

CHAPTER - III

LEGISLATIVE HISTORY OF PROVISIONS

LEGISLATIVE HISTORY OF PROVISIONS
SEC. 80 CC :-

3.1 INTRODUCTION OF PROVISION

Section 80 CC was inserted by the Finance Act, 1978 w.e.f. 1-4-1978, to provide for deduction in respect of investment in certain new shares.

3.2 LEGISLATIVE AMENDMENTS

This section has undergone the following Amendments.

1) 1982 :-

The Finance Act, 1982, substituted the word "twenty" for ten wherever occurring in sub Sec. (2) w.e.f. 1-4-1983, to increase the qualifying amount of deduction.

2) 1984 :-

The Finance Act 1984, inserted the word 'and such offer for subscription is made by the company before the 1st day of April, 1987' in clause (c) of sub-Sec. (3) w.e.f. 1-4-1984.

3) 1985 :-

The Finance Act, 1985, effected the following changes w.e.f. 1-4-1985.

- (i) The words "and the issue is wholly and exclusively for the purposes" were substituted for the words "with the main object".
- (ii) The words "formed and registered in India with the main object of" were omitted from the proviso to sub Sec.(3)(a).

4) 1987 :-

The finance Act 1987 made the following changes w.e.f. 1-4-1987.

(1) "1990" was substituted for "1987" in clause (c) of sub Sec.(3).

(11) "three" was substituted for "five" in sub (5).

5) 1988 :-

The finance Act, 1988, has inserted the words etc. "or units of any Mutual fund specified under clause (23D) of sec.10 of such fund subscribes only to eligible issue of capital" after the words "eligible issue of capital" in sub-Sec.(1) w.e.f. 1-4-1989.

Further clause 14 of the Direct Tax Laws (Amendment) bill, 1988, proposes to insert a new sub cl (iii) in cl (a) of sub Sec.(3) w.e.f. 1-4-1989.

OBJECTIVE OF PROVISION :

This section was inserted with a view to stimulating investment in equity shares of new industrial companies.

QUALIFYING MAXIMUM AMOUNT OF INVESTMENT :

The maximum amount of investment qualifying for deduction in a year is Rs.20,000 (Rs.10,000 upto assessment year 1982-83) Hence where the aggregate cost of the shares purchased by a tax payer in the previous year exceeds Rs.20,000 the deduction will be allowed only with reference to the cost of such of the shares (the aggregate cost where of does not exceed Rs.20,000) as are specified by the tax payer in this behalf. Where a taxpayer, who has acquired certain shares in any previous year pays the whole or a part of the amount, if any remaining unpaid on such shares within a period of six months from the end of that previous year, the amount so paid

by him will be regarded as having been paid by the taxpayer towards the cost of such shares in the previous year in which the shares.

CONDITIONS FOR DEDUCTION :

The tax concession under section 80 CC(1) will not be available unless the tax payer has subscribed to or purchased the shares in the manner specified hereunder.

- (a) the taxpayer should have subscribed to the shares in pursuance of an offer for public subscription made by the company or in pursuance of a reservation or an option made in his favour by reason of his being a promoter of the company; or
- (b) the taxpayer should have purchased the shares from a person who is specified as an "underwriter" in respect of the issue of such shares in pursuance of clause 11 of part I of schedule II to the ^{Companies} Act, 1956 and who has acquired such shares by virtue of this obligation as such underwriter.

FORFEITURE OF DEDUCTION :

The deduction allowed under this provision will be forfeited if the taxpayer sells or otherwise transfers these shares to any person within a period of three years (five years upto assessment year 1986-87) from the date of their acquisition in such cases, an amt equal to 50% of the cost of such shares shall be deemed to be the income of the taxpayer

of the year in which the shares are so sold or transferred and charged to tax accordingly, for the purposes of the aforesaid provision, a taxpayer shall be regarded as having acquired any shares on the date on which his name is entered in relation to those shares in the register of members of the company.

EXEMPTION OF CAPITAL GAINS :

Where a deduction is claimed and allowed to a taxpayer under this section with reference to the cost of any equity shares, the cost of such shares will not be taken into account for the purposes of exemption of capital gains under sec.54 E.

SEC. 80 CCA :-

INTRODUCTION OF PROVISION

Section 80 CCA was inserted by the Finance Act 1987. w.e.f. 1-4-88, to be operative from the assessment year 1988-89 and it was in the following terms :-

SEC. 80 CCA :- Deduction in respect of deposits under
National Savings Scheme

1. Where an assessee, being -
 - (a) an individual, or
 - (b) a Hindu undivided family, or
 - (c) an association of persons or a body of individual consisting, in either case, only of husband and wife governed by the system of community of property in force in the Union Territories of Dadra and Nagar Haveli and Goa, Daman and Diu.

Has in the previous year deposited out of his income chargeable to tax any amount in accordance with such scheme as the Central Govt. may, by notification in the official Gazette, specify in this behalf (hereafter^h this section referred to as the National Saving Scheme), he shall, in accordance, with and subject to the provisions of this section, be allowed a deduction in the computation of his total income of an amount equal to fifty percent of so much of the deposits (excluding interest accrued and credited to the assessee's account) as do not exceed the amount of twenty thousand rupees in the previous year.

2. Where any amount equal to 50% of the amount so with drawn shall be deemed to be the income of the assessee of that previous year in which such withdrawal is made and shall, accordingly be chargeable to tax as the income of that previous year.

Explanation :-

for the removal of doubts, it is hereby declared that interest on the deposits made under the National Savings Scheme shall not be chargeable to tax except in the manner and to the extent specified in sub section (2). However, this section has been substituted as at present by the finance Act 1988. w.e.f. the date of the operation of the original Sec. w.e.f. 1988. Under Sec. 80 CCA as originally enacted, deduction is allowed to an individual a Hindu undivided family and certain categories of associations of person or bodies of individuals, in respect of deposits made under the National Saving Scheme. The amount that qualifies for deduction is limited to Rs. 20,000 in a year. The deduction is admissible equal to 50% of amount deposited. If withdrawals are made under this scheme, an amount equal to 50% of the sum of withdrawal representing the deposit and interest accruing there on. is deemed to be the income of tax payer of the previous year in which such withdrawal is made the interest on the deposits made under this scheme is taxable in the year of withdrawal and to the extent of 50% thereof.

As a social security measure, the scope of this section has been extended to the deferred annuity plans

of the Life Insurance Corporation as prescribed by the Central Govt. in this behalf. However, the overall limit of investment for both deductions has been fixed at Rs.30,000

Deduction of Deposits Under National Savings
Scheme etc.

Under the new sec. 80 CCA deduction shall be allowed in the case of a tax payer, being an individual, a Hindu Undivided Family and certain categories of associations of persons or bodies of individuals in relation to (i) the deposits made under the National Savings Scheme and (ii) amounts paid to effect or to keep in force any contract for a deferred annuity plan of the Life Insurance Corporation of India. The Central Govt. has notified "Jeevan Dhara" and "Jeevan Akshay" plans of the Life Insurance Corporation of India as the annuity plans of that Corporation for the purposes of this section. The maximum amount that may be allowed as deduction is Rs.20,000 for Assessment year 1988-89 and it will be enhanced to Rs. 30,000 for assessment year 1989-90 on wards

Interest on Deposits where not Taxable

The explanation 1 to this sec. declares for removal of doubts that the interest on deposits made under the National Savings Scheme shall not be chargeable to tax except in the manner and to the extent specified in sec. 80 CCA(2).

**Deposited under National Savings Scheme and
payments under deferred annuity Plan**

The assessee who has enjoyed deduction under section in respect of the deposit made under the notified National Saving Scheme (N.S.S.) or the payment made under the notified deferred annuity plan is assessable when he withdraws the deposit or receives any amount under the annuity plan. But in the event of his death the refund of the deposit or the amount of the "gross insurance value element" received by his legal heirs is not taxable in their hands.

SEC. 80 G G :-

INTRODUCTION OF PROVISION

Section 80 GG was inserted by the Finance Act, 1975 w.e.f. 1-4-76, to provide for deduction of rents paid by assessee in respect of residential accommodation occupied by them for the purposes of their own residence. Since this provision will apply to all assessees who are not covered by Sec. 10 (13A), it will include self-employed persons as well as salaried employees who are not in receipt of any house rent allowance from their employees.

AMENDMENTS

Section 80 GG has suffered the following amendments :-

1) 1982 :-

The word "four" was substituted for the word "three" by the Finance Act 1982 w.e.f. 1-4-83 to raise the monetary ceiling of Rs. 300, per month to Rs. 400 per month.

2) 1983 :-

The existing proviso was substituted by the Finance Act, 1983, w.e.f. 1-4-84 for the following proviso

"Provided that nothing in this section shall apply to an assessee in any case where any residential accommodation is owned by his spouse, or minor child or where such assessee is a member of Hindu Undivided family, by such family".

3) 1986 :-

The finance act 1986, effected the following changes w.e.f. 1-4-1987.

- (i) The words "to the extent to which such excess expenditure does not exceed one thousand rupees per month or 25% of his total income for the year whichever is less." Were substituted for "to the extent to which such excess expenditure does not exceed four hundred rupees per month or fifteen percent of his total income for the year, whichever is less".
- (ii) The words, brackets and figures "under sub clause (1) of clause (a) or, as the case may be, clause (b) sub section (2) "were substituted for " under clause (i) or as the case may be, clause (ii)" of sub sec.(2)" in the proviso
- (iii) The words "twenty five percent" were substituted "fifteen percent" in the explanation.

With a view to liberalising the provisions of this section, by an amendment brought about by the Finance Act the monetary ceiling of deduction has been raised from Rs. 400 per month to Rs. 1,000 per month. The ceiling of deduction in terms of percentage of total income has been raised from fifteen percent to twenty five percent. The lower of the two ceiling now stipulated will be admissible as deduction as at present.

Eligible assessee :- Section 80 GG deduction rent paid by an assessee in respect of any furnished or unfurnished accommodation occupied by him for the purposes of his own residence. The assessee entitled to the deduction

of rents under this section should be an assessee who does not receive a house rent allowance exempt under section 10 (13A) from his employer, therefore, Section 80 GG will apply to all assessees who are not covered by Section 10 (13A) and it will include self-employed persons as well as salaried employees who are not in respect of any house rent allowance from their employers.

Condition for Allowance of deduction :-

The deduction to be allowed under Section 80 GG in respect of any expenditure incurred by an assessee towards payments of rent for any furnished or unfurnished accommodation occupied by him for the purposes of his own residence shall be allowed subject to the condition that accommodation is situated in any one of the following places namely -

(i) Agra, Ahemadabad, Allahabad, Amritsar, Bangalore, Bhopal, Calcutta, Coimbatore, Delhi, Faridabad, Gwalior (Lashkar), Hyderabad, Indore, Jabalpur, Jaipur, Kanpur, Lacknow, Ludhiana city, Madurai, Nagpur, Patna, Poona, Srinagar, Surat, Vadodara (Baroda) or Varanasi or the urban agglomeration of each of such places, or

(ii) Bombay, Calcutta, Cochin, Ghaziabad, Hubli-Dharwar, Madras, Solapur, Trivandrum or Vishakhapatnam.

Quantum of Deduction :-

The quantum of permissible deduction under section 80 GG is as follows :

For assessment year 1976-77/82-83

Any sum excess of 10% assessment total income excess 300 per month or 15% total income whichever is less.

For assessment year 1983-84/86-87

The monetary ceiling of Rs. 300 p.m. was raised to Rs. 400 p.m. and other condition were the same.

For assesement year 87-88 onwards

The ceiling on deductible expenditure on rent has been raised for A.Y. 1987-88. According to permissible deduction Rs. 1000 p.m. or 25% of assessee total income.

Deduction for House Rent :-

Section 10 (13A) exempts from tax any special allowance specifically granted to an employee to meet actual expenditure on rent for residential accommodation. This Section grants deduction in respect of residential rent to other employees who do not receive special allowance covered by Section 10 (13A) and to assessees other than employees Rule 11B specifies the places in which the benefit of the this Section can be claimed.

SECTION 80 HHC :

INTRODUCTION OF PROVISION

Section 80 HHC was inserted by the Finance Act 1983 w.e.f. 1-4-1983, with a view to encouraging larger exports of certain goods. The Finance Act 1982 had inserted Sec. 89A with effect from June 1, 1982 for providing tax relief to Indian Companies and non-Co-operate Tax payers resident in India whose export turn over for a year exceeded the export turn-over for the immediately preceeding year by more than 10 percent thereof, the Finance Act 1983, has omitted the aforesaid provision w.e.f. 1983.

AMENDMENTS

This Section has undergone the following Amendments

1) 1985 :-

The Finance Act, 1985, substituted this Section as at present w.e.f. 6-1-1986 for the Section as originally inserted the original section was as follows :

Sec. 80 HHC Deduction in respect of export turnover

1. Where the assessee being an Indian Company or a person (other than a company) who is resident in India, exports out of India during the previous year relevant to an assesment year any goods or merchandise to which this section applies, there shall, in accordance with and subject to the provisions of this

section, be allowed in computing the total income of the assessee, the following deductions : namely

- (a) a deduction of an amount equal to one per cent of the export turnover of such goods or merchandise during the previous year ; and
 - (b) a deduction of an amount equal to five percent of the amount by which the export turnover of such goods or merchandise during the previous year exceeds the export turnover of such goods or merchandise during the immediately preceeding previous year.
2. (a) This section applies to all goods or merchandise (other than those specified in Clause (b),) if the sale proceeds of such goods or merchandise exported out of India are receivable by the assessee in convertible foreign exchange.
- (b) The goods or merchandise referred to in Clause (a) are the following namely :
- (i) Agricultural Primary commodities, not being produce of plantations :
 - (ii) Mineral oil :
 - (iii) Minerals and ores ; and
 - (iv) Such other goods or merchandise as the Central Government may, by notification in the official Gazettee, specify in this behalf

3. No deduction under Clause (b) of Sub-Section (1) shall be allowed under the assessee had, during the immediately preceeding previous year exported out of India goods or merchandise to which this section applies -

Explanation - for the purposes this section, -

(a) "Convertible Foreign Exchange" means foreign exchange which is for the time being treated by the ~~Bank~~ 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) "Export Turnover" means the sale proceeds of any goods or merchandise exported out of India, but does not include foreign or insurance attributable to the transport of the goods or merchandise beyond the customs station as defined in the Customs Act, 1962 (52 of 1962).

2) 1986 :-

The Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986, made the following changes w.e.f. 1-4-1987 :

(i) In Sub-^{sec.} (1), the portion beginning with the words 'Provided that' was substituted by the portion as at present.

(ii) Sub-Sec. (4) was inserted before the
explanation

(iii) Clause (c) was inserted in the explanation

3) 1988 :-

The Finance Act 1988 has made the following
amendments w.e.f. 1-4-1989 :

(i) Sub-Sections (1) and (1A) shall be substituted
for Sub-Section (1).

(ii) Sub-Section (3A) shall be inserted after
Sub-Section (3)

(iii) Sub-Section (4A) shall be inserted after
sub-section (4)

(iv) Clauses (d) and (e) shall be inserted in the
explanation after Clause (c).

Deduction in respect of profits of export business.

(i) Eligible Assesseees —

Under Section 80 HHC, an Indian Company or a non-Co-operate resident assessee is entitled to the deduction of an amount, if the company or the assessee exports out of India during the previous year any goods or merchandise (other than mineral oil and minerals and ores). However from the Assessment year 1989-90, if the assessee being a holder of an export house certificate or a Trading house certificate in the prescribed form that

in respect of amount of export turnover specified therein, the deduction under Sub-Section is to be allowed to a supporting manufacturer, then the amount of deduction available to the export house or the Trading House shall be reduced by such amount which is calculated proportionately from assessment year 1989-90.

(ii) Goods or Merchandise Covered

The provisions of this Section will apply to all goods or merchandise (other than mineral oil and minerals and ores) if the sale proceeds of such goods or merchandise exported out of India are receivable by the assessment in convertible foreign exchange.

(iii) Excluded goods

The following goods or merchandise are excluded from the purview of this section

- (1) Mineral Oil (2) Minerals and Ores.

(iv) Conditions for deduction

(a) Principal Exporter - In order to claim deduction under this section the following conditions should be fulfilled by a principal exporter.

- (1) An amount equal to the amount of deduction claimed should be 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 utilised for the purposes

of the business of the assessee. The Board has clarified that the distribution of dividends out of such reserve is utilisation of the purposes of the assessee's business.

(ii) The assessee must furnish in from No. 10 CCAB prescribed by rule 18 BBA (2) alongwith the return of income the report of a chartered accountant or a qualified auditor as defined in explanation below sec. 288 (2).

(b) Supporting manufacturer - As noticed earlier, a supporting manufacturer is also entitled to deduction. Under sec. (1A) from Assessment year 1989-90 sub section (4A) lays down conditions for the admissibility of deduction under section (1A) in the case of a supporting manufacturer. The new sub section provides that the deduction shall not be allowed to a supporting manufacturer unless he furnishes in the prescribed along with the return of income.

(v) Quantum of Deduction

The deduction admissible under this section is as follows :-

(a) For Assessment year 1983-84 to 85-86 for Assessment year 1983-84 to 85-86 the position of allowable deduction was as under -

(i) a deduction of an amount equal of 1% of the export turnover of such goods or merchandise during the previous year, and.

- (1b) a deduction of an amount equal to 5% of the amount by which the export turnover of such goods or merchandise during the previous year exceeded the export turnover of such goods or merchandise during the immediately preceeding previous year.
- (b) for Assessment year 1986-87 for Assessment year 1986-87 a deduction of an amount not exceeding 50% of the profits derived by the assessee from the export of goods or merchandise was permissible.
- (c) for Assessment year 1987-88 and 88-89 a deduction of the aggregate of the following is admissible.
 - (i) 4% of the net foreign exchange realisation, and,
 - (ii) 50% of so much of the profits derived by the assessee from the export of goods or merchandise as exceeds 4% of the net foreign exchange realisation.

Profits derived from Export (गोपनीय)

1) Principal Exporter :-

In case, where the business carried on by the assessee consists exclusively of export out of India of the goods or merchandise to which the provisions of this sec. apply, the profits derived from the export of goods or merchandise for the purposes of the concession shall be the profits of the business as computed under the head "Profit and gains of business or profession".

2) Supporting manufacturing :-

As noticed earlier, a supporting manufacturer will

also be eligible for deduction under sub sec. (1A) from assessment year 1989-90, therefore, in a case where the business of the supporting manufacturer consists exclusively of sale of goods or merchandise to one or more Export Houses or Trading Houses, the whole of the Profit of the business of such manufacturer shall be the profits derived from the sale of goods or merchandise in respect of which the deduction is allowed.

Since the Direct Tax Laws (Amendment) Bill 1988, proposes to amend sub sec. (4) for changing the basis for calculating the deduction from "net foreign exchange realisation" to export turnover" w.e.f. 1-4-89 clause (d) of the Explanation defining, "net foreign exchange realisation" is also proposed to be omitted w.e.f. the same date.

Profit from Export

The old sec. 89 A which granted relief in respect of export turnover was brought into force from 1st June 1982. It was soon replaced, with substantial alterations, by the original sec. 80 HHC which came into force from 1st April 1983 and which granted a deduction based on a percentage of the export turnover. The sec. was substituted by the Finance Act 1985 w.e.f. 1-4-86 that sec. which granted a deduction with reference to export profits and later also with reference to foreign exchange realisations, required the amount of deduction "utilised for the purposes of the business of the assessee. Therefore the heading of the sec. Deductions in

respect of Profits retained for export business" was than appropriate with the 1989 amendments the Sec. for the first time

(i) Exempts the entire profits derived from export and

(ii) makes express provisions for dividing the exemption

between a recognised export House or Trading House and the supporting manufacturer. The main requirements of the Sec. are that

(a) the assessee should be an Indian company or any other non-corporate Person resident in India engaged in the business of export.

(b) the sale proceeds of goods or merchandise exported should be receivable by the assessee in convertible foreign exchange.

(c) the goods or merchandise exported should not be mineral oil-mineral or ores (Sub Sec.(2)(b) & (d) the assessee should furnish the report of an account certifying the correctness of the claim for deduction and in the case of a supporting manufacturer, also an auditor's certificate from the export House or the Trading House to ensure against double deduction.

Sub sec. (3) (a) provides that "Profits derived from the export of goods" (which enjoy exempt under section) are profits of the business as computed under the head of Business in a case where "the business carried on by the assessee consists exclusively of the export" of such goods the word "exclusively" should be read in reasonable sense.

SECTION 80 J1. INTRODUCTION OF PROVISION

Section 80J was inserted by the Finance (No.2) Act 1967 w.e.f. 1-4-1968. The subject matter of this provision was previously dealt with by Section 84, which was simultaneously deleted. This Section also corresponds to Section 15C of the 1922 Act and the provisions of Section 84 were in pari materia with the provision of Section 15C. However, the scheme of Section 80J is entirely different from that of Section 15C of the 1922 Act or Section 84 of this Act and is not declaratory of the law as then existing.

2. AMENDMENT

This Section has witnessed the following amendments.

1. 1969 :-

The Finance Act, 1969 substituted the words "twenty-eight years" for the words "twenty three years" in Sub-Section 5 (4) (iii) and (5) (iii) w.e.f. 1969. The result of this amendment was that "tax holiday" concession was made available to the new industrial undertaking commencing production of the articles or operation of cold storage plant or ships brought into use upto 31-3-1976, instead of upto 31-3-71 before the amendment.

2. 1974 :-

The Direct Taxes (Amendment) Act 1974 inserted a reference to section 80HH in Sub-Section (1) & (3) w.e.f. 1974 consequential to the insertion of that Section in the Act by Amendment Act.

3. 1977 :-

The Finance (No. 2) Act 1977, inserted a reference to Section 80 HHA in Sub-Section (1) and (3) w.e.f. 1-4-1978 consequent upon the insertion of that Section in the Act.

4. 1980 :-

The Finance (No. 2) Act 1980 made the following changes with retrospective effect ^{from} 1-4-1972.

(1) In Sub-Section (1), the words brackets, figure and letter "Computed in the manner specified in Sub-Section (1A)" were substituted for the words "Computed in the prescribed matter"

(2) Sub-Section (1A), as at present was inserted

The effect and scope of these amendments were elaborately explained by the Board in Circular No. 281 dated 22-9-1980.

5. 1988 :-

The Finance Act 1988, has omitted " or Section 280 O" from Sub-Section (3) w.e.f. 1-4-1988.

3. Objective of Provision :-

The principal object of this provision was to encourage setting up of new industrial undertakings by offering tax incentives. The object of granting concession under this Section is to encourage new industrial undertakings to boost up industrial growth".

Eligible profits and gains :-

The profits and gains included in the gross total income of an assessee are the profits derived from the following

- 1) An industrial undertaking, or
- 2) Ship or
- 3) Business of a hotel.

4. Quantum of deduction :-

The deduction from the profits and gains permissible under Section 80J is at the rate of 6% per annum of the capital employed in the industrial undertaking or ship or hotel business, computed in the manner specified in Sub-Sec. (1A) from the assessment year 1972-73 and in accordance with Rule 19A before this Assessment Year.

5. Period of deduction :-

The deduction is available for 5 assessment years including the initial assessment year relevant to the previous year in which the industrial undertaking begins

to manufacture or produce articles or to operate its cold storage plant or the ship in first brought into use the hotel starts functioning.

6. Deduction at prescribed rate available for entire year even if undertaking worked for less than 12 months :

It may be observed that deduction under section 80J is available at the rate of 6% or 7.5%, as the case may be, per annum of the capital employed. The expression "Per annum" has nothing to do with the number of days in a particular year for which the new units have worked. Relief provided under Section 80J is an incentive to the assessee which has established a new industrial undertaking which is available for the full five years inclusive of the year in which the manufacturing operations started and the relief depends not only upon the commencement of production, ^{on the} capital employed.

7. Computation of Capital Employed :-

It may be observed that deduction on this Section is available at the rate of 6% or 7.5% per annum of the capital employed in the industrial undertaking etc. It is therefore, necessary to properly understand the manner in which ^{fair} ordinary, natural, legal and common sense. Therefore, they do not convey the sense of capital used or utilised. The expression "Capital employed" has a variable meaning depending on the context in which it occurs and the purpose for which it is used -

- (i) Computation, in manner provided under Rule 19A till assessment year 71-72
- (ii) Rule 19A and Sub-Section (1A) valid
- (iii) "Capital employed" means Self-owned capital
- (iv) Computation from Assessment year 1972-73.

Conditions for eligibility of industrial undertakings etc.

Sub-Section (4) to (6) enumerate the conditions which are to be fulfilled by an industrial undertaking etc. in order to come within the ambit of Section 80J. Therefore, if the requirements of Section 80J (4) are not fulfilled, an industrial undertaking will not be entitled to special deduction under this section.

Conditions for Industrial Undertaking :-

The conditions specified by Sub-Section (4) to be fulfilled by an industrial undertaking go to show that the industrial undertaking contemplated therein is a newly established industrial undertaking" the term "newly established" though not occurring in the body of Section 80J, must be read where ^{for} the ^{term} industrial undertaking occurs in that section which is not the object and purpose of Section 80J.

More than one undertaking owned by Assessee :

It is not possible to equate an undertaking with a company therefore, when a company owns more than one undertaking, the application of Section 80J has to be with respect to the particular undertaking and not to the company in general.

Accordingly, there would be no reconstruction of the existing business in the following cases :

- (i) Where separate unit is set-up for manufacturing spare parts for oil engines by the assessee engagedⁱⁿ assembling oil engines by purchasing spare parts from out-side.
- (ii) Setting up of new unit for manufacture of "body panels" as components for motor cars by a manufacturer of motor cars
- (iii) New business has come into existence by virtue of succession or sale there is no question of any reconstruction at all
- (iv) setting-up of a new for manufacturing lamp caps under a separate licence by a company engaged in production of lamps.
- (v) Where the assessee, owning a paper mill, set-up an electro lysis plant for the manufacture of caustic soda, which was an essential chemical used in paper manufacture and the new plant was covered by separate licence and was housed in a separate building main manufacturing unit and that no part of the caustic soda was sold to any outsider
- (vi) where a manufacturer of hosiary goods established a separate export wing to export goods being manufactured by different raw materials and the

for this purpose constructed a new building and installed new machinery

- (vii) Establishment of different units for manufacturing components by the assessee importing components of instruments and assembling them
- (viii) Establishment^{of} a new factory by sugar manufacturer to be run by electricity whereas old factory was being run on steam. Though negligible portion of scrap and materials from the old factory were utilised in new factory
- (ix) there is substantial capital outlay on extensions to existing unit and installation of new P. & M. resulting in doubling production
- (x) installation new machineries for crushing gold and refining it by the assessee co engaged in mining gold and dismantling existing crushing plant and existing factory.
- (xi) setting up of a spinning unit by a manufacturer of textiles already having a weaving unit
- (xii) setting up of a spinning unit by a manufacturer of wool tops which were converted into woollen yarn by some outside spinners
- (xiii) setting up plant for manufacturing nylong inserts with fresh capital by a manufacturer of self locking nylong nuts for vehicles by purchasing nylong inserts from local sources even if new plant housed in an extension of existing business premises.

8. Carry forward and set off of deficiency

(i) General :- Under the scheme of Section 15C of the 1922 Act, unabsorbed relief in one year due to losses or insufficiency of profit could not be carried forward in the next year. However Sub-Section (3) of Section 80J permits the carry forward and set off of deficiency in the next following assessment year. Therefore, the provisions of Sub-Section (3) are new without any corresponding provision in the 1922 Act.

(ii) Scope of provision :-

Sub-Section (3) provides that if the amount of profits and gains derived from the industrial undertaking or ship or business of hotel included in the total income as computed without applying the provisions of Section 64 and before making any deduction under section 80C to 80V or 280.0 (as existing till 31-3-88), in respect of the P.Year relevant to the Assessment Year 1967-68 onwards³⁶ falls short of the statutory percentage (6% or 7.5%) of the capital employed during the previous year the amount of such shortfall or where there are no such profits and gains, an amount equal to 6 & 7% of capital employed during the P.Year shall be carried forward and set off against the profit and gains eligible for deduction for the next assessment year⁴⁵ ~~90~~ computed under section (1) after making deductions if any Under Section 80HH, or 80 HHA and Sub-Section (1) of Section 80J ^{36b}.

The deficiency can be carried forward for the purposes of set off to the next following assessment year.

(iii) Computation of deficiency under Sub-Sec. (1) in relevant and not subsequent assessment year essential - Sub-Section (1) and (3) of Section 80J have to be read together and not in isolation. It follows that there has to be a computation of deficiency under section 80J(1) and it is only the deficiency that can be carried forward and set off under section 80J(3). Section 80 does not regulate the other provision act.

(iv) Computation of deficiency of 6% of capital employed irrespective of period of working of industrial undertaking.

An assessee is entitled to have deficiency under Sub-Section (3) of Section 80J worked out at the rate of 6+ or 7.5% as the case may be of the capital employed without regard to the period in which the industrial undertaking has worked ⁴³.

9. Audit Report :-

Sub-Section (6A), inserted by the Finance Act, 1975 w.e.f. 1-4-76 requires the assesseees other than the companies and Co-Operative Societies submit an audit report in Form No. 10D prescribed under Rule 18C from a Chartered Accountant or a qualified Auditor as contemplated in the explanation below Section 288 (2) in order to be eligible for the benefits of Section 80J.

10. Prevention of abuse of "Tax Holiday" concession :-

Sub-Section (6B) and (6C) were also inserted by the Finance Act, 1975, w.e.f. 1-4-1976 with a view to preventing the abuse of "Tax Holiday" concession. In case where the goods for the purpose of the business of the industrial undertaking or the hotel or the operation of ships are transferred to any other business carried on by the assessee or vice-versa and the consideration for such transfer is in either case, not recorded in the accounts of the industrial undertaking or the hotel or ship at the market value the profits and gains of the business of the industrial undertaking or the hotel or the operation of ship will be computed as if the transfer had been made at the market value of such goods.

In a case where because of a close connection between the assessee carrying on the business of the industrial undertaking or the hotel or the operation of the ship any other person or for any other reason. Ordinary profits accrue to the business of the industrial undertaking or the hotel or operation of the ship. Assessing Officer will have the power to determine the reasonable profits that could be attributed to the industrial undertaking or the hotel or ship for the purpose of determining the tax holiday profits.

80 J :- (Sec. 15 C of 1922 Act)

Newly established industrial undertaking ships and hotels

The profits of new industrial undertakings, ships and hotels which fulfil the conditions prescribed by this section are entitled to a deduction to the extent of 6% annum on the capital employed in the case of company the original scheme of the Act was to grant a deduction to the company under this sec. and a separate deduction under section 80 K to the shareholders in respect of that portion of the dividend which was attributable to the profits exempt under this section this scheme has been altered as regards companies whose production activities commence on after 1-4-1976. In their case the deduction under section is seven and half percent per annum on the capital employed (proviso to sec.80J (1)) separate relief to the shareholder is abolished Sec. 80 K itself was ultimately deleted w.e.f. 1-4-1987.

This sec. has ceased to apply to cases where the new industrial undertaking begins to manufacture articles after 31st March 1981. Such cases may be covered by the present sec. 80 J.

"Profits and gains derived from an industrial undertaking or a ship" implies that the undertaking or the ship should be the direct sources, it does not cover interest on bank deposit made from surplus cash, not profits from the business of fishing carried on with the aid of the ship.

One condition is that the industrial undertaking (unless it is a cold storage plant) should manufacture or produce articles. Another condition is that the minimum number of workers employed by the industrial undertaking which manufactures or produces articles should not be less than that prescribed in Sub Sec.(4) (iv).

Deduction under section is available for the Assessment year relevant to the previous yearⁱⁿ which the industrial undertaking begins to manufacture articles and for the next four assessment years (six years in the case of a Co-op. Society) The "article" in this context is the final product which the undertaking is set up to manufacture and the sale of which yields the profit entitled to exemption. An industrial undertaking which does not fulfil the statutory conditions for exemption in the first of these 5 years (or seven years) would be entitled to exemption for any of the remaining years in which the conditions are fulfilled.

The benefit under this sec. is confined only to the profits of the new industrial undertaking and does not extend to the profits of any other business activity even though closely connected with the undertaking. Where the raw materials used in the new industrial undertaking are produced by the assessee himself in an old undertaking.

It is only if any taxable income remains after setting off the unabsorbed depreciation and carried forward losses of past years that the question of granting deduction under this sec. would arise. But depreciation and Development

rebate pertaining to the new undertaking have already been absorbed by the profits of another business. In the past years and hence there is no unabsorbed depreciation or development rebate to be carried forward. not part of such depreciation or development rebate should be set off against the profits of the new undertaking of the subsequent year in which the claim for relief under section is made".

The profit of new industrial undertaking should be entitled to deduction under section without its being reduced by the loss in another industrial undertaking old or new. In the case of inadequacy of profits, the "deficiency" can be carried forward for seven year. If initial years are no profits, it is not necessary for the assessee to make claim or for the assessing Officer compute the quantum of deduction under section for those years.

Duty of Assessing Officer

It is the duty of the Assessing Officer to draw the attention of the assessee that on the facts of the case he seems entitled to deduction under this sec., if the assessee has omitted to make the claim.

Company or Co-operative society deduction under section is admissible only if the account of the industrial undertaking of the relevant year have been audited and the assessee furnish audit report along with the return income (sub. Sec.(6A)).

Industrial Undertaking :- Manufacture, Production or Processing of goods

The basic concept with significant variations of industrial undertaking occurs in different sec. e.g. 32 A, 33, 54 D, 80 HH, 80 I, 80 J, 109(1-a) (some now deleted) and in various finance Acts. The case law on that basic concept is dealt with in one place.

Industrial activity is the genus, manufacture (used here to include production) or processing of goods is the species. All manufacturing activities are industrial but all industrial activities do not necessarily involve manufacture. Usually an industrial activity involves the manufacture or processing of goods.

The business of construction (build, dams, bridges etc) involves an industrial activity but it cannot be said to be a manufacturing business merely because the production of windows or concrete slabs is undertaken as an ancillary activity like wise residential hotel can not be said to be mainly engaged in the manufacture or processing of goods merely because it cooks foodstuff from raw materials.

The production articles for use from raw or prepared materials by giving such material new forms, qualities properties, or combinations, whether by hand labour or machine, is "manufacture". Industrial undertaking carrying on the following activities have been engaged in manufacture production or processing of goods or articles processing seeds or shrimps or prawns, producing chicken in a hatchery

by scientific and technological methods blending different types of tea and packing it running cold storage plants, supplying cool and filtered air through air conditioning apparatus refreading types, machining and polishing rough castings refining crude oil, pulverizing raw lumps of mineral, converting boulders into chips of stone, pressure piling, i.e. making cement concrete piles at the construction site for laying foundations of buildings drilling tube wells tailoring garments from cloth supplied by customer dyeing and printing grey cloth ginning or pressing cotton pamphlets, labels cards etc. data processing with the help of a computer.

A processor of goods need not himself carry out all the processes resulting in the end product. He may get some of them done by a third party.

Computation of Capital Employed

Validity of rule 15 A.

Capital employed includes

- (a) work in progress
- (b) goods in transit
- (c) machinery land or other assets acquired for the business, through they may be actually used in the accounting year
- (d) advance payments made for acquiring such assets.

Rule 19 A prescribes the mode of computing "the capital employed" for the purposes of this sec. various High Court had held that the rule was invalid as being "the capital employed" in terms that exclude all borrowed capital and (b) it takes the capital employed only as on the

first day of the assessment year ignores all additional capital employed during the rest of the year.

Rules 19 A had ultra vires the Act on the aforesaid two points since it affects or derogates from the full operative effect of the provisions of sec. 80 J.

The provisions of rule 19 A have now been substantially embodied in sub sec. (1A) with retrospective effect from the assessment year 1972-73 raising a question does parliament have a real role or merely a formal role in making most of the Laws ? Which has profound significance for the future of our democracy

"Transfer to a New Business of Machinery
or plant previously used"

"Transfer" includes lease the words "previously used" do not imply that the previous year must have been by the assessee himself, but are wide enough to cover previous user by another person. Under the pre 1976 Law it was held that second hand but reconditioned machinery purchased from abroad should be treated as new for the purposes of this section.

Explanation :-

1 to sub Sec. (4) which came into force from 1st April 1976. Sets out the circumstances in which second hand imported machinery or plant would be treated as new even if it has not been reconditioned.

Sub Sec. (5) Ship acquired from Government

The Govt. of India is not a "person resident in India" with in clause (ii) of sub sec. (5) and therefore a ship acquired from it fulfils the conditions of this clause.

Splitting up or reconstruction

The sec. does not apply to an industrial undertaking which is formed by "the splitting up or the reconstruction of a business already in existence". The term "reconstruction" implies that the identify of the business should not be lost and substantially the same business should be carried on by substantially the same persons. Business is sold or if its very nature is changed, it is not a case of reconstruction.

If there is new industrial undertaking which is entitled exemption under this section subsequent splitting up or reconstruction of that undertaking will not deprive if of the exemption

80 L :-

INTRODUCTION OF PROVISION

Sec. 80 L was introduced by the Finance (No.2) Act 1967 w.e.f. 1968 in order to encourage investments in shares in Indian companies.

AMENDMENTS

This section has undergone the following amendments.

1) 1968 :-

The Finance Act 1968 substituted sub sec. (1) w.e.f. 1969 the purpose of this amendment was explained by the Board in circulars No. 4 P dated 7-6-68 and 6 P dated 6-7-1968.

2) 1970 :-

The Finance Act 1970 substituted the sec. w.e.f. 1-4-71. The Board explained the purpose of this substitution in circular No. 45 dated 2-5-70 (1971) 79 ITR (Status)

3) 1975 :-

The Taxation Laws (Amendment) Act, 1975 inserted clause (vii a) in sub section (1) w.e.f. 1-4-1976. The Board explained the scope and effect of this new clause in circular No. 204 dated 24-7-76 (1977) 110 ITR (Status)357.

4) 1982 :-

The finance act 1982, made the following changes in sub sec. (1) after clause (ix) w.e.f. 1983

- (1) The word "four " was substituted for "three" in sub clause (1) and (2).

(ii) The proviso was inserted.

5) 1983 :-

The Finance Act 1983, made the following changes

w.e.f. 1-4-1984

(i) Clause (via) was inserted.

(ii) In sub s clause (1) and (2) ~~ee~~ occurring after clause(ix) of sub sec. (1) the word "seven" was substituted for "four".

(iii) The proviso inserted by finance act 1982, was omitted
The omitted proviso, which remained in force only for the assessment year 1983-84 read as under.

6) 1986 :-

The Finance Act 1986 made the following changes

w.e.f. 1-4-87.

(i) Clause (ii) of sub sec. (1) was substituted.

(ii) Sub Sec (2) was omitted before omission, this sub Sec.
as under :-

(2) In a case where the assessee is entitled also to the deduction under section 80 K in relation to the whole or any part of the income by way of dividends referred to in clause (iv) of sub sec. (1) only so much of such income by way of dividends as may remain after the deduction under section 80 K shall be taken into account for the purpose of allowing the deduction under sub sec. (1).
The omission of this sub sec. was consequential to the omission of sec. 80 K. by the same Act.

7) 1988 :-

The finance att 1988, has made the following amendments

w.e.f. 1-4-1989.

- (i) New clause (iia) has been inserted.
- (ii) The words "or with a Public company formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes occurring in the opening paragraph of clause (vii) have been omitted.
- (iii) In the proviso to clause (vii), the words "or as the case may be, the company" have been omitted.
- (iv) Clause (x) has been inserted.
- (v) The first and second provisos at the end of sub sec (1) have been substituted for the text of these amendments. See the new text of the section.

Income qualifying for Deduction

Under sec. 80 L the following categories of income, when included in the gross total income of the assessee, will qualify for deduction :-

- (i) Interest on any security of the Central Govt. or a State Govt.
- (ii) Interest on notified debentures (notified by the Central Govt.) issued by any institution or authority or any public sector company or any co-operative society (including a co-operative land mortgage bank or a co-operative land development bank) for the assessment year 1987-88 before this assessment year debentures issued by any public sector company were not included in this category.
- (iii) Interest on deposits under the National Deposit Scheme, 84.



Notified by the Central Govt. by Notification No.

GSR 453 (E) dated 15-6-85 from the assessment year 1985-86.

(iv) Interest on deposit under the following schemes :

(a) The scheme of post office governed by the Post
(Time Deposits) Rules 1970.

(b) The scheme of post office (Recurring Deposits) governed
by the Post Office (R.D.) Rules 1970.

(v) Dividends from any Indian Company.

(vi) Income received in respect of units from Unit Trust of
India.

(vii) Income received in respect of Units of Mutual fund
specified in new clause (23D) of sec. 10 (Assessment
year 1988-89).

(viii) Interest on deposits with a banking company governed by
the banking Regulation Act 1949 or a co-operative bank.

(ix) Interest on deposits with an approved bank other than a
bank referred to in (vii) above from Assessment year
1984-85.

(x) Int on deposits with a financial corporation engaged in
providing long-term finance for industrial development of
India or with a Public company.

(xi) Interest on deposits with housing or planning authorities
(from the assessment year 1976-77).

(xii) Interest on deposits with a co-operative society other
than a banking co-operative, made by a member of the
society.

(xiii) Dividends from any co-operative society.

(xiv) Interest on deposits under Post Office Rule 1987.

(xv) Interest on deposits with or dividend received from any

Public company formed and registered in India with the main object of carrying on the business of providing Long-term finance for corporation or purchase of houses in India for residential purposes.

Quantum of Deduction

<u>Sr.No.</u>	<u>Assessment year</u>	<u>Amount of Deduction</u>
1.	1971-72 to 82-83	Rs. 3,000
2.	1983-84	Rs. 4,000
3.	1984-85	Rs. 7,000

It may further observed that the ceiling on allowable deduction operates whether in income belongs to one or more categories enumerated in para 4 above.

Additional Deduction

For the Assessment year 1983-84 in view of the proviso inserted by the finantc act, 1982 w.e.f. 1-4-1983. A further deduction of Rs. 2000 in respect of interest on any Govt. security referred to in clause (i) of sub sec (1), or, interest on bank deposits referred to in clause (vi) sub sec. (1), being deposits for one year or more, was also allowable.

From assessment year 1985-86 to 1988-89 in view of the insertion of the two proviso to sub sec (1) an additional deduction is allowable as follows :-

- (i) Where gross total income includes interest on deposits under the National Deposit Scheme, 1984 or income in respect of Units from Unit Trust of India an additional deduction upto Rs. 3,000 will be allowed from such income as has not been allowed as deduction.

- (ii) In case of interest on deposits under the National Deposits scheme 1984 and further deduction up to Rs. 2,000 will be allowed from the income as has remained unallowed.

Dividend Income

It may be observed that till the Assessment year 1986-87 if the assessee was entitled to deduction in respect of dividends under sec. 80 K only the balance of the dividends income could qualify for deduction under section 80 L (1) this was the mandate of sub sec. (2) of Sub Sec 80 L. However, in view of omission of sec. 80 K w.e.f. 87 sub sec (2) of sec 80 L was also omitted with effect from that date. Therefore, from the Assessment year 1987-88, dividends will straight a way qualify for deduction under section 80 L.

Further, in view of sec. 80 AB inserted w.e.f. 1-4-81 deduction is available only on the net dividend. Therefore the decisions holding that deduction was available on gross dividend, are no longer good Law.

No deduction if income negative

For the application of the provision of chapter VIA. The first inquiry that has to be made is whether the assessee's gross total income includes any income by way of dividends, etc. If it does, the next step to take is to compute the assessee's gross total income. This is the total income computed under the Act without the deductions under chapter VI A or sec. 280-C as it existed till 31-3-88.

80 L :- Exemption in respect of dividends
Interest etc.

The net effect of the tortuous provisions this section is that an assessee is entitled to (a) A deduction of Rs. 7,000 from the various specified categories of income (b) a further deduction of Rs. 3,000 from dividends from any Indian company and (c) an additional deduction of Rs. 3,000 in respect of Income from Unit Trust of India Dividend from Master shares issued by the Unit Trust of India is covered by sub sec. (1) (iv). Since the Unit Trust of India company under section 2(26) (ia) of this Act read with sec. B (1) of the Unit Trust of India Act.

It was correctly held by the Allahabad High Court that a Partner was entitled to deduction under section in respect of his share of the dividend received by the firm. This decision is superseded by sub sec (3) which was introduced in 1984 with retrospective effect from 1-4-1976. Similarly a beneficiary under a trust is entitled to claim deduction under this sec. in respect of the interest on securities received by him from the trustees. As regards interest credited to an employee in his recognized provident fund account sec under section 17(1) "Annual accretion in recognized Provident Fund according to the Madras High Court deduction under this section is not available to the wife whose dividend income is includible in her husband's total income under section 64 but is available to only the husband whose dividend income is clubbed with hers.

Section 80 MINTRODUCTION OF PROVISION

Section 80 M in was introduced in place of old Sec. 85 A by the Finance (No.2) Act 1967 w.e.f. 1-4-68. Sec. 85 A was inserted by the Finance Act 1965 w.e.f. 1-4-65 and was deleted w.e.f. 1-4-68. Prior to Sec. 85 A this topic was dealt with under sec. 99(1) (iv).

AMENDMENTS

This section has witnessed the following amendments since its ception.

1) 1968 :-

The words "received by it" in the opening part of sub.sec. (1) and in clause (a) (i) were omitted by the Finance Act, 1968, w.e.f. 1-4-1968.

2) 1970 :-

The finance Act 1970, substituted sub sec (2) w.e.f. 1-4-1971.

3) 1982 :-

The figures and word "27,28,29, 30 and 33" were substituted in clause (a) of sub section (1) for "27, 29 and 33" by the Finance Act, 1982, w.e.f. 1-4-1983. This amendments was explained by the Board in circular No. 346 dated 30-6-1982. (1982) 138 ITR

4) 1984 :-

The Finance Act, 1984 substituted the words,

"an amount equal to sixty percent of such income", for
an amount equal to" and clause (a) and (b) of sub sec.(1)
w.e.f. 1-4-1985.

The Board explained the purpose of this amendment
in circular No. 387, dated 6-7-1984 : (1985) 152 ITR
(Statutes) 15.

5) 1986 :-

The Finance Act, 1986, substituted this sec. as
at present w.e.f. 1-4-87 for the following.

- (i) Where the gross total income of an assessee being a
domestic company includes any income by way of divi-
dends from domestic company 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 income by way of dividends of an
amount equal to sixty percent of such income.
- (ii) Where a company to which this sec. applies is entitled
also to the deduction under section 80 K the deduction
under sub sec. (1) shall be allowed in respect of income
by way of dividends referred to therein as reduced by the
amount of the deduction under section 80 K.

This substitution was necessitated on account of
omission of sec. 80 K.

SCOPE OF PROVISION

As noticed earlier, this Section has undergone as many as 8 Amendments since its inception in 1968. Till the Assessment Year 1984-85; full deduction was granted in respect of income by way of dividends received by a domestic company from a company formed and registered under the Companies Act 1956, after 28th February 1975 and engaged exclusively or almost exclusively in the manufacture or production of any one or more of the specified priority articles.

However, from the Assessment Year 1985-86 the position is quite different on the consideration that there is little justification for continuing to provide complete exemption in respect of dividend income. The Finance Act 1984 amended Section 80M w.e.f. 1-4-85 to provide a uniform rate of deduction at 60% for all dividends received by a domestic company.

Though Section 80M was substituted by the Financial Act 1986 w.e.f. 1-4-87 consequent upon the omission of Section 80K the rate of deduction is 60% of the inter-corporate dividends from Assessment Year 87-88 however with difference that from this Assessment Year, the qualifying dividend would not be reduced by deduction Under Section 80K as earlier because Section 80K has been omitted w.e.f. 1-4-87.

Deduction under this provision after setting off losses

Deduction under section 80M is to be made after setting off losses Under Section 71 and 72 under Section 71 the Assessee is entitled to have the entirety of its business loss from one head set off against its income under any other head. The Section does not permit the assessee to have only a part of the loss to be set off against income from other heads and carry forward the balance.

Assessee need not be registered share holder

If the gross total income includes any income by way of dividends, the assessee is entitled to the benefit of the deduction as specified in Section 80M see 80M does not postulate that in order to become entitled to the deduction under the said Section in respect of income by way of dividends earned from the shares. The assessee company must be the registered holder ~~of shares~~ of shares in respect of which income by way of dividend is earned. Accordingly, where the dividend income realised through a trust is assessed in the hands of the assessee-company deduction under Section 80M can not be denied.

No deduction if income negative

If the gross total income being computed happens to be loss. No relief can be granted under section 80M. Deduction from total income under section 80M cannot exceed the assessee's gross total income where such gross total

income is found to be a net loss in the year concerned because if the losses suffered during the year. There is no question of any further deduction of 60% of the dividend earned under section 80M.

SECTION 80M INTERCORPORATE DIVIDENDS

This Section applies only to one category of dividends received by a domestic company from a domestic company. "A domestic company" means Indian Company, or any Foreign Company in which has made the prescribed arrangements for the declaration and payment, within India, of the dividends payable out of its income liable to tax under this Act Section 2 (22A). In order to get the benefit of this Section it is not necessary that the company receiving dividend should be registered share holder of the company paying.

Deduction not to be calculated with reference to gross dividend, gross royalty etc.

Various Section of chapter grant deduction in respect of whole or a percentage dividend royalty etc. received by the assessee. Diff. High Court had held that in absense express statutory indication to the contrary these deductions should be calculated with reference to the gross dividend the deduction Under Section 80K, 80L 80M should be calculated with reference to the gross

dividend without deducting interest charges and other allowable expenses and the deduction Under Section 800 should be calculated with reference to the gross royalty without deducting the expenses for earning it. C.I.T. which was concerned with inter-corporate dividend under Section 80M but in which the principle was held applicable also to other Section 80K, 80MM, 80N, and 80 O (The first three of which are now deleted).

The Finance Act 1980 introduced Section 80AA with retrospective w.e.f. 1-4-1968 regards other receipts the Supreme Court over ruled cloth trader and held that the deduction under section 80M has to be calculated only with reference to the net amount after deducting the allowable expenditure and that 80AA was merely declaratory of the Law as it always -- "Gross total income" means the total income computed in accordance with the provisions of this Act.

PROBLEMSECTION 80 CC

Find out the deduction allowable in the following cases:

	Mr. A.	Mr. B.	Mr. C.
Equity shares purchased in a company forming part of eligible issue	6,000	6,000	22,000
Unpaid share amount paid within 6 months from the end of the previous year	-	4,000	1,000
Shares sold in the next previous year			22,000

The deduction allowable U/S 80CC

In the case of Mr. A.

Rs. 3,000 is allowable (i.e. 50% of 6,000)

In the case of Mr. B.

Rs. 5,000 is allowable (i.e. 50% of 10,000)

He is eligible for claiming deduction on Rs. 4,000 also since he has paid the remaining unpaid amount on the shares within 6 months from the end of the previous year as it will be treated to have been paid towards cost of the shares.

In the case of Mr. C.

Rs. 10,000 is allowable (i.e. 50% 20,000)

The amount of qualifying shares is limited to Rs. 20,000 as specified by the assessee. Hence the excess shares are ignored for the purpose and the maximum deduction will be Rs. 10,000 only.

PROBLEMSECTION 80 CCA

	Mr. A.	Mr. B.	Mr. C.
Deposits made under National Savings Scheme	32,000	25,000	16,000
Amount paid towards deferred annuity plan to Life Insurance Corporation	-	5,000	4,000

Calculation of deduction u/s 80CCA

In case of Mr. A.

Rs. 30,000 are allowed as deduction being 100% of the maximum amount of Rs. 30,000.

In case of Mr. B.

Rs. 30,000 are allowed as deduction being 100% of the total of Rs. 30,000 (i.e. 25,000 + 5,000)

In case of Mr. C.

Rs. 20,000 are allowed as deduction being 100% of the total of Rs. 20,000 (i.e. 16,000 + 4000)

PROBLEM

95

SECTION 80 GG

Example : Mr. A pays rent of Rs.1,250 per month. His gross total income for the assessment years 1988-89 to 1991-92 is Rs. 60,000. Deduction is to be claimed as explained hereunder.

Gross total income		Rs. 60,000
Less : Deductions under Chapter VIA:		
(1) National Savings Scheme (Section 80CCA)	Rs. 5,000	
(2) Dividends & interest from bank (Section 80L)	<u>Rs. 1,500</u>	<u>Rs. 6,500</u>
deduction under section 80GG		Rs.*53,500
Rent paid (Rs.1,250x12 months)	Rs.15,000	
Less : 10% of Rs.53,500 as computed above	<u>Rs. 5,350</u>	
Rent paid in excess	<u>Rs. 9,650</u>	
Rent paid in excess	Rs. 9,650	
25% of total income Rs.53,500	Rs.13,375	
Celling amount of Rs.1,000 per month x 12 months.	<u>Rs.12,000</u>	
The least of the above viz. Rs.9,650 is allowable as deduction under section 80 GG.		<u>Rs. 9,650</u>
	Taxable Income	<u>Rs. 43,850</u>

* Under the Explanation to section, the base 80GG in this example for deduction u/s 80GG is Rs.53,500. The gross total income in this example is Rs: 60,000 and the total income Rs. 43,850. The Explanation states that "10% or 25% of his total income."