

**Circular No. 37/2016**

**F.No.279/Misc./140/2015/ITJ**

**GOVERNMENT OF INDIA**

**MINISTRY OF FINANCE**

**DEPARTMENT OF REVENUE**

**CENTRAL BOARD OF DIRECT TAXES**

**New Delhi, the 2<sup>nd</sup> November 2016**

**Subject: Chapter VI-A deduction on enhanced profits - Reg.**

Chapter VI-A of the Income-tax Act, 1961 ("the Act"), provides for deductions in respect of certain incomes. In computing the profits and gains of a business activity, the Assessing Officer may make certain disallowances, such as disallowances pertaining to sections 32, 40(a)(ia), 40A(3), 43B etc., of the Act. At times disallowance out of specific expenditure claimed may also be made. The effect of such disallowances is an increase in the profits. Doubts have been raised as to whether such higher profits would also result in claim for a higher profit-linked deduction under Chapter VI-A.

**2.** The issue of the claim of higher deduction on the enhanced profits has been a contentious one. However, the courts have generally held that if the expenditure disallowed is related to the business activity against which the Chapter VI-A deduction has been claimed, the deduction needs to be allowed on the enhanced profits. Some illustrative cases upholding this view are as follows:

(i) If an expenditure incurred by assessee for the purpose of developing a housing project was not allowable on account of non-deduction of TDS under law, such disallowance would ultimately increase assessee's profits from business of developing housing project. The ultimate profits of assessee after adjusting disallowance under section 40(a)(ia) of the Act would qualify for deduction under section 80-IB of the Act. This view was taken by the courts in the following cases:

- Income-tax Officer - Ward 5(1) vs. Keval Construction, Tax Appeal No. 443 of 2012, December 10, 2012, Gujarat High Court - NJRS-2012-LL-1210-45.
- Commissioner of Income-tax-IV, Nagpur vs. Sunil Vishwambharnath Tiwari, IT Appeal No. 2 of 2011, September 11, 2015, Bombay High Court - NJRS-2015-LL-0911-22

(ii) If deduction under section 40A(3) of the Act is not allowed, the same would have to be added to the profits of the undertaking on which the assessee would be entitled for deduction under section 80-IB of the Act. This view was taken by the court in the following case:

- Principal CIT, Kanpur vs. Surya Merchants Ltd., I.T. Appeal No. 248 of 2015, May 03,

2016 Allahabad High Court. - NJRS-2016-LL-0503-77

The above views have attained finality as these judgments of the High Courts of Bombay, Gujarat and Allahabad have been accepted by the Department.

**3.** In view of the above, the Board has accepted the settled position that the disallowances made under sections 32, 40(a)(ia), 40A(3), 43B, etc. of the Act and other specific disallowances, related to the business activity against which the Chapter VI-A deduction has been claimed, result in enhancement of the profits of the eligible business, and that deduction under Chapter VI-A is admissible on the profits so enhanced by the disallowance.

**4.** Accordingly, henceforth, appeals may not be filed on this ground by officers of the Department and appeals already filed in Courts/ Tribunals may be withdrawn/ not pressed upon. The above may be brought to the notice of all concerned.

**(K Vamsi Krishna)**

**ACIT (OSD)(ITJ),**

**CBDT New Delhi**