

Deduction in respect of profits and gains from projects outside India.

80HHB. (1) Where the gross total income of an assessee being an Indian company or a person (other than a company) who is resident in India includes any profits and gains derived from the business of—

- (a) the execution of a foreign project undertaken by the assessee in pursuance of a contract entered into by him, or
- (b) the execution of any work undertaken by him and forming part of a foreign project undertaken by any other person in pursuance of a contract entered into by such other person,

with the Government of a foreign State or any statutory or other public authority or agency in a foreign State, or a foreign enterprise, 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 from such profits and gains of an amount equal to—

- (i) forty per cent thereof for an assessment year beginning on the 1st day of April, 2001;
- (ii) thirty per cent thereof for an assessment year beginning on the 1st day of April, 2002;
- (iii) twenty per cent thereof for an assessment year beginning on the 1st day of April, 2003;
- (iv) ten 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:

Provided that the consideration for the execution of such project or, as the case may be, of such work is payable in convertible foreign exchange.

(2) 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 ;
- (b) “foreign project” means a project for—
 - (i) the construction of any building, road, dam, bridge or other structure outside India ;
 - (ii) the assembly or installation of any machinery or plant outside India ;
 - (iii) the execution of such other work (of whatever nature) as may be prescribed.

(3) The deduction under this section shall be allowed only if the following conditions are fulfilled, namely :—

- (i) the assessee maintains separate accounts in respect of the profits and gains derived from the business of the execution of the foreign project, or, as the case may be, of the work forming part of the foreign project undertaken by him and, where the assessee is a person other than an Indian company or a co-operative society, such accounts have been audited by an accountant as defined in the *Explanation* below sub-section (2) of section 288 and the assessee furnishes, along with his return of income, the report of such audit in the prescribed form duly signed and verified by such accountant ;

- (ia) the assessee furnishes, along with his return of income, a certificate in the prescribed form from an accountant as defined in the *Explanation* below sub-section (2) of section 288, duly signed and verified by such accountant, certifying that the deduction has been correctly claimed in accordance with the provisions of this section;
- (ii) an amount equal to such percentage of the profits and gains as is referred to in sub-section (1) in relation to the relevant assessment year is debited to the profit and loss account of the previous year in respect of which the deduction under this section is to be allowed and credited to a reserve account (to be called the “Foreign Projects Reserve Account”) to be utilised by the assessee during a period of five years next following for the purposes of his business other than for distribution by way of dividends or profits ;
- (iii) an amount equal to such percentage of the profits and gains as is referred to in sub-section (1) in relation to the relevant assessment year is brought by the assessee in convertible foreign exchange into India, in accordance with the provisions of the Foreign Exchange Regulation Act, 1973 (46 of 1973), and any rules made thereunder, within a period of six months from the end of the previous year referred to in clause (ii) or, within such further period as the competent authority may allow in this behalf.

Provided that where the amount credited by the assessee to the Foreign Projects Reserve Account in pursuance of clause (ii) or the amount brought into India by the assessee in pursuance of clause (iii) or each of the said amounts is less than such percentage of the profits and gains as is referred to in sub-section (1) in relation to the relevant assessment year, the deduction under that sub-section shall be limited to the amount so credited in pursuance of clause (ii) or the amount so brought into India in pursuance of clause (iii), whichever is less.

Explanation.—For the purposes of clause (iii), 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.

(4) If at any time before the expiry of five years from the end of the previous year in which the deduction under sub-section (1) is allowed, the assessee utilises the amount credited to the Foreign Projects Reserve Account for distribution by way of dividends or profits or for any other purpose which is not a purpose of the business of the assessee, the deduction originally allowed under sub-section (1) shall be deemed to have been wrongly allowed, and the Assessing Officer may, notwithstanding anything contained in this Act, recompute the total income of the assessee for the relevant previous year and make the necessary amendment; and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the end of the previous year in which the money was so utilised.

(5) Notwithstanding anything contained in any other provision of this Chapter under the heading “C.—Deductions in respect of certain incomes”, no part of the consideration or of the income comprised in the consideration payable to the assessee for the execution of a foreign project referred to in clause (a) of sub-section (1) or of any work referred to in clause (b) of that sub-section shall qualify for deduction for any assessment year under any such other provision.