

Deduction in respect of profits retained for export business.

80HHC. (1) Where an assessee, being an Indian company or a person (other than a company) resident in India, is engaged in the business of export out of India of any goods or merchandise 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 to the extent of profits, referred to in sub-section (1B), derived by the assessee from the export of such goods or merchandise :

Provided that if the assessee, being a holder of an Export House Certificate or a Trading House Certificate (hereafter in this section referred to as an Export House or a Trading House, as the case may be,) issues a certificate referred to in clause (b) of sub-section (4A), that in respect of the amount of the export turnover specified therein, the deduction under this sub-section is to be allowed to a supporting manufacturer, then the amount of deduction in the case of the assessee shall be reduced by such amount which bears to the total profits derived by the assessee from the export of trading goods, the same proportion as the amount of export turnover specified in the said certificate bears to the total export turnover of the assessee in respect of such trading goods.

(1A) Where the assessee, being a supporting manufacturer, has during the previous year, sold goods or merchandise to any Export House or Trading House in respect of which the Export House or Trading House has issued a certificate under the proviso to sub-section (1), 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 to the extent of profits, referred to in sub-section (1B), derived by the assessee from the sale of goods or merchandise to the Export House or Trading House in respect of which the certificate has been issued by the Export House or Trading House.

(1B) For the purposes of sub-sections (1) and (1A), the extent of deduction of the profits shall be an amount equal to—

- (i) eighty per cent thereof for an assessment year beginning on the 1st day of April, 2001;
- (ii) seventy per cent thereof for an assessment year beginning on the 1st day of April, 2002;
- (iii) fifty per cent thereof for an assessment year beginning on the 1st day of April, 2003;
- (iv) thirty per cent thereof for an assessment year beginning on the 1st day of April, 2004,

and no deduction shall be allowed in respect of the assessment year beginning on the 1st day of April, 2005 and any subsequent assessment year.

(2)(a) This section applies to all goods or merchandise, other than those specified in clause (b), if the sale proceeds of such goods or merchandise exported out of India are received in, or brought into, India by the assessee (other than the supporting manufacturer) in convertible foreign exchange, within a period of six months from the end of the previous year or, within such further period as the competent authority may allow in this behalf.

Explanation.—For the purposes of this clause, the expression “competent authority” means the Reserve Bank of India or such other authority as is authorised under any law for the time being in force for regulating payments and dealings in foreign exchange.

(b) This section does not apply to the following goods or merchandise, namely :—

- (i) mineral oil ; and

- (ii) minerals and ores (other than processed minerals and ores specified in the Twelfth Schedule).

Explanation 1.—The sale proceeds referred to in clause (a) shall be deemed to have been received in India where such sale proceeds are credited to a separate account maintained for the purpose by the assessee with any bank outside India with the approval of the Reserve Bank of India.

Explanation 2.—For the removal of doubts, it is hereby declared that where any goods or merchandise are transferred by an assessee to a branch, office, warehouse or any other establishment of the assessee situate outside India and such goods or merchandise are sold from such branch, office, warehouse or establishment, then, such transfer shall be deemed to be export out of India of such goods and merchandise and the value of such goods or merchandise declared in the shipping bill or bill of export as referred to in sub-section (1) of section 50 of the Customs Act, 1962 (52 of 1962), shall, for the purposes of this section, be deemed to be the sale proceeds thereof.

(3) For the purposes of sub-section (1),—

- (a) where the export out of India is of goods or merchandise manufactured or processed by the assessee, the profits derived from such export shall be the amount which bears to the profits of the business, the same proportion as the export turnover in respect of such goods bears to the total turnover of the business carried on by the assessee ;
- (b) where the export out of India is of trading goods, the profits derived from such export shall be the export turnover in respect of such trading goods as reduced by the direct costs and indirect costs attributable to such export ;
- (c) where the export out of India is of goods or merchandise manufactured or processed by the assessee and of trading goods, the profits derived from such export shall,—
- (i) in respect of the goods or merchandise manufactured or processed by the assessee, be the amount which bears to the adjusted profits of the business, the same proportion as the adjusted export turnover in respect of such goods bears to the adjusted total turnover of the business carried on by the assessee ; and
- (ii) in respect of trading goods, be the export turnover in respect of such trading goods as reduced by the direct and indirect costs attributable to export of such trading goods :

Provided that the profits computed under clause (a) or clause (b) or clause (c) of this sub-section shall be further increased by the amount which bears to ninety per cent of any sum referred to in clause (iiia) (not being profits on sale of a licence acquired from any other person), and clauses (iiib) and (iiic) of section 28, the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee :

Provided further that in the case of an assessee having export turnover not exceeding rupees ten crores during the previous year, the profits computed under clause (a) or clause (b) or clause (c) of this sub-section or after giving effect to the first proviso, as the case may be, shall be further increased by the amount which bears to ninety per cent of any sum referred to in clause (iiid) or clause (iiie), as the case may be, of section 28, the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee :

Provided also that in the case of an assessee having export turnover exceeding rupees ten crores during the previous year, the profits computed under clause (a) or clause (b) or clause (c) of this

sub-section or after giving effect to the first proviso, as the case may be, shall be further increased by the amount which bears to ninety per cent of any sum referred to in clause (iiid) of section 28, the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee, if the assessee has necessary and sufficient evidence to prove that,—

- (a) he had an option to choose either the duty drawback or the Duty Entitlement Pass Book Scheme, being the Duty Remission Scheme; and
- (b) the rate of drawback credit attributable to the customs duty was higher than the rate of credit allowable under the Duty Entitlement Pass Book Scheme, being the Duty Remission Scheme :

Provided also that in the case of an assessee having export turnover exceeding rupees ten crores during the previous year, the profits computed under clause (a) or clause (b) or clause (c) of this sub-section or after giving effect to the first proviso, as the case may be, shall be further increased by the amount which bears to ninety per cent of any sum referred to in clause (iiie) of section 28, the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee, if the assessee has necessary and sufficient evidence to prove that,—

- (a) he had an option to choose either the duty drawback or the Duty Free Replenishment Certificate, being the Duty Remission Scheme; and
- (b) the rate of drawback credit attributable to the customs duty was higher than the rate of credit allowable under the Duty Free Replenishment Certificate, being the Duty Remission Scheme.

Explanation.—For the purposes of this clause, “rate of credit allowable” means the rate of credit allowable under the Duty Free Replenishment Certificate, being the Duty Remission Scheme calculated in the manner as may be notified by the Central Government:

Provided also that in case the computation under clause (a) or clause (b) or clause (c) of this sub-section is a loss, such loss shall be set off against the amount which bears to ninety per cent of—

- (a) any sum referred to in clause (iiia) or clause (iiib) or clause (iiic), as the case may be, or
- (b) any sum referred to in clause (iiid) or clause (iiie), as the case may be, of section 28, as applicable in the case of an assessee referred to in the second or the third or the fourth proviso, as the case may be,

the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee.

Explanation.—For the purposes of this sub-section,—

- (a) “adjusted export turnover” means the export turnover as reduced by the export turnover in respect of trading goods ;
- (b) “adjusted profits of the business” means the profits of the business as reduced by the profits derived from the business of export out of India of trading goods as computed in the manner provided in clause (b) of sub-section (3) ;
- (c) “adjusted total turnover” means the total turnover of the business as reduced by the export turnover in respect of trading goods ;

- (d) “direct costs” means costs directly attributable to the trading goods exported out of India including the purchase price of such goods ;
- (e) “indirect costs” means costs, not being direct costs, allocated in the ratio of the export turnover in respect of trading goods to the total turnover ;
- (f) “trading goods” means goods which are not manufactured or processed by the assessee.

(3A) For the purposes of sub-section (1A), profits derived by a supporting manufacturer from the sale of goods or merchandise shall be,—

- (a) in a case where the business carried on by the supporting manufacturer consists exclusively of sale of goods or merchandise to one or more Export Houses or Trading Houses, the profits of the business [***] ;
- (b) in a case where the business carried on by the supporting manufacturer does not consist exclusively of sale of goods or merchandise to one or more Export Houses or Trading Houses, the amount which bears to the profits of the business [***] the same proportion as the turnover in respect of sale to the respective Export House or Trading House bears to the total turnover of the business carried on by the assessee.

(4) The deduction under sub-section (1) shall not be admissible unless the assessee furnishes in the prescribed form, along with the return of income, the report of an accountant, as defined in the *Explanation* below sub-section (2) of section 288, certifying that the deduction has been correctly claimed in accordance with the provisions of this section:

Provided that in the case of an undertaking referred to in sub-section (4C), the assessee shall also furnish along with the return of income, a certificate from the undertaking in the special economic zone containing such particulars as may be prescribed, duly certified by the auditor auditing the accounts of the undertaking in the special economic zone under the provisions of this Act or under any other law for the time being in force.

(4A) The deduction under sub-section (1A) shall not be admissible unless the supporting manufacturer furnishes in the prescribed form along with his return of income,—

- (a) the report of an accountant, as defined in the *Explanation* below sub-section (2) of section 288, certifying that the deduction has been correctly claimed on the basis of the profits of the supporting manufacturer in respect of his sale of goods or merchandise to the Export House or Trading House ; and
- (b) a certificate from the Export House or Trading House containing such particulars as may be prescribed and verified in the manner prescribed that in respect of the export turnover mentioned in the certificate, the Export House or Trading House has not claimed the deduction under this section :

Provided that the certificate specified in clause (b) shall be duly certified by the auditor auditing the accounts of the Export House or Trading House under the provisions of this Act or under any other law.

(4B) For the purposes of computing the total income under sub-section (1) or sub-section (1A), any income not charged to tax under this Act shall be excluded.

(4C) The provisions of this section shall apply to an assessee,—

- (a) for an assessment year beginning after the 31st day of March, 2004 and ending before the 1st day of April, 2005;

- (b) who owns any undertaking which manufactures or produces goods or merchandise anywhere in India (outside any special economic zone) and sells the same to any undertaking situated in a special economic zone which is eligible for deduction under section 10A and such sale shall be deemed to be export out of India for the purposes of this section.

Explanation.—For the purposes of this section,—

- (a) “convertible foreign exchange” means foreign exchange which is for the time being treated by the Reserve Bank of India as convertible foreign exchange for the purposes of the Foreign Exchange Regulation Act, 1973 (46 of 1973), and any rules made thereunder ;
- (aa) “export out of India” shall not include any transaction by way of sale or otherwise, in a shop, emporium or any other establishment situate in India, not involving clearance at any customs station as defined in the Customs Act, 1962 (52 of 1962) ;
- (b) “export turnover” means the sale proceeds, received in, or brought into, India by the assessee in convertible foreign exchange in accordance with clause (a) of sub-section (2) of any goods or merchandise to which this section applies and which are exported out of India, but does not include freight or insurance attributable to the transport of the goods or merchandise beyond the customs station as defined in the Customs Act, 1962 (52 of 1962) ;
- (ba) “total turnover” shall not include freight or insurance attributable to the transport of the goods or merchandise beyond the customs station as defined in the Customs Act, 1962 (52 of 1962) :
- Provided** that in relation to any assessment year commencing on or after the 1st day of April, 1991, the expression “total turnover” shall have effect as if it also excluded any sum referred to in clauses (iiia), (iiib), (iiic), (iiid) and (iiie) of section 28 ;
- (baa) “profits of the business” means the profits of the business as computed under the head “Profits and gains of business or profession” as reduced by—
- (1) ninety per cent of any sum referred to in clauses (iiia), (iiib), (iiic), (iiid) and (iiie) of section 28 or of any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in such profits; and
- (2) the profits of any branch, office, warehouse or any other establishment of the assessee situate outside India ;
- (bb) [***]
- (c) “Export House Certificate” or “Trading House Certificate” means a valid Export House Certificate or Trading House Certificate, as the case may be, issued by the Chief Controller of Imports and Exports, Government of India ;
- (d) “supporting manufacturer” means a person being an Indian company or a person (other than a company) resident in India, manufacturing (including processing) goods or merchandise and selling such goods or merchandise to an Export House or a Trading House for the purposes of export;
- (e) “special economic zone” shall have the meaning assigned to it in clause (viii) of the *Explanation 2* to section 10A.