

**SECTION 10A, READ WITH SECTIONS 10AA & 10B OF THE INCOME-TAX ACT, 1961 -  
FREE TRADE ZONE - CLARIFICATION ON ISSUES RELATING TO APPLICABILITY OF  
CHAPTER IV OF THE ACT AND SET OFF AND CARRY FORWARD OF BUSINESS  
LOSSES**

**CIRCULAR NO. 7/DV/2013 [FILE NO.279/MISC./M-116/2012-ITJ], DATED 16-7-2013**

It has been brought to the notice of the Board that the provisions of 10A/10AA/10B/10BA of the Income-tax Act, with regard to applicability of Chapter IV of the Act and set off and carry forward of losses, are being interpreted differently by the Officers of the Department as well as by different High Courts.

2. The two sections 10A and 10B of the Act were initially placed on statute in 1981 and 1988 respectively, and continued with some modifications and amendments till 31.03.2001. Section 10A as inserted by Finance Act, 1981 read as under:

"10A. *Special provision in respect of newly established industrial undertakings in the free trade zones.*—(1) Subject to the provisions of this section, any profits and gains derived by an assessee from an industrial undertaking to which this section applies shall not be included in the total income of the assessee."

2.1 Similarly section 10B as inserted by Finance Act, 1988 read as under:

"10B. *Special provision in respect of newly established hundred per cent export oriented undertakings.*—Subject to the provisions of this section, any profits and gains derived by an assessee from a hundred per cent export oriented undertaking (hereafter in this section referred to as the undertaking) to which this section applies shall not be included in the total income of the assessee."

3. Vide Finance Act, 2000 sections 10A and 10B of the Act were substituted. Section 10A as substituted by Finance Act, 2000 reads as under:

"10A. (1) Subject to the provisions of this section, a deduction of such profits and gains as are derived by an undertaking from the export of articles or things or computer software for a period of ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce such articles or things or computer software, as the case may be, shall be allowed from the total income of the assessee...."

3.1 Similarly, section 10B as substituted by Finance Act, 2000 reads as under:

"10B. (1) Subject to the provisions of this section, a deduction of such profits and gains as are derived by a hundred per cent export-oriented undertaking from the export of articles or things or computer software for a period of ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce articles or things or computer software, as the case may be, shall be allowed from the total income of the assessee..."

3.2 The effect of the substitution of sections 10A and 10B of the Act has been elaborated in Circular No. 794 dated 9.8.2000 which clearly provides that the new provisions provide for deduction in respect of profits and gains derived by an undertaking from export of articles or things or computer software.

4. Sub-section (6) of sections 10A and 10B were amended by Finance Act, 2003 with retrospective effect from 1-4-2001. Circular No. 7/2003, dated 5-9-2003 explains the amendments brought by

Finance Act, 2003. The relevant paragraph is reproduced below:

"20. Providing for carry forward of business losses and unabsorbed depreciation to units in Special Economic Zones and 100% Export Oriented Units.

20.1 Under the existing provisions of sections 10A and 10B, the undertakings operating in a Special Economic Zone (under section 10A) and 100% Export Oriented Units (EOU's) (under section 10B) are not permitted to carry forward their business losses and unabsorbed depreciation.

20.2 With a view to rationalize the existing tax incentives in respect of such units, sub-section (6) in sections 10A and 10B has been amended to do away with the restrictions on the carry forward of business losses and unabsorbed depreciation.

20.3 The amendments have been brought into effect retrospectively from 1-4-2001 and have been made applicable to business losses or unabsorbed depreciation arising in the assessment year 2001-02 and subsequent years."

**5.** From the above it is evident that irrespective of their continued placement in Chapter III, sections 10A and 10B as substituted by Finance Act, 2000 provide for deduction of the profits and gains derived from the export of articles or things or computer software for a period of 10 consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce such article or thing or computer software. The deduction is to be allowed from the total income of the assessee. The term 'total income' has been defined in section 2 (45) of the IT Act and it means the total amount of income referred to in section 5, computed in the manner laid down in the Income-tax Act.

**5.1** All income for the purposes of computation of total income is to be classified under the following heads of income and computed in accordance with the provisions of Chapter IV of the Act-

- Salaries
- Income from house property
- Profits and gains of business and profession
- Capital gains
- Income from other sources

**5.2** The income computed under various heads of income in accordance with the provisions of Chapter IV of the IT Act shall be aggregated in accordance with the provisions of Chapter VI of the IT Act, 1961. This means that first the income/loss from various sources *i.e.* eligible and ineligible units, under the same head are aggregated in accordance with the provisions of section 70 of the Act. Thereafter, the income from one head is aggregated with the income or loss of the other head in accordance with the provisions of section 71 of the Act. If after giving effect to the provisions of sections 70 and 71 of the Act there is any income (where there is no brought forward loss to be set off in accordance with the provisions of section 72 of the Act) and the same is eligible for deduction in accordance with the provisions of Chapter VI-A or sections 10A, 10B etc. of the Act, the same shall be allowed in computing the total income of the assessee.

**5.3** If after aggregation of income in accordance with the provisions of sections 70 and 71 of the Act, the resultant amount is a loss (pertaining to assessment year 2001-02 and any subsequent year) from eligible unit it shall be eligible for carry forward and set off in accordance with the provisions of section 72 of the Act. Similarly, if there is a loss from an ineligible unit, it shall be carried forward and may be set off against the profits of eligible unit or ineligible unit as the case may be, in accordance with the provisions of section 72 of the Act.

**6.** The provisions of Chapter IV and Chapter VI shall also apply in computing the income for the purpose of deduction under sections 10AA and 10BA of the Act subject to the conditions specified in

the said sections.

