CHAPTER IV

DEDUCTIONS / ALLOWANCES UNDER INCOME TAX ACT. 1961

4.1

INVESTMENT ALLOWANCE

SECTION - 32 A

Development rebate, as tax incentives was withdrawn in respect of ships acquired, or machinery or plant installed after 31-5-1974, except in certain cases specified in section 16 of Finance Act,1974. On the discountinuance of the develop--ment rebate, an initial depreciation was introduced vide Section 32 as an allowance for and from assessment year 1975-76. However such depreciation was in operation for a short period between 31-5-1974 to 31-3-1976 in respect of ships or aircraft acquired or plant installed during that period such rebate and depreciation allowance were later on replaced by an allowance known as " Investment Allowance" with effect from 1-4-1976. This incentive allowance provided for by the Finance Act,1976 is applicable with effect from the assessment year 1976-77. The provisions contained in section 32 A are applicable in respect of only such ships or aircrafts acquired by the assessee on or after 1-4-1976 and machinery or plant as is installed on or after that date.

The object of investment allowance is not only to encourage investment in new machinery and plant, but also to enable the tax payer to replace the asset without much additional financial investment.

4.2

RATE OF INVESTMENT ALLOWANCE

The deduction on account of investment allowance will be allowed at the rate of 25 per cent of the actual cost of the asset qualifying assets.

However for an from assessment year 1978-79, higher rate of 35 per cent has been prescribed in respect of new machinery or plant installed after 30-6-1977 but before 1-4-1987 for the manufacture or production of any article or thing which is manufactured or produced by using any technology or other know-how developed in or which is invested by, a laboratory owned or financed by the Government, or a laboratory owned by a public sector company or a university.

1. The deduction at the higher rate will be available only where the following conditions are fulfilled

1. The right to manufacture or produce the article or thing or use the technology or other know-how has been acquired by the tax-payer from the owner of such laborstory.

2. The tax payer furnishes alongwith return of income for athe assessment year for which the deduction is claimed a certificate from the prescribed authority that such article or thing is manufactured or produced by using technology or other know-how developed in or such article or thing is

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invested by a laboratory owned or wholly financed by the Government or a laboratory owned by a public sector company or university.

3. The machinery or plant is not used by the tax payer for the purpose of business or manufacture or production of any article or thing specified in the Eleventh Schedule.

The Act also provides for the grant of investment allowance at a higher rate of 35 per cent in respect of such machinery or plant which would assist in control of pollution or protection of environment and notified by the Central Government, if such machinery or plant is installed for the purpose of business mentioned under (b) below after 31-5-1983.

4.4

ASSETS ELIGIBLE FOR ALLOWANCE

Investment allowance is admissible on four categories of assets namely Ships, or Aircrafts or Machinery or Plant shall be of the following -

a) New Ships (including fishing vessels and fishing trawler) or new aircraft acquired after 31st March,1976 by an assessee engaged in the business of operation of ships or aircraft.

b) New machinery or plant installed after 31st March,1976.

i) For the purpose of business of generation for distribution of electricity or any other form of power.

ii) For the purpose of business of manufacture or production of any article or thing in a small scale industrial undertaking. or

iii) For the purpose of business of construction, manufacture or production of any article or thing specified in the list of the Eleventh Schedule.

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c) Any new machinery or plant installed after 31-3-1983 but before 1-4-1987, for the purpose of business of repairs to ocean going vessels or other powered craft if the business is carried on by an Indian Company and the business so carried on is for the time being, approved for the purpose of this clause by the Central Government.

However, the deduction of investment allowance denied in respect of machinery or plant installed and used mainly for the purpose of business of construction, manufacture of production of any article or thing merely on the ground that machinery or plant is also used in part for the purpose of business of construction or manufacture or production of an article or thing specified in Eleventh Schedule.

For the purpose of the investment allowance second hand ships or aircrafts and re-conditioned machinery or plant imported from abroad will be regarded as new if the conditions specified below are fulfilled.

a) In the case of ships or aircrafts it may not at any time previous to the date of such acquisition owned by any person resident in India.

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b) In the case of second-hand machinery or plant-

i) It was not at any time previous to the date of such installation by the assessee used in India.

ii) it is imported into India from any foreign country; and

iii) no deduction on account of depreciation in respect of such machinery or plant.

ASSETS IN RESPECT OF WHICH INVESTMENT ALLOWANCE IS NOT ADMISSIBLE

The investment allowance will not be allowed in respect of the following assets-

i) Any machinery or plant installed in any Office premises or any residential house including guest house;

ii) Any office appliances,

iii) Any ship, machinery or plant in respect of which development rebate was or is available

iv) Any road transport vehicles,

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v) Machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the taxable income of any one previous year.

Thus no investment allowance will be admissible in respect of any machinery or plant the actual cost their of being less than Rs.5,000/- as allowed to be written off by way of depreciation allowance under the First provision to Section 32(1)(ii), any machinery or plant on which depreciation is admissible at the rate of 100 per cent under Income Tax Rules,1962, or any machinery or plant the entire cost of which is allowed as deduction under section 35(2) by way of expendi-ture of a capital nature on scientific research.

Year OF ALLOWANCE

Investment allowance is admissible inrespect of the previous year in which ship or aircraft acquired or the machinery or plant installed. If however the ship, aircraft, machinery or plant is first to use in the immediately succeeding previous year, it is allowable in that year and only once. In other words investment allowance is allowed either in the year of acquisition or installation or when it is first put to use in the immediately succeeding year. In view of this fact, investment allowance will be forfeited if for any reason the

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assessee is not in a position to fulfill the conditions of actual use before the end of the immediately following accounting year after installation or acquisition therefore it is necessary to note that there should not be delay in the use of the asset beyond the second accounting year after installation or acquisition/installation as the case may be. In some cases it may worthwhile to postpone the installation of the machinery to suit the fulfilment of the above condition. Thus the eligible asset must be used in the previous year of acquisition/installation or in the immediate succeeding previous year. If the instaallation of the plant is spread over number of years, the relevant year for the grant of investment allowance is the year in which the installation is completed.

Investment allowance is allowed as a deduction in the year in which the ship is acquired or the machinery or plant is installed, provided the asset if used for the purpose of the business in the year of acquisition or installation. But if the asset is first put into use in the succeeding year the allowance would be allowed in that year.

CONDITION FOR GRANTING OF INVESTMENT ALLOWANCE

The deduction for investment allowance shall be allowed only if the following conditions are fulfilled.

1. Ownership of the Qualifying Asset:

In order to qualify for investment allowance the assessee must be the owner of the qualifying asset. Qualifying asset means the asset on which the investment allowance is allowable. For claiming of the benefit of investment allowance, the assessee must owned or he must be the owner of the eligible assets, otherwise no such allowance shall be admissible. Hence the assessee, though he may be actually using the eligible asset for the purpose of his business shall not be entitled to the said allowance in case he does not happen to be the owner of the ship or the air craft or the machinery or plant as the case may be.

2. Use of the Qualifying Asset:

The qualifying asset must be used wholly for the purpose of the business of the assessee carried on by him. It mayns , if the qualifying asset is used for the profession of the assessee, the investment allowance shall not be allowable. If the eligible asset is partly used for the purpose of assessee's business the assessee would not be entitled to investment allowance. The words "wholly used" do not mean that they should be exclusively used. It would only mean that such assets are "used in entirely". Hence even partial use of eligible asset for purposes other than the business carried on by the assessee would disentitle the

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assessee altogether to the investment allowance. However, if the intention was to use the machinery or plant mainly for construction manufacture or production of articles other than those listed in the Eleventh Schedule, any later use in part for manufacture, construction or production of an article listed in the Eleventh Schedule, by itself will not disentitle the grant of said allowance. Further the investment allowance is not forfeited if the eligible asset is used partly for business purposes and partly for other purposes, in the subsequent year. Likewise, allowance is not withdrawn if the use of plant and machinery is changed by shifting from manufacture of one product to that of another. Similarly, physical transfer or shifting of the machinery from one place to another would not disentitle the assessee from investment allowance. It is also to be noted that even the use of eligible asset for a nominal period say even for a day, would entitle the assessee full amount of the investment allowance as the words used in Section 32A (1) are " is wholly used for the purpose of the business carried on by him".

3. Submission of Prescribed Particulars:

The particulars in this behalf have been furnished by the assessee in respect of the ship or aircraft or machinery or plant. Rule 5AA of the Income Tax Rule 1962 provided that the following particulars shall be furnished in columner forms

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i) Depreciation of asset;

ii) Actual cost of assets acquired during the previous year;

iii) Written down value of the existing value;

iv) Capital expenditure on addition or alterative

v) Period of use.

The prescribed particulars must be duly furnished by the tax payer. If they are not furnished Income-tax Officer may be justified in refusing the grant of the investment allowance.

4. Creation of Reserve:

The deduction on account of investment allowance will not be allowed unless an amount equal to 75 per cent of the investment allowance to be actually allowed is debited to the Profit and Loss Account of the relevant previous year and credited to a Investment Allowance Reserve Account. In the case of ship only 50 per cent of the amount admissible as investment allowance will be required to be transferred to the Reserve Account.

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5. Use of Reserve:

The investment allowance reserve account should be utilized by the tax-payer for the purpose of acquiring new ships, aircraft, machinery or plant within a period of 10 years next following the previous year in which the ship or aircraft was acquired or the machinery or plant installed.

Such acquisition is not necessary to be made after expiry of 10 years in question but the purchase of new eligible asset can be made within a period of 10 years if it is made so; it is also not necessary that the new eligible asset so acquired within 10 years should be put to use within that period.

6. Sale of the Qualifying Asset:

The ship, aircraft, machinery or plant should not be sold or otherwise transferred by the assessee to any perion for 8 years from the end of the previous year in which it was acquired or installed. This condition will not apply ih the following cases -

I) When the ship, aircraft, machinery or plant is sold or transferred by the assessee to the Government, a local authority, a statutory corporation or Government company; or

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II) When such assets sold or transferred in connection with the amalgamation or succession covered by Section 32(A)(6) or 32A(7) of the Act.

The investment allowance will not be available in respect of ship or aircraft acquired or machinery installed after 31st March,1987.

CONCLUSION AND SUGGESTION

The Withdrawal of the Investment Allowance

This will grievously hurt capital intensive industries and new industrial undertakings. It has to be emphasised that the new section 32 AB is no substitute for the investment allowance deduction permitted hitherto for the simple reason that the new funding scheme envisaged under Section 32 AB helps only those companies which are already making taxable profits.

Moreover, Section 32 AB will primarily benefit consumer oriented industries which have a low gestation period. In fact, entrepreneures will henceforth be dissuaded from promoting capital intensive industries in which the gestation period is long. Instead, they would prefer to promote enterprises requiring low capital investment, whether profitability can be achieved at a low breakever point. Thus

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the withdrawal of the investment allowance will lead to a shifting of priorities among entreprenuers and will curb the enthusisam of private entrepernuers to promote large capital intensive projects, which are required in the infrastructure industries in particular.

If Government Officials are correct in their contention that Section 32 AB is a substitute for the now withdrawn investment allowance, why should they have any objection in giving a company the opition to either claim the investment allowance or the relief under section 32 AB in respect of the investment deposit shceme. The grant of such an option to companies would prove, beyond doubt, the Governments sincerity in encouraging the growth of the corporate sector and inducing it to achieve the growth targets set for it.

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INVESTMENT DEPOSIT ACCOUNT - SECTION 32 AB

With the investment allowance deduction not available in respect of assets installed after 31-3-1987, companies businessmen and professionals now have the option to reduce their taxable incomes under section 32 AB of the Income Tax Act,1961. This recently introduced section allows 20 per cent of business profits to be deducted from taxable income if this amount is deposited with the Industrial Development Bank of India or utilised to purchase plant and machinery of a value equivalent to 20 per cent of taxable business profit.

The Provisions of this Section (32 AB) have been given below :

1. For this section "eligible business or profession" has been defined to mean business and profession other than-

   a) the business of construction, manufacture or production of any article or thing specified in the Eleventh Schedule carried on by an industrial undertaking other than a small scale industrial undertaking (as defined in section 80 HH)

   b) the business of leasing or hiring of machinery or plant to an industrial undertaking, other than a small scale industrial undertaking, engaged in

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the business of construction, manufacture or production of any article or thing listed in the Eleventh Schedule.

2. Where separate accounts in respect of eligible business or profession of an assessee are maintained, the profit of eligible business/profession qualifying for deduction shall be the amount of profit computed in accordance with the requirement of Part II and Par III of the Sixth Schedule to the Companies Act,1956.

The profit so determined shall be increased by the following amounts debited to Profit and Loss Account-

a) depreciation,

b) income tax paid or payable and any provision thereof;

c) Surtax paid or payable;

d) transfer of any reserve;

e) provision made for meeting liabilities other than ascertained liabilities;

f) provision for losses of subsidiary companies and

g) dividends paid or proposed.

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The resulting amount should be reduced by the following -

a) amount withdrawn from reserves on provisions (of credit to profit and loss account) and

b) amount of depreciation determined under section 32.

Where, however such separate accounts are not maintained or are not available, the profit of eligible business or profession shall be such amount which bears to the total profit of the business or profession of the assessee after the making the aforeside adjustment the same proporation as the total sales, turnover or gross receipts of the business or profession carried on by the assessee.

3. No deduction shall be allowed for the amount that is utilised for the purchases of any machinery or plant to be installed in any office premises or residential accommodation (including any accommodation in the nature of a guest house) any office appliances (not being computers), any road transport vehicles, or any machinery or plant whose actual cost is allowed as deduction (whether by way of depreciation or otherwise)

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in in computing the income under the head " profits and gains of business or profession" of any one previous year. "Computers" does not include calculating machines and calculating devices. In other words, deduction under section 32 AB is not available on purchase of calculating. Machines/devices.

4. Deduction under section 32 AB is also available in the case of purchases of second hand assets.

5. In a case where eligible business or profession carried on by a firm or an association of person or a body of individuals, no deduction shall be allowded in the case of its partner or member.

6. The deduction shall not be admissible unless the accounts of the business or profession of the assessee for the year for which the deduction is claimed have been audited by an accountant and the assessee furnishes alongwith his return of income the report of such audit in Form No. 3 AA duly signed and verified by such Accountant. Where the assessee is required by any other law to get his accounts audited, it shall be sufficient compliance with the provisions if such assessee gets the accounts of such business or profession audited under such law and funnished the a

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audit report as required under such other law and a further report in the form prescribed for this purpose.

7. Where any amount standing to the credit of the assessee in the deposit account is realised during any previous year by the Development Bank for being utilised for the purpose-s specified in the scheme or at the closure of the account and such amount is not utilised in accordance with and within time provided in the scheme, either wholly or partly, such amount as is not so utilised shall be deemed to be the profits and gains of the business or profession of the previous year and shall be included as the income of that previous year.

8. Where any asset acquired in accordance with the scheme is sold or otherwise transferred in any previous year within 8 years from the end of the previous year in which it was acquired, the cost of such asset to the extent it is relatable to the deductions allowed under this provision shall be deemed to be the income of the assessee of the previous year in which the asset is sold or otherwise transfe--rred. However, if the sale or transfer of such asset is to the Government, a local authority, a corporation established by a Central State or Provincial Act, or

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a Government Company, or if the sale or transfer is made in connection with the succession of the firm by a company in the business or profession carried on by the firm and the scheme contineous to apply to the company as in the case of the firm, then the deductions earlier allowed in respect of such asset shall not be charged to tax as aforesaid.

9. Where any expenditure in respect of which a deduction is allowed, is not a wholly or partly by utilizing the amounts standing to the credit of the tax payer in the deposit account in respect of which a deduction is allowed under Section 32 AB (1), than such expenditure shall be reduced by the amounts so utilized under the other provisions of the Act.

10. The amounts deposited with the Development Bank in accordance with the scheme shall not be permitted to be withdrawn before the expiry of a period of 5 years from the date of deposit, except in the case of -

a) closure of business,

b) death of the tax payer,

c) partitions of a Hindu Undivided Family,

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d) dissolution of the firm,

e) liquidation of the company and

f) in such other circumstances as may be specified in the scheme.

11. No deduction shall be allowed under this section in the case of an assessee who has claimed the deduction allowable under section 33 AB.

EXPLANATION:

1. SECOND-HAND ASSETS-

Second hand ships and aircrafts are also " eligible assets" for investment allowance if the ship or aircraft was not owned by any person resident in India prior to the date of it's acquisition by the assessee. Likewise, second-hand plant and machinery is eligible for investment allowance if the following conditions are satisfied.

a) if such plant or machinery had not been used in India at any time prior to the date of its acquisition by the assessee.

b) if such plant or machinery hasbeen imported into India from a foreign country and;

c) no deduction on account of depreciation in respect of such plant or machinery has been allowed or is allowable under the Act, in computing the total income of any person for any period prior to its installation by the assessee.

2. DEVELOPMENT BANK:

for the purpose of this section Development Bank means -

a) in the case of an assessee carrying on the business of growing / manufacturing tea in India, the National Bank for Agriculture and Rural Development.

b) in any other case, the Industrial Development Bank of India.

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C O N C L U S I O N

It must be pointed out that the Investment Deposit Scheme is likely to prove useful only for those who already have taxable income. A new company or business would not stand to gain at all, as it is unlikely to earn taxable profits for the first few years.

This provision was required to be incorporated with the previous provision i.e. investment allowance because the investment deposit scheme only benefited to those assessee who have already the income. On contrary the investment allowance scheme was beneficial to the both class of the assessee who have income and or other wise

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DEVELOPMENT ALLOWANCE - SECTION 33 A

Development Allowance at specified rates is allowed under section 33 A for the encouragement of plantation of tea bushes in our country. As tea is one of the major export oriented crops and it is necessary to maintain the profits and the profitability of the industry of a high leval, the development allowanc is granted. The right to development allowance under this section is subject to the fulfilment of the conditions set out in section 33 A and imposed by Rule 8 A of the Income Tax Rule 1962. Plantation of tea bushes is encouraged not only by the grant of development allowance but also by exemption under section 10 (30) in respect of Govern--ment subsidy for that purpose.

Section 33 A of the Act provides for the grant of development allowance in respect of planting of tea bushes on any land in India owned by an assessee who carries on the business of growing and manufacturing tea in India.

For development allowance, an assessee having a leasehold or other right of occupancy in land shall be deemed tobe owner of such land. Likewise where the assessee transfers such right he shall be deemed to have sold or otherwise transferred such land.

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In this connection it is important to note that growing of tea and manufacturing it are cumulative conditions. If the assessee grows the tea but does not manufacture it, he is not entitled to the development allowance.

RATE OF ALLOWANCE:

1. In respect of new plantation on any land never planted with tea bushes before, 50 per cent of the actual cost of planting.
   Plantation must be commenced after 31-3-1965.

2. In respect of plantation commenced after 31-3-1965 and completed before 1-4-1970 in replacement of tea bushes that have died or have become permanently useless on any land already planted, 30 per cent of actual cost of planting.

ACTUAL COST OF PLANTING:

For the purposes of the development allowance 'actual cost of planting' means the aggregate -

i) The cost of preparing land,

ii) The cost of seeds cutting and nurseries,

iii) The cost of planting and replanting, and

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iv) The cost of upkeep thereof for the previous year in which the land has been prepared and the three successive previous years next following such previous year.

Such aggregate further ought to reduce by that portion of the cost, if any, as has been met directly or indirectly by any other person.

Provides that such cost should be within the following ceiling limit.

1. Rs.40,000/- per hectare for any land in a hilly area comprised within the district of Darjeeling.

2. Rs.35,000/- per hectare in respect of land situated in hilly area other than the district of Darjeeling.

3. Rs.30,000/- per hectare in the case of land situated in any other area.

The cost in excess of above limits shall be ignored.

CONDITIONS FOR ALLOWING DEVELOPMENT ALLOWANCE

The following conditions have to be fulfilled for allowing development allowance.

1. The allowance is granted in respect of expenditure

incurred on planting of tea bushes on such land in India which had never been used for tea plantation.

2. The allowance is available in respect of fresh planta-tion done after 31-5-1965. Now no allowance is admissible in respect of replacement of tea bushes.

3. The land must be owned by the assessee who is engaged in the business of growing and manufacturing tea in India. However, here the assessee having a leasehold or other right to occupancy in any land is deemed to be the owner for this purpose.

4. The assessee has furnished the prescribed particulars in this behalf.

5. An amount equal to 75 per cent of the development allowance to be actually allowed should be debited to the profit and loss account and credited to special reserve account during the relevant previous year.

The above clause requires the assessee to create special reserve of an amount equal to 75 percent of the development allowance actually allowed i.e. not of that part of the allowance which, being unabsorbed, is carried forward.

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6. This reseve can be used by the assessee in his business for eight years, but it can not be utilized for a period of 8 years.

a) for distribution by way of dividends or profits or

b) for remittance outside India as profits or for the creation of any asset outside India or

c) for any other purpose which is not a purpose of the undertaking.

7. The land in respect of which development allowance has been granted should not be sold or otherwise transferred by the assessee to any person for eight years from the end of the previous year in which the deduction under section 33 (1) was allowed. This condition will not apply in the following cases -

i) Where the land is sold or otherwise transferred by the assessee to the Government, a local authority, a statutory corporation or a Government company.

ii) Where the sale or transfer of the land is made in connection with the amalgamation or succession covered by section 33A(5) or Section 33A(6).

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8. Rule 8A of the Income tax Rules,1962, specifies the following conditions for the purpose of granting development allowance -

a) The assessee shall, at least 3 months prior to the commencement of operations for planting or replanting tea bushes give a notice to the Tea Board of his intention to do so.

b) The assessee shall afford the Tea Board or any authorised person by the Tea Board every reasonable facility to enter upon and inspect the area under planting or replanting.

c) The assessee shall furnish to the Tea Board such particulars, documents or statements in relation to the planting or replanting of tea, as the Tea Board may require him to furnish.

d) The assessee shall furnish to the Income-tax Officer alongwith his return of income a certificate from the Tea Board in Form No.5 and a statement of particulars in Form No. 5A.

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TEA DEVELOPMENT ACCOUNT - 33 AB

To encourage tea companies to mobilise resources internally for specified purposes, the Finance Act,1985, has inserted with effect from 1-4-1986 a new section 33AB in the Income-tax Act.

This section provides that where the business of an assessee consists exclusively or almost exclusively of growing and manufacturing tea in India and the assessee has, during the previous year, deposited with the National Bank for Agriculture and Rural Development any amount in a special account maintained by it with that Bank in accordance with the scheme approved in this behalf by the Tea Board, the assessee shall be allowed a deduction while computing the taxable profits of such business. The quantum of deduction shall be -

a) a) a sum equal to the amount so deposited

or

b) a sum equal to 20 per cent of its profits (before making this deduction) whichever is less.

Where the amount deposited by the assessee during the previous year exceeds the sum allowable as deduction under this section, the excess shall be treated as a deposit made by the assessee in the next following previous year.

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Where any amount is withdrawn by an assessee from its special account with the bank, for acquiring any building, machinery, plant or furniture the actual cost of such asset shall for the purposes of the Income tax Act shall be reduced by the amount of utilised. Where the amount of such deposit is utilized for incurring any other expenditure for the purpose of the business, such expenditure shall be reduced by the amount so utilized and the balance shall be allowed as a deduction in computing the income.

Where the whole or any part of the amount realised in the previous year by the National Bank for Agriculture and Rural Development is not utilized by the assessee within the previous year in accordance with the scheme approved by the Tea Board, such amount or part shall be deemed to be the assessee's profits and gains of business and accordingly charged to tax as the income of the previous year.

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EXPENDITURE ON SCIENTIFIC RESEARCH
SECTION 35

1. In respect of expenditure on scientific research, the following deductions shall be allowed -

i) any expenditure (not being in the nature of capital expenditure) laid out or expended on scientific research related to the business.

(Explanation : Where any such expenditure has been paid out or expended before the commencement of the business (not being expenditure laid out or expended before the 1st day of April,1973) on payment of any salary (as defined in Explanation 2 below sub section (5) of section 40 A) to an employee engaged in such scientific research or on the purchase of materials used in such scientific research, the aggregate of the expendi--ture so laid out or expended within the three years immediately preceding the commencement of the business shall, to the extent it is certified by the prescribed authority to have been laid out or expended on such scientific research be deemed to have been laid out or expended in the previous year in which the business is commenced:)

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ii) any sum paid to a scientific research association which has as its object the undertaking of scientific research or to a university, college or other institution to be used for scientific research;

Provided that such association, university, college or institution is for the time being approved for the purposes of this clause by the prescribed authority;

iii) any sum paid to a university, college or other institution to be used for research in social science or statistical research related to the class of business carried on being a university, college or institution which is for the time being approved for the purposes of the clause by the prescribed authority.

iv) in respect of any expenditure of a capital nature on scientific research related to the business carried on by the assessee, such deduction as may be admissible under the provisions of sub-section (2)

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2. For the purposes of clause (iv) of sub-section (1)-

i) in a case where a such capital expenditure incurred before the 1st day of April,1967, one fifth of the capital expenditure incurred in day previous year shall be deducted for that previous year; and the balance of the expenditure shall be deducted in equal instalments for each of the four immediately succeeding previous year.

ia) in a case where such capital expenditure is incurred after the 31st day of March,1967 the whole of such capital expenditure incurred in any previous year shall be deducted for that previous year.)

(Provided that no deduction shall be admissible under this clause in respect of any expenditure incurred on the acquisition of any land, whether the land is acquired as such or as part of any property, after the 29th day of February,1984.)

EXPLANATION:1. Where any capital expenditure has been incurred before the commencement of the business the aggregate of the expenditure so incurred within the three years immediately preceding the commencement of the business shall be

deemed to have been incurred in the previous year in which the business is commenced.

EXPLANATION:2. For the purposes of this clause -

a) "land" includes any interest in land; and

b) the acquisition of any land shall be deemed to have been made by the assessee on the date on which the instrument of transfer of such land to him has been registered under the Registration Act,1908 (16 of 1908) or where he has taken or retained the possession of such land or any part there in part performance of a contract of the nature referred to in section 53 A of the transfer of the property Act,1882 (4 of 1882) the date of which he has so taken or retained possession of such land or part.)

ii) not-withstanding anything contained in clause (i), where an asset representing expenditure of a capital nature (incufred before the 1st day of April,1967) ceases to be used in a previous year for scientific research related to the business and the value of the asset at the time of the cessation, together

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with the aggregate of deduction already allowed under clause (i) falls short of the said expenditure, then -

a) there shall be allowed a deduction for that previous year of an amount equal to such deficiency, and

b) no deduction shall be allowed under that clause for that previous year or for any subsequent previous year;

iii) If the asset mentioned in clause (ii) is sold without having been used for other purposes, in the year of cessation, the sell price shall be taken to be the value of the asset at the time of the cessation, and if the asset is sold, without having been used for other purposes, in a previous year subsequent to the year of cessation, and sell price falls short of the value of the asset taken into amount equal to the deficency shall be allowed as a deduction for the previous year in which the sale took place.

iv) where a deduction is allowed for any previous year under this section in respect of expenditure represented wholly or partly by an asset, no

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deduction shall be allowed under (clauses (i),(ii), (iia), (iii) and (vi) of sub-section (1) (or under sub-section (1A)) of section 32 for the same (or any other) previous year in respect of that asset;

v) where the asset (mentioned in clause (ii) is used in the business after it ceases to be used for scientific research related to that business, depreciation shall be admissible under (clauses (i), (ii) and (iii) of sub section (1))of section 32.

2-A. Where (before the 1st day of March,1984) the assessee pays any sum (being any sum paid with a specific direction that the sum shall not be used for the acquisition of any land or building or construction of any building) to a scientific research association or university or college or other institution referred to in clause (ii) of sub section (i) or to a public sector company) to be used for scientific research undertaken under a programme approved in this behalf by the prescribed authority a having regard to the social, economic and industrial needs of India then-

a) there shall be allowed a deduction of a sum equal to one and one-third times the sum so paid and

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b) no deduction in respect of such sum shall be allowed under clause (ii) of sub section (1) for the same or any other assessment year).

EXPLANATION: For the purposes of this subsection " public sector company" shall have the same meaning as in clause (b) of the explanation below sub section (2 B) of section 32 A)

2-B a) Where (before the 1st day of March,1984) an assessee has incurred any expenditure (not being in the nature of capital expenditure incurred on the acquisition of any land or building or construction of any building) on scientific research undertaken under a programme approved in this behalf by the prescribed authority having regard to the social, economic and industrial needs of India. He shall, subject to the provisions of this sub section, be allowed a deduction of a sum equal to one and one-fourth times the amount of the expenditure certified by the prescribed authority to have been so incurred during the previous year.

4.38

b) Where a deduction has been allowed under clause (a) for any previous year in respect of any expenditure , no deduction in respect of such expenditure shall be allowed under clause (i) of sub-section (1) or clause (ia) of sub-section (2) for the same or any other previous year.

c) Where a deduction is allowed for any previous year under this sub-section in respect of expenditure represented wholly or partly by an asset, no deduction shall be allowed in respect of that asset under (clauses (i), (ii), (iia) and (iii) of sub-section (1) a or under sub-section (1-A)) of section 32 for the same or any subsequent previous year.

d) Any deduction made under this sub-section in respect of any expenditure on scientific research in excess of the expenditure actually incurred shall be deemed to have been wrongly made for the purposes of this Act if the assessee fails to furnish within one year of the period allowed by the prescribed authority for completion of the programme, a certificate of its completion obtained from that authority, and the provisions of sub-section (5B) of section 155 shall apply a-accordingly).

4.39

(3) If any question arises under this section as to whether and if so, to what extent, any activity constitutes or constituted, or any asset is or was being used for, scientific research, the board shall refer the question to the prescribed authority 15 a whose decision shall be final.

(4) The provisions of sub-section (2) of section 32 shall apply in relation to deduction allowable under clause (iv) of sub-section (i) as they apply in relation of deduction allowable in respect of depreciation.

(5) Where, in a scheme of amalagmation the amalgamating sells or otherwise transfers to the amalgamating company (being an India Company) any asset representing expenditure of a capital nature of scientific research.

i) the amalgamating company shall not be allowed the deduction under clause (ii) or clause (iii) of sub-section (2) and

ii) the provisions of this section shall as far as may be, apply to the amalgamated company as they would have applied to the amalgamating company if the latter had not so sold or otherwise transferred equal to the asset.

EXPLANATION:

Expenditure on scientific research incurred by an

assessee is deductable under section-35 of the Income-Tax Act, Scientific research in India has not been on the same magnitude it has been in the developed and advanced countries. Reaearch and development activity is vital for the growth of a country like India. The growth of industry generally depends upon research and development activity carried in the country. For the rapid sound industrilaisation research and development activity is must. Development of indigious technology helps on two counts namely to push up industriallisation and to reduce the drawing of foreign exchange reserve to some extent. Greater intiatiave and deduction of purpose is necessary to promote productive research in order to give incentives for carrying on research which would in turn reduce the import and technnology from addressed an incentive has been given by Indian Income tax Act 1961. The success story of companies in the private sector revails that taxation has apowerful and positive influence on the research planning; so investment in efficient production through the use of better technology and also the proper utilisation of resources towards refining the technology should be encouraged by the state through taxation, Indian Income tax Act 1961 provides certain exemption and concessions to the industrial units to promote research and development activities.

"Scientific Reaearch" means any activities for the extension of knowledge in the fields of natural or applied

science including agriculture, animal husbandry or fisheries.

References to expenditure incurred on scientific research include all expenditure incurred for the prosecution or the provision of facilities for the prosecution of scientific research, but do not include any expenditure incurred in the acquisition of rights in or arising out of scientific research.

References to scientific research related to a business or class of business include -

Any scientific research which may lead to or facilitate an extension of that business or as the case may be all business of that class;

Any scientific research of a medical nature which has a special relation to the welfare of workers employed in that business or, as the case may, all business of that class.

Section 35 contuemplates and following situations. When a company might incurred expenditure on scientific research

(a) Before comencement of business and

(b) After commencement of business.

Further in both the & alternatives of the expenditure could be either capital or revenue in nature and may be related to the business carried on by the assessee or not.

4.42

Again expenditure may have been directly incurred by the company or it could be a contribution made to outside agency or authority.

1) EXPENDITURE INCURRED BEFORE COMMENCEMENT OF BUSINESS:

Only the agreegate of expenditure laid out or incurred towards payment of salary to an employee engaged in such scientific research and for purchase of materials used in such scientific research within 3 years immediately preceding the commencement of the business would be allowed as deduction in the previous year in which the business is commenced but this deduction would be restricted by the prescribed authority to have been laid out or expended on scientific research.

If the company incurres any capital expenditure related to the business carried on by it within the 3 years preceding the year of commencement of business, then such expenditure shall be allowed as a deduction in the assessment for the said year of commencement of business.

2) Expenditure after commencement of business.

If the company carries on scientific research and incurres capital and revenue expenditure related to the business after commencement of business, then the entire amount is to be deductable in the assessment year relevant to the previous year in which the expenditure was incurred.

Similarly any sum paid to the approved scientific research association or to an approved University, college or other institution to be used for scientific research. It is immaterial whether the scientific research related or not relates to the business carried on by the company.

When the asset is used for any other purpose in the business afer it ceases to be used for scientific research related to that business, depreciation shall be admissible under provision of section 32.

If any asset used for scientific research purpose is sold, then the price realised for the sum shall be taxable in full either under the head Profits and Gains of business and on capital gain.

CONCLUSION AND SUGGESTION:

In computing the taxable profits and gains of business of an assessee any expenditure, not being in the nature of capital expenditure laid out or expended on scientific research related to the business shall be allowed as deduction. Under section 35. Expenditure to be allowable for a deduction should be incurred on scientific research carried on by the assessee or on behalf. The Supreme Court has held in C.I.T. Vs. Ciba of India Co Ltd, 69 ITR 692(Sc) 1968; that payment made to obtain to benifit of research

conducted by another person on his own account is not an allowable deduction under section 35, but it may be allowable under section 37(1). Thus in order to availability as deduction under section 35 it is uncumbent up on the tax payer on whom the burden lies to establish that expenditure incurred by hin on research carried on either himself or on his behalf or at his own business.

Generally speaking revenue expences incurred before commencement of business is not deductable. But with view to encourage scientific research, with effect from 1.4.1976 with an explanation to section 35(I) (i) has been inserted by Finance Act 1974; Which provides that revenue expenditure incurred by the assessee on payment of salary to research personnel and material inputs during the period of 3 years immediately preceding the commencement of the production will be regarded as having been expended in the previous year in which the commercial production is commenced. The deduction will be limited to the amount certified by the prescribed authority.

Unless expenditure is incurred, it is difficult for the prescribed authority to certify research. Consequently every assessee faces some difficulty. If for any reason the prescribed authority fails to certify the assessee has two outlets--

4.45

i) Contest the view expressed by the prescribed authority.

ii) At least to show the Income Tax Officer by way of producing all relevant documents that expenditure complies with the conditions under section 37 and hence deduction may be granted to him. This course of action would be necessary because the above expenditure is a sunk cost.

The implication of the words in the explanation be deemed to have been laid out or expended in the previous year in which the business is commenced may be taken as under -

The explanation generally refers to a situation before commencement of business and not before setting up of business it may be noted that a business set up when it is establish on set on foot. In the case of a new business accounting year commences on the date when the business is set up. Expenditure incurred before setting up of a business can not be allowed as deduction under Income tax act. This is because, before setting up, such expenditure would fall outside and on accounting year and have outside scope of section 28 which applies to business carried on secondly any expenditure incurred afer setting up but before commencement of business may be allowed under section 35 to 37 since

it would within the accounting year. It may happen that the business of the company may be commenced before it's incorporation should be allowed as deduction against revenue receipt of the same period. However, this general rule is not applicable deduction under section 35.

It is possible that due to want of profit in a particular year all capital expenditure deductable under section 35 may not be absorbed by the profits. In such cases the unabsorbed capital expenditure carried forward without any time limit, like unabsorbed depreciation allownance.

It is may be better to carry on research activity with due capital since in addition to tax benefit available under section 35, the company can also claim interest as on eligible expenditure for deduction. This would be half in regarding the effective cost of research.

Deduction under section 35 can be claimed for contribution made to approved bodies, for acquiring know how developed by them, however such expenditure may account to capital expenditure and is not eligible for deduction under section 37, hence it is better for the company to develop know-how in its own laboratory or by purchasing know-how further processing made can be in its laboratory to suit the specific needs of the company.

To take the maximum advantages of tax benefits the company should project the future profit potentional as accurately as possible with the help of a suitable profit plan and then expend the research activity. The success study of some companies in the private sector shows that they could built up a strong asset net work with the help of such successful planning over a period of 5 to 10 years during which period they have paid taxes.

4.47A

EXPENDITURE ON KNOW-HOW SECTION-35 AB

This new section is to be brought from 1-4-1986. It provides that where the assessee has paid in any previous year any lumsum consideration for acquiring any knowhow for use for the purposes of his business, one-sixth of the amount so paid shall be deducted in computing the profits and gains of the business for that previous year and the balance amount shall be deducted in equal instalments for each of the five immediately succeeding previous years.

Where the know-how is developed in a laboratory, university or in institution approved in this behalf the amount shall be paid equally over 3 years i.e. One-third of the said lumsum consideration paid in the previous year shall be deductable in computing the profits and gains of the business for that year and the balance amount shall be deductable in equal instalment for each of the two immediately succeeding previous year.

For the purpose of this section " know-how" means any industrial information or technique likely to asset in the manufacture or processing of goods or in the working of a mine-oil well or other sources of mineral deposits (including the searching for, discovery or testing of deposits or the winning of acces thereto).

4.50

DEDUCTIONS IN RESPECT OF INVESTMENT IN CERTAIN NEW SHARES - SECTION 80 CC

SECTION 80 CC

Deduction under section 80CC is available, where an assessee being-

a) An individual, or

b) A Hindu Undivided Family, or

c) An association of persons or body of individuals consisting 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 Daman and Diu,

has acquired in the previous year (being a previous year relevant to the assessment year commencing on the 1st day of April,1979, or any subsequent assessment year) out of his income chargeable to tax, equity shares forming part of any eligible issue of capital, he shall in accordance with and subject to the provisions of this section, be allowed a deduction in the computation of his total of an ammunt equal to 50 percent of the cost of such shares to him OR Rs. 10,000 whichever is less.

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EXPLANATION :

1) Where in any previous year the assessee has acquired any shares referred to in this sub section and has within a period of six months from the end of that previous year, paid the whole or a part of the amount if any, remaining unpaid such shares, the amount so paid shall be deemed to have been paid by the assessee towards the cost of such shares in that previous year.

2) Where the aggregate cost of the assessee of the shares referred to in sub section (1) which are acquired by him in the previous year exceeds Rs. 10,000, the deduction under that sub section shall be allowed only with reference to such of those shares (being shares the aggregate cost whereof to the assessee does not exceed Rs. 10,000 as are specified by him in this behalf).

3) For the purpose of this section, "eligible issue of capital" means an issue of equity shares which satisfies the following conditions, namely -

a) The issue is made by a public company formed and registered in India with the main object of carrying on the business of -

i) construction, manufacture or production of any article or thing, not being an article or thing

specifies in the list in the Eleventh Schedule; or

ii) providing long term finance for construction or purchase of houses in India for residential purposes.

Provided that in the case of a public company formed and registered in India with the main object of carrying on the business referred to in sub-section (ii), such company is approved by the Central Government for the purpose of this section.

b) The issue is an issue of capital made by the company for the first time.

c) The shares forming part of the issue are offered for subscription to the public.

d) Such other conditions as may be prescribed.

Provided that in the case of a company which had originally been incorporated as private company but has become a public company under the provisions of Companies Act. 1956 (1 of 1956) an issue of equity shares made by it for the first time after it has become a public company shall not be regarded as an eligible issue of capital, if -

i) such company had declared, distributed or paid any dividend when it was a private

4.53

company, or

ii) any of the shares forming part of such issue is offered for subscription at a premium.

EXPLANATION 1:

If any question arises as to whether any issue of equity shares would constitute an eligible issue of capital for the purposes of this section, the question shall be referred to the Central Government whose decision thereon shall be final.

EXPLANATION 2:

In this sub-section 4 "Public Company" shall have the meaning assigned to it in section 3 of the Companies Act 1956 (1 of 1956)

4) The deduction under sub section (1) shall not be allowed unless the assessee has -

i) subscribed to the shares in pursuance of an offer for subscription to the public made by the public company or in pursuance of a reservation or an option in his favour by reason of his being a

4.54

promoter of the company; or

ii) 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 (1 of 1956) and who has acquired such shares by virtue of his obligation as such underwriter.

5) If any equity shares, with reference to the cost of which a deduction is allowed under sub section (1), are sold or otherwise transferred by the assessee to any person at any time within a period of 3 years (inserted Finance Act 1987, with effect from 1st April, 1987) from the date of their acquisition an amount equal to 50 percent of the cost of the assessee of the shares so sold or otherwise transferred shall be deemed to be the income of the assessee of the previous year in which the shares are so sold or transferred and shall be chargeable to tax accordingly.

EXPLANATION:

A person shall be treated 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.

6) Where a deduction is claimed and allowed under sub-section (1) with reference to the cost of any equity shares,

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the cost of such shares shall not be taken into account for the purposes of section 54E.

LEGISLATIVE HISTORY :

Section 80CC was introduced by the Finance Act 1978 (19 of 1978) with effect from 1.4.1978; this section also modified by the Finance Act 1987 with effect from 1.4.1987.

CONCLUSION AND SUGGESTION

Section 80CC provides incentive to investors to invest their funds in the initial public equity issues. Under this section, tax payer will be entitled to a deduction in the computation of their taxable income of the amount equal to 50 percent of the cost of such shares to them. The maximum amount of investment qualifying for deduction in a year will be limited to Rs. 10,000/-. Hence where the aggregate cost of the shares purchased by a tax-payer in the previous year exceed Rs. 10,000/- the deduction will be allowed only with the reference to the cost of the such shares as are specified by the tax-payer in this befalf.

With a view to stimulating investment in equity shares in such companies, the Finance Act has raised the maximum amount of investment qualifying for deduction under

4.56 this provision from Rs 10,000/- to Rs. 20,000/- with effect from 1.4.1983.

The purpose of this provision provides for the grant of tax concession in case of individuals or Hindu Undivided Family and Association of persons or bodies of individuals consisting 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 Daman and Diu who acquired any equity shares forming part of an eligible issue of capital.

For the purposes of this section, an eligible issue of capital means an issue of equity shares which satisfies certain conditions. This conditions are-

1) The issue is made by a public company formed and registered in India, carrying on the business of construction, manufacture or production of specified things or providing long term finance for construction or purchase of houses in India for residential purpose.

2) The issue is an issue of capital made by the company for the first time.

3) The shares forming part of the issue as offered for public subscription.

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4) Such other conditions as may be prescribed.

The main objective of this provision is to stimulate investment in equity shares of new industrial companies. The equity capital is the risky capital. Further in case of new industrial companies there is waiting period. The investors may not get return on their investment in the immediate short period. The company may require 3 to 6 years to earn adequate profits so that the company can pay reasonable rate of return to its share holders. As such the investors are not much interested in acquiring initial issues of new industrial companies. In absence of demand from public it may be difficult to raise adequate funds required by the company. To induce the investors to acquire new shares, this section provides tax concession in respect of investment in eqity shares of new industrial companies. The section provides a deduction in the computation of their taxable income of an amount equal to 50 per cent of the cost of such shares purchased or Rs 10,000/- whichever is less. The concession granted with effect from 1.4.1978 was not so attractive and hence by the Finance Act 1982, the deduction limit has been raised from Rs 10,000/- to Rs 20,000/-.

From the view point of investor, deduction is attractive. However, to make it more attractive, it is suggested to

raise the limit further from Rs 20,000/- to Rs 40,000/-

The deduction allowed under this provision will be forfeited if the tax-payer sells or otherwise transfers these shares to any person within a period of 5 years, from the date of their acquisition. This provision is harmful to the investors. I hope that such time period is unnecessarlly stipulated in this section. If it is to be, the period should be curtailed from 5 years to 3 years.

From the view point of companies, it is felt that the scope of this section is limited. The provision is applicable to a public company carrying on business in the specified fields. The scope of the section should be broaden to include the companies which are included in other fields also.

The deduction is allowed, if the issue is an issue of capital made by the company for the first time. It means the benefit of this section is not allowed at subsequent stages. The company may require additional fund for expansion, modernization and rehabilitation. The change is required to allow a deduction even for subsequent issues of shares.

It is worthwhile to note the case of rehabilitation of shipping industry. The shipping industry's case is peculiar and the existing companies would need to raise most of the

4.59

equity capital for their expansion and modernization, therefore, the scope of this section should be widened to include existing and composite companies-both shipping and composite company. It is pointed out that the current level of profitability it may not be possible for most shipping companies to attract the necessary investment and some incentives would have to be given to investors under section 80CC; a shipping service industry is excluded from benefits under this section in brief.

In short it suggested that-

1) The present deduction of Rs.20,000/- is insufficient so it is better to increase in proportionately.

2) To bring service industry under the scope of this section.

3) To reduce the forfeiture period.

4) To widen the scope so this concession may be allowed to raise equity capital for expansion, modernization, and rehabilitation.

4.60

DEDUCTION IN RESPECT OF PROFITS AND GAINS FROM NEWLY ESTABLISHED INDUSTRIAL UNDERTAKINGS OR HOTAL BUSINESS IN BACKWARD ARES. SECTION 80HH

SECTION 80HH

1) Where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking, or the business of a hotel, 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, a deduction from such profits and gains of an amount equal to 20 per cent of thereof.

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

i) It has begun or begins to manufacture or produce articles after the 31st day of December 1970, in any backward area;

ii) it is not formed by the splitting up, or the reconstruction of business already in existence in any backward area.
Provided that this condition shall not apply in respect of any industrial undertaking which is

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formed as a result of the re-establishment, reconstruction or received by the assessee of the business of any such industrial 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 in any backward area;

iv) it employs ten or more workers in a manufacturing process acrried on with the aid of power, or employs twenty or more workers in a manufacturing process carried on without the aid of power.

EXPLANATION:

Where any machinery or plant or any part thereof previously used for any purpose in any backward area is transferred to a new business in that area or in any other backward area and the total value of the machinery or plant or part so transferred does not exceed 20 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 fulfilled.

4.62

3) This section applies to the business of any hotel, where all the following conditions are fulfilled namely-

i) the business of the hotel has started or starts functioning after the 31st day of December 1970, in any backward area;

ii) the business of the hotel is not formed by the splitting up, or the reconstruction, if a business already in existence,

iii) the hotel is for the time being approved for the purpose of this sub section by the Central Government.

4) The deduction specified in sub section (1) shall be allowed in computing the total income in respect of each of the ten assessment years begining with the assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce articles or the business of the hotel starts functioning.

Provided that -

i) in the case of an industrial undertaking which has begun to manufacture or produce artocles and

ii) in the case of the business of hotel which has started functioning after the 31st day of

4.63

December 1970, but before the 1st day of April 1973, this sub section shall have effect as if the reference to ten assessment years were a reference to ten assessment years as reduced by the number of assessment years which expired before the 1st day of April 1974.

5) Where the assessee is a person other than a company or a co-operative society, the deduction under sub section (1) shall not be admissible unless the accounts of the industrial undertaking or the business of the hotel 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 accountant.

6) Where any goods held for the purposes of the industrial undertaking or the hotel are transferred to any other business carried on by the assessee or where any goods held for the purposes of any other business carried on by the assessee are transferred to the industrial undertaking or the hotel and, in either case, the consideration, if any, for such transfer as recorded in the accounts of the business of the industrial undertaking or the hotel does not correspond to

the market value of such goods as on the date of the deduction under this section, the profits and gains of the industrial undertaking or the business of the hotel shall be computed as if the transfer, in either case, had been made at the market value of such goods as on the date.

Provided that where, in the opinion of the Income tax Officer, the computation of the profits and gains of the industrial undertaking or the business of the hotel in the manner hereinbefore specified presents exceptional difficulties, the Income Tax Officer may compute such profits and gains on such reasonable basis as he may deem fit.

EXPLANATION:

In this sub section "market value" in relation to any goods means the price that such goods would ordinarily fetch on sale in the open market.

7) Where it appears to the Income Tax Officer that owing to close connection between the assessee carrying on the business of the industrial undertaking or the hotel 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 the business of the industrial undertaking or the

hotel, the Income Tax Officer shall, in computing the profits and gains of the industrial undertaking or the hotel for the purposes of the deduction under this section, take the amount of profits as may be reasonably deemed to have been derived therefrom.

8) Omitted by the Taxation Laws Act 1975, with effect from 1.4.1976.

9) In a case where the assessee is entitled also to the deduction under (section 80I or section 80J) in relation to the profits and gains of an industrial undertaking or the business of a hotel to which this section applies, effect shall first be given to the provisons of this (80HH) section.

9A) Where a deduction in relation to the profits and gains of a small scale industrial undertaking to which section 80HH HA applies is claimed and allowed under that section for any assessment year, deduction in relation to such profits and gains shall not be allowed under section for the same or any other assessment year.

10) Nothing contained in this section shall apply inrelation to any undertaking engaged in mining.

11) For the purposes of this section "backward area"

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means such area as the Central Government may, having regard to the stage of development of that area, by notification in the Official Gazzette, specify in this beflaf.

Provided that any notification under this sub section may be issued so as to have retrospective effect to a date not earlier than the 1 day of April 1983.

EXPLANATION

In this section "backward area" means an area specified in the list in the Eighth Schedule.

LEGISLATIVE HISTORY:

The Direct Taxes (Amendment) Act 1974, has inserted a new section (80HH) with effect from 1.4.1974. Clause (8) of this section omitted by the Taxation Laws (Amendment) Act 1975, with effect from 1.4.1976.

EXPLANATION :

STATUTORY RULES :

Rule 18B of the Income-tax lays down 'the report of audit of the accounts of an assessee other than a company or a co-operative society which is required to be furnished under sub section 80HH shall be in form under 10C'

4.67

TRANSFER OF GOODS

For the purpose of determining the profits of the industrial undertaking or the hotel, where any goods held by the undertaking or the hotel are transferred to any other business carried on by the assessee, the value of the transfer, if not recorded at the market rates, will have to be accounted for at market rates. Thus if the owner of the new undertaking transfer the products of the undertaking to another business carried on by him at Rs. 4,00,000/- while the market value thereof is Rs. 5,00,000/- the book profit of the undertaking are to be increased by Rs. 1,00,000/- to arrive at the profits for the purpose of section 80HH.

On the other hand if such transfer be at Rs.7,00,000/- the book profit have to be reduced by Rs. 2,00,000/-

YEARS OF ALLOWANCE

This deduction can be allowed each of the ten assessment years beginning with the assessment year relevant to the previous year of commencement of production or starting the functioning of the hotel as the case may be. However, where the industrial undertaking has already started to manufacture or produce articles or the hotel has already started functioning before 1.4.1973, but after 31.12.1970, the number of assessment year which such deduction will be allowed by the number of assessment years that have expired

4.68

before 1.4.1974.

NO DEDUCTION IN CASE OF SMALL SCALE INDUSTRIAL UNDERTAKING :

With effect from 1.4.1978 no deduction shall be allowed under section 80HH for the same or any assessment year in a case where a deduction in relation to the profits and gains of small scale industrial undertaking to which section 80 HHA applies is claimed and allowed under that section for any assessment year.

CONCLUSION AND SUGGESTION :

The relief under section 80HH is open to any newly established industrial undertaking, promoted in backward area, as specified in the Eighth Schedule of the Act. Under this section which all categories of tax payers will be entitled to a deduction equal to 20 per cent of the profits derived by them from new industrial undertakings (other than those engaged in mining) and approved hotels set up after the 31st December 1970 in backward areas. In the case of industrial undertakings which begin to manufacture or produce articles after 31 st December 1970, the deduction will be allowed in respect of each of the ten assessment years beginning with the assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce articles.

It may be noted that the new concession will be

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available in the case of industrial undertakings which are formed by splitting up or reconstruction of a business already in existence in a non-backward area and, accordingly industrial undertakings shifting from non backward areas to backward area will qualify for the tax concession. Where an industrial undertaking is formed as result of re-establishment reconstruction or revival by the tax payer of the business of any such industrial undertaking as is referred to section 33B in the circumstances and within the period specified in that section, the same will qualify for next tax concession, even though the earlier business was situated in any specified backward area.

The industrial undertaking should not have been formed by the transfer to new business of machinery or plant previously used for any purpose in any backward areas specified in the Eighth Schedule in case where any machinery or plant or any part thereof previously used in any backward area is transferred to a new business in that area or in any other backward area the total value of the machinery or plant so transferred does not exceed 20 per cent of the total value of the machinery or plant used in business. In this connection, it may be noted that, unlike the provision in section 80J, it is nota necessary under the new section 80HH that the industrial undertaking should have been set up in a new building.

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SUGGESTION:

The tax incentives is given for ten assessment years. However there is no provision for carry forward of deficiency of initial years and so far the first few years of the life of new industrial undertaking, this benefit may remain only on the papers, because there may be no taxable profits after full allowance of depreciation, investment allowance and even set off earlier years brought forward business losses. It may happen that the new business unit may not get benefit of this section for first 3 to 5 years becasue of losses. There, it is suggested that-

1) The existing period of ten assessment years be extended.

2) This section is applicable only to the centrally backward districts but not applicable to the state backward districts. So in order to develop all other backward areas, it should be applicable to that areas also to the extent of few years as compared to the centrally backward districts.

3) Section 80 HH should be simplified.

4.71

DEDUCTION IN RESPECT OF PROFITS AND GAINS FROM NEWLY ESTABLISHED SMALL SCALE INDUSTRIAL UNDERTAKINGS IN CERTAIN AREAS. SECTION 80 HHA.

SECTION 80 HHA:

1) Where the gross total income of an assessee includes any profits and gains derived from a small scale industrial undertaking to which this section applies, there shall, in accordance with ~~this~~ and subject to the provisions of this section, be allowed, computing the total imcome of the assessee, a deduction from such profits and gains of an amount equal to twenty per cent thereof.

2) This section applies to any small scale industrial undertaking which fulfil all the following conditions, namely-

i) it begins to manufacture or produce articles after the 30th day of September 1977 in any rural area;

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 small scale industrial undertaking which is formed as a result of the re-establishment,

4.72

reconstruction or revival by the assessee of the business of any such industrial undertaking as is referred to in section 33 B, 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 purposes;

iv) it employs ten or more workers in a manufacturing process carried on with the aid of power, or employs twenty or more workers in a manufacturing process carried on without the aid of power.

EXPLANATION:

Where in the case of a small scale industiral 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 20 per cent of the total value of the machinery or plant used in the business then, for the purposes of clause (iii) of this sub section, the condition specified therein shall be deemed to have been fulfilled.

3) The deduction specified in sub section shall be allowed in computing the total income (of each of the ten previous years beginning with the previous year in which the

...

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the industrial undertaking) begins to manufacture or produce articles.

Provided that such deduction shall not be allowed in computing the total income of any of the ten previous years aforesaid in respect of which the industrial undertaking is not small scale industrial undertaking within the meaning of clause (b) of the Explanation below sub section (8).

4) Where the assessee is a person, other than a company or a co-operative society the deduction under sub section (1) shall not be admissible unless the accounts of the small scale industrial 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.

5) The provision of sub section (6) and of section 80HH shall, so far as may be apply in relation to the computation of the profits and gains of a small scale industrial undertaking for the purposes of the deduction under this section as they apply in relation to the computation of the profits and gains of an industrial undertaking for the purposes

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of the deduction under that section.

6) In a case where the assessee is entitled also to the deduction under (section 80I or) section 80J in relation to the profits and gains of a small scale industrial undertaking to which this section applies, effect shall first be given to the provisions of this section.

7) Where a deduction in relation to the profits and gains of a small scale industrial undertaking to which 80HH applied is claimed and allowed in that section for any assessment year, deduction in relation to such profits and gains shall not be allowed under this section for the same or any other assessment year.

8) Nothing contained in this section shall apply to, in relation to any small scale industrial undertaking engaged in mining.

EXPLANATION:

a) "rural area" shall have the same meaning as in clause (B) of the explanation to sub section (1) of section 35 CC.

b) an industrial undertaking shall be deemed to be a small scale industrial undertaking if the

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aggregate value of the machinery and plant (other than tools, jigs, dies and moulds) installed, as on the last day of the previous year, for the purpose of (the business of the undertaking does not exceed -

1) in a case where the previous year ends before the 1st day of August 1980, ten lakh rupees,

2) in a case where the previous year ends after the 31st day of July 1980 but before the 18th day of March 1985, twenty lakh rupees.

3) in a case where the previous year ends after the 17th day of March 1985, thirty five lakh rupees.

and for this purpose the value of any machinery or plant shall be -

1) in the case of any machinery or plant owned by the assessee, the actual cost thereof to the assessee and

ii) in the case of any machinery or plant hired by the assessee, the actual cost thereof as in the case of the owner of such machinery or plant.

LEGISLATIVE HISTORY:

Section 80HHA has been introduced by the Finance

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(No.2) Act, 1977, with effect from 1.4.1978. This section allows a deduction of 20 percent of the profits and gains derived from a small scale industrial undertaking, which begins to manufacture or produce articles after 30.9.1977 in any rural area. (other than those engaged in mining)

The deduction will be allowed in respect of each of the ten assessment years beginning with the assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce articles.

EXPLANATION :

Rural Area Means

'Rural area means any area other than-

i) an area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation notified area committee, town area committee, town committee by any other name) or a cantonment board and which has a population of not less than 10,000 according to the last preceding census of which the relevant figures have been published before the first day of the previous year, or

ii) an area within such distance, not being more than 15 kilometers, from the local limits of any

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municipality or cantonment boards referred to in sub section (I) as the Central Government may, having regard to the stage of development of such area (including the extent of, and scope for, urbanisation of such area) and other relevant consideration specify in this behalf by notification in the Official Gazzete.

2) For this section 80 HHA the value of any machinery or plant shall be-

i) in the case of any machinery or plant owned by the assesseethe actual cost thereof the assessee, and

ii) in the case of any machinery or plant hired by the assessee the actual cost hereof as in the case of the owner of such machinery or plant.

CONCLUSION AND SUGGESTIONS:

Section 80 HHA has been drafted more or less on the same lines as section 80 HH. The terms and conditions used in section 80HHA are used in the same spirit as in section 80HH.

However the following points are worth mentioning here-

1) Deduction under section 80HH is not allowed provided deduction under section 88HHA is claimed and allowed. The

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reverse also holds good. But assessee may not that by the time the returns are filled before an Income Tax Officer, they can only claimed a deduction under a particular section and it can not be said whether it would be allowed by the Income Tax Officer or not. But, they may not face any problem in claiming the deduction under the alternative section at later if the deduction claimed under the other section is allowed.

2) The term "industrial undertaking" has not been defined in the Income Tax Act 1961, But as per the present legal opinion, it may not include the hotel business. So deduction under section 80 HHA may not be allowed for a hotel business.

3) The section applies even if the assets are hired from outside the backward area, but the deduction under section 80J may not be available in relation to computing "relevant amount of capital employed".

4) This section is applicable to where the unit is registered under Factory Act, not in other cases. Hence it is suggested that the criteria of the number of employes should be abolished.

DEDUCTION IN RESPECT OF PROFITS AND GAINS FROM INDUSTRIAL UNDERTAKINGS AFTER A CERTAIN DATE.Etc

SECTION 80I

Section 80 I has been frequently change from period to period. It is necessary to maintain that the topic explain with by the section has been changed as indicated below in the course of the post few years.

Assessment Year		Topic
1) 1968-69 to 1972-73	-	Exemption in respect of priority industries previously covered section 80 E.
2) 1973-74 to 1980-81	-	The section stood omitted.
3) 1981-82 onwards	-	Exemption in respect of New industrial undertaking etc, going into operation after 31 March, 1981.

1968-69 to 1972-73 :- The section allowed a deduction inrespect of profits and gains from priority industries. In the case of a company to which this section applies, where the gross total income includes any profits and gains attributable to any priority industry. Thereshall be allowed a deduction from such profits and gains of an amount equal to 8% there of, in computing the total income of the company. Priority industry means the business of generation or distribution

of electricity or any other form of power or of construction, manufacture, or production of any one or more of the articles or things specified in the list in the Sixth Schedule or the business of any hotel where such business is carried on by the Indian Company and the hotel is for the time being approved in this behalf by the Central Government. With effect from 1.4.1972 the rate of deduction has been changed from 8% to 5%.

1972:- Section 80 I was omitted by the Finance Act 1972 (16 of 1972) w.e.f. 1 April 1973. The purpose of this omission was explained as withdrawal of relief in respect of specified priority industries Under section 80 I income derived by certain domestic companies from specified priority industries is charged to tax on a concessional basis. The priority industries specified in this behalf comprises:-

(a) The business of generation or distribution of electricity or any other form of power;

(b) The business of construction, manufacture or production of any one or more of the articles or things spefified in the list in the Sixth Schedule; and

(c) The business of any hotel, where such business is carried on by an Indian Company and the hotel is, for the being, approved in this behalf by the Central Government.

The concessional taxation of profits from these industries is brought about by allowing a deduction of a certain percentage of such profits in computing the taxable income of the domestic company; the scope of the application of this section by omitting some items from the list of articles and things in the Sixth Schedule. The Finance Act, 1972 has altogether omitted section 80-I, thus wholly withdrawing the concession available to priority industries under that section from 1 April, 1973, i.e. for and from the assessment year 1973-74.

The section was inoperative from 1 April, 1973 to 31 March, 1981.

1980 - The Finance (No. 2) Act 1980 (44 of 1980) re-introduced section 80-I with effect from 1 April, 1981, under section 80 I where the gross total income of an assessee include any profits and gains derived from an industrial undertaking or a ship of the business of hotel or the business of repairs to Ocean - going vessels or other powered craft to which this section applied, there shall in accordance with and subject to the provisions of this section be allowed in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to 20% thereof.

The deduction is admissible to any industrial undertaking which fulfils the following conditions:-

(1) It is not formed by the splitting up, or the reconstruction, of a business already in existance.

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

(3) It manufactures or produces any articles or thing not being an article or thing specified in the list in the Eleventh Schedule or operate cold storage plant in any part of India and begins to manufacture or operate such plant at any time within a period of 9 years following March 31, 1981 or such further period as the Central Government may, by notification in the Official Gazette, specify with reference to any particular industrial undertaking. Deduction is admissible to all small-scale industrial undertakings even if they are engaged in the production of articles listed in the Eleventh Schedule.

(4) In a case where the industrial undertaking manufactures or produces articles or things, the undertaking employs 10 or more workers in a manufacturing process carried on with the aid of power, or employs 20 or more workers in a manufacturing process carried on with out the

aid of power.

Section 80 - I applies to the business of any hotel, the conditions required to be fulfilled are following ...

(1) The business of the hotel is not formed by the splitting up or the reconstruction of a business already in existence or by the transfer to a new business of a building previously used as a hotel or of any machinery or plant previously used for any purpose.

(2) The business of the hotel is owned and carried on by a company registered in India with the paid up capital of not less than Rs. 5,00,000/-

(3) The hotel is for the time being approved for the purposes of this provision by the Central Government.

(4) The business of hotel starts functioning after March 31, 1981, but before April 1,1990.

Section 80-I applies to any ship, where all the following conditions are fulfilled, namely-

(1) It is owned by an Indian company and is wholly used for the purposes of the business carried on by the assessee.

(2) It should not have, prior to its acquisition by an Indian company, been owned and used in India territorial waters by a person resident in India.

(3) It is brought in to use by the Indian company within 9 years next following March 31, 1981 (up to 1st April 1990.)

Section 80 I applies to the business of a repairs to ocean-going vessels or other powered craft which fulfills all the following conditions namely-

(1) The business is not formed by the spilitting up or the reconstruction of a business already in existence.

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

(3) It is carried on by an Indian company and the work by way of repairs to ocean-going vessels or other powered craft has been commenced by such company after March. 31, 1983 and before April 1, 1988.

(4) It is for the time being approved by the Central Government.

The amount and period of deduction is given below :-

	% of profits deductable	Period of deduction
1. In case of a company carrying on the business of repairs to ocean-going vessels or other powered craft.	20	5 years
2. In the case of a company engaged in an activity other than the stated above	25	8 years
3. In the case of a co-operative society	20	10 years
4. In the case of any other assessee.	20	8 years

The objectives of this insertion was elaborated by the Board as under :-

(1) Under section 80-I a "tax holiday" is granted in respect of profits made by assessee form any industrial undertaking (including a cold storage plant) newly set up in India. The concession is also avilable in relation to profit derived by an Indian company from the business of an approved hotel or from playing a ship. The tax holiday concession

consists of exemption from income-tax up to a specified percentage of the capital employed in the undertaking, hotel or ship for specified number of assessment year.

(2) This tax concession has been criticised on the ground that it is baised in feavour of capital intensive techniques and that it weights heavily in favour of the existing concerns setting up new industrial units in as much as such concerns can not only obtain the benefit of the "tax holiday" provisions immediately by setting off the loss, depreciation and investment allowance of the new units against profits of the other units, but also derive a larger benefit in some cases over the entire "tax holiday" period.

(3) The existing "tax holiday" provisions will apply in relation to new industrial undertakings which go in to production before 1 April,1981 or approved hotels which start functioning before that date or new ships which are brought in to use on or before that date. The finance Act has inserted a new section 80-I which will apply in relation to new industrial undertakings (including cold storage plants) which are set up after 31 March,1981 or approved hotels which starts functioning after that date or ships which are brought into use after 1 April, 1981. The "tax holiday" under new provision will be available in respect of new industrial

undertakings set up before 1 April, 1985 or approved hotels which start functioning before that date or new ships which are acquired on or before that date. The new "tax holiday" scheme differs from the existing scheme in the following respects, namely-

1) The basis of computing the "tax holiday" profits has been changed from capital employed to a percentage of the taxable income derived from the new industrial unit, ship or approved hotel. In the case of companies 25% of the profits derived from new industrial undertakings etc; will be exempted from tax for a period of eight years and in the case of other taxable antities, 20% of such profits will be exempted for a like period. In the case of co-operative societies, however, the exemption will be allowed for a period of ten years instead of eight years.

2) The benefit of "tax holiday" under the new scheme would be admissible to all small scale industrial undertakings even if they are engaged in the production of articles listed in the Eleventh Schedule to the Income-tax Act. In the case of other industrial undertakings, however, the deduction will be available as at present, where the undertakings are engaged in the production

of articles other than articles listed in the said schedule.

3) In computing the quantum of "tax holiday" profits in all cases, taxable income derived from the new industrial units, etc; will be determined as if such unit were an independent unit owned by an assesse who does not have any other source of income. In the result, the losses, depreciation and investment allwance of earlier years in respect of the new industrial undertakings, ship or approved hotels will be taken into account in determining the quantum of deduction admissible under the new section 80-I even though they may actually have been set off against the profits of the assessee from other sources.

- SUGGESTION -

1) Benefit of the section 80-I is available only to the domestic company, this criateria of statutes of an eligible assessee should be abolish.

2) The ciling limit of the paid up capital of Rs. 5,00,000/- in the case of a hotel business eligible assessee should be decrease to the some extent.

3) There are some common provisions of section 80-I and section 80-J should be avoide or abolish.

4) Further it is suggested that the benefit of new section 80-I should be available to the all class of the company.

DEDUCTION IN RESPECT OF PROFIT AND GAINS FROM NEWLY ESTABLISHED INDUSTRIAL UNDERTAKINGS OR SHIPS OR HOTEL BUSINESS IN CERTAIN CASES. SECTION-80 J.

SECTION - 80J.

(1) Where the gross total income of an assessee includes any profits and gains derived from an Industrial undertaking or a ship or the business of a hotel, to which this section applies there shall, in accordance with the subject to the provisions of this section, be allowed, in computing the total income of the assessee a diduction from such profits and gains (reduced by the deduction if any, admissible to the assessee under section 80 HH (or section 80 HHA) of so much of the amount there of as does not exceed the amount calculated at the rate of six per cent per annum on the capital employed in the industrial undertaking or ship or business of the hotel as the case may be (computed in the manner specified in sub-section (1A) in respect of the previsions year relevant to the assessment year. (the amount calculated as aforesaid being here after, in this section referred to as therelevant amount of capital employed during the previous year).

(provided that in relation to the profits and gains derived by an assessee being a company from an industrial

undertaking which begins to manufacture or produce aritical or to operate its cold storage plant after the 31st day of March, 1976, or from s hip which is first brought into use after that date, or from the business of a hotel which starts functioning after that date the provisions of this sub-section shall have effect as if for the words "six persent the words" seven and half percent" (had been substituted.)

(1A) I) for the purpose of this section, the capital employed in an industrial undertaking or the business of a hotel shall, except as otherwise expressly provided in this section be computed in accordance with clause (V)

II) the aggregate of the amounts representing the values of the computation period of the undertaking or of the business of the hotel to which this section applies shall first be ascertained in the following manner:-

i) In the case of assets entitled to depreciation their written down value.

ii) In the case of assets acquired by purchase and not entitled to depreciation, there actual cost of the assessee;

iii) In the case of assets acquired otherwise than by purchase and not entitled to

depreciation, the value of the assets when they become assets of the business;

iv) In the case of assets being debts due to the person carrying on the business the normal amount of those debts;

v) In the case of assets, being cash in hand or bank, the amount there of.

EXPLEANATION :- 1) In this case, "actual cost" has the same meaning as in clause (1) of section 43

EXPLEANATION :- 2) In this clause and in clause (III) "computation period" means the period for which profits and gains of the industrial undertaking or business of the hotel are computed under sections 28 to 43 A.

EXPLEANATION :- 3) In this clause and inclause (V) "Written down value" has the same meaning as in clause (6) of section 43.

EXPLEANATION :- 4) Where the cost of any assets has been satisfied otherwise than in cash, then the value of the consideration actually given for the asset shall be treated as the actual cost of the asset.

Expleanation :- For the purpose of this clause

(1) "Tax" means :-

a) income tax or super tax (including advance

tax) due under any provision of this act:

b) Wealth tax due under any provision of the wealth tax act 1957 (27 of 1957)

c) Gift Tax due under any provision of the Gift Tax Act 1958 (18 of 1958)

d) Super profits tax due under any provision of the super profits Tax Act 1963 (14 of 1963)

e) Super Tax due under any provision of the super profits Tax Act 1964 (7 of 1964)

II) any liability in respect of tax shall be deemed to have become due :-

a) in the case of advance tax due under any provision of this act on the date on which such advance tax is payable and,

b) in the case of any other tax on the first day of the period with in which it is required to be paid.

III) The result and sim as determined under clause (III) shall be diminished by the value, as ascertained under clause (II) of any investments the income from which is not taken into account in computing the profits of the business and any moneys not required for the purpose

the business in so far as the aggregate of such investments or moneys exceed the amount of the borrowed moneys which under clause(III) are required to be deducted in computing the capital.

V) The capital employed in a ship shall be taken to be the written down valuse of the ship as reduced by the aggregate of the amounts owned by the assessee as on the computation date on account of moneys borrowed or debts incurred in acquiring that ship.

Expleanation :- In this case "computation date" in relation to a ship means :-

a) In respect of the previous year in which the ship is first brought into use the date on which it is so brought into use:

b) In respect of any subsequent previous year, the first day of such previous year.

(2) The deduction specified in sub-section.

(1) shall be allowed in computing the total income in respect of the assessment year relevant to the previous year in which the industrial undertaking began to manufacture or produce

articles or to operate its cold storage plant or plants or the ship, is first brought into use or the business of the hotel starts functioning (such assessment year being here after in this section, referred to as the initial assessment year) and each of the four assessments years immediately aucceeding the initial assessment year:

Provided that in the case of an assessee being a co-operative society the provisions of this sub-section shall have effect as it for the words "Four assessment years" the words "Six assessment years" had been substituted.

(3) Where the amount of the profit and gains derived from the industrial undertaking or ship or business of the hotel, as the case may be included in the total income (as computed with out applying the provisions of section 64 and before making any deduction under chaper VIA or section 280-0 in respect of the previous year relevant to an assessment year commencing on or after the 1st day of April 1967, (not being an assessment year proper to the initial assessment year or subsequent to the fourth assessment year as reckoned from the end of the initial assessment year) falls short of the relevant amount of capital employed during the previous year, the amount of such shortfall, or

were there are no such profits and gains, an amount equal to the relevant amount of capital employed during the previous year (such amount in either case, being here after in this section, referred to as deficiency) shall be carried forward and set off against the profits and gains referred to in sub-section (1) (as computed after allowing the deductions if any, admissible under (***) (Section 80 HH) (or section 80 HHA) (***) and the side sub-section (1) in respect of the previous year relevant to the next following assessment year and it there are no such profits and gains for that assessment year or where the diffciency exceeds such profit and gains the whole or balance of the deficiency as the case may be, shall be set off against such profits and gains for the next following assessment year and if and so far as such deficiency cannot be wholly so set off it shall be set off against such profits and gains assessable for the next following assessment year and so:

Provided that :-

(I) In no case shall be the deficiency or any part thereof be carried forward beyond the seventh assessment year as reckoned from the end of the initial assessment year:

(II) Where there is more than one deficiency and each such deficiency relates to a different assessment year the deficiency

which relates to an earlier assessment year shall be set off under this sub-section before setting off the deficiency in relation to a later assessment year.

Provided Further :- That in the case of an assessee being a co-operative society, the provisions of this sub-section shall have effect as if for the words. "fourth assessment year" the word "sixth assessment year" had been substituted.

4) This section applies to any industrial undertaking which fulfils all the following conditions namely:-

(1) It is not formed by the splitting up, or the reconstruction of a business already in existence.

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

(3) It manufactures or produces articles or operates one or more cold storage plant or plants in any part of India, and had begun or begins to manufacture or produce articles to operate such plant, or plants at any time within the period of (thirty three) years next following the 1st day of April 1948, or such further period

as the Central Government may, by notification in the official Gazette, specify with reference to any particular industrial undertaking.

(4) in a case where the industrial undertaking manufactures or produces articles the undertaking employs ten or more workers in a manufacturing process carried on with the aid of power, or employes twenty or more workers in a manufacturing process carried on with out the aid of power:

Provided that the condition in clause (1) shall not apply in respect of any industrial undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such industrial undertaking as is refferred to in section 33/13 in the circumstances and within the period specified in that section:-

(Provided further that where any building or any part there of previously used for any purpose is transferred to the business of the industrial undertaking the value of the building or part so transferred shall not be taken in to account in computing the capital employed in the industrial undertaking).

(Provided also that in the case of an industrial undertaking which manufactures or produces any article specified in the list in the Eleventh Schedule, the provisions of clause (iii) shall have effect as it for the words "thirty

three years" the words "thirty one years" had been substituted.

EXPLANATION * 1:

For the purpose of clause (ii) of this sub section, any machinery or plant which was used outside India 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 provision of the provisions of the Indian Income Tax Act 1922(11 of 1922) or this Act in computing the total income of any person for any period prior to the date of the installation of the machinery or plant by the assessee.

EXPLANATION 2:

Where in the case of an industrial undertaking

any machinery or plant or part there of previously used for any furpose is transferred to a new business and the total value of the machinery or plant or part so transferred does not exceed 20 per cent of the total value of the machinery or plant used in the business, then, for the purpose of clause(ii) of this sub section, the condition specified therein shall be deemed to have been complied with and the total value of the machinery or plant or part so transferred shall not be taken into account in eomputing the capital employed in the industrial undertaking.

5) This section applies to any ship, where all the following conditions are fulfilled, namely-

1) It is owned by an Indian Company and is wholly used for the purpose of the business carried on by it;

2) It was not, previously to the date of its acquisition by the Indian company, owned and used in Indian territorial waters by a person resident in India; and

3) It is brought in to use by the Indian company at any time within a period of (thirty three) years next following the 1st day of April 1948.

6) This section applies to the business of any hotel.

Where all the following conditions are fulfilled, namely-

a) The business of the hotel is not formed by the splitting up, or the reconstruction of a business already in existence or by the transfer to a new business of building previously used as a hotel or of any machinery or plant previously used for any purpose.

b) the business of the hotel is owned and carried on by a company registered in India with a paid up capital of not less than five hundred thousand rupees.

c) the hotel is for time being approved for the purpose of this sub section by the Central Government;

d) the business of the hotel starts funtioning on or after the 1st day of April 1961, but before the 1st day of April 1981.

EXPLANATION:

Where in the case of the business of hotel any building or any part thereof previously used as hotel, or any machinery or plant, or part thereof previously used for any prupose, is transfered to a new business and the total value of the building, machinery or plant or part so transfered

does not exceed 20 per cent of the total value of the building, machinery or plant used in the business then for the purpose of clause (a) of this sub section the condition specified therein shall be deemed to have been complied with and the total value of the building, machinery or plant so transferred shall not be taken into account in computing the capital employed in the business of the hotel.

6A) Where the assessee is a person other than a company or a co-operative society, the deduction under sub section (a) from profits and gains derived from an industrial undertaking shall not be admissible unless the account of the industrial undertaking for the previous year relevant to the assessment year from which the deduction is claimed have been audited by an account, as defined in the Explanation below sub section (2) of section 288, and the assessee furnished, along with his returns of income, the report of such audit in the prescribed form duly signed and verified by such accountant.

6B) Where any goods held for the purpose of the business of the industrial undertaking or the hotel or the operation of the ship are transferred to other business carried on by the assessee, or where any goods held for the purpose of any other business carried on by the assessee are transferred to the business of the industrial undertaking or the hotel

or the operation of the ship and in either case the consideration, if any for such transfer as recorded in the account of the business of the industrial undertaking or the hotel or the ship does not correspond to the market value of such goods as on the date of the deduction under this section, the profits and gains of the industrial undertaking or the business of the hotel or the operation of the ship shall be computed as if the transfer if the either case, had been made at the market value of such goods as on that date, provided that where, in the opinion of the Income Tax Officer, the computation of the profits and gains of the industrial undertaking or the business of the hotel or the operation of the ship in the manner herein before specified presents exceptional difficulties the Income Tax Officer may compute such profits and gains on such reasonable basis as he may seem fit.

6C) Where it applears to the Income Tax Officer that, owing to the close connection between the assessee carrying on the business of the industrial undertaking or the operation of the ship to which this section applies and any other person, or for any other reason the course of business between the is so arranged that the business transacted between them produce to the assessee more than the ordinary profit which might be expected to arise in the business of the industrial undertaking or the hotel or the operation

of the ship, the Income Tax Officer shall in computing the purposes of the deduction under this section, take the amount of profits as may be reasonably deemed to have been derived therefrom.

7) The Central Government may after making such inquiry as it may think fit, direct, by notification in the official Gazzette, that the exemption conferred by this section shall not apply to any class of industrial undertaking with effect from such date as it may specify in the notification.

LEGISLATIVE HISTORY :-

Section 80 J is intended to encourage the growth of new industrial undertakings, shipping companies and new hotels in India. Under this section profit and gains derived from a new industrial undertaking or a ship or the business of a hotel are exempt of 6 per cent per annum of the capital employed there in, provided such new industrial undertaking, ship or hotel business satisfy the necessary conditions-

With effect from 1.4.1976, profits and gains derived by a company from a new industrial undertaking which begins to manufacture or produce articles or to operate it's cold storage plant or plants after 31.3.1976 or from the hotel business which starts functioning after 31.3.1976 or from the hotel business which starts functioning shall

exempt from tax to the extent of 7.5 per cent of the capital employed as against 6 per cent in other cases. This deduction will be calculated on the profits and gains left after deduction under section 80HH or 80 HHA if any.

This deduction is popularly known as "Tax Holiday"

CARRY FORWARD OF DEFICIENCY :-

As any business is generally not in position to have adequate profit in the initial years, it is often not able to avail in full of the benefit of the tax holiday. In order to make tax holiday concession have meaningful in such cases, it is provided allow carry forward of the amount of the deficiency in profits.

The deficiency in the tax holiday benefits is the amount by which the profits and gains derived from the industrial undertaking or ship or the business of the hotel in each year fall short of the statutory percentage (6% or 7.5% as the case may be) of the capital employed in the business. The deficiency, shall be carried forward and set off against the profits and gains arived at after availing deduction under section 80HH; 80HHA and 80I of the following year. In case there are no sufficient profits again in the following year it shall be carried forward further until it is compuletely set off. The maximum period for which the

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deficiency can be carried forward in 8 assessment years, commencing with the industrial undertaking started producing articles or operating cold storage plant or the ship is first brought in to use or the business of hotel starts functioning. Where there is more than one dificiency and each such deficiency relates to a different assessment year, the deficiency which relates to an earlier year shall be set off before the setting of deficiency in relation to later assessment year.

The benefit under this section is limited to profits from new business included in gross total income and not to a income of any nature not derived from new business. Adequacy of profits to pumb in the relief should be computed without appling any deduction under chaper VI A or always section 280 (0) of the act of such profits.

DEFICIENCY IS COMPUTED

Profit from the new business before deduction under section 6A or 280-0	Less - 6% or 7.5% per anum of capital employed in the previous year relevent to the assessment year. say
10,000	15,000

Here the deficiency will be Rs. 5,000/-

Even deduction under section 80HH or 80HHA is not

to be taken in to account in the computation of the deficiency. The deficiency is to be set off against profit from the new business included in the gross total income, less deduction under section 80HH or section 80J in any of the assessment year under reference.

For the example, if the initial assessment year is 1980-81 and if section 80HH or 80HHA also applies to the new business, the immaginary data for explanation may be taken as under-

ASSESMENT YEAR	PREVIOUS YEAR
1980-81	No profits
1981-82	No profits
1982-83	No profits
1983-84	Profits available
1984-85	Profits available
1985-86	Profits available
1986-87	Profits available
1987-88	Profits available
1988-89	Profits available

In this case, from the assessment year 1980-81, and 1982-83 the question of deduction under section 80HH or 80HHA does not arise. However there is deficiency for such assessment years under section 80J(3), so far computing any

deduction under section 80J for the assessment year 1983-84, the following aspects should be noted -

a) Allow deduction under section 80HH or 80HHA from the profits of the new business. The deduction is 20 per cent of such profits.

b) The deduction now for section 80J(a) is available only out of 80% of gross profits.

c) Then deficiency of the first, second, and third assessment year will be set off. Now only deficiency at this stage could be absorbed up course not later than the assessment year 1988-89.

EXPLANATION :

1) Meaning and scope of the words "Not formed By The Splitting Up Or The Reconstruction Of a Business Already In Existence".

The expression "Splitting up" or "Reconstruction" not having been defined in the Act a decision as to whether an industrial undertaking had only been reconstructed and not newly set up would depend on the facts of each case. These words have been taken up for discussion for a long time by the courts. However these words can be understood by studying the following cases-

1) C.I.T. Va Gaikwad Foam and Rubber Co. Ltd.
(1959) 35ITR 662. (Bom)

It was held that identify of the business should be lost and substantially the same business by more or less the same persons be carried on. If the business is sold wholly or its very nature is changed, it is not a case of reconstruction. That is any change of ownership of a business not ostensibly but in reality and/ or if the very nature of the business changes, there is not reconstruction.

2) C.I.T. Vs Indian Aluminum Co. Ltd.
(SC) 108 ITR 367.

In this case the company installed new plant and machinery in the existing factory premises, new factory was also established for production of the same commodity. The Supreme Court affirmed the decisions of the lower courts by granting the tax holiday relief to the new business, including new plant and machinery installed in the same premises. Thus, a substantial expansion or extension of an existing undertaking or a new unit in the vicinity or at a different premises even to manufacture the "same product" already being produced in the existing business is eligible for tax holiday benefit.

EXPLANATION :

"Meaning and scope of the words Not Formed by the Transfer to a New Business of Machinery or Plant Previously used for any Purpose".

This words have a reference to "Initial assessment year" i.e such transfer of old machinery previously used has not been made in the initial assessment year and that such transfer is not prohibited completely. But this view is not to agreed to by all. Secondly any such transfered of a "used asset" in initial year followed by installing a new machinery in subsequent year, even before the expiry of the tax holiday period can not bring back the already rejected benefit.

However these words can be understood by studying the following cases-

1) C.I.T. Vs Asbestos, Magnesia and Friction Materials Ltd. (106 ITR 286.)

In this case the assessee company was closing down its old factory and starting a new unit elsewhere. The new unit was formed by purchasing land, erecting building, imperting and installing machinery and equipments and providing floating capotal, all running into several lakhs of rupees. However, minor equipment of the old factory was reconditioned and utilised in the new unit. Here the question

arose whether the new factory was formed with old reconditioned machinery? What is the meaning of the word "Formed"?

Here to solve the riddle, the following question was raised.

a) What is the monetary value of the old assets transferred to the utilised in the new undertaking? Since it formed a small fraction of the assets employed in the new business, the new business can not be deprived of the benefits.

It should now be clear that, if the second hand assets are such that the new business cannot be regarded as having been formed by their acquistion, the condition laid down cannot be presumed to have been fulfilled even if the monetary value of the second hand assets exceeds 20 per cent of the total value of the plant and machinery used in other words the explanation deems the condition to be fulfilled when in reality it is not but if in reality the condition is fulfilled the explanation does not operate to deem it be unfulfilled.

2) C.I.T. Vs Electric Construction and Equipment Co.Ltd, 104 ITR 101 (Cal)

In this case the assessee started a factory with new machinery. Later some machinery from the old factory was

transferred to the new factory. The question was whether the new factory was entitled to the relief? It was found by the Tribunal that the factory at Cossipora was a new business and an independent unit. It was not formed by the transfer of the existing machinery or was a case of reconstruction. So the assessee was entitled to the relief.

EXPLANATION :-

Meaning of "Manufacture or Produce of Articles or Processing Goods"

The term manufacture or process has not been defined in the Act. This leads to various pronouncement from the Courts and the ghist of legal decisions is under.

In every case whether the finished product is different from the raw material used, manufacture is contemplated. It is the production of articles for use, out of them (either by hand or machine) new forms, qualities, properties, names. The ingoing components may or may not lose their identity. But the resulting product should be different in a "commercial" sense from the raw material used. For example the printing of balance sheets, dividend warrants, etc. refining crude oil, were held to manufacture.

However these words can be understood by studying the following cases: -

1) C.I.T Vs Pressure Pilling Co. (India) (P) Ltd., (1980) 126 I.T.R. 333.

The essence of manufacturing process is the conversion of raw material into entirely a new commodity or a new thing. The place or the site where the manufacturing process or production of something is carried on is not relevant for determining whether the product produced or manufactured is an article. The mere fact that an article is manufactured or brought into being at the site itself would not be material for dtermining whether the thing produced or manufactured is an article. It is not necessary that an article should be manufactured in a factory alone. It is also not necessary that all articles must necessary have the quality or the possibility of being sold and purchased across the counter or that they must necessarly be transportable in order to be classified as an article. In the instant case, the assessee - company carried on business of laying foundations of buildings by a specialised patented method known as "pressure piling". The assessee claimed exemption for tax holiday.

HELD By subjecting the concrete mixture which consisted of several articles iron bars, something new was brought into being. By the piling process something new which ultimately formed part of the construction came into being. But at the time when it was brought into beings, it

had complete independent existence and it was described as pile which was more or less akin to a pillar. The fact that when the superstructure was constructed, the foundation which was in the form of piles, got attached to the superstructure and because a part of the entire building, would not material because the point of time with reference to which the applicability of section 84 (new section 80J) would have to be considered, was when the article was brought into being as a product by the piling process. Through ultimately the piles became part of the building, that did not detract from the fact that before the superstructure was constructed, a pile was an independent product as such since the end product of the piling process was something which had an independent existence and an indepedent entity and was described as a pile, it was an article for the purpose of section 80J, since it wasbrought into being by a 'special process of production. Hence the assessee was engaged in the 'manufacture or production' of articles within the meaning of the said section and so, entitled to relief for tax holiday.

CAPITAL EMPLOYED FOR SECTION 80J :

For the purpose of section 80J the capital employed in the industrial undertaking or the ship or the hotel was being computed on the basis laid down in the Income-tax Rules. Speaking generally, it was calculated on the basis of the

owned capital and reserve only; i.e. with reference to the value of the total assets of the tax-payer as reduced by the liabilities including long term borrowings. There ensured a cleavage of opinion among the courts whether this rule was ultra-vires the provisions relating to tax holiday in the Income-tax Act. Some of the High Courts took the view that the rule was ultra vires, the provision and that long term borrowing should also form part of the capital employed. In this connection it may be noted that from 1948 to 1968 Rule 19A provided for the computation of the capital employed only on the basis of owned capital. An amendment made in 1968 extended the definition of "Capital employed" so as to include long-term borrowings in the capital base as interest paid on such borrowings was allowed as deduction in computing the taxable income. The position has been made clear by incorporating the provisions of the rule in the Act, itself with the retrospective effect so as to eliminate unnecessary litigation in this regard. Sub section (1A) incorporates the new provision. Clause (1) of sub section (1A) provides that the capital employed in an industrial undertaking or the business of a hotel will be computed in accordance with the provisions of clause (II) to (IV) except as otherwise expressly provided in that section and the capital employed in a ship will be computed in accordance with the clause (V)

CASE LAWS ON CAPITAL EMPLOYED

Century Enka Ltd. Vs I.T.O I.T.R. 909 (Cal)

In this case held that section 80J does not provide that the 'capital employed' must be out of the money belonging to the assessee and that, therefore borrowed money if it is employed as capital in the new industrial undertaking is entitled to be considered for computation of 'Capital employed'. Thus capital employed in the industrial undertaking cannot be restricted to only owner's capital but would also include borrowed capital. It was further held that there is no warrant for restricting the computation of capital employed in the manner provided in Rule 19 A and to the extent it purports to do so it is violative of the authority given under section 80J and is ultra vires being beyond the rule making authority.

PROFITS AND GAINS DERIVED FROM AN INDUSTRIAL UNDERTAKING UNDER SECTION 80J :

Briefly 'profits' means "profits of the new business" which are to be included in the gross total income of the assessee company. These are to be computed as laid down in section 28 to 43 of the Income Tax Act 1961. In case an assessee is having only a new business and not other activity, the unabsorbed depreciation or past losses or expenditure on scientific research have to be absorbed first before computing benefit under section 80J or even under section 80HHA. It

may be pertinent to have note here that "gross total income" computed in accordance with the provisions of this Act, before making any deduction under Chapter VI(A) or section 280(B) and the total deduction under Chapter VI(A) (which include benefits under section 80 HH or 80 HHA and 80 J) cannot exceed the gross total income.

Also the benefit is available only to profits from new business and does not extend to the profits from any business activity however closely it may be connected to the new business. It was also the legal opinion that section 80J does not contemplate a set off of such past losses of the assessee against combined profits of all business activities of the same assessee and deduction of the balance. Thus, the profits of the "new business" should be held entitled to deduction under section 80J, without it being reduced by the loss in another unit of the assessee. But, unabsorbed depreciation of the new unit in an assessment year can be set off against other business activities of the assessee, and need not again be set off against future profits of the new business.

Where any goods held for the purpose of the business of industrial undertaking or the hotel operation of ships are transferred by it to any other business carried on by the assessee, are transferred to the business of the industrial

undertaking or a hotel or the shipping company and the consideration as recorded in the books of such industrial undertaking or the hotel or the shipping company is not according to its market value, then for the purpose of the deduction under section 80J the profits of such undertaking etc; shall be adjusted on the basis of market value of such goods.

Where owing to close connection between the assessee carrying on the business of the industrial undertaking on the business of the industrial undertaking, etc; and any other person, an arrangement is so made that the profits of such industrial undertaking etc; are over-started, the Income Tax Officer will adjust the profits to their reasonable amount.

Case laws as under -

I) NEW INDIA FISHERIES LIMITED Vs I.T.O
82 I.T.R. 765

In this case the concession provided by section 80J if available only in respect of income arising directly from ships. Where the assessee-company, engaged in deep sea fishing, acquired and utilised certain ship (trawlers) during the relevant year for catching fish, the assessee was not entitled to the concession as the income did not arise directly from ships.

II) Ashok Motors Limited Vs C.I.T. 41 I.T.R. 397.

In this case exemption under section 80J in respect of a new industrial undertaking can be granted only if any profit is derived from such undertaking. If there are no pfofits,no exemption can be granted. Even where the new industrial undertaking in intimately connected with the assessee's other business and is of such a charactar that its advancement depends on the other business, exemption shall be confined only to the profits of the undertaking.

PRIORITY AS BETWEEN SECTION 80HH-Section 80HHA - AND SECTION 80 J.

In a case where the assessee is entitled to the deduction under section 80HH (in relation to the profits and gains derived from an industrial undertaking or hotel business established in a backward area) or to the deduction under section 80HHA (in relation to profits and gains derived from a small-scale industrial undertakings et up in a rural area) and also to the deduction under section 80J in respect of the profits and gains derived from the same industrial undertaking or hotel business, the deduction under section 80HH or section 80HHA, as the case may be, will first be allowed and the remainder of the profits and gains will be considered for the purpose of the deduction under section 80J.

CONCLUSION AND SUGGESTION :-

This tax concession has been criticised on the ground that it is biased in favour of capital-intensive techniques and that it weigh heavily in favour of the existing concerns setting up new industrial units in as much as such concerns can not only obtain the benefit of the 'tax holiday' provisions immediately by setting off the loss, depriciation and investment allowance of the new units against profits of the other units, but also derive a larger benefit in some cases over the entire 'tax holiday' period.

SPECIAL POINTS REGARDING TAX HOLIDAY BENEFITS -

1) In as much as the newly established industrial undertaking (or hotel etc.) is set up before 1.4.1981, the assessee can claim 7.5 per cent of the capital employed as mentioned under section 80J (without taking debt capital) from the profits included in the gross total income of the assessee.

2) Set up of the new business undertaking after that date could be either in Free-trade Zone areas or other areas.

   In case the new undertaking is established in Free Trade Zone Areas or other areas. In

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case the new undertaking is established in Free Trade Zone area, it has an option either to claim section 80I benefit completely for 8 assessments or the new benefit of complete 'tax holiday' for 5 years without the benefit of unabsorbed depreciation, investment allowance etc; for these or (in future years in relation to the tax holiday period) years. Also other partial 'tax holiday' benefits provided under section 80HH, 80HHA, 80I which extend beyond the 5 year period are not available to the new business mentioned above. But depriciation can be claimed after the 5 year period and for this purpose the written down value will be computed as if normal depreciation (and also x additional allowance) was actually allowed during the 'tax holiday' period also.

3) In other cases where the complete 'tax holiday' for 5 years is not claimed either because the assessee exercised his option or due to the fact that the new unit is not established in a Free Trade Zone Area, the partial tax holiday benefits under section 80HH or 80HHA or 80I will be available. These assessee in the Free Trade Zone Areas must be cautious while exercising

o option. Much depends upon whether the new unit reports profits in the first 5 years or the aggregate profits in the first five years is less than the expected profits in the next 3 to 5 years. Also, the quantum of profits must be weighed against the depreciation, investment allowance, scientific research expenditure allowance etc; available to the assessee.

4) It is unfortunate, however to link 'tax holiday' benefit to profits. Profits are never a sign of performance, so much so, assessee either in the private sector or in the public sector may not now voluntarlly take up projects with long gestation period. So growth in these sectors would be enhanced if any, through amalgamation. However, the above provisions would be that in the wake of increased interest rates for bank borrowings it would be difficult to accept new projects without bagging at least a return of 20 to 25 per cent on the capital employed including debt; capital. But where as earlier 7.5 per cent of the capital employed (including loans) was tax free for 5 assessment years, the provision under section 80I seek to given a benefit equal to 25 per cent of (20 per cent of

capital employed) i.e. around 5 per cent of the capital employed. This is true with an assumption that assessee will not accept a project that gives a return less than 20 per cent of the capital employed. To achieve a return more than 20 per cent is almost bleak. But the 20 per cent return that is mentioned here relate to the whole life of the project and in certain cases the return may be almost nil in the first few years. In all such cases the above argument will be invalied.

The benefit under section 80HH/80HHA and 80I are available only after availing of the investment allowance, depriciation allowance, scientific research expendituer allowance etc; so the chances of getting these partial tax holiday benefits for all practical purposes in many cases, would be nil. In practical terms, these benefits can be bagged only by those new industrial units which produce substantial profits to absorb allowance under section 28 to 44 and still have excess profits. It may be wrong to suggest that assessee should look to business providing profits but it would be worth considering such business which report a return

equal to 20 per cent (or cost of optimum capital mix whichever is less) and that to mainly during the initial 8 years itself.

While considering any amalgamation schemes, the partical 'tax holiday' benefits available with the amalgamating companies are attractive.

5) It is also suggested that section 80J should be simplified.