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INCOME-TAX ACT, 2025

D: Profits and gains of business or profession

Section 38 - Certain sums deemed as profits and gains of business or profession.

(1) The following sums shall be deemed to be profits and gains of business or profession and shall be chargeable to income-tax, in the manner specified below, subject to the provisions of sub-section (2):––

(a) where an allowance or deduction has been allowed in respect of any loss, expenditure or trading liability incurred by the assessee during any tax year, then,—

(i) the value of any benefit accruing to the assessee by way of cessation or remission of such trading liability, including a unilateral act of write-off of such liability in his accounts, in a subsequent tax year in which such benefit accrues; or

(ii) any amount obtained by the assessee, whether in cash or otherwise, in respect of such loss or expenditure incurred, in subsequent tax year in which the amount is obtained,

whether the business or profession in respect of which the allowance or deduction was made is in existence in such subsequent tax year or not;

(b) in a case where any tangible asset [as referred to in section 33(12)(a)(i)], which is owned by assessee, is sold, discarded, demolished or destroyed, and the moneys payable for such asset, together with the scrap value [A] exceeds the written down value of such assets [C], the sum as computed below, in the tax year in which the moneys payable for such asset becomes due––

(i) where the moneys payable for such asset together with the scrap value [A] is less than the actual cost of such asset [B], then—

[A] – [C]; or

(ii) in any other case,—

[B] – [C];

(c) in a case where an asset representing expenditure of a capital nature on scientific research, referred to in section 45(1)(a)(i) is sold, without having been used for other purposes, and the sale proceeds together with the total deductions allowed under that section exceed the amount of capital expenditure, the excess or the amount of deduction so made, whichever is less, in the tax year in which the asset was sold;

(d) in a case where a deduction has been allowed for a bad debt (or part of it) under the provisions of section 31(2), and any amount subsequently recovered exceeds the difference between such debt and the amount allowed, then the amount in excess, in the tax year in which recovery is made;

(e) in a case where a deduction has been allowed for any special reserve created and maintained under the provisions of section 32(e), any amount subsequently withdrawn from such reserve, in the tax year in which the amount is withdrawn.

(2) The provisions of sub-section (1) shall apply subject to fulfilment of the following conditions:—

(a) in respect of sub-section (1)(a), only when an allowance or deduction has been made in assessment for any tax year towards the trading liability, loss or expenditure incurred;

(b) in respect of sub-section (1)(b), only when the asset owned by the assessee, has been used for the purpose of business or profession, and depreciation has been claimed and allowed thereon under section

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33(2);

(c) in respect of sub-section (1)(c), only when the asset has not been used for other purposes.

(3) Where the business or profession referred to in this section is no longer in existence and there is income chargeable to tax under sub-section (1)(a), (c), (d) or (e), in respect of that business or profession, any loss, not being a loss sustained in speculation business, which arose in that business or profession during the tax year in which it ceased to exist and which could not be set off against any other income of that tax year shall, so far as may be, be set off against the income chargeable to tax under the said clauses of that sub-section.

(4) In respect of sums referred to in sub-section (1)(a), if the benefit referred therein accrues to, or amount referred therein is obtained, by the successor in business, the value of the benefit or the amount shall be chargeable to income-tax as income in the hands of successor in business.

(5) The provisions of sub-section (1)(b), (c), (d) and (e) shall apply in a tax year even if the business is no longer in existence.

(6) For the purposes of this section,––

(a) “sold” includes a transfer by way of exchange or a compulsory acquisition under any law for the time being in force but does not include a transfer, in a scheme of amalgamation, of any asset by the amalgamating company to the amalgamated company where the amalgamated company is an Indian company;

(b) “successor in business” means––

(i) the amalgamated company, where there has been an amalgamation;

(ii) the resulting company, where there has been a demerger;

(iii) where the assessee is succeeded by any other person in that business or profession, that other person;

(iv) where a firm carrying on a business or profession is succeeded by another firm, that other firm.

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