

CIRCULAR NO. 10/2014 [F.NO.178/84/2012-ITA-I], DATED 6-5-2014

Section 80-IA of the Income-tax Act, 1961 (hereafter referred to as 'Act') deals with deduction in respect of profits & gains derived by an undertaking or enterprise engaged in developing, operating and maintaining any infrastructure facility, industrial park etc. The undertakings or enterprises eligible for availing deduction under this section have been specified under sub-section (4) of the said section and can broadly be classified as under:-

- (i) Enterprise carrying on the business of developing or operating & maintaining or developing, operating & maintaining infrastructure facilities [ref: 80-IA(4)(i)];
- (ii) undertaking providing basic or cellular telecommunication services [ref : 80-IA(4)(ii)];
- (iii) undertaking which develops, develops & operates or maintains & operates an industrial park or SEZ [ref: 80-IA(4)(iii)];
- (iv) undertaking set up for generation / generation & distribution of power or laying of network / renovation or modernization of network of transmission / distribution lines [ref: 80-IA(4)(iv)] or set up for reconstruction or revival of power generation plant [ref: 80-IA(4)(v)].

2. The provisions of section 80-IA of the Act also include conditions which are necessary to be met for being eligible for deduction. These include conditions prescribed under sub-section (3) of section 80-IA according to which the undertakings at (ii) and (iv) above should not, *inter-alia*, be formed by splitting up or reconstruction of an existing business.

3. The proviso to clause (i) and clause (iii) of sub-section (4) of section 80-IA deal with the situation where operation & maintenance of infrastructure facility or operation & maintenance of industrial park / SEZ respectively is transferred to another enterprise in the manner provided therein and the transferee undertaking can avail deduction for the unexpired period.

4. Sub-section (12A) of section 80-IA of the Act provides that where the enterprise or undertaking of an Indian Company entitled to the deduction under the said section is transferred on or after 01.04.2007 in a scheme of amalgamation or demerger, no deduction shall be available to the amalgamated or the resulting company.

5. The vital factor in determining the eligibility criteria for availing deduction u/s 80-IA in above cases would be verification of factual issues so as to ascertain whether (a) there has been splitting up or reconstruction of a business already in existence, (b) transfer is

in accordance with the proviso to clause (i) or clause (iii) of sub-section (4) of section 80-IA, or (c) transfer of an enterprise or undertaking is in a scheme of amalgamation or demerger. It is however clarified that if an enterprise or undertaking develops an infrastructure facility, industrial park or special economic zone, as the case may be, and transfers it to another enterprise or undertaking for operation and maintenance in accordance with the proviso to clause (i) or clause (iii) of sub-section (4) of section 80-IA of the Act and this transfer is not by way of amalgamation or demerger, the transferee shall be eligible for the deduction for the unexpired period. [*For example, if the 'transferor' has availed of the deduction for development of an infrastructure facility for 6 years and thereafter transfers it to the 'transferee' for operation and maintenance; such transferee will be eligible for deduction for remaining 4 years.*] It is further clarified that profit for the purposes of deduction in the case of transferee shall also be computed in accordance with sub-sections (5) to (10) of section 80-IA of the Act.

6. This may be brought to the notice of all concerned.