

Annexure 'B'

Issue 2: *The deduction is available for 11th to 15th year to the extent of “profits” debited to profit and loss account and credited to SEZ Reinvestment Reserve account. There is no mention as to whether the term profits include profits derived from exports alone or the profits as such earned by the undertaking (including both export as well as domestic profits.*

Section 10AA (1) reads as below

“10AA. (1) Subject to the provisions of this section, in computing the total income of an assessee, being an entrepreneur as referred to in clause (j) of section 212 of the Special Economic Zones Act, 2005, from his Unit, who begins to manufacture or produce articles or things or provide any services during the previous year relevant to any assessment year commencing on or after the 1st day of April, 2006¹³, a deduction of—

(i) hundred per cent of profits and gains derived from the export, of such articles or things or from services for a period of five consecutive assessment years beginning with the assessment year relevant to the previous year in which the Unit begins to manufacture or produce such articles or things or provide services, as the case may be, and fifty per cent of such profits and gains for further five assessment years and thereafter;

(ii) for the next five consecutive assessment years, so much of the amount not exceeding fifty per cent of the profit 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 called the "Special Economic Zone Re-investment Reserve Account") to be created and utilized for the purposes of the business of the assessee in the manner laid down in sub-section (2).

Clause (i) deals with deduction available in respect of the first ten years of operations. The clause provides for deduction in respect of *profits and gains derived from the export of articles or things or from services.*

Clause (ii) deals with deduction for the last five years in the block of fifteen years, the period under analysis in this note. The clause provides for deduction up to fifty percent of the profits, subject to a ceiling of the amount transferred from the Profit and Loss account to the SEZ Reserve.

It is pertinent to note the absence in the latter clause of the words ‘derived from the export of articles or things or from services’, which are present in the former. A plain reading of the section would indicate that the absence of said words in the second clause implies the allow-ability of deduction in respect of all profits derived by a SEZ unit, in contrast to the deduction of only export profits, as contemplated in the first clause.

Since the plain reading is amply explanatory, it may not be necessary to interpret the intent of the legislation. However, even if one were to undertake the exercise of interpretation of the said provision, the conclusion would be no different.

As discussed earlier, section 10AA, being a beneficial provision is to be construed liberally for computing the deduction available. Further courts cannot supply the words missing in the statute, as

enshrined by the principle of Casus Omissus, upheld in various precedents by the Apex Court and subordinate High Courts.

View 1: For the reasons discussed above, it is fallible to take a view that the second clause applies only to export profits, by supplying the missing words therein from the first clause. Thus, a view could be taken that in the eleventh to fifteenth years, deduction under the provision is not limited to export profits, and instead is available in respect of all profits and gains of the SEZ unit.

View 2: However, considering that the intention of legislature is to promote exports and develop SEZ's, and that the profits used under clause (i) of Section 10AA(2) makes specific reference to profits derived from exports, it could also be concluded the terms profits as used under clause (ii) of Section 10AA(2) would refer to the profits derived from export turnover and only such profits should be considered for the purpose of computing the eligible profits to be transferred to the SEZ Reinvestment Reserve.

Considering the intention of the legislature, **View 2** appears to be a better view.