

Deduction in respect of profits from export of computer software, etc.

80HHE. (1) Where an assessee, being an Indian company or a person (other than a company) resident in India, is engaged in the business of,—

- (i) export out of India of computer software or its transmission from India to a place outside India by any means;
- (ii) providing technical services outside India in connection with the development or production of computer software,

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 the profits, referred to in sub-section (1B), derived by the assessee from such business :

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Provided that if the assessee, being a company, engaged in the export out of India of computer software, issues a certificate referred to in clause (b) of sub-section (4A), that in respect of the amount of the export specified therein, the deduction under this sub-section is to be allowed to a supporting software developer, then the amount of deduction in the case of an assessee shall be reduced by such amount which bears to the total profits derived by the assessee from the export, the same proportion as the amount of the export turnover specified in such certificate bears to the total export turnover of the assessee.

Explanation.—For the removal of doubts, it is hereby declared that the profits and gains derived from on site development of computer software (including services for development of software) outside India shall be deemed to be the profits and gains derived from the export of computer software outside India.

(1A) Where the assessee, being a supporting software developer, has during the previous year, developed and sold computer software to an exporting company in respect of which the said company 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 of the profits derived by the assessee from the developing and selling of computer software to the exporting company in respect of which the certificate has been issued by the said company to such extent and for such years as specified in sub-section (1B).

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

- (i) eighty per cent of such profits 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) The deduction specified in sub-section (1) shall be allowed only if the consideration in respect of the computer software referred to in that sub-section is 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.—The said consideration shall be deemed to have been received in India where it is 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 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.

(3) For the purposes of sub-section (1), profits derived from the business referred to in that sub-section shall be the amount which bears to the profits of the business, the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee.

(3A) For the purposes of sub-section (1A), profits derived by a supporting software developer shall be,—

- (i) in a case where the business carried on by the supporting software developer consists exclusively of developing and selling of computer software to one or more exporting companies solely engaged in exports, the profits of such business;
- (ii) in a case where the business carried on by a supporting software developer does not consist exclusively of developing and selling of computer software to one or more exporting companies, the amount which bears to the profits of the business, the same proportion as the turnover in respect of sale to the respective exporting company 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.

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

- (i) 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 software developer in respect of sale of computer software to the exporting company; and
- (ii) a certificate from the exporting company 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 exporting company has not claimed deduction under this section :

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

(5) Where a deduction under this section is claimed and allowed in respect of profits of the business referred to in sub-section (1) for any assessment year, no deduction shall be allowed in relation to such profits under any other provision of this Act for the same or any other assessment year.

Explanation.—For the purposes of this section,—

- (a) “convertible foreign exchange” shall have the meaning assigned to it in clause (a) of the *Explanation* to section 80HHC;
- (b) “computer software” means,—
- (i) any computer programme recorded on any disc, tape, perforated media or other information storage device; or
 - (ii) any customised electronic data or any product or service of similar nature as may be notified by the Board,
- which is transmitted or exported from India to a place outside India by any means;
- (c) “export turnover” means the consideration in respect of computer software received in, or brought into, India by the assessee in convertible foreign exchange in accordance with sub-section (2), but does not include freight, telecommunication charges or insurance attributable to the delivery of the computer software outside India or expenses, if any, incurred in foreign exchange in providing the technical services outside India;
- (ca) “exporting company” means a company referred to in sub-section (1) making actual export of computer software;
- (d) “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 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;
- (e) “total turnover” shall not include—
- (i) any sum referred to in clauses (iia), (iib) and (iic) of section 28;
 - (ii) any freight, telecommunication charges or insurance attributable to the delivery of the computer software outside India; and
 - (iii) expenses, if any, incurred in foreign exchange in providing the technical services outside India;
- (ea) “supporting software developer” means an Indian company or a person (other than a company) resident in India, developing and selling computer software to an exporting company for the purposes of export.