

Deduction in respect of earnings in convertible foreign exchange.

80HHD. (1) Where an assessee, being an Indian company or a person (other than a company) resident in India, is engaged in the business of a hotel or of a tour operator, approved by the prescribed authority in this behalf or of a travel agent, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee—

- (a) for an assessment year beginning on the 1st day of April, 2001, a deduction of a sum equal to the aggregate of—
 - (i) forty per cent of the profits derived by him from services provided to foreign tourists; and
 - (ii) so much of the amount not exceeding forty per cent of the profits referred to in sub-clause (i) as is debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account to be utilised for the purposes of the business of the assessee in the manner laid down in sub-section (4);
- (b) for an assessment year beginning on the 1st day of April, 2002, a deduction of a sum equal to the aggregate of—
 - (i) thirty per cent of the profits derived by him from services provided to foreign tourists; and
 - (ii) so much of the amount not exceeding thirty per cent of the profits referred to in sub-clause (i) as is debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account to be utilised for the purposes of the business of the assessee in the manner laid down in sub-section (4);
- (c) for an assessment year beginning on the 1st day of April, 2003, a deduction of a sum equal to the aggregate of—
 - (i) twenty-five per cent of the profits derived by him from services provided to foreign tourists; and
 - (ii) so much of the amount not exceeding twenty-five per cent of the profits referred to in sub-clause (i) as is debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account to be utilised for the purposes of the business of the assessee in the manner laid down in sub-section (4);
- (d) for an assessment year beginning on the 1st day of April, 2004, a deduction of a sum equal to the aggregate of—
 - (i) fifteen per cent of the profits derived by him from services provided to foreign tourists; and
 - (ii) so much of the amount not exceeding fifteen per cent of the profits referred to in sub-clause (i) as is debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account to be utilised for the purposes of the business of the assessee in the manner laid down in sub-section (4),

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:

Provided that a hotel or, as the case may be, a tour operator approved by the prescribed authority on or after the 30th day of November, 1989 and before the 1st day of October, 1991, shall be deemed to have been approved by the prescribed authority for the purposes of this section in relation to the assessment year commencing on the 1st day of April, 1989 or the 1st day of April, 1990 or, as the case may be, the 1st day of April, 1991 if the assessee was engaged in the business of such hotel or as such tour operator during the previous year relevant to any of the said assessment years.

(2) This section applies only to services provided to foreign tourists the receipts in relation to which are received in, or brought into, India by the assessee 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 1.—For the purposes of this sub-section, any payment received by an assessee, engaged in the business of a hotel or of a tour operator or of a travel agent, in Indian currency obtained by conversion of foreign exchange brought into India through an authorised dealer, from another hotelier, tour operator or travel agent, as the case may be, on behalf of a foreign tourist or group of foreign tourists, shall be deemed to have been received by the assessee in convertible foreign exchange if the person making the payment furnishes to the assessee a certificate specified in sub-section (2A).

Explanation 2.—For the purposes of this sub-section, 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.

(2A) Every person making payment to an assessee referred to in the *Explanation 1* to sub-section (2) out of Indian currency obtained by conversion of foreign exchange received from or on behalf of a foreign tourist or a group of foreign tourists shall furnish to that assessee a certificate in the prescribed form indicating the amount received in foreign exchange, its conversion into Indian currency and such other particulars as may be prescribed.

(3) For the purposes of sub-section (1), profits derived from services provided to foreign tourists shall be the amount which bears to the profits of the business (as computed under the head “Profits and gains of business or profession”) the same proportion as the receipts specified in sub-section (2) as reduced by any payment, referred to in sub-section (2A), made by the assessee bear to the total receipts of the business carried on by the assessee.

(4) The amount credited to the reserve account under clause (b) of sub-section (1), shall be utilised by the assessee before the expiry of a period of five years next following the previous year in which the amount was credited for the following purposes, namely :—

- (a) construction of new hotels approved by the prescribed authority in this behalf or expansion of facilities in existing hotels already so approved;
- (b) purchase of new cars and new coaches by tour operators already so approved or by travel agents ;
- (c) purchase of sports’ equipment for mountaineering, trekking, golf, river-rafting and other sports in or on water ;
- (d) construction of conference or convention centres ;

- (e) provision of such new facilities for the growth of Indian tourism as the Central Government may, by notification in the Official Gazette, specify in this behalf;
- (f) subscription to equity shares forming part of any eligible issue of capital made by a public company:

Provided that where any of the activities referred to in clauses (a) to (f) would result in creation of any asset owned by the assessee outside India, such asset should be created only after obtaining prior approval of the prescribed authority.

(5) Where any amount credited to the reserve account under clause (b) of sub-section (1),—

- (a) has been utilised for any purpose other than those referred to in sub-section (4), the amount so utilised; or
- (b) has not been utilised in the manner specified in sub-section (4), the amount not so utilised,

shall be deemed to be the profits,—

- (i) in a case referred to in clause (a), in the year in which the amount was so utilised; or
- (ii) in a case referred to in clause (b), in the year immediately following the period of five years specified in sub-section (4),

and shall be charged to tax accordingly.

(5A) Where any amount credited to the reserve account under clause (b) of sub-section (1) has been utilised for subscription to any equity shares referred to in clause (f) of sub-section (4) and either whole or any part of such equity shares are transferred or converted into money by the assessee at any time within a period of three years from the date of their acquisition, the aggregate amount so utilised in respect of such equity shares shall be deemed to be the profits of the previous year in which the equity shares are transferred or converted into money.

Explanation.—A person shall be treated as having acquired any shares on the date on which his name is entered in relation to those shares in the register of members of the public company.

(6) 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 on the basis of the [***] amount of convertible foreign exchange received by the assessee for services provided by him to foreign tourists, payments made by him to any assessee referred to in sub-section (2A) and the payments received by him in Indian currency as referred to in the *Explanation 1* to sub-section (2).

(7) Where a deduction under sub-section (1) is claimed and allowed in respect of profits derived from the business of a hotel, such part of profits shall not qualify to that extent for deduction for any assessment year under any other provisions of this Chapter under the heading “C.—*Deductions in respect of certain incomes*”, and shall in no case exceed the profits and gains of such hotel.

Explanation.—For the purposes of this section,—

- (a) “travel agent” means a travel agent or other person (not being an airline or a shipping company) who holds a valid licence granted by the Reserve Bank of India under section 32 of the Foreign Exchange Regulation Act, 1973 (46 of 1973);
- (b) “convertible foreign exchange” shall have the meaning assigned to it in clause (a) of the *Explanation* to section 80HHC;

- (c) “services provided to foreign tourists” shall not include services by way of sale in any shop owned or managed by the person who carries on the business of a hotel or of a tour operator or of a travel agent;
- (d) “authorised dealer”, “foreign exchange” and “Indian currency” shall have the meanings respectively assigned to them in clauses (b), (h) and (k) of section 2 of the Foreign Exchange Regulation Act, 1973 (46 of 1973);
- (e) “eligible issue of capital” means an issue made by a public company formed and registered in India and the entire proceeds of the issue is utilised wholly and exclusively for the purpose of carrying on the business of—
 - (i) setting up and running of new hotels approved by the prescribed authority; or
 - (ii) providing such new facility for the growth of tourism in India, as the Central Government may, by notification in the Official Gazette, specify.