expenditure specified in sub-section (2),—

- (i) before the commencement of his business, or
- (ii) after the commencement of his business, in connection with the extension of his [***] undertaking or in connection with his setting up a new [***] unit,

the assessee shall, in accordance with and subject to the provisions of this section, be allowed a deduction of an amount equal to one-tenth of such expenditure for each of the ten successive previous years beginning with the previous year in which the business commences or, as the case may be, the previous year in which the extension of the [***] undertaking is completed or the new [***] unit commences production or operation :

Provided that where an assessee incurs after the 31st day of March, 1998, any expenditure specified in sub-section (2), the provisions of this sub-section shall have effect as if for the words “an amount equal to one-tenth of such expenditure for each of the ten successive previous years”, the words “an amount equal to one-fifth of such expenditure for each of the five successive previous years” had been substituted.]

(2) The expenditure referred to in sub-section (1) shall be the expenditure specified in any one or more of the following clauses, namely :—

- (a) expenditure in connection with—
 - (i) preparation of feasibility report;
 - (ii) preparation of project report;
 - (iii) conducting market survey or any other survey necessary for the business of the assessee;
 - (iv) engineering services relating to the business of the assessee :

Provided that the work in connection with the preparation of the feasibility report or the project report or the conducting of market survey or of any other survey or the engineering services referred to in this clause is carried out by the assessee himself or by a concern which is for the time being approved in this behalf by the Board;

- (b) legal charges for drafting any agreement between the assessee and any other person for any purpose relating to the setting up or conduct of the business of the assessee;
- (c) where the assessee is a company, also expenditure—
 - (i) by way of legal charges for drafting the Memorandum and Articles of Association of the company;
 - (ii) on printing of the Memorandum and Articles of Association;
 - (iii) by way of fees for registering the company under the provisions of the Companies Act, 1956 (1 of 1956);
 - (iv) in connection with the issue, for public subscription, of shares in or debentures of the company, being underwriting commission, brokerage and charges for drafting, typing, printing and advertisement of the prospectus;

(d) such other items of expenditure (not being expenditure eligible for any allowance or deduction under any other provision of this Act) as may be prescribed.

(3) Where the aggregate amount of the expenditure referred to in sub-section (2) exceeds an amount calculated at two and one-half per cent—

(a) of the cost of the project, or

(b) where the assessee is an Indian company, at the option of the company, of the capital employed in the business of the company,

the excess shall be ignored for the purpose of computing the deduction allowable under sub-section (1) :

Provided that where the aggregate amount of expenditure referred to in sub-section (2) is incurred after the 31st day of March, 1998, the provisions of this sub-section shall have effect as if for the words “two and one-half per cent”, the words “five per cent” had been substituted.

Explanation.—In this sub-section—

(a) “cost of the project” means—

(i) in a case referred to in clause (i) of sub-section (1), the actual cost of the fixed assets, being land, buildings, leaseholds, plant, machinery, furniture, fittings and railway sidings (including expenditure on development of land and buildings), which are shown in the books of the assessee as on the last day of the previous year in which the business of the assessee commences;

(ii) in a case referred to in clause (ii) of sub-section (1), the actual cost of the fixed assets, being land, buildings, leaseholds, plant, machinery, furniture, fittings and railway sidings (including expenditure on development of land and buildings), which are shown in the books of the assessee as on the last day of the previous year in which the extension of the [***] undertaking is completed or, as the case may be, the new [***] unit commences production or operation, in so far as such fixed assets have been acquired or developed in connection with the extension of the [***] undertaking or the setting up of the new [***] unit of the assessee;

(b) “capital employed in the business of the company” means—

(i) in a case referred to in clause (i) of sub-section (1), the aggregate of the issued share capital, debentures and long-term borrowings as on the last day of the previous year in which the business of the company commences;

(ii) in a case referred to in clause (ii) of sub-section (1), the aggregate of the issued share capital, debentures and long-term borrowings as on the last day of the previous year in which the extension of the [***] undertaking is completed or, as the case may be, the new [***] unit commences production or operation, in so far as such capital, debentures and long-term borrowings have been issued or obtained in connection with the extension of the [***] undertaking or the setting up of the new [***] unit of the company;

(c) “long-term borrowings” means—

(i) any moneys borrowed by the company from Government or the Industrial Finance Corporation of India or the Industrial Credit and Investment Corporation of India or any other financial institution which is eligible for deduction under clause (viii)

of sub-section (1) of section 36 or any banking institution (not being a financial institution referred to above), or

- (ii) any moneys borrowed or debt incurred by it in a foreign country in respect of the purchase outside India of capital plant and machinery, where the terms under which such moneys are borrowed or the debt is incurred provide for the repayment thereof during a period of not less than seven years.

(4) Where the assessee is a person other than a company or a co-operative society, no deduction shall be admissible under sub-section (1) unless the accounts of the assessee for the year or years in which the expenditure specified in sub-section (2) is incurred 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 for the first year in which the deduction under this section is claimed, the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

(5) Where the undertaking of an Indian company which is entitled to the deduction under sub-section (1) is transferred, before the expiry of the period of ten years specified in sub-section (1), to another Indian company in a scheme of amalgamation,—

- (i) no deduction shall be admissible under sub-section (1) in the case of the amalgamating company for the previous year in which the amalgamation takes place; and
- (ii) the provisions of this section shall, as far as may be, apply to the amalgamated company as they would have applied to the amalgamating company if the amalgamation had not taken place.

(5A) Where the undertaking of an Indian company which is entitled to the deduction under sub-section (1) is transferred, before the expiry of the period specified in sub-section (1), to another company in a scheme of demerger,—

- (i) no deduction shall be admissible under sub-section (1) in the case of the demerged company for the previous year in which the demerger takes place; and
- (ii) the provisions of this section shall, as far as may be, apply to the resulting company, as they would have applied to the demerged company, if the demerger had not taken place.

(6) Where a deduction under this section is claimed and allowed for any assessment year in respect of any expenditure specified in sub-section (2), the expenditure in respect of which deduction is so allowed shall not qualify for deduction under any other provision of this Act for the same or any other assessment year.