

INCOME-TAX (THIRTEENTH AMENDMENT) RULES, 2009 - SUBSTITUTION OF RULE 3 AND INSERTION OF RULE 40F

Notification No. 94/2009/F.NO. 142/25/2009-SO (TPL), dated 18-12-2009

In exercise of the powers conferred by section 295 read with sub-section (2) of section 17 of the Income-tax Act, (43 of 1961). The Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely :-

- (1) These rules may be called the Income-tax (13th Amendment) Rules, 2009.
- (2) They shall be deemed to have come into force on the 1st day of April, 2009.

In the Income-tax Rules, 1962, for rule 3, the following shall be substituted, namely: -

"3. For the purpose of computing the income chargeable under the head "Salaries", the value of perquisites provided by the employer directly or indirectly to the assessee (hereinafter referred to as employee) or to any member of his household by reason of his employment shall be determined in accordance with the following sub-rules, namely:—

- (1) The value of residential accommodation provided by the employer during the previous year shall be determined on the basis provided in the Table below:

Sl. NO.

Circumstances

Where accommodation is Unfurnished

Where accommodation is furnished

- (1)
- (2)
- (3)
- (4)

- (1)

Where the accommodation is provided by the Central Government or any State Government to the employees either holding office or post in connection with the affairs of the Union or of such State.

License fee determined by the Central Government or any State Government in respect of accommodation in accordance with the rules framed by such Government as reduced by the rent actually paid by the employee.

determined under column (3) and increased by 10% per annum of the cost of furniture (including television sets, radio sets, refrigerators, other household appliances, air-conditioning plant or equipment) or if such furniture is hired from a third party, the actual

hire charges payable for the same as reduced by any charges paid or payable for the same by the employee during the previous year.

(2)

Where the accommodation is provided by any other employer and—

(a) where the accommodation is owned by the employer, or

(i) 15% of salary in cities having population exceeding 25 lakhs as per 2001 census;

(ii) 10% of salary in cities having population exceeding 10 lakhs but not exceeding 25 lakhs as per 2001 census;

(iii) 7.5% of salary in other areas,

in respect of the period during which the said accommodation was occupied by the employee during the previous year as reduced by the rent, if any, actually paid by the employee.

The value of perquisites as determined under column (3) and increased by 10% per annum of the cost of furniture (including television sets, refrigerators, other household appliances or equipment or other similar appliances or gadgets) or if such furniture is hired from a third party, by the actual hire charges payable for the same as reduced by any charges paid or payable for the same by the employee during the previous year.

(b) where the accommodation is taken on lease or rent by the employer.

Actual amount of lease rental paid or payable by the employer or 15% of salary whichever is lower as reduced by the rent, if any, actually paid by the employee.

The value of perquisite as determined under column (3) and increased by 10% per annum of the cost of furniture (including television sets, radio sets, refrigerators, other household appliances, air-conditioning plant or equipment or other similar appliances or gadgets) or if such furniture is hired from a third party, by the actual hire charges payable for the same as reduced by any charges paid or payable for the same by the employee during the previous year.

(3)

Where the accommodation is provided by the employer specified in serial number (1) or (2) in a hotel (except where the employee is provided such accommodation for a period not exceeding in aggregate fifteen days on his transfer from one place to another)

Not applicable

24% of salary paid or payable for the previous year or the actual charges paid or payable to such hotel, which is lower, for the period during which such accommodation is provided as reduced by the rent, if any, actually paid or payable by the employee:

Provided that nothing contained in this sub-rule shall apply to any accommodation provided to an employee working at a mining site or an on-shore oil exploration site or a project execution site, or a dam site or a power generation site or an off-shore site—

(i) which, being of a temporary nature and having plinth area not exceeding 800 square feet, is located not less than eight kilometers away from the local limits of any municipality or a cantonment board; or

(ii) which is located in a remote area:

Provided further that where on account of his transfer from one place to another, the employee is provided with accommodation at the new place of posting while retaining the accommodation at the other place, the value of perquisite shall be determined with reference to only one such accommodation which has the lower value with reference to the Table above for a period not exceeding 90 days and thereafter the value of perquisite shall be charged for both such accommodations in accordance with the Table.

Explanation.—For the purposes of this sub-rule, where the accommodation is provided by the Central Government or any State Government to an employee who is serving on deputation with any body or undertaking under the control of such Government,-

(i) the employer of such an employee shall be deemed to be that body or undertaking where the employee is serving on deputation; and

(ii) the value of perquisite of such an accommodation shall be the amount calculated in accordance with Sl. No. (2)(a) of Table I, as if the accommodation is owned by the employer.

(2)(A) The value of perquisite by way of use of motor car to an employee by an employer shall be determined in accordance with the following Table, namely:—

Sl.No.

Circumstance

Where cubic capacity of engine does not exceed 1.6 liters

Where cubic capacity of engine exceeds 1.6 liters

(1)

(2)

(3)

(4)

(1)

Where the motor car is owned or hired by the employer and—

- (a) is used wholly and exclusively in the performance of his official duties;
- (b) is used exclusively for the private or personal purposes of the employee or any member of his household and the running and maintenance expenses are met or reimbursed by the employer;
- (c) is used partly in the performance of duties and partly for private or personal purposes of his own or any member of his household and—
 - (i) the expenses on maintenance and running are met or reimbursed by the employer;
 - (ii) the expenses on running and maintenance for private or personal use are fully met by the assessee.

No value:

Provided that the documents specified in clause (B) of this sub-rule are maintained by the employer.

Actual amount of expenditure incurred by the employer on the running and maintenance of motor car during the relevant previous year including remuneration, if any, paid by the employer to the chauffeur as increased by the amount representing normal wear and tear of the motor car and as reduced by any amount charged form the employee for such use.

Rs. 1,800 (plus Rs. 900, if chauffeur is also provided to run the motor car)

Rs. 600 (plus Rs.900, if chauffeur is also provided by the employer to run the motor car)

No value:

Provided that the documents specified in clause (B) of this sub-rule are maintained by the employer.

Actual amount of expenditure incurred by the employer on the running and maintenance of motor car during the relevant previous year including remuneration, if any, paid by the employer to the chauffeur as increased by the amount representing normal wear and tear of the motor car and as reduced by any amount charged form the employee for such use.

Rs. 2,400 (plus Rs. 900, if chauffeur is also provided to run the motor car)

Rs. 900 (plus Rs. 900, if chauffeur is also provided to run the motor car)

(2)

Where the employee owns a motor car but the actual running and maintenance charges (including remuneration of the chauffeur, if any) are met or reimbursed to him by the employer and—

(i) such reimbursement is for the use of the vehicle wholly and exclusively for official purposes;

(ii) such reimbursement is for the use of the vehicle partly for official purposes and partly for personal or private purposes of the employee or any member of his household.

No value:

Provided that the documents specified in clause (B) of this sub-rule are maintained by the employer.

Subject to the provisions of clause (B) of this sub-rule, the actual amount of expenditure incurred by the employer as reduced by the amount specified in Sl. No. (1)(c)(i) above.

No value:

Provided that the documents specified in clause (B) of this sub-rule are maintained by the employer.

Subject to the provisions of clause (B) of this sub-rule, the actual amount of expenditure incurred by the employer as reduced by the amount specified in Sl. No. (1)(c)(i) above.

(3) Where the employee owns any other automotive conveyance but the actual running and maintenance charges are met or reimbursed to him by the employer and

(i). such reimbursement is for the use of the vehicle wholly and exclusively for official purposes;

(ii) such reimbursement is for the use of vehicle partly for official purposes and partly for personal or private purposes of the employee.

No Value :

Provided that the documents specified in clause (B) of this sub-rule are maintained by the employer.

Subject to the provisions of clause (B) of this sub-rule, the actual amount of expenditure incurred by the employer as reduced by the amount of Rs. 900.

Not applicable :

Provided that where one or more motor-cars are owned or hired by the employer and the employee or any member of his household are allowed the use of such motor-car or all of any of such motor-cars (otherwise than wholly and exclusively in the performance of his duties), the value of perquisite shall be the amount calculated in respect of one car in accordance with Sl. No. (1)(c)(i) of Table II as if the employee had been provided one motor-car for use partly in the performance of his duties and partly for his private or personal purposes and the amount calculated in respect of the other car or cars in accordance with Sl. No. (1)(b) of Table II as if he had been provided with such car exclusively for his private or personal purposes.

(B) Where the employer or the employee claims that the motor-car is used wholly and exclusively in the performance of official duty or that the actual expenses on the running and maintenance of the motor-car owned by the employee for official purposes is more than the amounts deductible in Sl. No. 2(ii) or 3(ii) of Table II, he may claim a higher amount attributable to such official use and the value of perquisite in such a case shall be the actual amount attributable to official use of the vehicle provided that the following conditions are fulfilled:—

(a) the employer has maintained complete details of journey undertaken for official purpose which may include date of journey, destination, mileage and the amount of expenditure incurred thereon;

(b) the employer gives a certificate to the effect that the expenditure was incurred wholly and exclusively for the performance of official duties.

Explanation.—For the purposes of this sub-rule, the normal wear and tear of a motor-car shall be taken at 10% per annum of the actual cost of the motor-car or cars.

(3) The value of benefit to the employee or any member of his household resulting from the provision by the employer or services of a sweeper, a gardener, a watchman or a personal attendant, shall be the actual cost to the employer. The actual cost in such a case shall be the total amount of salary paid or payable by the employer or any other person on his behalf for such services as reduced by any amount paid by the employee for such services.

(4) The value of the benefit to the employee resulting from the supply of gas, electric energy or water for his household consumption shall be determined as the sum equal to the amount paid on that account by the employer to the agency supplying the gas, electric energy or water. Where such supply is made from resources owned by the employer, without purchasing them from any other outside agency, the value of perquisite would be the manufacturing cost per unit incurred by the employer. Where the employee is paying any amount in respect of such services, the amount so paid shall be deducted from the value so arrived at.

(5) The value of benefit to the employee resulting from the provision of free or concessional educational facilities for any member of his household shall be determined as the sum equal to the amount of expenditure incurred by the employer in that behalf or where the educational institution is itself maintained and owned by the employer or where free educational facilities for such member of employees' household are allowed in any other educational institution by reason of his being in employment of that employer, the value of the perquisite to the employee shall be determined with reference to the cost of such education in a similar institution in or near the locality. Where any amount is paid or recovered from the employee on that account, the value of benefit shall be reduced by the amount so paid or recovered :

Provided that where the educational institution itself is maintained and owned by the employer and free educational facilities are provided to the children of the employee or where such free educational facilities are provided in any institution by reason of his being in employment of that employer, nothing contained in this sub-rule shall apply if the cost of such education or the value of such benefit per child does not exceed one thousand rupees per month.

(6) The value of any benefit or amenity resulting from the provision by an employer who is engaged in the carriage of passengers or goods, to any employee or to any member of his household for personal or private journey free of cost or at concessional fare, in any conveyance owned, leased or made available by any other arrangement by such employer for the purpose of transport of passengers or goods shall be taken to be the value at which such benefit or amenity is offered by such employer to the public as reduced by the amount, if any, paid by or recovered from the employee for such benefit or amenity :

Provided that nothing contained in this sub-rule shall apply to the employees of an airline or the railways.

(7) In terms of provisions contained in clause (viii) of sub-section (2) of section 17, the following other benefits or amenities and value thereof shall be determined in the manner provided hereunder:

(i) The value of the benefit to the assessee resulting from the provision of interest-free or concessional loan for any purpose made available to the employee or any member of his household during the relevant previous year by the employer or any person on his behalf shall be determined as the sum equal to the interest computed at the rate charged per annum by the State Bank of India, constituted under the State Bank of India Act, 1955 (23 of 1955), as on the 1st day of the relevant previous year in respect of loans for the same purpose advanced by it on the maximum outstanding monthly balance as reduced by the interest, if any, actually paid by him or any such member of his household:

Provided that no value would be charged if such loans are made available for medical treatment in respect of diseases specified in rule 3A of these Rules or where the amount of loans are petty not exceeding in the aggregate twenty thousand rupees:

Provided further that where the benefit relates to the loans made available for medical treatment referred to above, the exemption so provided shall not apply to so much of the loan as has been reimbursed to the employee under any medical insurance scheme.

(ii) The value of travelling, touring, accommodation and any other expenses paid for or borne or reimbursed by the employer for any holiday availed of by the employee or any member of his household, other than concession or assistance referred to in rule 2B of these rules, shall be determined as the sum equal to the amount of the expenditure incurred by such employer in that behalf. Where such facility is maintained by the employer, and is not available uniformly to all employees, the value of benefit shall be taken to be the value at which such facilities are offered by other agencies to the public. Where the employee is on official tour and the expenses are incurred in respect of any member of his household accompanying him, the amount of expenditure so incurred shall also be a fringe benefit or amenity:

Provided that where any official tour is extended as a vacation, the value of such fringe benefit shall be limited to the expenses incurred in relation to such extended period of stay or vacation. The amount so determined shall be reduced by the amount, if any, paid or recovered from the employee for such benefit or amenity.

(iii) The value of free food and non-alcoholic beverages provided by the employer to an employee shall be the amount of expenditure incurred by such employer. The amount so determined shall be reduced by the amount, if any, paid or recovered from the employee for such benefit or amenity:

Provided that nothing contained in this clause shall apply to free food and non-alcoholic beverages provided by such employer during working hours at office or business premises or through paid vouchers which are not transferable and usable only at eating joints, to the extent the value thereof either case does not exceed fifty rupees per meal or to tea or snacks provided during working hours or to free food and non-alcoholic beverages during working hours provided in a remote area or an off-shore installation.

(iv) The value of any gift, or voucher, or token in lieu of which such gift may be received by the employee or by member of his household on ceremonial occasions or otherwise from the employer shall be determined as the sum equal to the amount of such gift:

Provided that where the value of such gift, voucher or token, as the case may be, is below five thousand rupees in the aggregate during the previous year, the value of perquisite shall be taken as "nil".

(v) The amount of expenses including membership fees and annual fees incurred by the employee or any member of his household, which is charged to a credit card (including any add-on-card) provided by the employer, or otherwise, paid for or reimbursed by such employer shall be taken to be the value of perquisite chargeable to tax as reduced by the amount, if any paid or recovered from the employee for such benefit or amenity:

Provided that there shall be no value of such benefit where expenses are incurred wholly and exclusively for official purposes and the following conditions are fulfilled:—

(a) complete details in respect of such expenditure are maintained by the employer which may, inter alia, include the date of expenditure and the nature of expenditure;

(b) the employer gives a certificate for such expenditure to the effect that the same was incurred wholly and exclusively for the performance of official duties.

(vi) (A) The value of benefit to the employee resulting from the payment or reimbursement by the employer of any expenditure incurred (including the amount of annual or periodical fee) in a club by him or by a member of his household shall be determined to be the actual amount of expenditure incurred or reimbursed by such employer on that account. The amount so determined shall be reduced by the amount, if any paid or recovered from the employee for such benefit or amenity:

Provided that where the employer has obtained corporate membership of the club and the facility is enjoyed by the employee or any member of his household, the value of perquisite shall not include the initial fee paid for acquiring such corporate membership.

(B) Nothing contained in this clause shall apply if such expenditure is incurred wholly and exclusively for business purposes and the following conditions are fulfilled:—

(a) complete details in respect of such expenditure are maintained by the employer which may inter alia, include the date of expenditure, the nature of expenditure and its business expediency;

(b) the employer gives a certificate for such expenditure to the effect that the same was incurred wholly and exclusively for the performance of official duties.

(C) Nothing contained in this clause shall apply for use of health club, sports and similar facilities provided uniformly to all employees by the employer.

(vii) The value of benefit to the employee resulting from the use by the employee or any member of his household of any movable asset (other than assets already specified in this rule and other than laptops and computers) belonging to the employer or hired by him shall be determined at 10% per annum of the actual cost of such asset or the amount of rent or charge paid or payable by the employer, as the case may be, as reduced by the amount, if any, paid or recovered from the employee for such use.

(viii) The value of benefit to the employee arising from the transfer of any movable asset belonging to the employer directly or indirectly to the employee or any member of his household shall be determined to be the amount representing the actual cost of such assets to the employer as reduced by the cost of normal wear and tear calculated at the rate of 10% of such cost for each completed year during which such asset was put to use

by the employer and as further reduced by the amount, if any, paid or recovered from the employee being the consideration for such transfer :

Provided that in the case of computers and electronic items, the normal wear and tear would be calculated at the rate of 50% and in the case of motor cars at the rate of 20% by the reducing balance method.

(ix) The value of any other benefit or amenity, service, right or privilege provided by the employer shall be determined on the basis of cost to the employer under an arm's length transaction as reduced by the employee's contribution, if any :

Provided that nothing contained in this clause shall apply to the expenses on telephones including a mobile phone actually incurred on behalf of the employee by the employer.

(8)(i) For the purposes of clause (vi) of sub-section (2) of section 17, the fair market value of any specified security or sweat equity share, being an equity share in a company, on the date on which the option is exercised by the employee, shall be determined in accordance with the provisions of clause (ii) or clause (iii).

(ii) In a case where, on the date of the exercising of the option, the share in the company is listed on a recognized stock exchange, the fair market value shall be the average of the opening price and closing price of the share on that date on the said stock exchange :

Provided that where, on the date of exercising of the option, the share is listed on more than one recognized stock exchanges, the fair market value shall be the average of opening price and closing price of the share on the recognised stock exchange which records the highest volume of trading in the share :

Provided further that where, on the date of exercising of the option, there is no trading in the share on any recognized stock exchange, the fair market value shall be—

(a) the closing price of the share on any recognised stock exchange on a date closest to the date of exercising of the option and immediately preceding such date; or

(b) the closing price of the share on a recognised stock exchange, which records the highest volume of trading in such share, if the closing price, as on the date closest to the date of exercising of the option and immediately preceding such date, is recorded on more than one recognized stock exchange.

(iii) In a case where, on the date of exercising of the option, the share in the company is not listed on a recognised stock exchange, the fair market value shall be such value of the share in the company as determined by a merchant banker on the specified date.

(iv) For the purpose of this sub-rule,—

(a) "closing price" of a share on a recognised stock exchange on a date shall be the price of the last settlement on such date on such stock exchange :

Provided that where the stock exchange quotes both "buy" and "sell" prices, the closing price shall be the "sell" price of the last settlement;

(b) "merchant banker" means category I merchant banker registered with Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(c) "opening price" of a share on a recognised stock exchange on a date shall be the price of the first settlement on such date on such stock exchange :

Provided that where the stock exchange quotes both "buy" and "sell" prices, the opening price shall be the "sell" price of the first settlement;

(d) "recognised stock exchange" shall have the same meaning assigned to it in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(e) "specified date" means,—

(i) the date of exercising of the option; or

(ii) any date earlier than the date of the exercising of the option, not being a date which is more than 180 days earlier than the date of the exercising.

(9) For the purposes of clause (vi) of sub-section (2) of section 17, the fair market value of any specified security, not being an equity share in a company, on the date on which the option is exercised by the employee, shall be such value as determined by a merchant banker on the specified date.

Explanation.—For the purposes of this sub-rule, 'merchant banker' and 'specified date' shall have the meanings assigned to them in sub-clause (b) and sub-clause (e) respectively of clause (iv) of sub-rule (8).

(10) This rule shall come into force with effect from the 1st day of April, 2009.

Explanation.—For the purposes of this rule-

(i) "accommodation" includes a house, flat, farm house or part thereof, or accommodation in a hotel, motel, service apartment, guest house, caravan, mobile home, ship or other floating structure;

(ii) "entertainment" includes hospitality of any kind and also, expenditure on business gifts other than free samples of the employers own product with the aim of advertising to the general public;

(iii) "hotel" includes licensed accommodation in the nature of motel, service apartment or guest house;

(iv) "member of household" shall include—

(a) spouse(s),

(b) children and their spouses,

(c) parents, and

(d) servants and dependents;

(v) "remote area", for purposes of proviso to this sub-rule means an area that is located at least 40 kilometres away from a town having a population not exceeding 20,000 based on latest published all-India census;

(vi) "salary" includes the pay, allowances, bonus or commission payable monthly or otherwise or any monetary payment, by whatever name called from one or more employers, as the case may be, but does not include the following, namely:—

(a) dearness allowance or dearness pay unless it enters into the computation of superannuation or retirement benefits of the employee concerned;

(b) employer's contribution to the provident fund account of the employee;

(c) allowances which are exempted from payment of tax;

(d) the value of perquisites specified in clause (2) of section 17 of the Income-tax Act;

(e) any payment or expenditure specifically excluded under proviso to sub-clause (iii) of clause (2) or proviso to clause (2) of section 17;

(f) lump-sum payments received at the time of termination of service or superannuation or voluntary retirement, like gratuity, severance pay leave encashment, voluntary retrenchment benefits, commutation of pension and similar payments;

(vii) 'maximum outstanding monthly balance' means the aggregate outstanding balance for each loan as on the last day of each month.

appendix 2

Section 17 of Income-tax Act, 1961

"Salary", "perquisite" and "profits in lieu of salary" defined.

17. For the purposes of sections 15 and 16 and of this section,—

(1) "salary" includes—

(i) wages;

(ii) any annuity or pension;

(iii) any gratuity;

(iv) any fees, commissions, perquisites or profits in lieu of or in addition to any salary or wages;

(v) any advance of salary;

(va) any payment received by an employee in respect of any period of leave not availed of by him;

(vi) the annual accretion to the balance at the credit of an employee participating in a recognised provident fund, to the extent to which it is chargeable to tax under rule 6 of Part A of the Fourth Schedule;

(vii) the aggregate of all sums that are comprised in the transferred balance as referred to in sub-rule (2) of rule 11 of Part A of the Fourth Schedule of an employee participating in a recognised provident fund, to the extent to which it is chargeable to tax under sub-rule (4) thereof; and

(viii) the contribution made by the Central Government or any other employer in the previous year, to the account of an employee under a pension scheme referred to in section 80CCD;

(2) "perquisite" includes—

(i) the value of rent-free accommodation provided to the assessee by his employer;

(ii) the value of any concession in the matter of rent respecting any accommodation provided to the assessee by his employer;

Explanation 1.—For the purposes of this sub-clause, concession in the matter of rent shall be deemed to have been provided if,—

(a) in a case where an unfurnished accommodation is provided by any employer other than the Central Government or any State Government and—

(i) the accommodation is owned by the employer, the value of the accommodation determined at the specified rate in respect of the period during which the said accommodation was occupied by the assessee during the previous year, exceeds the rent recoverable from, or payable by, the assessee;

(ii) the accommodation is taken on lease or rent by the employer, the value of the accommodation being the actual amount of lease rental paid or payable by the employer or fifteen per cent of salary, whichever is lower, in respect of the period during which the said accommodation was occupied by the assessee during the previous year, exceeds the rent recoverable from, or payable by, the assessee;

(b) in a case where a furnished accommodation is provided by the Central Government or any State Government, the licence fee determined by the Central Government or any State Government in respect of the accommodation in accordance with the rules framed by such Government as increased by the value of furniture and fixtures in respect of the period during which the said accommodation was occupied by the assessee during the previous year, exceeds the aggregate of the rent recoverable from, or payable by, the assessee and any charges paid or payable for the furniture and fixtures by the assessee;

(c) in a case where a furnished accommodation is provided by an employer other than the Central Government or any State Government and—

(i) the accommodation is owned by the employer, the value of the accommodation determined under sub-clause (i) of clause (a) as increased by the value of the furniture and fixtures in respect of the period during which the said accommodation was occupied by the assessee during the previous year, exceeds the rent recoverable from, or payable by, the assessee;

(ii) the accommodation is taken on lease or rent by the employer, the value of the accommodation determined under sub-clause (ii) of clause (a) as increased by the value of the furniture and fixtures in respect of the period during which the said accommodation was occupied by the assessee during the previous year, exceeds the rent recoverable from, or payable by, the assessee;

(d) in a case where the accommodation is provided by the employer in a hotel (except where the assessee is provided such accommodation for a period not exceeding in aggregate fifteen days on his transfer from one place to another), the value of the accommodation determined at the rate of twenty-four per cent of salary paid or payable for the previous year or the actual charges paid or payable to such hotel, whichever is lower, for the period during which such accommodation is provided, exceeds the rent recoverable from, or payable by, the assessee.

Explanation 2.—For the purposes of this sub-clause, value of furniture and fixture shall be ten per cent per annum of the cost of furniture (including television sets, radio sets, refrigerators, other household appliances, air-conditioning plant or equipment or other similar appliances or gadgets) or if such furniture is hired from a third party, the actual

hire charges payable for the same as reduced by any charges paid or payable for the same by the assessee during the previous year.

Explanation 3.—For the purposes of this sub-clause, "salary" includes the pay, allowances, bonus or commission payable monthly or otherwise or any monetary payment, by whatever name called, from one or more employers, as the case may be, but does not include the following, namely:—

- (a) dearness allowance or dearness pay unless it enters into the computation of superannuation or retirement benefits of the employee concerned;
- (b) employer's contribution to the provident fund account of the employee;
- (c) allowances which are exempted from the payment of tax;
- (d) value of the perquisites specified in this clause;
- (e) any payment or expenditure specifically excluded under the proviso to this clause.

Explanation 4.—For the purposes of this sub-clause, "specified rate" shall be—

- (i) fifteen per cent of salary in cities having population exceeding twenty-five lakhs as per 2001 census;
 - (ii) ten per cent of salary in cities having population exceeding ten lakhs but not exceeding twenty-five lakhs as per 2001 census; and
 - (iii) seven and one-half per cent of salary in any other place;
- (iii) the value of any benefit or amenity granted or provided free of cost or at concessional rate in any of the following cases—
- (a) by a company to an employee who is a director thereof;
 - (b) by a company to an employee being a person who has a substantial interest in the company;
 - (c) by any employer (including a company) to an employee to whom the provisions of paragraphs (a) and (b) of this sub-clause do not apply and whose income under the head "Salaries" (whether due from, or paid or allowed by, one or more employers), exclusive of the value of all benefits or amenities not provided for by way of monetary payment, exceeds fifty thousand rupees:

[***]

Explanation.—For the removal of doubts, it is hereby declared that the use of any vehicle provided by a company or an employer for journey by the assessee from his residence to his office or other place of work, or from such office or place to his residence, shall not be regarded as a benefit or amenity granted or provided to him free of cost or at concessional rate for the purposes of this sub-clause;

(iiia) [***]

(iv) any sum paid by the employer in respect of any obligation which, but for such payment, would have been payable by the assessee;

(v) any sum payable by the employer, whether directly or through a fund, other than a recognised provident fund or an approved superannuation fund or a Deposit-linked Insurance Fund established under section 3G of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or, as the case may be, section 6C of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), to effect an assurance on the life of the assessee or to effect a contract for an annuity; 1[and]

(vi) the value of any other fringe benefit or amenity (excluding the fringe benefits chargeable to tax under Chapter XII-H) as may be prescribed :

The following sub-clauses (vi), (vii) and (viii) shall be substituted for the existing sub-clause (vi) of clause (2) of section 17 by the Finance (No. 2) Act, 2009, w.e.f. 1-4-2010 :

(vi) the value of any specified security or sweat equity shares allotted or transferred, directly or indirectly, by the employer, or former employer, free of cost or at concessional rate to the assessee.

Explanation.—For the purposes of this sub-clause,—

(a) "specified security" means the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and, where employees' stock option has been granted under any plan or scheme therefor, includes the securities offered under such plan or scheme;

(b) "sweat equity shares" means equity shares issued by a company to its employees or directors at a discount or for consideration other than cash for providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called;

(c) the value of any specified security or sweat equity shares shall be the fair market value of the specified security or sweat equity shares, as the case may be, on the date on which the option is exercised by the assessee as reduced by the amount actually paid by, or recovered from the assessee in respect of such security or shares;

- (d) "fair market value" means the value determined in accordance with the method as may be prescribed;
- (e) "option" means a right but not an obligation granted to an employee to apply for the specified security or sweat equity shares at a predetermined price;
- (vii) the amount of any contribution to an approved superannuation fund by the employer in respect of the assessee, to the extent it exceeds one lakh rupees; and
- (viii) the value of any other fringe benefit or amenity as may be prescribed:

Provided that nothing in this clause shall apply to,—

- (i) the value of any medical treatment provided to an employee or any member of his family in any hospital maintained by the employer;
- (ii) any sum paid by the employer in respect of any expenditure actually incurred by the employee on his medical treatment or treatment of any member of his family—
 - (a) in any hospital maintained by the Government or any local authority or any other hospital approved by the Government for the purposes of medical treatment of its employees;
 - (b) in respect of the prescribed diseases or ailments, in any hospital approved by the Chief Commissioner having regard to the prescribed guidelines :

Provided that, in a case falling in sub-clause (b), the employee shall attach with his return of income a certificate from the hospital specifying the disease or ailment for which medical treatment was required and the receipt for the amount paid to the hospital;

- (iii) any portion of the premium paid by an employer in relation to an employee, to effect or to keep in force an insurance on the health of such employee under any scheme approved by the Central Government or the Insurance Regulatory and Development Authority established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999), for the purposes of clause (ib) of sub-section (1) of section 36;
- (iv) any sum paid by the employer in respect of any premium paid by the employee to effect or to keep in force an insurance on his health or the health of any member of his family under any scheme approved by the Central Government or the Insurance Regulatory and Development Authority established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999), for the purposes of section 80D;
- (v) any sum paid by the employer in respect of any expenditure actually incurred by the employee on his medical treatment or treatment of any member of his family other than

the treatment referred to in clauses (i) and (ii); so, however, that such sum does not exceed fifteen thousand rupees in the previous year;

(vi) any expenditure incurred by the employer on—

(1) medical treatment of the employee, or any member of the family of such employee, outside India;

(2) travel and stay abroad of the employee or any member of the family of such employee for medical treatment;

(3) travel and stay abroad of one attendant who accompanies the patient in connection with such treatment,

subject to the condition that—

(A) the expenditure on medical treatment and stay abroad shall be excluded from perquisite only to the extent permitted by the Reserve Bank of India; and

(B) the expenditure on travel shall be excluded from perquisite only in the case of an employee whose gross total income, as computed before including therein the said expenditure, does not exceed two lakh rupees;

(vii) any sum paid by the employer in respect of any expenditure actually incurred by the employee for any of the purposes specified in clause (vi) subject to the conditions specified in or under that clause :

Provided further that for the assessment year beginning on the 1st day of April, 2002, nothing contained in this clause shall apply to any employee whose income under the head "Salaries" (whether due from, or paid or allowed by, one or more employers) exclusive of the value of all perquisites not provided for by way of monetary payment, does not exceed one lakh rupees.

Explanation.—For the purposes of clause (2),—

(i) "hospital" includes a dispensary or a clinic or a nursing home;

(ii) "family", in relation to an individual, shall have the same meaning as in clause (5) of section 10; and

(iii) "gross total income" shall have the same meaning as in clause (5) of section 80B;

[* * *]

(3) "profits in lieu of salary" includes—

(i) the amount of any compensation due to or received by an assessee from his employer or former employer at or in connection with the termination of his employment or the modification of the terms and conditions relating thereto;

(ii) any payment (other than any payment referred to in clause (10), clause (10A), clause (10B), clause (11), clause (12), clause (13) or clause (13A) of section 10), due to or received by an assessee from an employer or a former employer or from a provident or other fund, to the extent to which it does not consist of contributions by the assessee or interest on such contributions or any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy.

Explanation.—For the purposes of this sub-clause, the expression "Keyman insurance policy" shall have the meaning assigned to it in clause (10D) of section 10;

(iii) any amount due to or received, whether in lump sum or otherwise, by any assessee from any person—

(A) before his joining any employment with that person; or

(B) after cessation of his employment with that person.