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L.L.B. Part III

Paper - VIII th

Taxation

Special Provision in respect of certain Articles or things (Section 10BA): —

Section 10BA is a new section inserted by the Taxation Laws (Amendment) Act 2003 w.e.f. 1-4-2004. The provisions of this section are as follows:—

(1) Subject to the provisions of this section a deduction of such profits and gains as are derived by an undertaking from the export out of India of eligible articles or things, shall be allowed from the total income of the assessee:

Provided that where in computing the total income of the undertaking for any assessment year, deduction under sections 10A or section 10B has been claimed, the undertaking shall not be entitled to the deduction under this section:

Provided further that no deduction under this section shall be allowed to any undertaking for the assessment year beginning on the 1st day of April 2010 and

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subsequent years.

(2) This section applies to any undertaking which fulfils the following conditions namely:

(a) it manufactures or produces the eligible articles or things without the use of imported raw materials:

to it is not formed by the splitting up, or the reconstruction, or a business already in existence:

Provided that this condition shall not apply in respect of any undertaking which is formed as a result of the re-establishment, reconstruction, or revival by the carrying on of the business of any such undertaking as referred to in S.B. 33, in the circumstances and within the period specified in that section:

(c) it is not formed by the transfer to a new business or machinery or plant previously used for any purpose.

Explanation— The provisions of Explanation 1 and Explanation 2 to sub-section (2) of section 80-1 shall apply for the purposes of this clause as they apply for the purposes of clause (ii) of sub-section (2) of that section:

of ninety per cent or more of its sales during the previous year relevant to the

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assessment year are by way of exports of the eligible articles or things:

(a) it employs twenty or more workers during the previous year in the process of manufacture or production.

(3) This section applies to the undertaking if the sale proceeds of the eligible articles or things exported out of India are assessed 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 — For the purposes of this 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.

(4) For the purposes of section 41 the profits derived from export out of India of the eligible articles or things shall be the amount which bears to the profits of the business of the undertaking the same proportion as the export turnover

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in respect of such articles or things bears to the total turnover of the business carried on by the undertaking.

(5) The deduction under such-section shall not be admissible, unless the assessee furnishes in the prescribed form, along the return of income, the report of an accountant, as defined in the Explanation below such-section (2) of section 288, certifying that the deduction has been correctly claimed in accordance with the provisions of this section.

(6) Notwithstanding anything contained in any other provision of this Act, where a deduction is allowed under this section in computing the total income of the assessee, no deduction shall be allowed under any other section in respect of its expenditure.

(7) The provisions of such-section (8) and such-section (10) of section 80 I A shall, so far as may be apply in relation to the undertaking referred to in this section as they apply for the purposes of the undertaking referred to in section 80 I A.

Explanation — For the purposes of this section:

(a) "convertible foreign exchange" means foreign exchange which is for the time being

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treated by the Reserve Bank of India as convertible foreign exchange for the purposes of the Foreign Exchange Management Act 1999 (42 of 1999), and any rules made thereunder or any other corresponding law for the time being in force;

(b) "eligible articles or things" means all hand made articles or things, which are of artistic value and which require the use of wool as the main raw material;

(c) "export turnover" means the consideration in respect of export by the undertaking of eligible articles or things received in, or brought into India by the assessee in convertible foreign exchange in accordance with sub-section (3) but does not include freight, telecommunication charges or insurance attributable to the delivery of the articles or things outside India;

(d) "export out of India" shall not include any transaction by way of sale or otherwise in a shop, emporium or any other established site in India, not involving clearance of any customs station as defined in the Customs Act 1962;