



## RELEVANT EXTRACTS FROM INCOME – TAX ACT

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### SECTION 10(15)(Viii) / (23G) / (34)

#### **Incomes not included in total income.**

10. Income computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included –

(15)<sup>1-3</sup> [(Viii) any income by way of interest received by a non resident or a person who is not ordinary resident, in India on a deposit made on or after the 1<sup>st</sup> day of April, 2005, in an Offshore Banking Unit referred to in clause (u) of section 2 of the Special Economic Zones Act, 2005;]

<sup>4</sup>[(23G) any income by way of dividend, other than dividends referred to in section 115-O, interest or long-term capital gains of an infrastructure capital fund or an infrastructure capital company or a co-operative bank from investments made on or after the first day of June, 1998 by way of shares or long – term finance in any enterprise or undertaking wholly engaged in the business referred to in sub- section (3) of section 80-IAB] or a housing project referred to in sub-section (10) of section 80-1B or a hotel project or a hospital project and which has been approved by the Central Government on an application made by it in accordance with the rules made in this behalf and which satisfies the prescribed conditions.

Provided that the income, by way of dividends, other than dividends referred to in section 115-O, interest or long – term capital gains of an infrastructure capital company, shall be taken into account in computing the book profit and income – tax payable under section 115JB.

Explanation 1. – For the purpose of this clause; -

- (a) “ infrastructure capital company” means such company as has made investments by way of acquiring share or providing long term finance to an enterprise wholly engaged in the business referred to in this clause;
- (b) “ Infrastructure capital fund” means such fund operating under a trust deed registered under the provision of the Registration Act, 1908 ( 16 of 1908) established to raise monies by the trustees for investment by way of acquiring shares or providing long-term finance to an enterprise wholly engaged in the business referred to in this clause;

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1-3. Inserted by the Special Economic Zones Act, 2005, w.e.f **10.2.2006**

1-4. Clause (23G) shall be omitted by the Finance Act, 2006, w.e.f. **1.4.2007**

1-5. Inserted by the Special Economic Zones Act, 2005, w.e.f. **10.2.2006**

(c) [\*\*\*]

(d) “ long – term finance” shall have the meaning assigned to it in clause (Viii) of sub- section (1) of section 36;

(e) “ Co-operation bank” shall have the meaning assigned to it in clause (dd) of section 2 of the Deposit Insurance and Credit Guarantee Cooperation Act, 1961 (47 of 1961);

(f) “ interest” includes any fee or commission received by a financial institution for giving any guarantee to, or enhancing credit in respect of, an enterprise which has been approved by the Central Government for the purpose of this clause;

(g) “ hotel project” means a project for constructing a hotel of not less than three-star category as classified by the Central Government;

(h) “ hospital project” means a project for constructing a hospital with at least one hundred beds for patients.

Explanation 2. – For the removal of doubts , it is hereby declared that any income by way of dividends, interest or long-term capital gains of an infrastructure capital fund or an infrastructure company from investments made before the 1<sup>st</sup> day of June,198 by way of shares or long-term finance in any enterprise carrying on the business of developing, maintaining and operating any infrastructure facility shall not be included and the provisions of this clauses as it stood immediately before its amendment and the Finance ( No. 2) Act, 1998 (21 of 1998) shall apply to such income;]

(34) any income by way of dividends referred to in section 115-O

6[Explanation. – For the removal of doubts, it is hereby declared that the dividend referred to in section 115-O shall not be included in the total income of the assessee being a Developer or entrepreneur;]

#### **SECTION 10A**

##### **Special provision in respect of newly established undertaking in free trade zone, etc,**

**10A.** (1) Subject to the provisions of this section, a deduction of such profits and gains as are derived by an undertaking from the export of articles or things or computer software for a period of ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce such articles or things or computer software, as the case may be, 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, its profits and gains had not been included by application of the provisions of this sections it stood immediately before its substitution by the Finance Act,2000, the undertaking shall be entitled to deduction referred to in this sub-section only for the unexpired period of the aforesaid ten consecutive assessment years:

**Provided further** that where an undertaking initially located in any free trade zone or export processing zone is subsequently located in a special economic zone by reason of conversion of such free trade zone or export processing zone into a special economic zone, the period of ten consecutive year relevant of the previous year in which the undertaking began to manufacture or produce such articles or things or computer software in such free trade zone or export processing zone:

**Provided** also that for the assessment year beginning on the 1<sup>st</sup> day of April,2003, the deduction under this sub-section shall be ninety percent of the profits and gains derived by an undertaking from the export of such articles or things or computer software:

**Provided also** that no deduction under this section shall be allowed to any undertaking for the assessment year beginning on the 1<sup>st</sup> day of April,2010 and subsequent years.

(1A) Notwithstanding anything contained in sub-section(1), the deduction, in computing the total income of an undertaking which begins to manufacture or produce articles or things or computer software during the previous year relevant to any assessment year commencing on or after the 1<sup>st</sup> day of April, 2003, in any special economic zone, shall be,-

- (i) hundred percent of profits and gains derived from the export of such articles or things or computer software for a period of five consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce such articles or things or computer software , as the case may be , and thereafter, fifty percent of such profits and gains for further two consecutive assessment years and thereafter;
- (ii) for the next three 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 Allowance Reserve Account”) to be created and utilized for the purposes of the business of the assessee in the manner laid down in sub-section (1B):

<sup>7</sup>[ **Provided** that no deduction under this section shall be allowed to an assessee who does not furnish a return of his income on or before the due date specified under sub-section (1) of section 139.]

(1B) The deduction under clause (ii) of sub-section (1A) shall be allowed only if the following conditions are fulfilled, namely:-

(a) the amount credited to the special economic zone Re- investment Allowance Reserve Accounts is to be utilized -

- (i) for the purposes of acquiring new machinery or plant which is first put to use before the expiry of a period of three years next following the previous year in which the reserve was created; and
- (ii) until the acquisition of new machinery or plant as aforesaid, for the purposes of the business of the undertaking other than for distribution by way of

dividends or profits or for remittance outside India as profits or for the creation of any asset outside India;

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7. Inserted by the Finance Act, 2005 w.e.f. **1.4.2006**.

- (b) the particulars as may be prescribed in this behalf, have been furnished by the assessee in respect of new machinery or plant along with the return of income for the assessment year relevant to the previous year in which such plant or machinery was first put to use.

(IC) Where any amount credited to the Special Economic Zone Re-investment Allowance Reserve Account under clause (ii) of sub-section (1A),-

- (a) has been utilized for any purpose other than those referred to in sub-section (1B), the amount so utilized; or  
(b) has not been utilized before the expiry of the period specified in sub-clause (i) of clause (a) of sub-section (1B), the amount not so utilized,

shall be deemed to be the profits,-

- (i) in a case referred to in clause (a), in the year in which the amount was so utilized; or  
(ii) in a case referred to in clause (b), in the year immediately following the period of three years specified in sub-clause (i) of clause (a) of sub-section (1B),

and shall be charged to tax accordingly.

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

- (i) it has begun or begins to manufacture or produce articles or things or computer software during the previous year relevant to the assessment year-  
(a) commencing on or after the 1<sup>st</sup> day of April, 1981, in any free trade zone; or  
(b) Commencing on or after the 1<sup>st</sup> day of April, 1994, in any electronic hardware technology park, or, as the case may be, software technology park;  
(c) Commencing on or after the 1<sup>st</sup> day of April, 2001 in any special economic zone;  
(ii) it is not formed by the splitting up, or the reconstruction, of a business already in existence:  
**Provided** that this condition shall not apply in respect of any undertaking which is formed as a result of there – established, reconstruction or revival by the assessee of the business of any such undertakings as is referred to in section 33B, in the circumstances and within the period specified in that section;  
(iii) it is not formed by the transfer to a new business of machinery or plant previously used for the purpose.

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

(3) This section applies to the undertaking, if the sale proceeds of articles or things or computer software exported out of India are 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 as the competent authority may allow in this behalf.

Explanation 1. – For the purposes of this sub-section, the expression “competent authority” means the Reserve Bank of India or such other authority as authorized under any law for the time being in force for regulating payments and dealings in foreign exchange.

Explanation 2. – The sale proceeds referred to in the sub-section shall be deemed to have been received in India where such sale proceeds are credited to a separate account maintained for the purpose by the assessee with any bank outside India with the approval of the Reserve Bank of India.

(4) For the purpose of sub-sections (1) and (1A), the profits derived from exports of articles or things or computer software shall be the amount which bears to the profits of the business of the undertaking, the same proportion as the export turnover in respect of such articles or things or computer software bears to the total turnover of the business carried on by the undertaking.

(5) The deduction under this section shall not be admissible for any assessment year beginning on or after the 1<sup>st</sup> day of April, 2001, unless the assessee furnishes in the prescribed form, along with the return of income, the report of an accountant, as defined in the Explanation below sub-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, in computing the total income of the assessee of the previous year relevant to the assessment year immediately succeeding the last of the relevant assessment years or of any previous year, relevant to any subsequent assessment year,-

- (i) section 32, section 32A, section 33, section 35 and clause (ix) of sub-section (1) of section 36 shall apply as if every allowance or deduction referred to therein and relating to or allowable for any of the relevant assessment years ending before the 1<sup>st</sup> day of April, 2001, in relation to any building, machinery, plant or furniture used for the purposes of the business of the undertaking in the previous year relevant to such assessment year or any expenditure incurred for the purposes of such assessment year or any expenditure incurred for the purposes of such business in such previous year had been given full effort to for that assessment year itself and accordingly sub-section (2) of section 32, clause (ii) of sub-section (3) of section 32A, clause (ii) of sub-section (2) of section 33, sub-section (4) of section 35 or the second proviso to clause (ix) of sub-section (1) of section 36, as the case may be, shall not apply in relation to any such allowance or deduction;
- (ii) no loss referred to in sub-section (1) of section 72 or sub-section (1) or sub-section (3) of section 74, in so far as such loss relates to the business of the undertaking shall be carried forward or set off where such loss relates to any of the relevant assessment years ending before the 1<sup>st</sup> day April, 2001;
- (iii) no deduction shall be allowed under section 80HH or section 80HHA or section 80-I or section 80-IA or section 80-IB in relation to the profits and gains of the undertaking; and
- (iv) in computing the depreciation allowance under section 32, the written down value of any asset used for the purposes of the business of the undertaking shall be computed as if the assessee had claimed of the undertaking shall be computed

as if the assessee had claimed and been actually allowed the deduction in respect of depreciation for each of the relevant assessment year.

(7) The provisions of sub-section (8) and sub-section (10) of section 80-IA 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-IA

(7A) Where any undertaking of an Indian company which is entitled to the deduction under this section is transferred, before the expiry of the period specified in this section, to another Indian company in a scheme of amalgamation or demerger;-

- (a) no deduction shall be admissible under this section to the amalgamating or the demerged company for the previous year in which the amalgamation or the demerger takes place; and
- (b) the provision of this section shall, as far as may be, apply to the amalgamated or the resulting company as they would have applied to the amalgamating or the demerged company if the amalgamation or demerger had not taken place.

<sup>8</sup>[(7B) The provisions of this section shall not apply to any undertaking being a Unit referred to in clause (zc) of section 2 of the special Economic Zones Act, 2005, which has begun or begins to manufacture or produce articles or things or computer software during the previous year relevant to the assessment year commencing on or after the 1<sup>st</sup> day of April, 2006 in any Special Economic Zone.]

(8) Notwithstanding anything contained in the foregoing provisions of this section where the assessee, before the due date for furnishing the return of income under sub-section (1) of section 139, furnishes to the Assessing Officers a declaration in writing that section shall not apply to him for any of the relevant assessment years.

(9) [Omitted by the Finance Act, 2003, w.e.f. 1.4.2004]

(9A) [Omitted by the Finance Act, 2003, w.e.f. 1.4.2004]

Explanation 1.- [Omitted by the Finance Act, 2003, w.e.f. 1.4.2004.]

Explanation 2. – For the purposes of this section,-

- (i) “Computer software” means-
  - (a) any computer programme recorded on any disc, tape, perforated media or other information storage device; or
  - (b) any customized electronic data or any product or service of similar nature, as may be noticed by the Board,  
Which is transmitted or exported from India to any place outside India by any means;
- (ii) “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 there under or any other corresponding law for the time being in force;
- (iii) “electronic hardware technology park” means any park set up in accordance with the Electronic Hardware Technology Park ( EHTP) Scheme notified by the Government of India in the Ministry of Commerce and Industry;
- (iv) “ export turnover” means the consideration in respect of export by the undertaking of articles or things or computer software 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, if any, incurred in foreign exchange in providing the technical services outside India;

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8. Inserted by the Special Economic Zones Act, 2005, w.e.f. **10.2.2006**

- (v) “free trade zone” means the Kandla Free Trade Zone and the Santacruz Electronics Export Processing Zone and includes any other free trade zone which the Central Government may, by notification in the official Gazette, specify for the purposes of this section;
- (vi) “relevant assessment year” means any assessment year falling within a period of ten consecutive assessment years referred to in this section;
- (vii) “Software technology park” means any park set up in accordance with the Software Technology Park Scheme notified by the Government of India in the Ministry of commerce and Industry;
- (viii) “special economic zone” means a zone which the Central Government may, by notification in the official Gazette, specify as a special economic zone for the purpose of this section.

Explanation 3. – For the removal of doubts, it is hereby declared that the profits and gains derived from on site development of computer software (including services for development of software) outside India shall be deemed to be profits and gains derived from the export of computer software outside India.

Explanation 4. – For the purposes of this section, “manufacture or produce” shall include the cutting and polishing precious and semi-precious stones.

#### **SECTION 10AA**

**“[Special provision In respect of newly established Units In special Economic Zones.**

**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 2 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 1<sup>st</sup> day of April, 2006, 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 produces 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 profits as it debited to the profits 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).

(2) The deduction under clause (ii) of sub-section(1) shall be allowed only if the following conditions are fulfilled, namely:-

- (a) the amount credited to the Special Economic Zone Re-investment Reserve Account is to be utilized-
    - (i) for the purposes of acquiring machinery or plant which is first put to use before the expiry of a period of three years following the previous year in which the reserve was created; and
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9. Inserted by the Special Economic Zones Act, 2005, w.e.f. **10.2.2006**

- (ii) until the acquisition of the machinery or plant as aforesaid, for the purpose of the business of the undertaking other than for distribution by way of dividends or profits or for remittance outside India as profits or for the Creation of any asset outside India;
- (b) the particulars as may be specified by the central Board of Direct Taxes in this behalf, under clause (b) of sub-section (1B) of section 10A have been furnished by the assessee in respect of machinery or plant along with the return of income for the assessment year relevant to the previous year in which such plant or machinery was first put to use.

(3) Where any amount credited to the Special Economic Zone e-Investment Reserve Account under clause (ii) of sub-section (1),-

- (a) has been utilized for any purpose other than those referred to in sub-section (2), the amount so utilized; or
  - (b) has not been utilized before the expiry of the period specified in sub-clause (i) of clause (a) of sub-section (2), the amount not so utilized,
- shall be deemed to be the profits,-
- (i) in a case referred to in clause (a), in the year in which the amount was so utilized; or
  - (ii) in a case referred to in clause (b), in the year immediately following the period of three years specified in sub-section (i) of clause (a) of sub-section (2),

and shall be charged to tax accordingly;

**Provided** that where in computing the total income of the Unit for any assessment year its profits and gains had not been included by application of the provisions of sub-section (7B) of section 10A, the undertaking, being the Unit shall be entitled to deduction referred to in this sub-section only for the unexpired period of ten consecutive assessment years and thereafter it shall be eligible for deduction from income as provided in clause (ii) of sub-section(I).

Explanation. – For the removal of doubts, it is hereby declared that an understanding being the Unit, which had already availed, before the commencement of the Special Economic Zone Act,2005, the deductions referred to in section 10A for ten consecutive assessment years, such Unit shall not be eligible for deduction from income under this section:

**Provided further** that where a Unit initially located in any free trade zone or export processing zone is subsequently located in a Special Economic Zone by reason of conversion of such free trade zone or export processing zone into a Special Economic Zone, the period of ten consecutive assessment years referred to above shall be reckoned from the assessment year relevant to the previous year in which the Unit began to manufacture, or produce or process such articles or things or services in such free trade zone or export processing zone:

**Provided also** that where a Unit initially located in any free trade zone or export processing zone is subsequently located in a Special Economic Zone by reason of conversion of such free trade zone or export processing zone into a Special Economic Zone and has completed the period of ten consecutive assessment years referred to above, it shall not be eligible for deduction from incomes as provided in clause (ii) of sub-section (1) with effect from the 1<sup>st</sup> day of April,2006.

(4) This section applies to any undertaking being the Unit, which has begun or begins to manufacture or produce articles or things or services during the previous year relevant

to the assessment year commencing on or after the 1<sup>st</sup> day of April, 2006, in any Special Economic Zone.

(5) Where any undertaking being the Unit which is entitled to the deduction under this section is transferred, before the expiry of the period specified in this section, to another undertaking being the Unit in as scheme of amalgamation or demerger,-

- (a) no deduction shall be admissible under this section to the amalgamating or the demerged Unit, being the company for the previous year in which the amalgamation or the demerger takes place, and
- (b) the provisions of this section shall, as they would have applied to the amalgamating or the demerged Unit being the company as if the amalgamation or demerger had not taken place

(6) Loss referred to in sub-section (I) of section 72 or sub-section (I) or sub-section (3) of section 74, in so far as such loss related to the business of the undertaking being the Unit shall be allowed to be carried forward or set off.

(7) For the purposes of sub-section (1), the profits derived from the export of articles or things or services (including computer software) shall be the amount which bears to the profits of the business of the undertaking, being the Unit, the same proportion as the export turnover in respect of such articles or things or services bears to the total turnover of the business carried on by the assessee.

(8) The provisions of sub-section (5) and (6) of section 10A shall apply to the articles or things or services referred to in sub-section (I) as if-

(a) for the figures, letters and word “1<sup>st</sup> April,2001”, the figures, letters and word “1<sup>st</sup> April,2006” had been substituted;

(b) for the word “undertaking”, the words “ undertaking being the Unit” had been substituted.

(9) The provisions of sub-section (8) and sub-section (10) of section 80-IA 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-IA.

Explanation 1. – For the purpose of this section,-

- (i) “export turnover” means the consideration in respect of export by the undertaking, being the Unit of articles or things or services received in, or brought into, India by the assessee but does not include freight, telecommunication charges or insurance attributable to the delivery of the articles or things outside India or expenses, if any, incurred in foreign exchange in rendering of services (including computer software) outside India;
- (ii) “ export in relation to the Special Economic Zones” means taking goods or providing services out of India from a Special Economic Zone by land, sea, air, or by any other mode, whether physical or otherwise;
- (iii) “manufacture” shall have the same meaning as assigned to it in clause (r) of section 2 of the Special Economic Zone Act,2005;
- (iv) “relevant assessment year” means any assessment year falling within a period of fifteen consecutive assessment years referred to in this section;

- (v) “Special Economic Zone” and “Unit” shall have the same meanings as assigned to them under clauses (za) of section 2 of the Special Economic Zone Act, 2005.

Explanation 2.- For the removal of doubts, it is hereby declared that the profits and gains derived from on site development of computer software (including services for development of software) outside India shall be deemed to be the profits and gains derived from the export of computer software outside India.]

### **SECTION 54GA**

#### **10[ Exemption of capital gains on transfer of assets in cases of shifting of Industrial undertaking from urban area to any Special Economic Zone.**

54GA. (I) Notwithstanding anything contained in section 54G, where the capital gain arises from the transfer of a capital asset, being machinery or plant or building or land or any rights in building or land used for the purposes of the business of an industrial undertaking situate in an urban area, effected in the course of, or in consequence of the shifting of such industrial undertaking to any Special Economic Zone, whether developed in any urban area or any other area and the assessee has within a period of one year before or three years after the date on which the transfer took place,-

- (a) purchased machinery or plant for the purposes of business of the industrial undertaking in the Special Economic Zone to which the said undertaking is shifted;
- (b) acquired building or land or constructed building for the purposes of his business in the Special Economic Zone;
- (c) shifted the original asset and transferred the established of such undertaking to the Special Economic Zone; and
- (d) incurred expenses on such other purposes as may be specified in a scheme framed by the Central Government for the purposes of this section,

then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall, subject to the provisions of sub-section(2), be dealt with in accordance with the following provisions of this section, that is to say,-

- (i) if the amount of the capital gain is greater than the cost and expenses incurred in relation to all or any of the purposes mentioned in clauses (a) to (d) (such cost and expenses being hereafter in this section referred to as the new asset), the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its being purchased, acquired, constructed or transferred, as the case may be, the cost shall be Nil; or
- (ii) if the amount of the capital gain is equal to, or less than, the cost of the new asset, the capital gain shall not be charged under section 45, and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its being purchased, acquired, constructed or transferred, as the case may be, the cost shall be reduced by the amount of the capital gain.

Explanation.- In this sub-section,-

- (a) “Special Economic Zone” shall have the meaning assigned to it in clause (za) of the Special Economic Zone Act,2005;
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10. Inserted by the Special Economic Zones Act, 2005, w.e.f. **10.2.2006**

(2A) Notwithstanding anything contained in the sub-section (1) or sub-section (2), the deduction in computing the total income of an undertaking providing telecommunication services specified in clause (ii) or sub-section (4), shall be hundred per cent of the profits and gains of the eligible business for the first five assessment years commencing at any time during the periods as specified in sub-section (2) and thereafter, thirty per cent of such profits and gains for further five assessment years.

(3) This section applies to an undertaking referred to in clause (ii) or clause (iv) of sub-section (4) which fulfils all the following conditions, namely:-

(i) it is not formed by splitting up, or the reconstruction, of a business already in existence:

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

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

**Provided** that nothing contained on this sub-section shall apply in the case of transfer either in whole or in part, of machinery or plant previously used by a State Electricity Board referred to in clause (7) of section 2 of the Electricity Act, 2003 (36 of 2003), whether or not such transfer is in pursuance of the splitting up or reconstruction or reorganization of the Board under Part XIII of that Act.

Explanation 1.- For the purposes of clause (ii), any machinery or plant which was used outside India by any person other than the assessee shall not be regarded as machinery or plant previously used for the purpose, if the following conditions are fulfilled, namely:-

- (a) such machinery or plant was not, at any time previous to the date of the installation by the assessee, used in India;
- (b) such machinery or plant is imported into India from any country outside India; and
- (c) no deduction in account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of the Act in computing the total income of machinery or plant by the assessee.

Explanation 2.- Where in the case of an undertaking, any machinery or plant or any part thereof previously used for any purpose is transferred to a new business and the total value of the machinery or plant or part so transferred does not exceed twenty per cent of the total value of the machinery or plant used in the business, then, for the purposes of clause (ii) of this sub-section, the condition specified therein shall be deemed to have been complied with.

(4) This section applies to-

(i) any enterprise carrying on the business of (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining any infrastructure facility which fulfils all the following conditions, namely:-

(a) it is owned by a company registered in India or by a consortium of such companies<sup>11</sup>[ or by an authority or board or a corporation or any other body established or constituted under any Central or State Act;]

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11. Inserted by the Finance Act, 2005, w.e.f. 1.4.2006

(2A) Notwithstanding anything contained in sub-section (1) or sub-section (2), the deduction in computing the total income of an undertaking providing telecommunication services, specified in clause (ii) of sub-section (4), shall be hundred per cent of the profits and gains if the eligible business for the first five assessment years commencing at any time during the periods as specified in sub-section (2) and thereafter thirty per cent of such profits and gains for further five assessment years.

(3) This section applies to an undertaking referred to in clause (ii) or clause (iv) of sub-section (4) which fulfils all the following conditions, namely:-

(i) it is not formed by splitting up, or the reconstruction, of a business already in existence:

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

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

**Provided** that nothing contained in this sub-section shall apply in the case of transfer, either in whole or in part, of machinery or plant previously used by a State Electricity Board referred to in clause (7) of section 2 of the Electricity Act, 2003 (36 of 2003), whether or not such transfer is in pursuance of the splitting up or reconstruction or reorganization of the Board under Part XIII of that Act.

Explanation 1. – For the purpose of clause (ii), any machinery or plant which was used outside India by any person other than the assessee shall not be regarded as machinery or plant previously used for any purpose, if the following conditions are fulfilled, namely:-

- (a) such machinery or plant was not, at any time previous to the date of the installation by the assessee, used in India;
- (b) such machinery or plant is imported into India from any country outside India; and
- (c) no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of this Act in computing the total income or any person for any period prior to the date of the installation of machinery or plant by the assessee.

Explanation 2.- Where in the case of an undertaking, any machinery or plant or any part thereof previously used for any purpose is transferred to a new business and the total value of the machinery or plant or part so transferred does not exceed twenty per cent of the total value of the machinery or plant used in the business, then, for the purposes of clause (ii) of this sub-section, the condition specified therein shall be deemed to have been complied with.

(4) This section applies to-

(i) any enterprise carrying on the business of (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining any infrastructure facility which fulfils all the following conditions, namely:-

(a) it is owned by a company registered in India or by a consortium of such companies<sup>11</sup>[ or by an authority or a board or a corporation or any other body established or constituted under any Central or State Act;]

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11. Inserted by the Finance Act, 2005, w.e.f. **1.4.2006**

- (b) it has entered into an agreement with the Central Government or a State Government or State Government or a local authority or any other statutory body for (i) developing or (ii) operating and maintaining or (iii) developing operating and maintaining a new infrastructure facility;
- (c) it has started or starts operating and maintaining the infrastructure facility on or after the 1<sup>st</sup> day of April, 1995:

**Provided** that where an infrastructure facility is transferred on or after the 1<sup>st</sup> day of April, 1995 by an enterprise which developed such infrastructure facility (hereafter referred to in section as the transferor enterprise) to another enterprise (hereafter in this section referred to as the transferee enterprise) for the purpose of operating and maintaining the infrastructure facility on its behalf in accordance with the agreement with the Central Government, state Government, local authority or statutory body, the provisions of this section shall apply to the transferee enterprise as if it were the enterprise to which this clause applies and the deduction from profits and gains would be available to such transferee enterprise for the unexpired period during which the transferor enterprise would have been entitled to the deduction if the transfer had not taken place.

Explanation.- For the purposes of this clause, “ infrastructure facility” means –

- (a) a road including toll road, a bridge or a rail system;
- (b) a highway project including housing or other activities being an integral part of the highway project;
- (c) a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system;
- (d) a port, airport, inland waterway or inland port;

(ii) any undertaking which has started or starts providing telecommunication services, whether basic or cellular, including radio paging, domestic satellite service, whether basic or cellular, including radio paging domestic satellite service, network of trunking, broadband network and internet services on or after the 1<sup>st</sup> day of April, 1995, but on or before the 31<sup>st</sup> day of March, 2005.

(iii) any undertaking which develops, develops and operates or maintains and operates an industrial park or special economic zone notified by the Central Government in accordance with the scheme framed and notified by that Government for the period beginning on the 1<sup>st</sup> day of April, 1997 and ending on the 31<sup>st</sup> day of March,2006:

**Provided** that in a case where an undertaking develops an industrial park on or after the 1<sup>st</sup> day of April, 1999 or a Special economic zone on or after the 1<sup>st</sup> day of April,2001 and transfers the operation and maintenance of such industrial park or such special economic zone, as the case may be, o another undertaking (hereafter in this section refered to as the transferee undertaking), the deduction under sub-section (1) shall be allowed to such transferee undertaking for the remaining period in the ten consecutive assessment

Years as if the operation and maintenance were not so transferred to the transferee undertaking;

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**The following second proviso shall be inserted after the first proviso to clause (iii) of sub-section (4) of section 80-IA by the Finance Act, 2006, w.e.f. 1.4.2007:**

**Provided further** that in the case of any undertaking which develops, develops and operates or maintains and operates an industrial park, the provisions of this clauses shall have effect as if for the figures, letters and words “31<sup>st</sup> day of March,2006”, the figures, letters and words “31<sup>st</sup> day of March,2009” has been substituted;

- (iv) an undertaking which,-
  - (a) is set up in any port of India for the generation or generation and distribution of power of it begins to generate power at any time during the period beginning on the 1<sup>st</sup> day of April,1993 and ending on the 31<sup>st</sup> day of March, <sup>12</sup>[2006];
  - (b) starts transmission or distribution by laying a network of new transmission or distribution lines at any time during the period beginning on the 1<sup>st</sup> day of April, 1999 and ending on the 31<sup>st</sup> day of March, <sup>12</sup>[2006];  
Provided that the deduction under this section to an undertaking under sub-clause (b) shall be allowed only in relation to the profits derived from laying of such network of new lines for transmission or distribution;
  - (c)undertakes substantial renovation and modernisation of the existing network of transmission or distribution lines at any time during the period beginning on the 1<sup>st</sup> day of April,2004 and ending on the 31<sup>st</sup> day of March, <sup>12</sup>[2006]

Explanation,- For the purposes of this sub-clause, “substantial renovation and modernization” means an increase in the plant and machinery in the network of transmission or distribution lines by a at least fifty per cent of the book value of such plant and machinery as on the 1<sup>st</sup> day of April,2004;

13[(v) an undertaking owned by an Indian Company and set up for reconstruction or revised of a power generation plant, if-

- (a) such Indian Company is formed before the 30<sup>th</sup> day of November, 2005 with majority equity participation by public sector companies for the purposes of enforcing the security interest of the lenders to the company owning the power generating plant and such Indian company is notified before the 31<sup>st</sup> day of December, 2005 by the Central Government for the purposes of this clause;
- (b) such undertaking begins to generate or transmit or distribute power before the 31<sup>st</sup> day of March, 2007.]

(5) Notwithstanding anything contained in any other provision of this Act, the profits and gains of an eligible business to which the provisions of sub-section (1) apply shall, for the purposes of determining the quantum of deduction under that sub-section for the assessment year immediately succeeding the initial assessment year or any subsequent

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12. Figures “2010” shall be substituted for “2006” by the Finance Act, 2006, w.e.f. 1.4.2007

13. Inserted by the Taxation Laws (Amendment) Act, 2005, w.e.f 1.4.2006

assessment year, be computed as if such eligible business were the only source of income of the assessee during the previous year relevant to the initial assessment year and to every subsequent assessment year up to and including the assessment year for which the determination is to be made.

(6) Notwithstanding anything contained in sub-section (4), where housing or other activities are an integral part of the highway project and the profits of which are computed on such basis and manners as may be prescribed, such profit shall not be liable to tax where the profit has been transferred to a special reserve account and the same is actually utilized for the highway project excluding housing and other activities before the expiry of three years following remaining unutilized shall be chargeable to tax as income of the year in which such transfer to reserve account took place.

(7) The deduction under sub-section (1) from profits and gains derived from an undertaking shall not be admissible unless the accounts of the undertaking for the previous year relevant to the assessment year for which the deduction is claimed 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.

(8) Where any goods or services held for the purposes of the eligible business are transferred to any other business carried on by the assessee, or where any goods or services held for the purposes of any other business carried on by the assessee are transferred to the eligible business and, in either case, the consideration, if any, for such transfer as recorded in the accounts of the eligible business does not correspond to the market value of such goods or services as on the date of the transfer, then for the purposes of the deduction under this section, the profits and gains of such eligible business shall be computed as if the transfer, in either case, had been made at the market value of such goods or services as on that date:

**Provided** that where, in the opinion of the Assessing Officer, the computation of the profits and gains of the eligible business in the manner hereinbefore specified presents exceptional difficulties, the Assessing Officer may compute such profits and gains on such reasonable basis as he may deem fit.

Explanation.- For the purposes of this sub-section, “market value” in relation to any goods or services, means the price that such goods or services would ordinarily fetch in the open market.

(9) Where any amount of profits and gains of an undertaking or of an enterprise in the case of an assessee is claimed and allowed under this section for any assessment year, deduction to the extent of such profits and gains shall not be allowed under any other provisions of this Chapter under the heading “C.-Deductions in respect of certain incomes”, and shall in no case exceed the profits and gains of such eligible business of undertaking or enterprise as the case may be.

(10) Where it appears to the Assessing Officer that, owing to the close connection between the assessee carrying on the eligible business to which this section applies and any other person, or

for any other reason, the course of business between them is so arranged that the business transacted between them produces to the assessee more than the ordinary profits which might be expected to arise in such eligible business, the Assessing Officer shall, in computing the profits and gain of such eligible business for the purpose of the deduction under this section, take the amount of profits as may be reasonably deemed to have been derived therefrom.

(11) The Central Government may, after making such inquiry as it may think fit, direct, by notification in the Official Gazette, that the exemption conferred by this section shall not apply to any class of Industrial undertaking or enterprise with effect from such date as it may specify in the notification.

(12) Where any undertaking of an Indian company which is entitled to the deduction under this section is transferred, before the expiry of the period specified in this section, to another Indian company in a scheme of amalgamation or demerger-

(a) no deduction shall be admissible under this section to the amalgamating or the demerged company for the previous year in which the amalgamation or the demerger takes place; and

(b) the provisions of this section shall, as far as may be, apply to the amalgamated or the resulting company as they would have applied to the amalgamating or the demerged company if the amalgamation or demerger had not taken place.

<sup>14</sup>[(13) Nothing contained in this section shall apply to any Special Economic Zone notified on or after the 1<sup>st</sup> day of April, 2005 in accordance with the scheme referred to in sub-clause (iii) of clause © of sub-section (4).]

#### **SECTION 80-IAB**

#### **14[Deductions in respect of profits and gains by an undertaking or enterprise engaged in development of Special Economic Zone.**

80-IAB. (1) Where the gross total income of an assessee, being a Developer, includes any profits and gains derived by an undertaking or an enterprise from any business of developing a Special Economic Zone, notified on or after the 1<sup>st</sup> day of April, 2005 under the Special Economic Zones Act, 2005, 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 of an amount equal to one hundred per cent of the profits and gains derived from such business for ten consecutive assessment years.

(2) The deduction specified in sub-section (1) may, at the option of the assessee, be claimed by him for any ten consecutive assessment years out of fifteen years beginning from the year in which a Special Economic Zone has been notified by the Central Government:

**Provided** that where in computing the total income of any undertaking, being a Developer for any assessment year, its profits and gains had not been included by application of the provisions of sub-section (13) of section 80-IA, the undertaking being the Developer shall be entitled to deduction referred to in this section only for the unexpired period of ten consecutive assessment years and thereafter it shall be eligible for deduction from income as provided in sub-section (1) or sub-section (2), as the case may be:

**Provided further** that in a case where an undertaking, being a Developer who develops a Special Economic Zone on or after the 1<sup>st</sup> day of April, 2005 and transfers the operation and maintenance of such Special Economic Zone to another Developer (hereafter in this section referred to as the transferee Developer), the deduction under sub-section (1) shall be allowed to such transferee Developer for the remaining period in the ten consecutive assessment years as if the operation and maintenance were not so transferred to the transferee Developer.

(3) The provisions of sub-section (5) and sub-sections (7) to (12) of section 80-IA shall apply to the Special Economic Zones for the purpose of allowing deductions under sub-section(1).

14. Inserted by the Special Economic Zones Act,2005, w.e.f. **10.2.2006**

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Explanation.- For the purpose of this section, “Developer” and “Special Economic Zone” shall have the same meanings respectively as assigned to them in clauses (g) and (za) of section 2 of the Special Economic Zones Act, 2005.]

### **SECTION 80LA**

#### **<sup>15</sup>[Deductions in respect of certain incomes of Offshore Banking Units and International Financial Services Centre.**

**80LA.** (1) Where the gross total income of an assessee,-

- (i) being a scheduled bank, or, any bank incorporated by or under the laws of a country outside India; and having an Offshore Banking Unit in a Special Economic Zone; or
- (ii) being a Unit of an International Financial Services Centre.

Includes any income referred to in sub-section (2), there shall be allowed, in accordance with and subject to the provisions of this section, a deduction from such income, of an amount equal to-

- (a) one hundred per cent of such income for five consecutive assessment years beginning with the assessment year relevant to the previous year in which the permission, under clause (a) of sub-section (1) of section 23 of the Banking Regulation Act, 1949 (10 of 1949 ) or permission or registration under the Securities and Exchange Board of India Act,1992, (15 of 1992) or any other relevant law was obtained, and thereafter;
- (b) fifty per cent of such income for five consecutive assessment years

(2) The income referred to in sub-section (1) shall be the income –

- (a) from an Offshore Banking Unit in a Special Economic Zone; or
- (b) from the business referred to in sub-section (1) of section 6 of the Banking Regulation Act, 1949 (10 of 1949) with an undertaking located in a Special Economic Zone or any other undertaking which develops, develops and operates or develops, operates and maintains a Special Economic Zone; or
- (c) from any Unit of the International Financial Services Centre from its business from its business for which it has been approved for setting up in such a Centre in a Special Economic Zone.

(3) No deduction under this section shall be allowed unless the assessee furnishes along with the return of income, -

- (i) the report, in the form specified by the Central Board of Direct Taxes under clause (i) of sub-section (2) of section 80LA, as it stood immediately before its substitution by this section, of an accountant as defined in the Explanation below sub-section (2) of section 288, certifying that the deduction has been correctly claimed in accordance with the provisions of this section; and
- (ii) a copy of the permission obtained under clause (a) of sub-section (1) of section 23 of the Banking Regulation Act, 1949 [10 of 1949]

Explanation.—For the purpose of this section,-

- (a) ‘International Financial Services Centre’ shall have the same meaning as assigned to it in clause (q) of section 2 of the Special Economic Zones Act, 2005;

15. Substituted by the Special Economic Zone Act,2005, w.e.f. **10.2.2006**

- (b) “ Scheduled bank” shall have the same meaning as assigned to it in clause (e) of section 2 of the Reserve Bank of India Act, 1934 (2 of 1934);
- (c) “ Special Economic Zone” shall have the same meaning as assigned to it in clause (za) of section 2 of the Special Economic Zones Act,2005;
- (d) “Unit” shall have the same meaning as assigned to it in clause (zc) of section 2 of the Special Economic Zones Act, 2005.]

### **SECTION 115JB**

#### **Special provision for payment of tax by certain companies.**

**115JB.** (1) Notwithstanding anything contained in any other provision of this Act, where in the case of an assessee, being a company, the income-tax, payable on the total income as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after the 1<sup>st</sup> day of April, <sup>16</sup>[2007], is less than <sup>17</sup>[ seven and one-half per cent] of its book profit, such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee on such total income shall be the amount of income-tax at the rate of <sup>17</sup>[seven and one-half per cent].

(2) Every assessee, being a company, shall for the purposes of this section, prepare its profit and loss account for the relevant previous year in accordance with the provisions of parts II and III of Schedule VI to the Companies Act, 1956 (1 of 1956):

**Provided** that while preparing the annual accounts including profit and loss account,-

- (i) the accounting policies;
- (ii) the accounting standards adopted for preparing such accounts including profit and loss account;
- (iii) the method and rates adopted for calculating the depreciation,

shall be the same as have been adopted for the purpose of preparing such accounts including profit and loss account and laid before the company at its annual general meeting in accordance with the provisions of section 210 of the Companies Act,1956 (1 of 1956):

**Provided further** that where the company has adopted or adopts the financial year under the Companies Act, 1956 (1 of 1956), which is different from the previous year under this Act,-

- (i) the accounting policies;
- (ii) the accounting standards adopted for preparing such accounts including profit and loss account;
- (iii) the method and rates adopted for calculating the depreciation,

shall be the same as have been adopted for the purpose of preparing such accounts including profit and loss account and laid before the company at its annual general meeting in accordance with the provisions of section 210 of the Companies Act, 1956 (1 of 1956):

Provided further that where the company has adopted or adopts the financial year under the companies Act, 1956 (1 of 1956), which is different from the previous year under this Act,-

- (i) the accounting policies;

- (ii) the accounting standards adopted for preparing such accounts including profit and loss accounts;
  - (iii) the method and rates adopted for calculating the depreciation,
- shall correspond to the accounting policies, accounting standards and the method and rates for calculating the depreciation which have been adopted for preparing such accounts including profit and loss account for such financial year or part of such financial year falling within the relevant previous year.

Explanation.- For the purposes of this section, “book profit” means the net profit as shown in the profit and loss account for the relevant previous year prepared under sub-section (2), as increased by-

- (a) the amount of income-tax paid or payable, and the provision therefore; or
- (b) the amounts carried to any reserves, by whatever name called, other than a reserve specified under section 33AC; or

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16. Figures “2007” shall be substituted for “2001” by the Finance Act, 2006, w.e.f. 1.4.2007.

17. Words “ten per cent” shall be substituted for “Seven and One-half per cent”, *ibid*.

- (c) the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities; or
- (d) the amount by way of provision for losses of subsidiary companies; or
- (e) the amount or amounts of dividends paid or proposed; or
- (f) the amount or amounts of expenditure relatable to any income to which <sup>18</sup>[ section 10<sup>18</sup>[(other than the provisions contained in clause (23G) thereof)] or section 10A or section 10B or section 10A or Section 10B or section 11 or section 12 apply.]

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The following clause (g) shall be inserted after clause (f) of Explanation to sub-section (2) of section 115JB by the Finance Act, 2006, w.e.f. 1.4.2007:

- (g) the amount of depreciation,

<sup>19</sup>[ if any amount referred to in clauses (a) to (f) is debited to the profit and loss account, and as reduces by - ]

- (i) the amount withdrawn from any reserve or provision (excluding a reserve created before the 1<sup>st</sup> day of April, 1997 otherwise than by way of a debit to the profit and loss account), if any such amount is credited to the profit and loss account:

**Provided** that where this section is applicable to an assessee in any previous year, the amount withdrawn from reserves created or provisions made in a previous year relevant to the assessment year commencing on or after the 1<sup>st</sup> day of April, 1997 shall not be reduced from the book profit unless the book profit of such year has been increased by those reserves or provisions (out of which the said amount was withdrawn) under this Explanation or Explanation below the second proviso to section 115JA, as the case may be; or

- (ii) the amount of income to which any of the provisions of <sup>20</sup>[ section 10 <sup>21</sup>[( other than the provisions contained in clause (23G) thereof)] or section 10A or section 10B or section 11 or section 12 apply, if any such amount is credited to the profit and loss account; or

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**The following clauses (iia) and (iib) shall be inserted after clause (ii) in the Explanation to sub-section (2) of section 115JB by the Finance Act, 2006, w.e.f. 1.4.2007:**

(iia) the amount of depreciation debited to the profit and loss account (excluding the depreciation on account of revaluation of assets); or

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18. Words “section 10 [ other than the provisions contained in clause (38) thereof] or section 10A or section 10B or section 11 or section 12 apply; or” shall be substituted for “ section 10 ( other than the provisions contained in clause (23G) thereof) or section 10A or section 10B or section 11 or section 12 apply,” by the Finance Act, 2006, w.e.f. 1.4.2007.

18a. Inserted by the Finance (No.2) Act, 2004, w.e.f 1.4.2005.

19. For the portion beginning with the words “if any amount” and ending with the words “ as reduced by –“, the following shall be substituted by the Finance Act, 2006, w.e.f. 1.4.2007: “if any amount referred to in clauses (a) to (g) is debited to the profit and loss account, and as reduced by-“

20. Words “section 10 [other than the provisions contained in clause (38) thereof]” shall be substituted for “section 10 9othr than the provisions contained in clause (23G) thereof)” by the Finance Act, 2006, w.e.f. **1.4.2007**.

21. Inserted by the Finance (No.2) Act, 2004, w.e.f. 1.4.2005.

(iib) the amount withdrawn from revaluation reserve and credited to the profit and loss account, to the extent it does not exceed the amount of depreciation, on account of revaluation of assets referred to in clause (iia); or

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(iii) the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account.

Explanation.- For the purpose of this clause,-

(a) the loss shall not include depreciation;

(b) the provisions of this clause shall not apply if the amount of loss brought forward or unabsorbed depreciation is nil; or

(iv) the amount of profits eligible for deduction under section 80HHC, computed under clause (a) or clause (b) or clause (c) of sub-section (3) or sub-section (3A), as the case may be, of that section, and subject to the conditions specified in that section; or

(v) the amount of profits eligible for deduction under section 80HHE computed under sub-section (3) or sub-section (3A), as the case may be, of that section, and subject to the conditions specified in that section; or

(vi) the amount of profits eligible for deduction under section 80HHF computed under sub-section (3) of that section, and subject to the conditions specified in that section; or

(vii) the amount of profits of sick industrial company for the assessment year commencing on and from the assessment year relevant to the previous year in which the said company has becomes a sick industrial company under sub-section (1) of section 17 of the Sick Industrial Companies

(Special Provisions) Act, 1985 (1 of 1986) and ending with the assessment year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses.

Explanation.- For the purpose of this clause, “ net worth” shall have the meaning assigned to it in clause (ga) of sub-section (1) of section 3 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986).

(3) Nothing contained in sub-section (1) shall affect the determination of the amounts in relation to the relevant previous year to be carried forward to the subsequent year or years under the provisions of sub-section (2) of section 32 or sub-section (3) of section 32A or clause (ii) of sub-section (1) of section 72 or section 73 or section 74 or sub-section (3) of section 74A.

(4) Every company to which this section applies, shall furnish a report in the prescribed form from an accountant as defined in the Explanation below sub-section (2) of section 288, certifying that the book profit has been computed in accordance with the provisions of this section along with the return of income filed under sub-section (1) of section 139 or along with the return of income furnished in response to a notice under clause (i) of sub-section (1) of section 142.

(5) Save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee, being a company, mentioned in this section.

<sup>22</sup>[(6) The provisions of this section shall not apply to the income accrued or arising on or after the 1<sup>st</sup> day of April, 2005 from any business carried on, or services rendered, by an entrepreneur or a Developer, in a Unit or Special Economic Zone, as the case may be.]

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22. Inserted by the Special Economic Zones Act, 2005, w.e.f. **10.2.2006**

### **SECTION 115-O**

#### **Tax on distributed of domestic companies.**

115-O. (1) Notwithstanding anything contained in any other provision of this Act and subject to the provisions of this section, in addition to the income-tax chargeable in respect of the total income of a domestic company for any assessment year, any amount declared, distributed or paid by such company by way of dividends (Whether interim or otherwise) on or after the 1<sup>st</sup> day of April, 2003, whether out of current or accumulated profits shall be charged to additional income-tax (hereafter referred to as tax on distributed profits) at the rate of twelve and one-half per cent.

(2) Notwithstanding that no income-tax is payable by a domestic company on its total income computed in accordance with the provisions of this Act, the tax on distributed profits under sub-section (1) shall be payable by such company.

(3) The principal officer of the domestic company and the company shall be liable to pay the tax on distributed profits to the credit of the Central Government within fourteen days from the date of-

- (a) declaration of any dividend; or
- (b) distribution of any dividend; or
- (c) payment of any dividend;

Whichever is earliest.

(4) The tax on distributed profits so paid by the company shall be treated as the final payment of tax in respect of the amount which has been charged to tax under sub-section (1) or the tax thereon.

<sup>23</sup>[(6) Notwithstanding anything contained in this section, no tax on distributed profits shall be chargeable in respect of the total income of an undertaking or enterprise engaged in developing or developing and operating or developing, operation and maintaining a Special Economic Zone for any assessment year on any amount declared, distributed or paid by such Developer or enterprise, by way of dividends (whether interim or otherwise) on or after the 1<sup>st</sup> day of April, 2005 out of its current income either in the hands of the Developer or enterprise or the person receiving such dividend <sup>24</sup>[ not falling under clause (23G) OF SECTION 10.]]

### **SECTION 197A**

#### **No deduction to be made in certain cases.**

197A. (1) Notwithstanding anything contained in section 194 or section 194EE, no deduction of tax shall be made under any of the said sections in the case of an individual,

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23. Inserted by the Special Economic Zones Act, 2005, w.e.f. **10.2.2006**.

24. Words “not falling clause (23G) of section 10” shall be omitted by the Finance Act, 2006, w.e.f. **1.4.2007**

Who is resident in India, if such individual furnishes to the person responsible for paying any income of the nature referred to in section 194 or, as the case may be, section 194EE, a declaration in writing in duplicate in the prescribed form and verified in the prescribed manner to the effect that the tax on his estimated income of the previous year in which such income is to be included in computing his total income will be nil.

(1A) Notwithstanding anything contained in section 193 or section 194A or section 194K, no deduction of tax shall be made under any of the said sections in the case of a person (not being a company or a firm), if such person furnishes to the person responsible for paying any income of the nature referred to in section 193 or section 194A or section 194K, as the case may be, a declaration in writing in duplicate in the prescribed form and verified in the prescribed manner to the effect that the tax on his estimated total income will be nil.

(1B) The previous of this section shall not apply where the amount of any income of the nature referred to in sub-section (1) or sub-section (1A), as the case may be, or the aggregate of the amounts of such incomes credited or paid or likely to be credited or paid during the previous year in which such income is to be included exceeds the maximum amount which is not chargeable to income-tax.

(1C) Notwithstanding anything contained in section 193 or section 194 or section 194A or section 194EE or section 194K or sub-section (1B) of this section, no deduction of tax shall be made in the case of an individual resident of India, who is of the age of sixty-five years or more at any time during the previous year and is entitled to a deduction from the amount of income-tax on his total income referred to in section 88B, if such individual furnishes to the person responsible for paying any income of the nature referred to in section 193 or section 194 or section 194A or section 194EE or section 194K, as the case may be, a declaration in writing in duplicate in the prescribed form and verified in the prescribed manner to the effect that the tax on his estimated

total income of the previous year in which such incomes is to be included in computing his total income will be nil.

25[(1D) Notwithstanding anything contained in this section, no deduction of tax shall be made by the Offshore Banking Unit from the interest paid-

- (a) on deposit made on or after the 1<sup>st</sup> day of April, 2005, by a non-resident or a person not ordinarily resident in India; or
- (b) on borrowing, on or after the 1<sup>st</sup> day of April, 2005, from a non-resident or a person not ordinarily resident in India.

Explanation, - For the purposes of this sub-section “Offshore Banking Unit” shall have the same meaning as assigned to it in clause (u) of section 2 of the Special Economic Zones Act, 2005.]

(2) The person responsible for paying income of the nature referred to in sub-section (1) or sub-section (1A) or sub-section (1C) shall deliver or cause to be delivered to the chief Commissioner or Commissioner one copy of the declaration referred to in sub-section (1) or sub-section (1A) or sub-section (1C) on or before the seventh day of the month next following the month in which the declaration is furnished to him.

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Omitted with effect from **1.4.2006**

25. Inserted by the Special Economic Zones Act,2005, w.e.f. **10.2.2006**