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B.L.B. Part III rd
Paper VIII th
Taxation

Deduction in respect of profits and gains from export or transfer of film software, etc. (S. 80HHE). -

4) Where an assessee being an Indian company or a person (other than a company) resident in India, is engaged in the business of export or transfer by any means out of India, of any film software, television software, music software, television news software, including telecast rights therefor in this section referred to as the software or software rights), he allowed, in computing the total income of the assessee, a deduction to the extent of the profits referred to in section 41A derived by the assessee from such business. (4A) For the purposes of section 41A, the extent of deduction of profits shall be an amount equal to -
(i) 80 per cent of such profits for an assessment year beginning on 1-4-2001,
(ii) 70 per cent thereof for an assessment year beginning on 1-4-2002;

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(iii) 50 per cent thereof for an assessment year beginning on 1-4-2002;

(iv) 30 per cent thereof for an assessment year beginning on 1-4-2004, and no deduction shall be allowed in respect of the assessment year beginning on 1-4-2005 and any subsequent assessment year.

(2) The deduction specified (1) shall be allowed only if the consideration in respect of the software or software rights 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.

(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.

(4) The deduction under sub-section (1) shall not be admissible unless the assessee furnishes in the prescribed form,

(3)

along with the return of income, the report of an accountant, as defined in the Explanation below sub-section (1) of section 288 certifying that the deduction has been correctly claimed in accordance with the provisions of this section.

(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 in relation to such profits under any other provisions of this Act for the same or any other assessment year.

(6) Notwithstanding anything contained in this section, no deduction shall be allowed in respect of the software or software rights referred to in sub-section (1) if such business is prohibited by any law for the time being in force.

Explanation.— For the purposes of this section:—

(a) "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;

(b) "convertible foreign exchange"

(4)

shall have the meaning assigned to it in clause (a) of the Explanation to section 80HHC.

(c) "export turnover" means the consideration in respect of the software or software rights specified in clause (d), (e), (g), (h) and (i) received in, or brought in to, 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 such software outside India or expenses, if any incurred in foreign exchange in providing the technical services outside India;

(d) "film software" means a copy of a cinematograph on acetate, polyester or celluloid film positive, magnetic tape, digital media or other optical or magnetic tape, digital media or other optical or magnetic devices, and certified by the Board of film certification constituted by the Central Government under section 3 of the Cinematography Act 1952

(@ ninety percent)

(e) "music software" includes series of sounds or music recorded on magnetic tape cassette, compact discs and digital media which can be played or reproduced on any appropriate apparatus;

(5)

(b) "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—

(A) 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

(B) the profits of any branch, office, warehouse or any other establishment of the assessee situated outside of India.

(g) "telecast rights" means a licence or contract to exhibit motion pictures of television programmes over a television network either through terrestrial transmission or through a satellite broadcast in a specified territory;

(h) "television news software" means a collection of sounds and images, reportage, data and voice of actualities broadcast either through terrestrial transmission, wire or satellite, live or pre-recorded on video cassettes or digital media;

(i) "television software" means any programme or series of sounds and images recorded on film or tape or digital media or broadcast through terrestrial transmitters, satellite or any other means of diffusion;

(j) "total turnover" shall not include—

(A) any sum referred to in clause (iii a), (iii b) and (iii c) of section 28;