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TAXMANN'S

INCOME TAX ACT

AS AMENDED BY FINANCE ACT 2010

54th EDITION
2010

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INCOME-TAX ACT, 1961*

[43 OF 1961]

[AS AMENDED BY FINANCE ACT, 2010]

An Act to consolidate and amend the law relating to income-tax and super-tax

BE it enacted by Parliament in the Twelfth Year of the Republic of India as follows :—

CHAPTER I

PRELIMINARY

Short title, extent and commencement.

[1]**1.** [2](1) This Act may be called the Income-tax Act, 1961.

(2) It extends to the whole of India.

(3) Save as otherwise provided in this Act, it shall come into force on the 1st day of April, 1962.

Definitions.

2. In this Act, unless the context otherwise requires,—

[3][(*1*) "advance tax" means the advance tax payable in accordance with the provisions of Chapter XVII-C;]

---

1. For applicability of the Act to State of Sikkim, *see* section 26 of the Finance Act, 1989. For extension of Act to Continental Shelf of India, *see* Notification No. GSR 304(E), dated 31-3-1983. For details, *see* Taxmann's Master Guide to Income-tax Act.

2. For effective date for the applicability of the Act in the State of Sikkim, *see* Notification No. SO 148(E), dated 23-2-1989. For details, *see* Taxmann's Master Guide to Income-tax Act.

3. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

Amendments made by the Finance Act, 2010 notwithstanding the dates from which they come into effect have been printed in italics enclosed with bold square brackets.

Amendments made by the Finance (No. 2) Act, 2009 coming into force from 1-4-2010 have also been printed in italics but enclosed within medium square brackets.

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[4][[5](*1A*)] [6]"agricultural income"[7] means[8]—

[9][(*a*) any rent[10] or revenue[10] derived[10] from land[10] which is situated in India and is used for agricultural purposes;]

(*b*) any income derived from such land[10] by—

(*i*) agriculture[10]; or

(*ii*) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market[10]; or

(*iii*) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in paragraph (*ii*) of this sub-clause ;

(*c*) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any process mentioned in paragraphs (*ii*) and (*iii*) of sub-clause (*b*) is carried on :

[9][**Provided** that—

(*i*) the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator, or the receiver of rent-in-kind, by reason of his connection with the land, requires as a dwelling house, or as a store-house, or other out-building, and

(*ii*) the land is either assessed to land revenue in India or is subject to a local rate assessed and collected by officers of the Government as such or where the land is not so assessed to land revenue or subject to a local rate, it is not situated—

(*A*) in any 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 or by any other name)

---

4. Renumbered as clause (*1A*) by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

5. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

6. *See* rules 7 and 8 for manner of computation of income which is partially agricultural and partially from business. *See* also rules 7A & 7B.

7. The Finance Act, 1973 introduced for the first time a scheme of partially integrated taxation of non-agricultural income with incomes derived from agriculture for the purposes of determining the rate of income-tax that will apply to certain non-corporate assessees. The scheme is since continued by the Annual Finance Acts. The provisions applicable for the assessment year 2010-11 are contained in section 2(*2*)/2(*13*)(*c*) and Part IV of the First Schedule to the Finance Act, 2010.

8. *See* also Circular No. 310, dated 29-7-1981 and Circular No. 5/2003, dated 22-5-2003. For details, *see* Taxmann's Master Guide to Income-tax Act.

9. Substituted by the Taxation Laws (Amendment) Act, 1970, w.r.e.f. 1-4-1962.

10. For meaning of the terms/expressions "rent", "revenue", "derived", "revenue derived from land", "such land", "agriculture" and "market", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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or a cantonment board and which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year ; or

(*B*) in any area within such distance, not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (*A*), as the Central Government may, having regard to the extent of, and scope for, urbanisation of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette[11].]

[12][[13][*Explanation 1.*]—For the removal of doubts, it is hereby declared that revenue derived from land shall not include and shall be deemed never to have included any income arising from the transfer of any land referred to in item (*a*) or item (*b*) of sub-clause (*iii*) of clause (*14*) of this section.]

[14][*Explanation 2.*—For the removal of doubts, it is hereby declared that income derived from any building or land referred to in sub-clause (*c*) arising from the use of such building or land for any purpose (including letting for residential purpose or for the purpose of any business or profession) other than agriculture falling under sub-clause (*a*) or sub-clause (*b*) shall not be agricultural income.]

[15][*Explanation 3.*—For the purposes of this clause, any income derived from saplings or seedlings grown in a nursery shall be deemed to be agricultural income;]

[16][[17][(*1B*)] "amalgamation", in relation to companies, means the merger of one or more companies with another company or the merger of two or more companies to form one company (the company or companies which so merge being referred to as the amalgamating company or companies and the company with which they merge or which is formed as a result of the merger, as the amalgamated company) in such a manner that—

(*i*) all the property of the amalgamating company or companies immediately before the amalgamation becomes the property of the amalgamated company by virtue of the amalgamation ;

(*ii*) all the liabilities of the amalgamating company or companies immediately before the amalgamation become the liabilities of the amalgamated company by virtue of the amalgamation ;

---

11. For specified urban areas, refer Taxmann's Direct Taxes Circulars.

12. Inserted by the Finance Act, 1989, w.r.e.f. 1-4-1970.

13. *Explanation* renumbered as *Explanation 1* by the Finance Act, 2000, w.e.f. 1-4-2001.

14. Inserted, *ibid.*

15. Inserted by the Finance Act, 2008, w.e.f. 1-4-2009.

16. Inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

17. Renumbered as clause (*1B*) by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

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(*iii*) shareholders holding not less than [18][three-fourths] in value of the shares in the amalgamating company or companies (other than shares already held therein immediately before the amalgamation by, or by a nominee for, the amalgamated company or its subsidiary) become shareholders of the amalgamated company by virtue of the amalgamation,

otherwise than as a result of the acquisition of the property of one company by another company pursuant to the purchase of such property by the other company or as a result of the distribution of such property to the other company after the winding up of the first-mentioned company ;]

[19][(*1C*) "Additional Commissioner" means a person appointed to be an Additional Commissioner of Income-tax under sub-section (1) of section 117;

(*1D*) "Additional Director" means a person appointed to be an Additional Director of Income-tax under sub-section (1) of section 117 ;]

(*2*) "annual value", in relation to any property, means its annual value as determined under section 23 ;

(*3*) [20][* * *]

(*4*) "Appellate Tribunal" means the Appellate Tribunal constituted under section 252 ;

(*5*) "approved gratuity fund" means a gratuity fund which has been and continues to be approved by the [21][Chief Commissioner or Commissioner] in accordance with the rules contained in Part C of the Fourth Schedule ;

(*6*) "approved superannuation fund" means a superannuation fund or any part of a superannuation fund which has been and continues to be approved by the [21][Chief Commissioner or Commissioner] in accordance with the rules contained in Part B of the Fourth Schedule ;

[22](*7*) "assessee"[23] means a person by whom [24][any tax] or any other sum of money is payable under this Act, and includes—

(*a*) every person in respect of whom any proceeding under this Act has been taken for the assessment of his income [25][or assessment of fringe benefits] or of the income of any other person in respect of which he is assessable, or of the loss sustained by him or by such other person, or of the amount of refund due to him or to such other person ;

---

18. Substituted for "nine-tenths" by the Finance Act, 1999, w.e.f. 1-4-2000.

19. Clauses (*1C*) and (*1D*) inserted by the Finance Act, 2007, w.r.e.f. 1-6-1994.

20. Clause (*3*) omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

21. Substituted for "Commissioner", *ibid.*

22. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

23. For meaning of the term "assessee", *see* Taxmann's Direct Taxes Manual, Vol. 3.

24. Substituted for "income-tax or super-tax" by the Finance Act, 1965, w.e.f. 1-4-1965.

25. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

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(*b*) every person who is deemed to be an assessee under any provision of this Act ;

(*c*) every person who is deemed to be an assessee in default under any provision of this Act ;

[26][(*7A*) "Assessing Officer" means the Assistant Commissioner [27][or Deputy Commissioner] [28][or Assistant Director] [27][or Deputy Director] or the Income-tax Officer who is vested with the relevant jurisdiction by virtue of directions or orders issued under sub-section (1) or sub-section (2) of section 120 or any other provision of this Act, and the [29][Additional Commissioner or] [30][Additional Director or] [31][Joint Commissioner or Joint Director] who is directed under clause (*b*) of sub-section (4) of that section to exercise or perform all or any of the powers and functions conferred on, or assigned to, an Assessing Officer under this Act ;]

(*8*) "assessment"[32] includes reassessment ;

(*9*) "assessment year" means the period of twelve months commencing on the 1st day of April every year ;

[33][(*9A*) "Assistant Commissioner" means a person appointed to be an Assistant Commissioner of Income-tax [34][or a Deputy Commissioner of Income-tax] under sub-section (1) of section 117 ;]

[35][(*9B*) "Assistant Director" means a person appointed to be an Assistant Director of Income-tax under sub-section (1) of section 117;]

(*10*) "average rate of income-tax" means the rate arrived at by dividing the amount of income-tax calculated on the total income, by such total income ;

[36][(*11*) "block of assets" means a group of assets falling within a class of assets comprising—

(*a*) tangible assets, being buildings, machinery, plant or furniture;

---

26. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

27. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

28. Inserted by the Finance (No. 2) Act, 1996, w.e.f. 1-10-1996.

29. Inserted by the Finance Act, 2007, w.r.e.f. 1-6-1994.

30. Inserted, *ibid.,* w.r.e.f. 1-10-1996.

31. Substituted for "Deputy Commissioner or Deputy Director" by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier "or Deputy Director" was inserted by the Finance (No. 2) Act, 1996, w.e.f. 1-10-1996.

32. For the meaning of the term "assessment", *see* Taxmann's Direct Taxes Manual, Vol. 3.

33. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

34. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

35. Inserted by the Finance Act, 2007, w.r.e.f. 1-4-1988.

36. Substituted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999. Prior to its substitution, clause (*11*), as inserted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988, read as under :

'(*11*) "block of assets" means a group of assets falling within a class of assets, being buildings, machinery, plant or furniture, in respect of which the same percentage of depreciation is prescribed ;'

Original clause was earlier omitted by the Finance Act, 1965, w.e.f. 1-4-1965.

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(*b*) intangible assets, being know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature,

in respect of which the same percentage of depreciation is prescribed ;]

(*12*) "Board" means the [37][Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963 (54 of 1963)] ;

[38][(*12A*) "books or books of account" includes ledgers, day-books, cash books, account-books and other books, whether kept in the written form or as print-outs of data stored in a floppy, disc, tape or any other form of electro-magnetic data storage device;]

[39](*13*) "business"[40] includes any trade[40], commerce or manufacture or any adventure[40] or concern in the nature of trade[40], commerce or manufacture ;

[41](*14*) "capital asset" means property[42] of any kind held by an assessee, whether or not connected with his business or profession, but does not include—

(*i*) any stock-in-trade, consumable stores or raw materials held for the purposes of his business or profession ;

[43][(*ii*) personal effects[44], that is to say, movable property (including wearing apparel and furniture) held for personal use[44] by the assessee or any member of his family dependent on him, but excludes—

(*a*) jewellery;

(*b*) archaeological collections;

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37. Substituted for "Central Board of Revenue constituted under the Central Board of Revenue Act, 1924 (4 of 1924)" by the Central Boards of Revenue Act, 1963, w.e.f. 1-1-1964.

38. Inserted by the Finance Act, 2001, w.e.f. 1-6-2001.

39. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

40. For the meaning of the terms/expressions "business", "trade", "adventure" and "in the nature of trade", *see* Taxmann's Direct Taxes Manual, Vol. 3.

41. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

42. For the meaning of the term "property", *see* Taxmann's Direct Taxes Manual, Vol. 3.

43. Substituted by the Finance Act, 2007, w.e.f. 1-4-2008. Prior to its substitution, sub-clause (*ii*), as substituted by the Finance Act, 1972, w.e.f. 1-4-1973, read as under :

'(*ii*) personal effects, that is to say, movable property (including wearing apparel and furniture, but excluding jewellery) held for personal use by the assessee or any member of his family dependent on him.

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

(*a*) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stone, and whether or not worked or sewn into any wearing apparel ;

(*b*) precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel ;'

44. For the meaning of the expressions "personal effects" and "personal use", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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(*c*) drawings;

(*d*) paintings;

(*e*) sculptures; or

(*f*) any work of art.

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

(*a*) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stone, and whether or not worked or sewn into any wearing apparel;

(*b*) precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel ;]

[45][(*iii*) agricultural land[46] in India, not being land situate—

(*a*) in any area which is comprised within the jurisdiction of a municipality[46] (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population[46] of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year ; or

(*b*) in any area within such distance, not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (*a*), as the Central Government may, having regard to the extent of, and scope for, urbanisation of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette[47];]

[48][(*iv*) 6½ per cent Gold Bonds, 1977,[49][or 7 per cent Gold Bonds, 1980,] [50][or National Defence Gold Bonds, 1980,] issued by the Central Government ;]

[51][(*v*) Special Bearer Bonds, 1991, issued by the Central Government ;]

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45. Substituted for "(*iii*) agricultural land in India" by the Finance Act, 1970, w.e.f. 1-4-1970.

46. For the meaning of the terms/expressions "agricultural land", "municipality" and "population", *see* Taxmann's Direct Taxes Manual, Vol. 3.

47. For specified urban areas, refer Taxmann's Direct Taxes Circulars.

48. Inserted by the Taxation Laws (Amendment) Act, 1962, w.e.f. 13-12-1962.

49. Inserted by the Finance (No. 2) Act, 1965, w.e.f. 1-4-1965.

50. Inserted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1965, w.e.f. 4-12-1965.

51. Inserted by the Special Bearer Bonds (Immunities and Exemptions) Act, 1981, w.e.f. 12-1-1981.

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[52][(*vi*) Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 notified by the Central Government ;]

[53][[54](*15*) [55]"charitable purpose"[56] includes relief of the poor, education[56], medical relief, [57][preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest,] and the advancement of any other [56]object of general public utility:

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity:]

[57a]**[Provided further** *that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is ten lakh rupees or less in the previous year;***]**

[58][(*15A*) "Chief Commissioner" means a person appointed to be a Chief Commissioner of Income-tax under sub-section (1) of section 117 ;]

[59][[60][(*15B*)] "child", in relation to an individual, includes a step-child and an adopted child of that individual ;]

[61][(*16*) "Commissioner" means a person appointed to be a Commissioner of Income-tax under sub-section (1) of section 117 [62][* * *] ;]

[63][(*16A*) "Commissioner (Appeals)" means a person appointed to be a Commissioner of Income-tax (Appeals) under sub-section (1) of section 117 ;]

[64][(*17*) "company" means—

(*i*) any Indian company, or

(*ii*) any body corporate incorporated by or under the laws of a country outside India, or

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52. Inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

53. Substituted by the Finance Act, 2008, w.e.f. 1-4-2009. Prior to its substitution, clause (*15*), as amended by the Finance Act, 1983, w.e.f. 1-4-1984, read as under :

'(*15*) "charitable purpose" includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility;'

54. *See* also Circular No. 395, dated 24-9-1984 and No. 11/2008, dated 19-12-2008. For details, *see* Taxmann's Master Guide to Income-tax Act.

55. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

56. For the meaning of terms/expressions "charitable purpose", "education" and "object of general public utility", *see* Taxmann's Direct Taxes Manual, Vol. 3.

57. Inserted by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-2009.

57a. Inserted by the Finance Act, 2010, w.r.e.f. **1-4-2009**.

58. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

59. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

60. Renumbered by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

61. Substituted by the Finance Act, 1970, w.e.f. 1-4-1970.

62. Words ", and includes a person appointed to be an Additional Commissioner of Income-tax under that sub-section" omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

63. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

64. Substituted by the Finance (No. 2) Act, 1971, w.e.f. 1-4-1971.

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(*iii*) any institution, association or body which is or was assessable or was assessed as a company for any assessment year under the Indian Income-tax Act, 1922 (11 of 1922), or which is or was assessable or was assessed under this Act as a company for any assessment year commencing on or before the 1st day of April, 1970, or

(*iv*) any institution, association or body, whether incorporated or not and whether Indian or non-Indian, which is declared by general or special order of the Board to be a company :

Provided that such institution, association or body shall be deemed to be a company only for such assessment year or assessment years (whether commencing before the 1st day of April, 1971, or on or after that date) as may be specified in the declaration ;]

(*18*) "company in which the public are substantially interested"—a company is said to be a company in which the public[65] are substantially interested—

[66][(*a*) if it is a company owned by the Government or the Reserve Bank of India or in which not less than forty per cent of the shares are held (whether singly or taken together) by the Government or the Reserve Bank of India or a corporation owned by that bank ; or]

[67][(*aa*) if it is a company which is registered under section 25 of the Companies Act, 1956 (1 of 1956)[68] ; or

(*ab*) if it is a company having no share capital and if, having regard to its objects, the nature and composition of its membership and other relevant considerations, it is declared by order of the Board to be a company in which the public are substantially interested :

Provided that such company shall be deemed to be a company in which the public are substantially interested only for such assessment year or assessment years (whether commencing before the 1st day of April, 1971, or on or after that date) as may be specified in the declaration ; or]

[69][(*ac*) if it is a mutual benefit finance company, that is to say, a company which carries on, as its principal business, the business of acceptance of deposits from its members and which is declared by the Central Government under section 620A[70] of the Companies Act, 1956 (1 of 1956), to be a *Nidhi* or Mutual Benefit Society ; or]

[71][(*ad*) if it is a company, wherein shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than fifty per cent of

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65. For the meaning of the term "public", *see* Taxmann's Direct Taxes Manual, Vol. 3.

66. Substituted by the Finance Act, 1964, w.e.f. 1-4-1964.

67. Inserted by the Finance (No. 2) Act, 1971, w.e.f. 1-4-1971.

68. For text of section 25 of the Companies Act, 1956, *see* **Appendix.**

69. Inserted by the Finance Act, 1985, w.r.e.f. 1-4-1984.

70. For text of section 620A of the Companies Act, 1956, and notified Nidhi(s) thereunder, *see* **Appendix.**

71. Inserted by the Finance Act, 1992, w.e.f. 1-4-1993.

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the voting power have been allotted unconditionally to, or acquired unconditionally by, and were throughout the relevant previous year beneficially held by, one or more co-operative societies ;]

[72][(*b*) if it is a company which is not a [73]private company as defined in the Companies Act, 1956 (1 of 1956), and the conditions specified either in item (*A*) or in item (*B*) are fulfilled, namely :—

(*A*) shares in the company (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) were, as on the last day of the relevant previous year, listed in a recognised stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 (42 of 1956), and any rules made thereunder ;

[74][(*B*) shares in the company (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than fifty per cent of the voting power have been allotted unconditionally to, or acquired unconditionally by, and were throughout the relevant previous year beneficially held by—

(*a*) the Government, or

(*b*) a corporation established by a Central, State or Provincial Act, or

(*c*) any company to which this clause applies or any subsidiary company of such company [75][if the whole of the share capital of such subsidiary company has been held by the parent company or by its nominees throughout the previous year.]

Explanation.—In its application to an Indian company whose business consists mainly in the construction of ships or in the manufacture or processing of goods or in mining or in the generation or distribution of electricity or any other form of power, item (*B*) shall have effect as if for the words "not less than fifty per cent", the words "not less than forty per cent" had been substituted ;]]

(*19*) "co-operative society" means a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State for the registration of co-operative societies ;

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72. Substituted by the Finance Act, 1969, w.e.f. 1-4-1970. Earlier, clause (*b*) was amended first by the Finance Act, 1965, w.e.f. 1-4-1965 and then by the Finance Act, 1966, w.e.f. 1-4-1966.

73. Clause (*iii*) of section 3(1) of the Companies Act, 1956, defines "private company". For text of section 3, *see* **Appendix.**

74. Substituted by the Finance Act, 1983, w.e.f. 2-4-1983.

75. Substituted for "where such subsidiary company fulfils the conditions laid down in clause (*b*) of section 108" by the Finance Act, 1987, w.e.f. 1-4-1988.

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[76][(*19A*) "Deputy Commissioner" means a person appointed to be a Deputy Commissioner of Income-tax [77][* * *] under sub-section (1) of section 117 ;

[78][(*19AA*) "demerger", in relation to companies, means the transfer, pursuant to a scheme of arrangement under sections 391 to 394[79] of the Companies Act, 1956 (1 of 1956), by a demerged company of its one or more undertakings to any resulting company in such a manner that—

(*i*) all the property of the undertaking, being transferred by the demerged company, immediately before the demerger, becomes the property of the resulting company by virtue of the demerger;

(*ii*) all the liabilities relatable to the undertaking, being transferred by the demerged company, immediately before the demerger, become the liabilities of the resulting company by virtue of the demerger;

(*iii*) the property and the liabilities of the undertaking or undertakings being transferred by the demerged company are transferred at values appearing in its books of account immediately before the demerger;

(*iv*) the resulting company issues, in consideration of the demerger, its shares to the shareholders of the demerged company on a proportionate basis;

(*v*) the shareholders holding not less than three-fourths in value of the shares in the demerged company (other than shares already held therein immediately before the demerger, or by a nominee for, the resulting company or, its subsidiary) become shareholders of the resulting company or companies by virtue of the demerger,

otherwise than as a result of the acquisition of the property or assets of the demerged company or any undertaking thereof by the resulting company;

(*vi*) the transfer of the undertaking is on a going concern basis;

(*vii*) the demerger is in accordance with the conditions, if any, notified under sub-section (5) of section 72A by the Central Government in this behalf.

Explanation 1.—For the purposes of this clause, "undertaking" shall include any part of an undertaking, or a unit or division of an undertaking or a business activity taken as a whole, but does not include individual assets or liabilities or any combination thereof not constituting a business activity.

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76. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

77. Words "or an Additional Commissioner of Income-tax" omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier the quoted words were inserted by the Finance Act, 1994, w.e.f. 1-6-1994.

78. Clauses (*19AA*) and (*19AAA*) inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

79. For text of sections 391 to 394 of the Companies Act, 1956, *see* **Appendix.**

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Explanation 2.—For the purposes of this clause, the liabilities referred to in sub-clause (*ii*), shall include—

(*a*) the liabilities which arise out of the activities or operations of the undertaking;

(*b*) the specific loans or borrowings (including debentures) raised, incurred and utilised solely for the activities or operations of the undertaking; and

(*c*) in cases, other than those referred to in clause (*a*) or clause (*b*), so much of the amounts of general or multipurpose borrowings, if any, of the demerged company as stand in the same proportion which the value of the assets transferred in a demerger bears to the total value of the assets of such demerged company immediately before the demerger.

Explanation 3.—For determining the value of the property referred to in sub-clause (*iii*), any change in the value of assets consequent to their revaluation shall be ignored.

Explanation 4.—For the purposes of this clause, the splitting up or the reconstruction of any authority or a body constituted or established under a Central, State or Provincial Act, or a local authority or a public sector company, into separate authorities or bodies or local authorities or companies, as the case may be, shall be deemed to be a demerger if such split up or reconstruction fulfils [80][such conditions as may be notified in the Official Gazette[81], by the Central Government];

(*19AAA*) "demerged company" means the company whose undertaking is transferred, pursuant to a demerger, to a resulting company;]

(*19B*) "Deputy Commissioner (Appeals)" means a person appointed to be a Deputy Commissioner of Income-tax (Appeals) [82][or an Additional Commissioner of Income-tax (Appeals)] under sub-section (1) of section 117 ;]

[83][(*19C*) "Deputy Director" means a person appointed to be a Deputy Director of Income-tax [84][* * *] under sub-section (1) of section 117 ;]

(*20*) [85]"director", "manager" and "managing agent", in relation to a company, have the meanings respectively assigned to them in the Companies Act, 1956 (1 of 1956) ;

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80. Substituted for "the conditions specified in sub-clauses (*i*) to (*vii*) of this clause, to the extent applicable" by the Finance Act, 2000, w.e.f. 1-4-2000.

81. For notified conditions, *see* Taxmann's Master Guide to Income-tax Act.

82. Inserted by the Finance Act, 1994, w.e.f. 1-6-1994.

83. Inserted, *ibid.*

84. Words "or an Additional Director of Income-tax" omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

85. Clauses (*13*), (*24*) and (*25*) of section 2 of the Companies Act, 1956, define expressions "director", "manager" and "managing agent", respectively. For text of provisions, *see* **Appendix.**

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[86][(*21*) "Director General or Director" means a person appointed to be a Director General of Income-tax or, as the case may be, a Director of Income-tax, under sub-section (1) of section 117, and includes a person appointed under that sub-section to be [87][an Additional Director of Income-tax or] a [88][Joint] Director of Income-tax or an Assistant Director [89][or Deputy Director] of Income-tax ;]

(*22*) [90]"dividend"[91] includes—

(*a*) any distribution[91] by a company of accumulated profits[91], whether capitalised or not, if such distribution entails the release by the company to its shareholders of all or any part of the assets of the company ;

(*b*) any distribution[91] to its shareholders by a company of debentures, debenture-stock, or deposit certificates in any form, whether with or without interest, and any distribution to its preference shareholders of shares by way of bonus, to the extent to which the company possesses accumulated profits[91], whether capitalised or not ;

(*c*) any distribution[91] made to the shareholders of a company on its liquidation, to the extent to which the distribution is attributable to the accumulated profits of the company immediately before its liquidation, whether capitalised or not ;

(*d*) any distribution[91] to its shareholders by a company on the reduction of its capital, to the extent to which the company possesses accumulated profits[91] which arose after the end of the previous year ending next before the 1st day of April, 1933, whether such accumulated profits have been capitalised or not ;

(*e*) any payment by a company, not being a company in which the public are substantially interested, of any sum (whether as representing a part of the assets of the company or otherwise) [92][made after the 31st day of May, 1987, by way of advance or loan to a shareholder[93], being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten per cent of the voting power, or to any concern in which such shareholder is a member or a partner and in which

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86. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

87. Inserted by the Finance Act, 1994, w.e.f. 1-6-1994.

88. Substituted for "Deputy" by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

89. Inserted, *ibid.*

90. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

91. For the meaning of the terms "dividend", "distribution" and "profits", *see* Taxmann's Direct Taxes Manual, Vol. 3.

92. Substituted for "by way of advance or loan to a shareholder, being a person who has a substantial interest in the company," by the Finance Act, 1987, w.e.f. 1-4-1988.

93. For the meaning of the term "shareholder", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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he has a substantial interest (hereafter in this clause referred to as the said concern)] or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits[94] ;

but "dividend" does not include—

(*i*) a distribution made in accordance with sub-clause (*c*) or sub-clause (*d*) in respect of any share issued for full cash consideration, where the holder of the share is not entitled in the event of liquidation to participate in the surplus assets ;

[95][(*ia*) a distribution made in accordance with sub-clause (*c*) or sub-clause (*d*) in so far as such distribution is attributable to the capitalised profits of the company representing bonus shares allotted to its equity shareholders after the 31st day of March, 1964, [96][and before the 1st day of April, 1965] ;]

(*ii*) any advance or loan made to a shareholder [97][or the said concern] by a company in the ordinary course of its business, where the lending of money is a substantial part of the business of the company ;

(*iii*) any dividend paid by a company which is set off by the company against the whole or any part of any sum previously paid by it and treated as a dividend within the meaning of sub-clause (*e*), to the extent to which it is so set off;

[98][(*iv*) any payment made by a company on purchase of its own shares from a shareholder in accordance with the provisions of section 77A[99] of the Companies Act, 1956 (1 of 1956);

(*v*) any distribution of shares pursuant to a demerger by the resulting company to the shareholders of the demerged company (whether or not there is a reduction of capital in the demerged company).]

Explanation 1.—The expression "accumulated profits", wherever it occurs in this clause, shall not include capital gains arising before the 1st day of April, 1946, or after the 31st day of March, 1948, and before the 1st day of April, 1956.

Explanation 2.—The expression "accumulated profits" in sub-clauses (*a*), (*b*), (*d*) and (*e*), shall include all profits of the company up to the date of distribution or payment referred to in those sub-clauses, and in sub-clause (*c*) shall include all profits of the company up to the date of liquidation, [1][but shall not, where the liquidation is consequent on

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94. For the meaning of the terms "profits" and "distribution", *see* Taxmann's Direct Taxes Manual, Vol. 3.

95. Inserted by the Finance Act, 1965, w.e.f. 1-4-1965.

96. Inserted by the Finance Act, 1966, w.e.f. 1-4-1966.

97. Inserted by the Finance Act, 1987, w.e.f. 1-4-1988.

98. Inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

99. For text of section 77A of the Companies Act, 1956, *see* **Appendix.**

1. Inserted by the Direct Taxes (Amendment) Act, 1964, w.r.e.f. 1-4-1962.

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the compulsory acquisition of its undertaking by the Government or a corporation owned or controlled by the Government under any law for the time being in force, include any profits of the company prior to three successive previous years immediately preceding the previous year in which such acquisition took place].

[2][*Explanation 3.*—For the purposes of this clause,—

(*a*) "concern" means a Hindu undivided family, or a firm or an association of persons or a body of individuals or a company ;

(*b*) a person shall be deemed to have a substantial interest in a concern, other than a company, if he is, at any time during the previous year, beneficially entitled to not less than twenty per cent of the income of such concern ;]

[3][(*22A*) "domestic company" means an Indian company, or any other company which, in respect of its income liable to tax under this Act, has made the prescribed arrangements for the declaration and payment, within India, of the dividends (including dividends on preference shares) payable out of such income ;]

[4][(*22AA*) "document" includes an electronic record as defined in clause (*t*)[5] of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);]

[6][*(*22AAA*) "electoral trust" means a trust so approved by the Board in accordance with the scheme made in this regard by the Central Government;*]

[7][[8][(*22B*)] "fair market value", in relation to a capital asset, means—

(*i*) the price that the capital asset would ordinarily fetch on sale in the open market on the relevant date ; and

(*ii*) where the price referred to in sub-clause (*i*) is not ascertainable, such price as may be determined in accordance with the rules made under this Act ;]

[9][*(*23*)* (i) *"firm" shall have the meaning assigned to it in the Indian Partnership Act, 1932 (9 of 1932)*[10], *and shall include a limited*

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2. Inserted by the Finance Act, 1987, w.e.f. 1-4-1988.

3. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

4. Inserted by the Finance Act, 2001, w.e.f. 1-6-2001.

5. For definition of "document" under section 2(1)(*t*) of the Information Technology Act, 2000, *see* **Appendix.**

6. Inserted by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2010.**

7. Inserted by the Finance Act, 1964, w.e.f. 1-4-1964.

8. Renumbered as clause (*22B*) by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

9. Substituted by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2010.** Prior to its substitution, clause (*23*) read as under:

'(*23*) "firm", "partner" and "partnership" have the meanings respectively assigned to them in the Indian Partnership Act, 1932 (9 of 1932) ; but the expression "partner" shall also include any person who, being a minor, has been admitted to the benefits of partnership ;'

10. Section 4 of the Indian Partnership Act, 1932, defines expressions "firm", "partner" and "partnership" as follows :

(Contd. on p. 1.16)

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liability partnership[11] *as defined in the Limited Liability Partnership Act, 2008 (6 of 2009);*

*(*ii*) "partner" shall have the meaning assigned to it in the Indian Partnership Act, 1932 (9 of 1932), and shall include,—*

*(*a*) any person who, being a minor, has been admitted to the benefits of partnership; and*

*(*b*) a partner of a limited liability partnership*[11] *as defined in the Limited Liability Partnership Act, 2008 (6 of 2009);*

*(*iii*) "partnership" shall have the meaning assigned to it in the Indian Partnership Act, 1932 (9 of 1932), and shall include a limited liability partnership*[11] *as defined in the Limited Liability Partnership Act, 2008 (6 of 2009);*]

[12][(*23A*) "foreign company" means a company which is not a domestic company ;]

[13][(*23B*) "fringe benefits" means any fringe benefits referred to in section 115WB;]

[14](*24*) "income"[15] includes[15]—

(*i*) profits and gains[15] ;

(*ii*) dividend ;

[16][(*iia*) voluntary contributions received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such purposes [17][or by an association or institution referred to in clause (*21*) or clause (*23*), or by a fund or trust or institution referred to in sub-clause (*iv*) or sub-clause (*v*) [18][or by any university or other educational institution

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(Contd. from p. 1.15)

' "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Persons who have entered into partnership with one another are called individually "partners" and collectively "a firm", and the name under which their business is carried on is called the "firm name".'

11. For definition of "designated partner", "limited liability partnership" and "partner" under Limited Liability Partnership Act, 2008, *see* **Appendix**.

12. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

13. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

14. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

15. For the meaning of the terms/expression "income", "includes" and "profits and gains", *see* Taxmann's Direct Taxes Manual, Vol. 3.

16. Inserted by the Finance Act, 1972, w.e.f. 1-4-1973.

17. Substituted for "or by a trust or institution of national importance referred to in clause (*d*) of sub-section (1) of section 80F" by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Earlier, the said expression was substituted for ", not being contributions made with a specific direction that they shall form part of the corpus of the trust or institution" by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date.

18. Substituted for "or by any university or other educational institution referred to in sub-clause (*vi*) or by any hospital or other institution referred to in sub-clause (*via*)" by the Finance Act, 2006, w.e.f. 1-4-2007. Earlier the quoted words were inserted by the Finance Act, 2006, w.r.e.f. 1-4-1999.

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referred to in sub-clause (*iiiad*) or sub-clause (*vi*) or by any hospital or other institution referred to in sub-clause (*iiiae*) or sub-clause (*via*)] of clause (*23C*) of section 10 [19][*or by an electoral trust*]].

Explanation.—For the purposes of this sub-clause, "trust" includes any other legal obligation ;]

(*iii*) the value of any perquisite or profit in lieu of salary taxable under clauses (*2*) and (*3*) of section 17 ;

[20][(*iiia*) any special allowance or benefit, other than perquisite included under sub-clause (*iii*), specifically granted to the assessee to meet expenses wholly, necessarily and exclusively for the performance of the duties of an office or employment of profit ;

(*iiib*) any allowance granted to the assessee either to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at a place where he ordinarily resides or to compensate him for the increased cost of living ;]

(*iv*) the value of any benefit or perquisite[21], whether convertible into money or not, obtained from a company either by a director or by a person who has a substantial interest in the company, or by a relative of the director or such person, and any sum paid by any such company in respect of any obligation which, but for such payment, would have been payable by the director or other person aforesaid ;

[22][(*iva*) the value of any benefit or perquisite[21], whether convertible into money or not, obtained by any representative assessee mentioned in clause (*iii*) or clause (*iv*) of sub-section (1) of section 160 or by any person on whose behalf or for whose benefit any income is receivable by the representative assessee (such person being hereafter in this sub-clause referred to as the "beneficiary") and any sum paid by the representative assessee in respect of any obligation which, but for such payment, would have been payable by the beneficiary ;]

(*v*) any sum chargeable to income-tax under clauses (*ii*) and (*iii*) of section 28 or section 41 or section 59 ;

[23][(*va*) any sum chargeable to income-tax under clause (*iiia*) of section 28 ;]

[24][(*vb*) any sum chargeable to income-tax under clause (*iiib*) of section 28 ;]

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19. Inserted by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2010**.

20. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.r.e.f. 1-4-1962.

21. For the meaning of the expression "benefit or perquisite", *see* Taxmann's Direct Taxes Manual, Vol. 3.

22. Inserted by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1980.

23. Inserted by the Finance Act, 1990, w.r.e.f. 1-4-1962.

24. Inserted, *ibid.,* w.r.e.f. 1-4-1967.

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[25][(*vc*) any sum chargeable to income-tax under clause (*iiic*) of section 28 ;]

[26][(*vd*)] the value of any benefit or perquisite taxable under clause (*iv*) of section 28 ;

[27][(*ve*) any sum chargeable to income-tax under clause (*v*) of section 28 ;]

(*vi*) any capital gains chargeable under section 45 ;

(*vii*) the profits and gains of any business of insurance carried on by a mutual insurance company or by a co-operative society, computed in accordance with section 44 or any surplus taken to be such profits and gains by virtue of provisions contained in the First Schedule ;

[28][(*viia*) the profits and gains of any business of banking (including providing credit facilities) carried on by a co-operative society with its members;]

(*viii*) [*Omitted by the Finance Act, 1988, w.e.f. 1-4-1988. Original sub-clause (*viii*) was inserted by the Finance Act, 1964, w.e.f. 1-4-1964;*]

[29][(*ix*) any winnings from lotteries[30], crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature whatsoever.]

[31][*Explanation.*—For the purposes of this sub-clause,—

(*i*) "lottery" includes winnings from prizes awarded to any person by draw of lots or by chance or in any other manner whatsoever, under any scheme or arrangement by whatever name called ;

(*ii*) "card game and other game of any sort" includes any game show, an entertainment programme on television or electronic mode, in which people compete to win prizes or any other similar game ;]

[32][(*x*) any sum received by the assessee from his employees as contributions to any provident fund or superannuation fund or any fund set up under the provisions of the Employees' State Insurance Act, 1948 (34 of 1948), or any other fund for the welfare of such employees ;]

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25. Inserted by the Finance Act, 1990, w.r.e.f. 1-4-1972.

26. Relettered by the Finance Act, 1990, w.r.e.f. 1-4-1962. Earlier the original sub-clause (*va*) was inserted by the Finance Act, 1964, w.e.f. 1-4-1964.

27. Inserted by the Finance Act, 1992, w.e.f. 1-4-1993.

28. Inserted by the Finance Act, 2006, w.e.f. 1-4-2007.

29. Inserted by the Finance Act, 1972, w.e.f. 1-4-1972.

30. For the meaning of the term "lotteries", *see* Taxmann's Direct Taxes Manual, Vol. 3.

31. Inserted by the Finance Act, 2001, w.e.f. 1-4-2002.

32. Inserted by the Finance Act, 1987, w.e.f. 1-4-1988.

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[33][(*xi*) 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 clause*, the expression "Keyman insurance policy" shall have the meaning assigned to it in the *Explanation* to clause (*10D*) of section 10 ;]

[34][(*xii*) any sum referred to in [35][clause (*va*)] of section 28;]

[36][(*xiii*) any sum referred to in clause (*v*) of sub-section (2) of section 56;]

[37][(*xiv*) any sum referred to in clause (*vi*) of sub-section (2) of section 56;]

[38][(*xv*) any sum of money or value of property referred to in clause (*vii*) [38a]**[***or clause (*viia*)***]** of sub-section (2) of section 56;]

(*25*) "Income-tax Officer" means a person appointed to be an Income-tax Officer under [39][* * *] section 117 ;

[40][(*25A*) "India" means the territory of India as referred to in article 1 of the Constitution, its territorial waters, seabed and subsoil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976), and the air space above its territory and territorial waters;]

(*26*) "Indian company" means a company formed and registered under the Companies Act, 1956 (1 of 1956), and includes—

(*i*) a company formed and registered under any law relating to companies formerly in force in any part of India (other than the State of Jammu and Kashmir [41][and the Union territories specified in sub-clause (*iii*) of this clause]) ;

[42][(*ia*) a corporation established by or under a Central, State or Provincial Act ;

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33. Inserted by the Finance (No. 2) Act, 1996, w.e.f. 1-10-1996.

34. Inserted by the Finance Act, 2002, w.e.f. 1-4-2003.

35. Substituted for "clause (*vii*)" by the Finance Act, 2003, w.e.f. 1-4-2003.

36. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005.

37. Inserted by the Finance Act, 2007, w.e.f. 1-4-2007.

38. Inserted by the Finance (No. 2) Act, 2009, w.e.f. 1-10-2009.

38a. Inserted by the Finance Act, 2010, w.e.f. **1-6-2010**.

39. Words "sub-section (1) of" omitted by the Direct Tax Laws (Amendment) Act, 1989, w.r.e.f. 1-4-1988. Earlier, that expression was inserted by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date.

40. Substituted by the Finance Act, 2007, w.r.e.f. 25-8-1976. Prior to its substitution, clause (*25A*), as inserted by the Taxation Laws (Extension to Union Territories) Regulation, 1963, w.e.f. 1-4-1963, read as under :

'(*25A*) "India" shall be deemed to include the Union territories of Dadra and Nagar Haveli, Goa, Daman and Diu, and Pondicherry,—

(*a*) as respects any period, for the purposes of section 6; and

(*b*) as respects any period included in the previous year, for the purposes of making any assessment for the assessment year commencing on the 1st day of April, 1963, or for any subsequent year ;'

41. Inserted by the Taxation Laws (Extension to Union Territories) Regulation, 1963, w.e.f. 1-4-1963.

42. Inserted by the Finance (No. 2) Act, 1971, w.e.f. 1-4-1971.

*Should be read as "sub-clause".

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(*ib*) any institution, association or body which is declared by the Board to be a company under clause (*17*) ;]

(*ii*) in the case of the State of Jammu and Kashmir, a company formed and registered under any law for the time being in force in that State ;

[43][(*iii*) in the case of any of the Union territories of Dadra and Nagar Haveli, Goa†, Daman and Diu, and Pondicherry, a company formed and registered under any law for the time being in force in that Union territory :]

Provided that the [44][registered or, as the case may be, principal office of the company, corporation, institution, association or body] in all cases is in India ;

[45][(*26A*) "infrastructure capital company" means such company which makes investments by way of acquiring shares or providing long-term finance to any enterprise or undertaking wholly engaged in the business referred to in sub-section (4) of section 80-IA or sub-section (1) of section 80-IAB or an undertaking developing and building a housing project referred to in sub-section (10) of section 80-IB or a project for constructing a hotel of not less than three-star category as classified by the Central Government or a project for constructing a hospital with at least one hundred beds for patients;

(*26B*) "infrastructure capital fund" means such fund operating under a trust deed registered under the provisions of the Registration Act, 1908 (16 of 1908) established to raise monies by the trustees for investment by way of acquiring shares or providing long-term finance to any enterprise or undertaking wholly engaged in the business referred to in sub-section (4) of section 80-IA or sub-section (1) of section 80-IAB or an undertaking developing and building a housing project referred to in sub-section (10) of section 80-IB or a project for constructing a hotel of not less than three-star category as classified by the Central Government or a project for constructing a hospital with at least one hundred beds for patients;]

(*27*) [46][* * *]

(*28*) "Inspector of Income-tax" means a person appointed to be an Inspector of Income-tax under sub-section [47][(1)] of section 117 ;

[48][[49](*28A*) "interest" means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or

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43. Inserted by the Taxation Laws (Extension to Union Territories) Regulation, 1963, w.e.f. 1-4-1963.

44. Substituted for "registered office of the company" by the Finance (No. 2) Act, 1971, w.e.f. 1-4-1971.

45. Clauses (*26A*) and (*26B*) inserted by the Finance Act, 2006, w.e.f. 1-4-2006.

46. Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

47. Substituted for "(2)", *ibid.*

48. Inserted by the Finance Act, 1976, w.e.f. 1-6-1976.

49. *See* also Letter F. No. 164/18/77-IT(A-I), dated 13-7-1978. For details, *see* Taxmann's Master Guide to Income-tax Act.

†Now State of Goa.

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other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised ;]

[50][(*28B*) "interest on securities" means,—

(*i*) interest on any security of the Central Government or a State Government ;

(*ii*) interest on debentures or other securities for money issued by or on behalf of a local authority or a company or a corporation established by a Central, State or Provincial Act ;]

[51][(*28BB*) "insurer" means an insurer, being an Indian insurance company, as defined under clause (*7A*) of section 2[52] of the Insurance Act, 1938 (4 of 1938), which has been granted a certificate of registration under section 3 of that Act;]

[53][(*28C*) "Joint Commissioner" means a person appointed to be a Joint Commissioner of Income-tax or an Additional Commissioner of Income-tax under sub-section (1) of section 117;

(*28D*) "Joint Director" means a person appointed to be a Joint Director of Income-tax or an Additional Director of Income-tax under sub-section (1) of section 117;]

(*29*) "legal representative" has the meaning assigned to it in clause (*11*) of section 2 of the Code of Civil Procedure, 1908 (5 of 1908)[54] ;

[55][(*29A*) "long-term capital asset" means a capital asset which is not a short-term capital asset ;

(*29B*) "long-term capital gain" means capital gain arising from the transfer of a long-term capital asset ;]

[56][(*29BA*) "manufacture", with its grammatical variations, means a change in a non-living physical object or article or thing,—

(*a*) resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use; or

(*b*) bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure;]

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50. Inserted by the Finance Act, 1988, w.e.f. 1-4-1989.

51. Inserted by the Finance Act, 2001, w.e.f. 1-4-2002.

52. For text of section 2(*7A*) of the Insurance Act, 1938, *see* **Appendix.**

53. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

54. Clause (*11*) of section 2 of the Code of Civil Procedure defines "legal representative" as follows :

'(*11*) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued ;'

55. Inserted by the Finance Act, 1987, w.e.f. 1-4-1988.

56. Inserted by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-2009.

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[57][(*29C*) "maximum marginal rate" means the rate of income-tax (including surcharge on income-tax, if any) applicable in relation to the highest slab of income in the case of an individual [58][, association of persons or, as the case may be, body of individuals] as specified in the Finance Act of the relevant year ;]

[59][(*29D*) "National Tax Tribunal" means the National Tax Tribunal established under section 3 of the National Tax Tribunal Act, 2005;]

(*30*) "non-resident" means a person who is not a "resident" [60][, and for the purposes of sections 92, 93 [61][* * *] and 168, includes a person who is not ordinarily resident within the meaning of clause (*6*) of section 6] ;

[62](*31*) "person" includes—

(*i*) an individual[63],

(*ii*) a Hindu undivided family[63],

(*iii*) a company,

(*iv*) a firm[64],

(*v*) an association of persons[64] or a body of individuals[64], whether incorporated or not,

(*vi*) a local authority, and

(*vii*) every artificial juridical person, not falling within any of the preceding sub-clauses.

[65][*Explanation.*—For the purposes of this clause, an association of persons or a body of individuals or a local authority or an artificial juridical person shall be deemed to be a person, whether or not such person or body or authority or juridical person was formed or established or incorporated with the object of deriving income, profits or gains;]

(*32*) "person who has a substantial interest in the company", in relation to a company, means a person who is the beneficial owner of shares, not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits, carrying not less than twenty per cent of the voting power ;

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57. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

58. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1991.

59. Shall be inserted by the National Tax Tribunal Act, 2005, with effect from a date yet to be notified.

60. Inserted by the Finance Act, 1999, w.e.f. 1-4-1999. Earlier these words were omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999.

61. ", 113" omitted by the Finance Act, 1965, w.e.f. 1-4-1965.

62. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

63. For the meaning of the term/expression "individual" and "Hindu undivided family", *see* Taxmann's Direct Taxes Manual, Vol. 3.

64. For the meaning of the term/expressions "firm", "association of persons" and "body of individuals", *see* Taxmann's Direct Taxes Manual, Vol. 3.

65. Inserted by the Finance Act, 2002, w.e.f. 1-4-2002.

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(*33*) "prescribed" means prescribed by rules made under this Act ;

(*34*) "previous year" means the previous year as defined in section 3 ;

[66](*35*) "principal officer", used with reference to a local authority or a company or any other public body or any association of persons or any body of individuals, means—

(*a*) the secretary, treasurer, manager or agent of the authority, company, association or body, or

(*b*) any person connected with the management or administration of the local authority, company, association or body upon whom the [67][Assessing] Officer has served a notice of his intention of treating him as the principal officer thereof ;

[68](*36*) "profession" includes vocation[69] ;

[70][(*36A*) "public sector company" means any corporation established by or under any Central, State or Provincial Act or a Government company[71] as defined in section 617 of the Companies Act, 1956 (1 of 1956) ;]

(*37*) [72]"public servant" has the same meaning as in section 21 of the Indian Penal Code (45 of 1860) ;

[73][(*37A*) "rate or rates in force" or "rates in force", in relation to an assessment year or financial year, means—

(*i*) for the purposes of calculating income-tax under the first proviso to sub-section (5) of section 132, or computing the income-tax chargeable under sub-section (4) of section 172 or sub-section (2) of section 174 or section 175 or sub-section (2) of section 176 or deducting income-tax under section 192 from income chargeable under the head "Salaries" [74][* * *] or [75][computation of the

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66. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

67. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

68. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

69. For the meaning of the term "vocation", *see* Taxmann's Direct Taxes Manual, Vol. 3.

70. Inserted by the Finance Act, 1987, w.e.f. 1-4-1987.

71. Section 617 of the Companies Act, 1956, defines "Government company" as follows :
'617. *Definition of "Government company".*—For the purposes of this Act, Government company means any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments and includes a company which is a subsidiary of a Government company as thus defined.'

72. Section 21 of the Indian Penal Code defines "public servant". For text of section 21, *see* **Appendix**.

73. Inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

74. "or sub-section (9) of section 80E from any payment referred to therein" omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Originally, the said expression was inserted by the Finance Act, 1968, w.e.f. 1-4-1968.

75. Substituted for 'computation of the "advance tax" payable under Chapter XVII-C, the rate or rates of income-tax specified in this behalf in the Finance Act of the relevant year' by the Finance Act, 1970, w.e.f. 1-4-1971.

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"advance tax" payable under Chapter XVII-C in a case not falling under [76][section 115A or section 115B [77][or section 115BB [78][or section 115BBB] or section 115E] or] section 164 [77][or section 164A [79][* * *]] [80][or section 167B], the rate or rates of income-tax specified in this behalf in the Finance Act of the relevant year, and for the purposes of computation of the "advance tax" payable under Chapter XVII-C [81][in a case falling under section 115A or section 115B [82][or section 115BB [83][or section 115BBB] or section 115E] or section 164 [82][or section 164A [84][* * *]] [85][or section 167B], the rate or rates specified in section 115A or [86][section 115B or section 115BB [87][or section 115BBB] or section 115E or section 164 or section 164A [84][***] [85][or section 167B], as the case may be,] or the rate or rates of income-tax specified in this behalf in the Finance Act of the relevant year, whichever is applicable ;]

(*ii*) for the purposes of deduction of tax under sections 193, 194, 194A [88][, 194B] [89][, 194BB] [90][and 194D], the rate or rates of income-tax specified in this behalf in the Finance Act of the relevant year ;]

[91][(*iii*) for the purposes of deduction of tax under section 195, the rate or rates of income-tax specified in this behalf in the Finance Act of the relevant year or the rate or rates of income-tax specified in [92][an agreement entered into by the Central Government under section 90, or an agreement notified by the Central Government

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76. Inserted by the Finance Act, 1976, w.e.f. 1-6-1976.

77. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

78. Inserted by the Finance Act, 2002, w.e.f. 1-4-2003.

79. "or section 167A" omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Earlier this expression was inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

80. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

81. Substituted for "in a case falling under section 164, the rate specified in that section" by the Finance Act, 1976, w.e.f. 1-6-1976.

82. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

83. Inserted by the Finance Act, 2002, w.e.f. 1-4-2003.

84. "or section 167A" omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Earlier this expression was inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

85. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

86. Substituted for "section 115B or, as the case may be, section 164" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

87. Inserted by the Finance Act, 2002, w.e.f. 1-4-2003.

88. Inserted by the Finance Act, 1972, w.e.f. 1-4-1972.

89. Inserted by the Finance Act, 1978, w.e.f. 1-4-1978.

90. Substituted for ", 194D and 195" by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

91. Substituted by the Finance Act, 1992, w.e.f. 1-6-1992. Prior to its substitution, sub-clause (*iii*) was inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

92. Substituted for "an agreement entered into by the Central Government under section 90, whichever is applicable by virtue of the provisions of section 90" by the Finance Act, 2006, w.e.f. 1-6-2006.

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under section 90A, whichever is applicable by virtue of the provisions of section 90, or section 90A, as the case may be];]

[93](*38*) "recognised provident fund" means a provident fund which has been and continues to be recognised by the [94][Chief Commissioner or Commissioner] in accordance with the rules contained in Part A of the Fourth Schedule, and includes a provident fund established under a scheme framed under the Employees' Provident Funds Act, 1952 (19 of 1952) ;

(*39*) [95][*Omitted by the Finance Act, 1992, w.e.f. 1-4-1993*;]

(*40*) "regular assessment" means the assessment made under [96][sub-section (3) of] section 143 or section 144 ;

(*41*) "relative", in relation to an individual, means the husband, wife, brother or sister or any lineal ascendant or descendant of that individual ;

[97][(*41A*) "resulting company" means one or more companies (including a wholly owned subsidiary thereof) to which the undertaking of the demerged company is transferred in a demerger and, the resulting company in consideration of such transfer of undertaking, issues shares to the shareholders of the demerged company and includes any authority or body or local authority or public sector company or a company established, constituted or formed as a result of demerger;]

(*42*) "resident" means a person who is resident in India within the meaning of section 6 ;

[98][[99](*42A*) [1]["short-term capital asset" means a capital asset held by an assessee for not more than [2][thirty-six] months immediately preceding the date of its transfer :]

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93. *See* also Circular No. 153, dated 30-11-1974. For details, *see* Taxmann's Master Guide to Income-tax Act.

94. Substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

95. Prior to omission, clause (*39*) was substituted by the Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-4-1989. Earlier clause (*39*) was omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989 and was later reintroduced by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

96. Inserted by the Finance Act, 1990, w.r.e.f. 1-4-1989.

97. Inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

98. Inserted by the Finance (No. 2) Act, 1962, w.e.f. 1-4-1962.

99. *See* also Circular No. 415, dated 14-3-1985 and Circular No. 704, dated 28-4-1995. For details and relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

1. Substituted for the portion beginning with "short-term capital asset" and ending with "preceding the date of its transfer ;" by the Finance Act, 1973, w.e.f. 1-4-1974. Earlier clause (*42A*) was first amended by the Finance Act, 1966, w.e.f. 1-4-1966 and later by the Finance Act, 1968, w.e.f. 1-4-1969.

2. Substituted for "sixty" by the Finance (No. 2) Act, 1977, w.e.f. 1-4-1978.

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[3][**Provided** that in the case of a share held in a company [4][or any other security listed in a recognised stock exchange in India or a unit of the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963) or a unit of a Mutual Fund specified under clause (*23D*) of section 10] [5][or a zero coupon bond], the provisions of this clause shall have effect as if for the words "thirty-six months", the words "twelve months" had been substituted.]

[6][*Explanation 1*].—(*i*) In determining the period for which any capital asset is held by the assessee—

(*a*) in the case of a share held in a company in liquidation, there shall be excluded the period subsequent to the date on which the company goes into liquidation ;

(*b*) in the case of a capital asset which becomes the property of the assessee in the circumstances mentioned in [7][sub-section (1)] of section 49, there shall be included the period for which the asset was held by the previous owner referred to in the said section ;

[8][(*c*) in the case of a capital asset being a share or shares in an Indian company, which becomes the property of the assessee in consideration of a transfer referred to in clause (*vii*) of section 47, there shall be included the period for which the share or shares in the amalgamating company were held by the assessee ;]

[9][(*d*) in the case of a capital asset, being a share or any other security (hereafter in this clause referred to as the financial asset) subscribed to by the assessee on the basis of his right to subscribe to such financial asset or subscribed to by the person in whose favour the assessee has renounced his right to subscribe to such financial asset, the period shall be reckoned from the date of allotment of such financial asset ;

(*e*) in the case of a capital asset, being the right to subscribe to any financial asset, which is renounced in favour of any other person, the period shall be reckoned from the date of the offer of such right by the company or institution, as the case may be, making such offer ;]

[10][(*f*) in the case of a capital asset, being a financial asset, allotted without any payment and on the basis of holding of any other financial asset, the period shall be reckoned from the date of the allotment of such financial asset ;]

[11][(*g*) in the case of a capital asset, being a share or shares in an Indian company, which becomes the property of the assessee in consi-

3. Inserted by the Finance Act, 1987, w.e.f. 1-4-1988.
4. Inserted by the Finance Act, 1994, w.e.f. 1-4-1995.
5. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.
6. Existing *Explanation* renumbered as *Explanation 1* by the Finance Act, 1994, w.e.f. 1-4-1995.
7. Substituted for "clauses (*i*) to (*iii*)" by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.
8. Inserted, *ibid.*
9. Inserted by the Finance Act, 1994, w.e.f. 1-4-1995.
10. Inserted by the Finance Act, 1995, w.e.f. 1-4-1996.
11. Inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

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deration of a demerger, there shall be included the period for which the share or shares held in the demerged company were held by the assessee ;]

[12][(*h*) in the case of a capital asset, being trading or clearing rights of a recognised stock exchange in India acquired by a person pursuant to demutualisation or corporatisation of the recognised stock exchange in India as referred to in clause (*xiii*) of section 47, there shall be included the period for which the person was a member of the recognised stock exchange in India immediately prior to such demutualisation or corporatisation;

(*ha*) in the case of a capital asset, being equity share or shares in a company allotted pursuant to demutualisation or corporatisation of a recognised stock exchange in India as referred to in clause (*xiii*) of section 47, there shall be included the period for which the person was a member of the recognised stock exchange in India immediately prior to such demutualisation or corporatisation;]

[13][(*hb*) in the case of a capital asset, being any specified security or sweat equity shares allotted or transferred, directly or indirectly, by the employer free of cost or at concessional rate to his employees (including former employee or employees), the period shall be reckoned from the date of allotment or transfer of such specified security or sweat equity shares;]

(*ii*) In respect of capital assets other than those mentioned in clause (*i*), the period for which any capital asset is held by the assessee shall be determined subject to any rules which the Board may make in this behalf.]

[14][*Explanation 2.*—For the purposes of this clause, the expression "security"[15] shall have the meaning assigned to it in clause (*h*) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956).]

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12. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

13. Inserted by the Finance Act, 2007, w.e.f. 1-4-2008.

14. Inserted by the Finance Act, 1994, w.e.f. 1-4-1995.

15. Clause (*h*) of section 2 of the Securities Contracts (Regulation) Act, 1956, defines "securities" as follows :

'(*h*) "securities" include—

(*i*) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;

(*ia*) derivative;

(*ib*) units or any other instrument issued by any collective investment scheme to the investors in such schemes;

(*ic*) security receipt as defined in clause (*zg*) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(*id*) units or any other such instrument issued to the investors under any mutual fund scheme;

(*ie*) any certificate or instrument (by whatever name called), issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case may be;

(Contd. on p. 1.28)

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[16][*Explanation 3.*—For the purposes of this clause, the expressions "specified security" and "sweat equity shares" shall have the meanings respectively assigned to them in the *Explanation* to clause (*d*) of sub-section (1) of section 115WB;]

[17][(*42B*) "short-term capital gain" means capital gain arising from the transfer of a short-term capital asset ;]

[18][(*42C*) "slump sale" means the transfer of one or more undertakings as a result of the sale for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales.

Explanation 1.—For the purposes of this clause, "undertaking" shall have the meaning assigned to it in *Explanation 1* to clause (*19AA*).

Explanation 2.—For the removal of doubts, it is hereby declared that the determination of the value of an asset or liability for the sole purpose of payment of stamp duty, registration fees or other similar taxes or fees shall not be regarded as assignment of values to individual assets or liabilities ;]

[19][(*43*) "tax" in relation to the assessment year commencing on the 1st day of April, 1965, and any subsequent assessment year means income-tax chargeable under the provisions of this Act, and in relation to any other assessment year income-tax and super-tax chargeable under the provisions of this Act prior to the aforesaid date [20][and in relation to the assessment year commencing on the 1st day of April, 2006, and any subsequent assessment year includes the fringe benefit tax payable under section 115WA] ;]

[21][(*43A*) "tax credit certificate" means a tax credit certificate granted to any person in accordance with the provisions of Chapter XXII-B[22] and any scheme made thereunder ;]

(*43B*) [23][* * *]

[24][(*44*) "Tax Recovery Officer" means any Income-tax Officer who may be authorised by the Chief Commissioner or Commissioner, by general

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(Contd. from p. 1.27)

(*ii*) Government securities;

(*iia*) such other instruments as may be declared by the Central Government to be securities; and

(*iii*) rights or interest in securities;'

16. Inserted by the Finance Act, 2007, w.e.f. 1-4-2008.
17. Inserted by the Finance Act, 1987, w.e.f. 1-4-1988.
18. Inserted by the Finance Act, 1999, w.e.f. 1-4-2000. Earlier clause (*42C*) was inserted by the Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-4-1990 and later on omitted by the Finance Act, 1990, w.e.f. 1-4-1990.
19. Substituted by the Finance Act, 1965, w.e.f. 1-4-1965.
20. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.
21. Inserted by the Finance Act, 1965, w.e.f. 1-4-1965.
22. Chapter XXII-B was omitted by the Finance Act, 1990, w.e.f. 1-4-1990.
23. Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Original clause (*43B*) was inserted by the Finance (No. 2) Act, 1971, w.e.f. 1-1-1972.
24. Substituted by the Direct Tax Laws (Amendment) Act, 1987 [as amended by the Direct Tax Laws (Amendment) Act, 1989], w.r.e.f. 1-4-1988. Prior to substitution, clause (*44*) was substituted by the Finance Act, 1963, w.r.e.f. 1-4-1962.

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or special order in writing, to exercise the powers of a Tax Recovery Officer [25][and also to exercise or perform such powers and functions which are conferred on, or assigned to, an Assessing Officer under this Act and which may be prescribed];]

(*45*) "total income" means the total amount of income referred to in section 5, computed in the manner laid down in this Act ;

(*46*) [26][* * *]

[27](*47*) [28]["transfer"[29], in relation to a capital asset, includes,—

(*i*) the sale[29], exchange[29] or relinquishment[29] of the asset ; or

(*ii*) the extinguishment of any rights therein[29] ; or

(*iii*) the compulsory acquisition thereof under any law ; or

(*iv*) in a case where the asset is converted by the owner thereof into, or is treated by him as, stock-in-trade of a business carried on by him, such conversion or treatment ;] [30][or]

[31][(*iva*) the maturity or redemption of a zero coupon bond; or]

[32][(*v*) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A[33] of the Transfer of Property Act, 1882 (4 of 1882) ; or

(*vi*) any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of, any immovable property.

Explanation.—For the purposes of sub-clauses (*v*) and (*vi*), "immovable property" shall have the same meaning as in clause (*d*) of section 269UA;]

[34][(*48*) "zero coupon bond" means a bond—

(*a*) issued by any infrastructure capital company or infrastructure

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25. Inserted by the Taxation Laws (Amendment) Act, 2006, w.e.f. 13-7-2006.

26. Omitted by the Finance Act, 1965, w.e.f. 1-4-1965.

27. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act. For Letter F. No. 34/11/65-IT(A-I), dated 15-1-1966, Circular No. 751, dated 10-2-1997 and Circular No. 2/2008, dated 22-2-2008, *see* Taxmann's Master Guide to Income-tax Act.

28. Substituted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-4-1985.

29. For the meaning of the terms/expression "transfer", "sale", "exchange", "relinquishment" and "extinguishment of any rights therein", *see* Taxmann's Direct Taxes Manual, Vol. 3.

30. Inserted by the Finance Act, 1987, w.e.f. 1-4-1988.

31. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

32. Inserted by the Finance Act, 1987, w.e.f. 1-4-1988.

33. For text of section 53A of the Transfer of Property Act, 1882, *see* **Appendix.**

34. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006. Earlier clause (*48*) was omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. It was later reintroduced by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989 and again omitted by the Finance Act, 1992, w.e.f. 1-4-1993.

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capital fund or public sector company [35][or scheduled bank] on or after the 1st day of June, 2005;

(*b*) in respect of which no payment and benefit is received or receivable before maturity or redemption from infrastructure capital company or infrastructure capital fund or public sector company [35][or scheduled bank]; and

(*c*) which the Central Government may, by notification[36] in the Official Gazette, specify in this behalf.

[37][*Explanation*.—For the purposes of this clause, the expression "scheduled bank" shall have the meaning assigned to it in clause (*ii*) of the *Explanation* to sub-clause (*c*) of clause (*viia*) of sub-section (1) of section 36.]]

[38][**"Previous year" defined.**

3. For the purposes of this Act, "previous year" means the financial year immediately preceding the assessment year :

Provided that, in the case of a business or profession newly set up, or a source of income newly coming into existence, in the said financial year, the previous year shall be the period beginning with the date of setting up of the business or profession or, as the case may be, the date on which the source of income newly comes into existence and ending with the said financial year.]

CHAPTER II

BASIS OF CHARGE

Charge of income-tax.

[39]**4.** [40](1) Where any Central Act enacts that income-tax[41] shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with, and [42][subject to the

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35. Inserted by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-2009.

36. For specified bonds, *see* Taxmann's Master Guide to Income-tax Act. *See* also rules 8B & 8C and Form No. 5B.

37. Inserted by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-2009. Original *Explanation* prior to its omission by the Finance Act, 2006, w.e.f. 1-4-2006, read as under :

'*Explanation*.—For the purposes of this clause, the expressions "infrastructure capital company" and "infrastructure capital fund" shall have the same meanings respectively assigned to them in clauses (*a*) and (*b*) of *Explanation 1* to clause (*23G*) of section 10.'

38. Substituted by the Finance Act, 1999, w.e.f. 1-4-2000. Prior to its substitution, section 3 was amended by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989 and the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

39. *See* also Circular No. 142, dated 1-8-1974, Circular No. 447, dated 22-1-1986, Circular No. 573, dated 21-8-1990, Circular No. 776, dated 8-6-1999 and Instruction No. 747 [F. No. 288/29/74-IT(A-II)], (relevant extracts), dated 30-8-1974. For details, *see* Taxmann's Master Guide to Income-tax Act.

40. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

41. For the meaning of the term "income-tax", *see* Taxmann's Direct Taxes Manual, Vol. 3.

42. Substituted for "subject to the provisions of this Act" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

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provisions (including provisions for the levy of additional income-tax) of, this Act[43]] in respect of the total income[43] of the previous year [44][***] of every person :

Provided that where by virtue of any provision of this Act income-tax is to be charged in respect of the income of a period other than the previous year, income-tax shall be charged accordingly.

(2) In respect of income chargeable under sub-section (1), income-tax shall be deducted at the source or paid in advance, where it is so deductible or payable under any provision of this Act.

Scope of total income.

[45]**5.** [46](1) Subject to[47] the provisions of this Act, the total income[47] of any previous year of a person who is a resident includes all income from whatever source derived which—

(*a*) is received[48] or is deemed to be received[48] in India in such year by or on behalf of such person ; or

(*b*) accrues[48] or arises[48] or is deemed[48] to accrue or arise to him in India during such year ; or

(*c*) accrues[48] or arises[48] to him outside India during such year :

Provided that, in the case of a person not ordinarily resident in India within the meaning of sub-section (6)* of section 6, the income which accrues or arises to him outside India shall not be so included unless it is derived from a business controlled in or a profession set up in India.

(2) Subject to[47] the provisions of this Act, the total income[47] of any previous year of a person who is a non-resident includes all income from whatever source derived which—

(*a*) is received[48] or is deemed to be received[48] in India in such year by or on behalf of such person ; or

(*b*) accrues[48] or arises[48] or is deemed to accrue or arise to him in India during such year.

Explanation 1.—Income accruing or arising outside India shall not be deemed to be received[48] in India within the meaning of this section by reason only of the fact that it is taken into account in a balance sheet prepared in India.

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43. For the meaning of the expressions "in accordance with, and subject to the provisions of, this Act" and "total income", *see* Taxmann's Direct Taxes Manual, Vol. 3.

44. "or previous years, as the case may be," omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

45. *See* also Circular No. 369, dated 17-9-1983. For details, *see* Taxmann's Master Guide to Income-tax Act.

46. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

47. For the meaning of the terms/expressions "subject to" and "total income", *see* Taxmann's Direct Taxes Manual, Vol. 3.

48. For the meaning of the terms/expressions "is received", "deemed to be received", "accrues or arises", "accrued or arisen" and "deemed to have accrued", *see* Taxmann's Direct Taxes Manual, Vol. 3.

*Should be read as 'clause (*6*)'.

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Explanation 2.—For the removal of doubts, it is hereby declared that income which has been included in the total income of a person on the basis that it has accrued[49] or arisen[49] or is deemed to have accrued[49] or arisen[49] to him shall not again be so included on the basis that it is received or deemed to be received by him in India.

[50][**Apportionment of income between spouses governed by Portuguese Civil Code.**

5A. (1) Where the husband and wife are governed by the system of community of property (known under the Portuguese Civil Code of 1860 as "COMMUNIAO DOS BENS") in force in the State of Goa and in the Union territories of Dadra and Nagar Haveli and Daman and Diu, the income of the husband and of the wife under any head of income shall not be assessed as that of such community of property (whether treated as an association of persons or a body of individuals), but such income of the husband and of the wife under each head of income (other than under the head "Salaries") shall be apportioned equally between the husband and the wife and the income so apportioned shall be included separately in the total income of the husband and of the wife respectively, and the remaining provisions of this Act shall apply accordingly.

(2) Where the husband or, as the case may be, the wife governed by the aforesaid system of community of property has any income under the head "Salaries", such income shall be included in the total income of the spouse who has actually earned it.]

Residence in India.

[51]**6.** For the purposes of this Act,—

(*1*) An individual is said to be resident in India in any previous year, if he—

(*a*) is in India in that year for a period or periods amounting in all to one hundred and eighty-two days or more ; or

(*b*) [52][* * *]

(*c*) having within the four years preceding that year been in India for a period or periods amounting in all to three hundred and sixty-five days or more, is in India for a period or periods amounting in all to sixty days or more in that year.

[53][*Explanation.*—In the case of an individual,—

(*a*) being a citizen of India, who leaves India in any previous year

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49. For the meaning of the terms/expressions, "accrued or arisen" and "deemed to have accrued or arisen", *see* Taxmann's Direct Taxes Manual, Vol. 3.

50. Inserted by the Finance Act, 1994, w.r.e.f. 1-4-1963.

51. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

52. Omitted by the Finance Act, 1982, w.e.f. 1-4-1983.

53. Substituted by the Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-4-1990. Original *Explanation* was inserted by the Finance Act, 1978, w.e.f. 1-4-1979 and later amended by the Finance Act, 1982, w.e.f. 1-4-1983.

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[54][as a member of the crew of an [55]Indian ship as defined in clause (*18*) of section 3 of the Merchant Shipping Act, 1958 (44 of 1958), or] for the purposes of employment outside India, the provisions of sub-clause (*c*) shall apply in relation to that year as if for the words "sixty days", occurring therein, the words "one hundred and eighty-two days" had been substituted ;

(*b*) being a citizen of India, or a person of Indian origin within the meaning of *Explanation* to clause (*e*) of section 115C, who, being outside India, comes on a visit to India in any previous year, the provisions of sub-clause (*c*) shall apply in relation to that year as if for the words "sixty days", occurring therein, the words "one hundred and [56][eighty-two] days" had been substituted.]

(*2*) A Hindu undivided family, firm or other association of persons is said to be resident in India in any previous year in every case except where during that year the control and management[57] of its affairs[57] is situated wholly[57] outside India.

(*3*) A company is said to be resident in India in any previous year, if—

(*i*) it is an Indian company ; or

(*ii*) during that year, the control and management[57] of its affairs[57] is situated wholly[57] in India.

(*4*) Every other person is said to be resident in India in any previous year in every case, except where during that year the control and management of his affairs is situated wholly outside India.

(*5*) If a person is resident in India in a previous year relevant to an assessment year in respect of any source of income, he shall be deemed to be resident in India in the previous year relevant to the assessment year in respect of each of his other sources of income.

[58][(*6*) A person is said to be "not ordinarily resident" in India in any previous year if such person is—

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54. Inserted by the Finance Act, 1990, w.e.f. 1-4-1990.

55. Clause (*18*) of section 3 of the Merchant Shipping Act, 1958, defines "Indian ship" as follows :

'(*18*) "Indian ship" means a ship registered as such under this Act and includes any ship registered at any port in India at the commencement of this Act which is recognised as an Indian ship under the proviso to sub-section (2) of section 22;'

56. Substituted for "fifty" by the Finance Act, 1994, w.e.f. 1-4-1995.

57. For the meaning of the terms/expressions "control and management", "affairs" and "wholly", *see* Taxmann's Direct Taxes Manual, Vol. 3.

58. Substituted by the Finance Act, 2003, w.e.f. 1-4-2004. Prior to its substitution, clause (*6*) read as under :

'(*6*) A person is said to be "not ordinarily resident" in India in any previous year if such person is—

(Contd. on p. 1.34)

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(*a*) an individual who has been a non-resident in India in nine out of the ten previous years preceding that year, or has during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and twenty-nine days or less; or

(*b*) a Hindu undivided family whose manager has been a non-resident in India in nine out of the ten previous years preceding that year, or has during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and twenty-nine days or less.]

Income deemed to be received.

7. The following incomes shall be deemed to be received in the previous year :—

(*i*) the annual accretion in the previous year to the balance at the credit of an employee participating in a recognised provident fund, to the extent provided in rule 6 of Part A of the Fourth Schedule ;

(*ii*) the transferred balance in a recognised provident fund, to the extent provided in sub-rule (4) of rule 11 of Part A of the Fourth Schedule ;

[59][(*iii*) the contribution made, by the Central Government [60][or any other employer] in the previous year, to the account of an employee under a pension scheme referred to in section 80CCD.]

Dividend income.

8. [61][For the purposes of inclusion in the total income of an assessee,—

(*a*) any dividend] declared by a company or distributed or paid by it within the meaning of sub-clause (*a*) or sub-clause (*b*) or sub-clause (*c*) or sub-clause (*d*) or sub-clause (*e*) of clause (*22*) of section 2 shall be deemed to be the income of the previous year in which it is so declared, distributed or paid, as the case may be ;

[62][(*b*) any interim dividend shall be deemed to be the income of the previous year in which the amount of such dividend is unconditionally made available by the company to the member who is entitled to it.]

(Contd. from p. 1.33)

(*a*) an individual who has not been resident in India in nine out of the ten previous years preceding that year, or has not during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and thirty days or more ; or

(*b*) a Hindu undivided family whose manager has not been resident in India in nine out of the ten previous years preceding that year, or has not during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and thirty days or more.'

59. Inserted by the Finance (No. 2) Act, 2004, w.r.e.f. 1-4-2004.

60. Inserted by the Finance Act, 2007, w.r.e.f. 1-4-2004.

61. Substituted for "For the purposes of inclusion in the total income of an assessee, any dividend" by the Finance Act, 1965, w.e.f. 1-4-1965.

62. Inserted, *ibid.*

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Income deemed to accrue or arise in India.

[63]**9.** [64](1) The following incomes shall be deemed[65] to accrue or arise in India :—

[66](*i*) all income accruing or arising, whether directly or indirectly, through or from any business connection[67] in India, or through or from any property[67] in India, or through or from any asset or source of income in India, [68][* * *] or through the transfer of a capital asset situate in India.

[69][*Explanation 1*].—For the purposes of this clause—

(*a*) in the case of a business of which all the operations[70] are not carried out in India, the income of the business deemed under this clause to accrue or arise in India shall be only such part of the income as is reasonably attributable to the operations[70] carried out in India ;

(*b*) in the case of a non-resident, no income shall be deemed to accrue or arise in India to him through or from operations which are confined to the purchase of goods in India for the purpose of export ;

[71][* * *]

[72][(*c*) in the case of a non-resident, being a person engaged in the business of running a news agency or of publishing newspapers, magazines or journals, no income shall be deemed to accrue or arise in India to him through or from activities which are confined to the collection of news and views in India for transmission out of India ;]

[73][(*d*) in the case of a non-resident, being—

(*1*) an individual who is not a citizen of India ; or

(*2*) a firm which does not have any partner who is a citizen of India or who is resident in India ; or

(*3*) a company which does not have any shareholder who is a citizen of India or who is resident in India,

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63. *See* also Circular No. 35(XXXIII-7) of 1956, dated 3-9-1956, Circular No. 4, dated 20-2-1969, Circular No. 382, dated 4-5-1984, Circular No. 5/2004, dated 28-9-2004 and Circular No. 7/2009 (withdrawing Circular No. 23, dated 23-7-1969, Circular No. 163, dated 29-5-1975 and Circular No. 786, dated 7-2-2000). For details, *see* Taxmann's Master Guide to Income-tax Act.

64. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

65. For the meaning of the term "deemed", *see* Taxmann's Direct Taxes Manual, Vol. 3.

66. *See* rule 10 for manner of computation of income of non-residents in certain cases.

67. For the meaning of the terms/expression "business connection" and "property", *see* Taxmann's Direct Taxes Manual, Vol. 3.

68. Words "or through or from any money lent at interest and brought into India in cash or in kind" omitted by the Finance Act, 1976, w.e.f. 1-6-1976.

69. *Explanation* renumbered as *Explanation 1* by the Finance Act, 2003, w.e.f. 1-4-2004.

70. For the meaning of the term "operations", *see* Taxmann's Direct Taxes Manual, Vol. 3.

71. Proviso omitted by the Finance Act, 1964, w.e.f. 1-4-1964.

72. Inserted by the Finance Act, 1983, w.r.e.f. 1-4-1962.

73. Inserted by the Taxation Laws (Amendment) Act, 1984, w.r.e.f. 1-4-1982.

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no income shall be deemed to accrue or arise in India to such individual, firm or company through or from operations[74] which are confined to the shooting of any cinematograph film in India.]

[75][*Explanation 2.*—For the removal of doubts, it is hereby declared that "business connection" shall include any business activity carried out through a person who, acting on behalf of the non-resident,—

(*a*) has and habitually exercises in India, an authority to conclude contracts on behalf of the non-resident, unless his activities are limited to the purchase of goods or merchandise for the non-resident; or

(*b*) has no such authority, but habitually maintains in India a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the non-resident; or

(*c*) habitually secures orders in India, mainly or wholly for the non-resident or for that non-resident and other non-residents controlling, controlled by, or subject to the same common control, as that non-resident:

Provided that such business connection shall not include any business activity carried out through a broker, general commission agent or any other agent having an independent status, if such broker, general commission agent or any other agent having an independent status is acting in the ordinary course of his business :

Provided further that where such broker, general commission agent or any other agent works mainly or wholly on behalf of a non-resident (hereafter in this proviso referred to as the principal non-resident) or on behalf of such non-resident and other non-residents which are controlled by the principal non-resident or have a controlling interest in the principal non-resident or are subject to the same common control as the principal non-resident, he shall not be deemed to be a broker, general commission agent or an agent of an independent status.

Explanation 3.—Where a business is carried on in India through a person referred to in clause (*a*) or clause (*b*) or clause (*c*) of *Explanation 2*, only so much of income as is attributable to the operations carried out in India shall be deemed to accrue or arise in India;]

(*ii*) income which falls under the head "Salaries", if it is earned[76] in India.

[77][*Explanation.*—For the removal of doubts, it is hereby declared that the income of the nature referred to in this clause payable for—

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74. For the meaning of the term "operations", *see* Taxmann's Direct Taxes Manual, Vol. 3.

75. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

76. For the meaning of the term "earned", *see* Taxmann's Direct Taxes Manual, Vol. 3.

77. Substituted by the Finance Act, 1999, w.e.f. 1-4-2000. Prior to its substitution, *Explanation* was inserted by the Finance Act, 1983, w.r.e.f. 1-4-1979.

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(*a*) service rendered in India; and

(*b*) the rest period or leave period which is preceded and succeeded by services rendered in India and forms part of the service contract of employment,

shall be regarded as income earned in India ;]

(*iii*) income chargeable under the head "Salaries" payable by the Government to a citizen of India for service outside India ;

(*iv*) a dividend paid by an Indian company outside India ;

[78][(*v*) income by way of interest payable by—

(*a*) the Government ; or

(*b*) a person who is a resident, except where the interest is payable in respect of any debt incurred, or moneys borrowed and used, for the purposes of a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India ; or

(*c*) a person who is a non-resident, where the interest is payable in respect of any debt incurred, or moneys borrowed and used, for the purposes of a business or profession carried on by such person in India ;

(*vi*) income by way of royalty[79] payable by—

(*a*) the Government ; or

(*b*) a person who is a resident, except where the royalty is payable in respect of any right, property or information used or services utilised for the purposes of a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India ; or

(*c*) a person who is a non-resident, where the royalty is payable in respect of any right, property or information used or services utilised for the purposes of a business or profession carried on by such person in India or for the purposes of making or earning any income from any source in India :

Provided that nothing contained in this clause shall apply in relation to so much of the income by way of royalty as consists of lump sum consideration for the transfer outside India of, or the imparting of information outside India in respect of, any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process or trade mark or similar property, if such income is payable in pursuance of an agreement made before the 1st day of April, 1976, and the agreement is approved by the Central Government :

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78. Clauses (*v*), (*vi*) and (*vii*) inserted by the Finance Act, 1976, w.e.f. 1-6-1976.

79. For the meaning of the term "royalty", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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[80][**Provided further** that nothing contained in this clause shall apply in relation to so much of the income by way of royalty as consists of lump sum payment made by a person, who is a resident, for the transfer of all or any rights (including the granting of a licence) in respect of computer software supplied by a non-resident manufacturer along with a computer or computer-based equipment under any scheme approved under the Policy on Computer Software Export, Software Development and Training, 1986 of the Government of India.]

Explanation 1.—For the purposes of the [81][first] proviso, an agreement made on or after the 1st day of April, 1976, shall be deemed to have been made before that date if the agreement is made in accordance with proposals approved by the Central Government before that date; so, however, that, where the recipient of the income by way of royalty is a foreign company, the agreement shall not be deemed to have been made before that date unless, before the expiry of the time allowed under sub-section (1) or sub-section (2) of section 139 (whether fixed originally or on extension) for furnishing the return of income for the assessment year commencing on the 1st day of April, 1977, or the assessment year in respect of which such income first becomes chargeable to tax under this Act, whichever assessment year is later, the company exercises an option by furnishing a declaration in writing to the [82][Assessing] Officer (such option being final for that assessment year and for every subsequent assessment year) that the agreement may be regarded as an agreement made before the 1st day of April, 1976.

Explanation 2.—For the purposes of this clause, "royalty" means consideration (including any lump sum consideration but excluding any consideration which would be the income of the recipient chargeable under the head "Capital gains") for—

(*i*) the transfer of all or any rights (including the granting of a licence) in respect of a patent, invention, model, design, secret formula or process or trade mark or similar property ;

(*ii*) the imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret formula or process or trade mark or similar property ;

(*iii*) the use of any patent, invention, model, design, secret formula or process or trade mark or similar property ;

(*iv*) the imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill ;

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80. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1991.

81. Substituted for "foregoing", *ibid.*

82. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

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[83][(*iva*) the use or right to use any industrial, commercial or scientific equipment but not including the amounts referred to in section 44BB;]

(*v*) the transfer of all or any rights (including the granting of a licence) in respect of any copyright, literary, artistic or scientific work including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting, but not including consideration for the sale, distribution or exhibition of cinematographic films ; or

(*vi*) the rendering of any services in connection with the activities referred to in sub-clauses (*i*) to [83][(*iv*), (*iva*) and] (*v*).

[84][*Explanation 3.*—For the purposes of this clause, "computer software" means any computer programme recorded on any disc, tape, perforated media or other information storage device and includes any such programme or any customized electronic data;]

(*vii*) income by way of fees for technical services payable[85] by—

(*a*) the Government ; or

(*b*) a person who is a resident, except where the fees are payable in respect of services utilised in a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India ; or

(*c*) a person who is a non-resident, where the fees are payable in respect of services utilised in a business or profession carried on by such person in India or for the purposes of making or earning any income from any source in India :

[86][**Provided** that nothing contained in this clause shall apply in relation to any income by way of fees for technical services payable in pursuance of an agreement made before the 1st day of April, 1976, and approved by the Central Government.]

[86][*Explanation 1.*—For the purposes of the foregoing proviso, an agreement made on or after the 1st day of April, 1976, shall be deemed to have been made before that date if the agreement is made in accordance with proposals approved by the Central Government before that date.]

Explanation [86][*2*].—For the purposes of this clause, "fees for technical services" means any consideration (including any lump sum consi-

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83. Inserted by the Finance Act, 2001, w.e.f. 1-4-2002.

84. Substituted by the Finance Act, 2000, w.e.f. 1-4-2001. Prior to its substitution, *Explanation 3*, as inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1991, read as under :

'*Explanation 3.*—For the purposes of this clause, the expression "computer software" shall have the meaning assigned to it in clause (*b*) of the *Explanation* to section 80HHE;'

85. For the meaning of the expression "fees for technical services payable", *see* Taxmann's Direct Taxes Manual, Vol. 3.

86. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 1-4-1977.

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deration) for the rendering of any managerial, technical or consultancy services (including the provision of services of technical or other personnel) but does not include consideration for any construction[87], assembly, mining or like project undertaken by the recipient or consideration which would be income of the recipient chargeable under the head "Salaries".]

(2) Notwithstanding anything contained in sub-section (1), any pension payable outside India to a person residing permanently outside India shall not be deemed to accrue or arise in India, if the pension is payable to a person referred to in article 314 of the Constitution or to a person who, having been appointed before the 15th day of August, 1947, to be a Judge of the Federal Court or of a High Court within the meaning of the Government of India Act, 1935, continues to serve on or after the commencement of the Constitution as a Judge in India.

[88]**[**Explanation.—*For the removal of doubts, it is hereby declared that for the purposes of this section, income of a non-resident shall be deemed to accrue or arise in India under clause (*v*) or clause (*vi*) or clause (*vii*) of sub-section (1) and shall be included in the total income of the non-resident, whether or not,—*

(i) the non-resident has a residence or place of business or business connection in India; or

*(ii) the non-resident has rendered services in India.***]**

CHAPTER III

INCOMES WHICH DO NOT FORM PART OF TOTAL INCOME

Incomes not included in total income.

10. In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included—

(*1*) agricultural income ;

[89](*2*) [90][subject to the provisions of sub-section (2) of section 64,] any sum received by an individual as a member of a Hindu undivided family, where such sum has been paid out of the income of the family, or, in the case of any impartible estate, where such sum has been paid out of the income of the estate belonging to the family ;

[91][(*2A*) in the case of a person being a partner of a firm which is separately assessed as such, his share in the total income of the firm.

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87. For the meaning of the term "construction", *see* Taxmann's Direct Taxes Manual, Vol. 3.

88. Substituted by the Finance Act, 2010, w.r.e.f. **1-6-1976**. Prior to its substitution, *Explanation* as inserted by the Finance Act, 2007, w.r.e.f. 1-6-1976, read as under :

"*Explanation.*—For the removal of doubts, it is hereby declared that for the purposes of this section, where income is deemed to accrue or arise in India under clauses (*v*), (*vi*) and (*vii*) of sub-section (1), such income shall be included in the total income of the non-resident, whether or not the non-resident has a residence or place of business or business connection in India."

89. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

90. Inserted by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

91. Inserted by the Finance Act, 1992, w.e.f. 1-4-1993. Earlier, clause (*2A*) was inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989 and was omitted by the Direct Tax Laws (Amendment) Act, 1989, with effect from the same date.

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Explanation.—For the purposes of this clause, the share of a partner in the total income of a firm separately assessed as such shall, notwithstanding anything contained in any other law, be an amount which bears to the total income of the firm the same proportion as the amount of his share in the profits of the firm in accordance with the partnership deed bears to such profits ;]

(*3*) [92][***]

[93][(*4*) (*i*) in the case of a non-resident, any income by way of interest on such securities or bonds as the Central Government may, by notification in the Official Gazette[94], specify in this behalf, including income by way of premium on the redemption of such bonds :

[95][**Provided** that the Central Government shall not specify, for the purposes of this sub-clause, such securities or bonds on or after the 1st day of June, 2002;]

[96][[97](*ii*) in the case of an individual, any income by way of interest on moneys standing to his credit in a Non-Resident (External) Account in any bank in India in accordance with the Foreign Exchange Regulation Act, 1973 (46 of 1973), and the rules made thereunder :

Provided that such individual is a person resident outside India as defined in clause (*q*) of section 2[98] of the said Act or is a person who

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92. Omitted by the Finance Act, 2002, w.e.f. 1-4-2003. Prior to its omission, clause (*3*), as substituted by the Finance Act, 1972, w.e.f. 1-4-1972, and amended by the Finance Act, 1986, w.e.f. 1-4-1987, Finance (No. 2) Act, 1991, w.e.f. 1-10-1991 and Finance Act, 1992, w.e.f. 1-4-1992, read as under :

'(*3*) any receipts which are of a casual and non-recurring nature, to the extent such receipts do not exceed five thousand rupees in the aggregate :

Provided that where such receipts relate to winnings from races including horse races, the provisions of this clause shall have effect as if for the words "five thousand rupees", the words "two thousand five hundred rupees" had been substituted :

Provided further that this clause shall not apply to—

(*i*) capital gains chargeable under the provisions of section 45 ; or

(*ii*) receipts arising from business or the exercise of a profession or occupation ; or

(*iii*) receipts by way of addition to the remuneration of an employee ;'

93. Substituted for clauses (*4*) and (*4A*) by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Prior to their substitution, clause (*4*) was amended by the Finance Act, 1964, w.e.f. 1-4-1964. Clause (*4A*) was inserted by the Finance Act, 1964, w.e.f. 1-4-1965, subsequently amended by the Finance Act, 1968, w.e.f. 1-4-1969 and substituted by the Finance Act, 1982, w.e.f. 1-4-1982.

94. For specified securities, *see* Notification No. SO 3331, dated 19-10-1965. For details, *see* Taxmann's Master Guide to Income-tax Act.

95. Inserted by the Finance Act, 2002, w.e.f. 1-4-2003.

96. Substituted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1991.

97. *See* also Circular No. 592, dated 4-2-1991. For details, *see* Taxmann's Master Guide to Income-tax Act.

98. Clause (*q*) of section 2 of the Foreign Exchange Regulation Act, 1973, defines "person resident outside India" as follows :

'(*q*) "person resident outside India" means a person who is not resident in India ;'

For definition of the above term in FEMA, 1999, *see* **Appendix.**

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has been permitted by the Reserve Bank of India to maintain the aforesaid Account ;]]

[99][***]

[1][(*4B*) in the case of an individual, being a citizen of India or a person of Indian origin, who is a non-resident, any income from interest on such savings certificates issued [2][before the 1st day of June, 2002] by the Central Government as that Government may, by notification in the Official Gazette[3], specify in this behalf :

Provided that the individual has subscribed to such certificates in convertible foreign exchange remitted from a country outside India in accordance with the provisions of the Foreign Exchange Regulation Act, 1973 (46 of 1973), and any rules made thereunder.

Explanation.—For the purposes of this clause,—

(*a*) a person shall be deemed to be of Indian origin if he, or either of his parents or any of his grandparents, was born in undivided India ;

(*b*) "convertible foreign exchange" means foreign exchange which is for the time being treated by the Reserve Bank of India as convertible foreign exchange for the purposes of the Foreign Exchange Regulation Act, 1973 (46 of 1973), and any rules made thereunder ;]

[4][(*5*) in the case of an individual, the value of any travel concession or assistance received by, or due to, him,—

(*a*) from his employer for himself and his family, in connection with his proceeding on leave to any place in India ;

(*b*) from his employer or former employer for himself and his family, in connection with his proceeding to any place in India after retirement from service or after the termination of his service,

subject to such conditions as may be prescribed[5] (including conditions as to number of journeys and the amount which shall be exempt

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99. Omitted by the Finance Act, 2005, w.e.f. 1-4-2006. Prior to its omission, second proviso, as inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2006, read as under :

"**Provided further** that nothing contained in this sub-clause shall apply to any income by way of interest paid or credited on or after the 1st day of April, 2005 to the Non-Resident (External) Account of such individual;"

1. Inserted by the Finance Act, 1982, w.e.f. 1-4-1983.

2. Inserted by the Finance Act, 2002, w.e.f. 1-4-2003.

3. For specified savings certificates, *see* Notification No. SO 653(E), dated 8-9-1982. For details, *see* Taxmann's Master Guide to Income-tax Act.

4. Substituted by the Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-4-1989. Earlier clause (*5*) was amended by the Finance Act, 1975, w.e.f. 1-4-1975, the Taxation Laws (Amendment) Act, 1970, w.r.e.f. 1-4-1962 and the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

5. Rule 2B prescribes the conditions as well as quantum of exemption, which are as follows : *Conditions to be satisfied* - Conditions to be satisfied are as under :

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per head) having regard to the travel concession or assistance granted to the employees of the Central Government :

(Contd. from p. 1.42)

◆ The exemption is admissible on the value of any travel concession or assistance received by or due to an assessee from his employer or former employer, as the case may be, for himself and his family, in connection with his proceeding (*i*) on leave to any place in India, or (*ii*) to any place in India after the retirement from service, or (*iii*) to any place in India after the termination of his service.

◆ The exemption is admissible in respect of actual expenditure incurred for journeys performed, not only by the assessee but also by his family.

For this purpose, 'family' means (*i*) the spouse and children of the assessee, and (*ii*) the parents, brothers and sisters of the assessee provided that they are wholly or mainly dependent on the assessee. With effect from 1-10-1997, the Central Civil Service Leave Travel Concession Rules have been amended in this respect.

◆ The exemption can be availed only in respect of two *journeys* performed in a *block of four calendar years.* For this purpose, the first four-year block commenced with the calendar year 1986. Thus, the four-year blocks will be 1986-89, 1990-93, 1994-97, 1998-2001, 2002-05, 2006-09 and so on.

◆ If an assessee has not availed travel concession or assistance during any of the specified four-year block periods on one of the two permitted occasions, or on both occasions, exemption can be claimed provided he avails the concession or assistance in the calendar year immediately following that block. This is popularly known as the 'carry-over' concession. In such cases, the exemption so availed will not be counted for purposes of regulating the future exemptions allowable for the succeeding block of four years.

Quantum of exemption.—The basic rule is that the quantum of exemption will be limited to the actual expenses incurred on the journey. This pre-supposes that, without performing any journey and incurring expenses thereon, no exemption can be claimed.

In addition to the above general limitation, the quantum of exemption will also be subject to the following maximum limits, depending upon the mode of transport used or available:

JOURNEYS PERFORMED ON OR AFTER 1-10-1997	
■ For journeys performed by Air	■ Air economy fare of the national carrier (Indian Airlines or Air India) by the shortest route to the place of destination.
■ Where place of origin of journey and destination are connected by rail and the journey is performed by any mode of transport other than by air	■ Air-conditioned first class rail fare by the shortest route to the place of destination.
■ Where place of origin of journey and destination or part thereof are not connected by rail	■ (*i*) Where a recognised public transport system exists, the first class or deluxe class fare on such transport by the shortest route to the place of destination. (*ii*) Where no recognised public transport system exists, the air-conditioned first class rail fare, for the distance of the journey by the shortest route, as if the journey has been performed by rail.

Restricted concession for children.—Under sub-rule (4) of rule 2B, inserted with effect from 1-10-1997, exemption on travel concession will not be admissible to more than two

(Contd. on p. 1.44)

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Provided that the amount exempt under this clause shall in no case exceed the amount of expenses actually incurred for the purpose of such travel.

Explanation.—For the purposes of this clause, "family", in relation to an individual, means—

(*i*) the spouse and children of the individual ; and

(*ii*) the parents, brothers and sisters of the individual or any of them, wholly or mainly dependent on the individual;]

(*5A*) [6][*Omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999;*]

(*5B*) [7][*Omitted by the Finance Act, 2002, w.e.f. 1-4-2003;*]

(Contd. from p. 1.43)

surviving children of an individual born after 1-10-1998. This restriction will not however apply in respect of children born before 1-10-1998, and also in cases where an individual, after getting one child, begets multiple children (twins/triplets/quadruplets, etc.) on the second occasion. The implications of this restriction will be as follows :

- In respect of journeys performed on or before 1-10-1998 exemption will be admissible in respect of all the surviving children of the individual.
- In respect of journeys performed after 1-10-1998
  - the exemption will be admissible to all surviving children born before 1-10-1998;
  - in addition, the exemption will be admissible to only two surviving children born on or after 1-10-1998. In reckoning this limit of two children, children born out of multiple birth after the first child will be treated as 'one child' only.

It may be noted that section 2(*15B*) of the Act defines a 'child' as includes 'a step-child and an adopted child of the individual'. Hence the aforesaid restrictions will operate in respect of step-children and adopted children also provided they are born on or after 1-10-1998.

6. Prior to its omission, clause (*5A*) was inserted by the Taxation Laws (Amendment) Act, 1984, w.r.e.f. 1-4-1982.

7. Prior to its omission, clause (*5B*), as inserted by the Finance Act, 1993, w.e.f. 1-4-1994, and later on amended by the Finance Act, 1999, w.e.f. 1-4-1999, read as under :

'(*5B*) in the case of an individual who renders services as a technician in the employment (commencing from a date after the 31st day of March, 1993) of the Government or of a local authority or of any corporation set up under any special law or of any such institution or body established in India for carrying on scientific research as is approved for the purposes of this clause by the prescribed authority or in any business carried on in India and the individual was not resident in India in any of the four financial years immediately preceding the financial year in which he arrived in India and the tax on his income for such services chargeable under the head "Salaries" is paid to the Central Government by the employer [which tax, in the case of an employer, being a company, may be paid notwithstanding anything contained in section 200 of the Companies Act, 1956 (1 of 1956)], the tax so paid by the employer for a period not exceeding forty-eight months commencing from the date of his arrival in India :

Provided that the Central Government may, if it considers it necessary or expedient in the public interest so to do, waive the condition relating to non-residence in India

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(*6*) in the case of an individual who is not a citizen of India,—

(*i*) [8][***]

[9][(*ii*) the remuneration received by him as an official, by whatever name called, of an embassy, high commission, legation, commission, consulate or the trade representation of a foreign State, or as a member of the staff of any of these officials, for service in such capacity :

Provided that the remuneration received by him as trade commissioner or other official representative in India of the Government of a foreign State (not holding office as such in an honorary capacity), or as a member of the staff of any of those officials, shall be exempt only if the remuneration of the corresponding officials or, as the case may be, members of the staff, if any, of the Government resident for similar purposes in the country concerned enjoys a similar exemption in that country :

Provided further that such members of the staff are subjects of the country represented and are not engaged in any business or profession or employment in India otherwise than as members of such staff ;]

(Contd. from p. 1.44)

as specified in this clause in the case of any individual who is employed in India for designing, erection or commissioning of machinery or plant or supervising activities connected with such designing, erection or commissioning.

Explanation.—For the purposes of this clause, "technician" means a person having specialised knowledge and experience in—

(*i*) constructional or manufacturing operations, or in mining or in the generation of electricity or any other form of power, or

(*ii*) agriculture, animal husbandry, dairy farming, deep sea fishing or ship building, or

(*iii*) such other field as the Central Government may, having regard to availability of Indians having specialised knowledge and experience therein, the needs of the country and other relevant circumstances, by notification in the Official Gazette, specify,

who is employed in India in a capacity in which such specialised knowledge and experience are actually utilised ;'

8. Omitted by the Finance Act, 2002, w.e.f. 1-4-2003. Prior to its omission, sub-clause (*i*), as substituted by the Taxation Laws (Amendment) Act, 1970, w.r.e.f. 1-4-1962 and amended by the Finance (No. 2) Act, 1977, w.r.e.f. 1-4-1972 and the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999, read as under :

"(*i*) subject to such conditions as the Central Government may prescribe, passage moneys or the value of any free or concessional passage received by or due to such individual—

(*a*) from his employer, for himself, his spouse and children, in connection with his proceeding on home leave out of India ;

(*aa*) [* * *]

(*b*) from his employer or former employer for himself, his spouse and children, in connection with his proceeding to his home country out of India after retirement from service in India or after the termination of such service ;"

9. Substituted for sub-clauses (*ii*) to (*v*) by the Finance Act, 1988, w.e.f. 1-4-1989.

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(*iii*) to (*v*) [*Sub-clause (*ii*) substituted for sub-clauses (*ii*) to (*v*) by the Finance Act, 1988, w.e.f. 1-4-1989;*]

(*vi*) the remuneration received by him as an employee of a foreign enterprise for services rendered by him during his stay in India, provided the following conditions are fulfilled—

(*a*) the foreign enterprise is not engaged in any trade or business in India ;

(*b*) his stay in India does not exceed in the aggregate a period of ninety days in such previous year ; and

(*c*) such remuneration is not liable to be deducted from the income of the employer chargeable under this Act ;

(*via*) [10][*Omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999;*]

(*vii*) [11][*Omitted by the Finance Act, 1993, w.e.f. 1-4-1993;*]

(*viia*) [12][*Omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999;*]

(*viii*) any income chargeable under the head "Salaries" received by or due to any such individual being a non-resident as remuneration for services rendered in connection with his employment on a foreign ship where his total stay in India does not exceed in the aggregate a period of ninety days in the previous year ;

(*ix*) [13][*Omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999;*]

(*x*) [14][*Omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999;*]

[15][(*xi*) the remuneration received by him as an employee of the Government of a foreign State during his stay in India in connection with his training in any establishment or office of, or in any undertaking owned by,—

(*i*) the Government ; or

(*ii*) any company in which the entire paid-up share capital is held by the Central Government, or any State Government or Governments, or partly by the Central Government and partly by one or more State Governments ; or

(*iii*) any company which is a subsidiary of a company referred to in item (*ii*) ; or

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10. Prior to its omission, sub-clause (*via*) was inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

11. Prior to omission, sub-clause (*vii*) was amended by the Finance Act, 1964, w.e.f. 1-4-1964, Finance Act, 1965, w.e.f. 1-4-1965 and Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

12. Prior to its omission, sub-clause (*viia*) was inserted by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971 and later on amended by the Direct Taxes (Amendment) Act, 1974, w.r.e.f. 1-4-1973, Finance Act, 1979, w.e.f. 1-6-1979, Finance Act, 1988, w.e.f. 1-4-1988, Finance Act, 1992, w.e.f. 1-6-1992 and Finance Act, 1993, w.e.f. 1-4-1993.

13. Prior to its omission, sub-clause (*ix*) was inserted by the Finance Act, 1964, w.e.f. 1-4-1964.

14. Prior to its omission, sub-clause (*x*) was inserted, *ibid.*

15. Inserted by the Finance Act, 1976, w.e.f. 1-4-1976.

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(*iv*) any corporation established by or under a Central, State or Provincial Act ; or

(*v*) any society registered under the Societies Registration Act, 1860 (14 of 1860), or under any other corresponding law for the time being in force and wholly financed by the Central Government, or any State Government or State Governments, or partly by the Central Government and partly by one or more State Governments ;]

[16][(*6A*) where in the case of a foreign company deriving income by way of royalty or fees for technical services received from Government or an Indian concern in pursuance of an agreement made by the foreign company with Government or the Indian concern after the 31st day of March, 1976 [17][but before the 1st day of June, 2002] [18][and,—

(*a*) where the agreement relates to a matter included in the industrial policy, for the time being in force, of the Government of India, such agreement is in accordance with that policy ; and

(*b*) in any other case, the agreement is approved by the Central Government,

the tax on such income is payable, under the terms of the agreement, by Government or the Indian concern to the Central Government, the tax so paid].

Explanation.—For the purposes of this clause [19][and clause (*6B*)],—

(*a*) "fees for technical services" shall have the same meaning as in *Explanation 2* to clause (*vii*) of sub-section (1) of section 9 ;

(*b*) "foreign company" shall have the same meaning as in section 80B ;

(*c*) "royalty" shall have the same meaning as in *Explanation 2* to clause (*vi*) of sub-section (1) of section 9;]

[19][(*6B*) where in the case of a non-resident (not being a company) or of a foreign company deriving income (not being salary, royalty or fees for technical services) from Government or an Indian concern in pursuance of an agreement entered into [20][before the 1st day of June, 2002] by the Central Government with the Government of a foreign State or an international organisation, the tax on such income is payable by Government or the Indian concern to the Central Government under the terms of that agreement or any other related agreement approved [20][before that date] by the Central Government, the tax so paid ;]

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16. Inserted by the Finance Act, 1983, w.e.f. 1-4-1984.

17. Inserted by the Finance Act, 2002, w.e.f. 1-4-2003.

18. Substituted for "and approved by the Central Government, the tax on such income is payable, under the terms of such agreement, by Government or the Indian concern to the Central Government, the tax so paid" by the Finance Act, 1992, w.e.f. 1-6-1992.

19. Inserted by the Finance Act, 1988, w.e.f. 1-4-1988.

20. Inserted by the Finance Act, 2002, w.e.f. 1-4-2003.

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[21][(*6BB*) where in the case of the Government of a foreign State or a foreign enterprise deriving income from an Indian company engaged in the business of operation of aircraft, as a consideration of acquiring an aircraft or an aircraft engine (other than payment for providing spares, facilities or services in connection with the operation of leased aircraft) on lease under [22][an agreement entered into after the 31st day of March, 1997 but before the 1st day of April, 1999, or entered into after the [23][31st day of March, [24][2007]] and approved by the Central Government in this behalf] and the tax on such income is payable by such Indian company under the terms of that agreement to the Central Government, the tax so paid.

Explanation.—For the purposes of this clause, the expression "foreign enterprise" means a person who is a non-resident;]

[25][(*6C*) any income arising to such foreign company, as the Central Government may, by notification[26] in the Official Gazette, specify in this behalf, by way of [27][royalty or] fees for technical services received in pursuance of an agreement entered into with that Government for providing services in or outside India in projects connected with security of India ;]

(*7*) any allowances or perquisites paid or allowed as such outside India by the Government to a citizen of India for rendering service outside India ;

(*8*) in the case of an individual who is assigned to duties in India in connection with any co-operative technical assistance programmes and projects in accordance with an agreement entered into by the Central Government and the Government of a foreign State (the terms whereof provide for the exemption given by this clause)—

(*a*) the remuneration received by him directly or indirectly from the Government of that foreign State for such duties, and

(*b*) any other income of such individual which accrues or arises outside India, and is not deemed to accrue or arise in India, in respect of which such individual is required to pay any income or social security tax to the Government of that foreign State ;

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21. Inserted by the Finance Act, 1997, w.e.f. 1-4-1998.

22. Substituted for "an agreement entered after the 31st day of March, 1997 (but before the 1st day of April, 1999) and approved by the Central Government in this behalf" by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2006. Words "30th day of September, 2005" substituted for "31st day of March, 2005" by the Finance Act, 2005, w.e.f. 1-4-2006. Earlier the bracketed words were amended by the Finance Act, 1999, w.e.f. 1-4-2000.

23. Substituted for "30th day of September, 2005" by the Taxation Laws (Amendment) Act, 2005, w.e.f. 1-4-2006.

24. Substituted for "2006" by the Finance Act, 2006, w.e.f. 1-4-2007.

25. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

26. For notified companies, *see* Taxmann's Master Guide to Income-tax Act.

27. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

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[28][(*8A*) in the case of a consultant—

(*a*) any remuneration or fee received by him or it, directly or indirectly, out of the funds made available to an international organisation [hereafter referred to in this clause and clause (*8B*) as the agency] under a technical assistance grant agreement between the agency and the Government of a foreign State ; and

(*b*) any other income which accrues or arises to him or it outside India, and is not deemed to accrue or arise in India, in respect of which such consultant is required to pay any income or social security tax to the Government of the country of his or its origin.

Explanation.—In this clause, "consultant" means—

(*i*) any individual, who is either not a citizen of India or, being a citizen of India, is not ordinarily resident in India ; or

(*ii*) any other person, being a non-resident,

engaged by the agency for rendering technical services in India in connection with any technical assistance programme or project, provided the following conditions are fulfilled, namely :—

(*1*) the technical assistance is in accordance with an agreement entered into by the Central Government and the agency ; and

(*2*) the agreement relating to the engagement of the consultant is approved by the prescribed authority[29] for the purposes of this clause ;

(*8B*) in the case of an individual who is assigned to duties in India in connection with any technical assistance programme and project in accordance with an agreement entered into by the Central Government and the agency—

(*a*) the remuneration received by him, directly or indirectly, for such duties from any consultant referred to in clause (*8A*) ; and

(*b*) any other income of such individual which accrues or arises outside India, and is not deemed to accrue or arise in India, in respect of which such individual is required to pay any income or social security tax to the country of his origin, provided the following conditions are fulfilled, namely :—

(*i*) the individual is an employee of the consultant referred to in clause (*8A*) and is either not a citizen of India or, being a citizen of India, is not ordinarily resident in India ; and

(*ii*) the contract of service of such individual is approved by the prescribed authority[29] before the commencement of his service ;]

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28. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1991.

29. The prescribed authority under rule 16B is Additional Secretary, Department of Economic Affairs in Ministry of Finance, Government of India in concurrence with Member (Income-tax), CBDT.

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(*9*) the income of any member of the family of any such individual as is referred to in clause (*8*) [30][or clause (*8A*) or, as the case may be, clause (*8B*)] accompanying him to India, which accrues or arises outside India, and is not deemed to accrue or arise in India, in respect of which such member is required to pay any income or social security tax to the Government of that foreign State [30][or, as the case may be, country of origin of such member];

[31][[32](*10*) [33](*i*) any death-*cum*-retirement gratuity received under the revised Pension Rules of the Central Government or, as the case may be, the Central Civil Services (Pension) Rules, 1972, or under any similar scheme applicable to the members of the civil services of the Union or holders of posts connected with defence or of civil posts under the Union (such members or holders being persons not governed by the said Rules) or to the members of the all-India services or to the members of the civil services of a State or holders of civil posts under a State or to the employees of a local authority or any payment of retiring gratuity received under the Pension Code or Regulations applicable to the members of the defence services ;

(*ii*) any gratuity received under the Payment of Gratuity Act, 1972 (39 of 1972), to the extent it does not exceed an amount calculated in accordance with the provisions of sub-sections (2) and (3) of section 4[34] of that Act ;

(*iii*) any other gratuity received by an employee on his retirement or on his becoming incapacitated prior to such retirement or on termination of his employment, or any gratuity received by his widow, children or dependants on his death, to the extent it does not, in either case, exceed one-half month's salary for each year of completed service[35], [36][calculated on the basis of the average salary for the ten months immediately preceding the month in which any such event

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30. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1991.

31. Substituted by the Finance Act, 1974, w.e.f. 1-4-1975. Original clause was amended first by the Finance Act, 1972, w.e.f. 1-4-1973 and then by the Finance Act, 1974, w.r.e.f. 1-6-1972/1-4-1962.

32. *See* also Letter F. No. 1(179)-62/TPL, dated 13-12-1962 and Letter F. No. 194/6/73-IT (A-I), dated 19-6-1973. For details, *see* Taxmann's Master Guide to Income-tax Act.

33. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

34. For text of sub-sections (2) and (3) of section 4 of the Payment of Gratuity Act, 1972, *see* **Appendix.**

The limit laid down under section 4(3) of the Payment of Gratuity Act, 1972 [as amended by the Payment of Gratuity (Amendment) Act, 1998, w.r.e.f. 24-9-1997] is Rs. 3,50,000. Payment of Gratuity (Amendment) Bill, 2010, has proposed to increase the limit to Rs. 10,00,000.

35. For the meaning of the expression "each year of completed service", *see* Taxmann's Direct Taxes Manual, Vol. 3.

36. Substituted for "calculated on the basis of the average salary for the three years immediately preceding the year in which the gratuity is paid, subject to a maximum of *thirty-six thousand rupees or twenty months' salary so calculated, whichever is less" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

*Substituted for "thirty thousand rupees" by the Finance Act, 1983, w.r.e.f. 1-4-1982.

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occurs, subject to such limit[37] as the Central Government may, by notification in the Official Gazette, specify in this behalf having regard to the limit applicable in this behalf to the employees of that Government] :

Provided that where any gratuities referred to in this clause[38] are received by an employee from more than one employer in the same previous year, the aggregate amount exempt from income-tax under this clause [39][shall not exceed the limit so specified] :

Provided further that where any such gratuity or gratuities was or were received in any one or more earlier previous years also and the whole or any part of the amount of such gratuity or gratuities was not included in the total income of the assessee of such previous year or years, the amount exempt from income-tax under this clause [39][shall not exceed the limit so specified] as reduced by the amount or, as the case may be, the aggregate amount not included in the total income of any such previous year or years.

[40][* * *]

Explanation.—[41][In this clause, and in clause (*10AA*)], "salary" shall have the meaning assigned to it in clause (*h*) of rule 2 of Part A of the Fourth Schedule ;]

[42][[43](*10A*) [44](*i*) any payment in commutation of pension received under the Civil Pensions (Commutation) Rules of the Central Government or under any similar scheme applicable [45][to the members of the civil services of the Union or holders of posts connected with defence or of civil posts under the Union (such members or holders being persons not governed by the said Rules) or to the members of the all-India services or to the members of the defence services or to the members of the civil services of a State or holders of civil posts under a State or to the employees of a local authority] or a corporation established by a Central, State or Provincial Act ;

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37. Rs. 3,50,000 has been specified as the limit in case of retirement, etc., on or after 24-9-1997 *vide* Notification No. 10772 [F. No. 200/77/97-IT(A-I)], dated 20-1-1999. For details, *see* Taxmann's Master Guide to Income-tax Act. *See* also footnote No. 34, on page 1.50.

38. For meaning of the expression "this clause", *see* Taxmann's Direct Taxes Manual, Vol. 3.

39. Substituted for "shall not exceed *thirty-six thousand rupees" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

*Substituted for "thirty thousand rupees" by the Finance Act, 1983, w.r.e.f. 1-4-1982.

40. Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Original third and fourth provisos were inserted by the Finance Act, 1983, w.r.e.f. 1-4-1982.

41. Substituted for "In this clause" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

42. Inserted by the Finance (No. 2) Act, 1965, w.r.e.f. 1-4-1962.

43. *See* also Circular No. 286, dated 17-11-1980 and Circular No. 623, dated 6-1-1992. For details, *see* Taxmann's Master Guide to Income-tax Act.

44. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

45. Substituted for "to the members of the Defence Services or to the employees of a State Government, a local authority" by the Finance Act, 1974, w.r.e.f. 1-4-1962.

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(*ii*) any payment in commutation of pension received under any scheme of any other employer, to the extent it does not exceed—

(*a*) in a case where the employee receives any gratuity, the commuted value of one-third of the pension which he is normally entitled to receive, and

(*b*) in any other case, the commuted value of one-half of such pension,

such commuted value being determined having regard to the age of the recipient, the state of his health, the rate of interest and officially recognised tables of mortality ;

[46][* * *]

[47][(*iii*) any payment in commutation of pension received from a fund under clause (*23AAB*) ;]

[48][[49](*10AA*) (*i*) any payment received by an employee of the Central Government or a State Government as the cash equivalent of the leave salary in respect of the period of earned leave at his credit at the time of his [50]retirement [51][whether] on superannuation or otherwise ;

(*ii*) any payment of the nature referred to in sub-clause (*i*) received by an employee, other than an employee of the Central Government or a State Government, in respect of so much of the period of earned leave at his credit at the time of his retirement [51][whether] on superannuation [50]or otherwise as does not exceed [52][ten] months, calculated on the basis of the average salary drawn by the employee during the period of ten months immediately preceding his retirement [51][whether] on superannuation or otherwise, [53][subject to such limit as the Central Government may, by notification in the Official Gazette, specify in this behalf having regard to the limit[54] applicable in this behalf to the employees of that Government] :

Provided that where any such payments are received by an employee from more than one employer in the same previous year, the aggregate amount exempt from income-tax under this sub-clause [55][shall not exceed the limit so specified] :

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46. Proviso omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

47. Inserted by the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997.

48. Inserted by the Finance Act, 1982, w.r.e.f. 1-4-1978.

49. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

50. For the meaning of the terms "retirement" and "or otherwise" *see* Taxmann's Direct Taxes Manual, Vol. 3.

51. Inserted by the Taxation Laws (Amendment) Act, 1984, w.r.e.f. 1-4-1978.

52. Substituted for "eight" by the Finance Act, 1999, w.r.e.f. 1-4-1998. Earlier "eight" was substituted for "six" by the Direct Tax Laws (Amendment) Act, 1987, w.r.e.f. 1-7-1986.

53. Substituted for "or thirty thousand rupees, whichever is less" by the Direct Tax Laws (Amendment) Act, 1987, w.r.e.f. 1-7-1986.

54. Specified exemption limit applicable in relation to employees who retire, whether on superannuation or otherwise, after 1-4-1998 : Rs. 3,00,000 - Notification No. SO 588(E), dated 31-5-2002. For details, *see* Taxmann's Master Guide to Income-tax Act.

55. Substituted for "shall not exceed thirty thousand rupees" by the Direct Tax Laws (Amendment) Act, 1987, w.r.e.f. 1-7-1986.

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Provided further that where any such payment or payments was or were received in any one or more earlier previous years also and the whole or any part of the amount of such payment or payments was or were not included in the total income of the assessee of such previous year or years, the amount exempt from income-tax under this sub-clause [56][shall not exceed the limit so specified], as reduced by the amount or, as the case may be, the aggregate amount not included in the total income of any such previous year or years.

[57][* * *]

Explanation.—For the purposes of sub-clause (*ii*),—

[58][***] the entitlement to earned leave of an employee shall not exceed thirty days for every year of actual service rendered by him as an employee of the employer from whose service he has retired ;

[59][* * *]

[60][(*10B*) any compensation received by a workman under the Industrial Disputes Act, 1947 (14 of 1947), or under any other Act or Rules, orders or notifications issued thereunder or under any standing orders or under any award, contract of service or otherwise, [61][at the time of his retrenchment :

Provided that the amount exempt under this clause shall not exceed—

(*i*) an amount calculated in accordance with the provisions of [62]clause (*b*) of section 25F of the Industrial Disputes Act, 1947 (14 of 1947) ; or

[63][(*ii*) such amount, not being less than fifty thousand rupees, as the Central Government may, by notification[64] in the Official Gazette, specify in this behalf,]

whichever is less :

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56. Substituted for "shall not exceed thirty thousand rupees" by the Direct Tax Laws (Amendment) Act, 1987, w.r.e.f. 1-7-1986.

57. Third and fourth provisos omitted, *ibid.* Prior to their omission, the third and fourth provisos were amended by the Taxation Laws (Amendment) Act, 1984, w.r.e.f. 1-4-1978.

58. "(*i*)" omitted by the Direct Tax Laws (Amendment) Act, 1987, w.r.e.f. 1-7-1986.

59. Clause (*ii*) omitted, *ibid.*

60. Inserted by the Finance Act, 1975, w.e.f. 1-4-1976.

61. Substituted for the following by the Finance Act, 1985, w.e.f. 1-4-1986 :

"at the time of his retrenchment, to the extent such compensation does not exceed—

(*i*) an amount calculated in accordance with the provisions of clause (*b*) of section 25F of the Industrial Disputes Act, 1947 (14 of 1947) ; or

(*ii*) twenty thousand rupees,

whichever is less."

62. Clause (*b*) of section 25F of the Industrial Disputes Act, 1947, read as follows :

"(*b*) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months ; and"

63. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

64. Maximum limit is Rs. 5,00,000 where retrenchment is on or after 1-1-1997 - Notification No. 10969 [F. No. 200/21/97-IT(A-I)], dated 25-6-1999.

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Provided further that the preceding proviso shall not apply in respect of any compensation received by a workman in accordance with any scheme which the Central Government may, having regard to the need for extending special protection to the workmen in the undertaking to which such scheme applies and other relevant circumstances, approve in this behalf.]

Explanation.—For the purposes of this clause—

(*a*) compensation received by a workman at the time of the closing down of the undertaking in which he is employed shall be deemed to be compensation received at the time of his retrenchment ;

(*b*) compensation received by a workman, at the time of the transfer (whether by agreement or by operation of law) of the ownership or management of the undertaking in which he is employed from the employer in relation to that undertaking to a new employer, shall be deemed to be compensation received at the time of his retrenchment if—

(*i*) the service of the workman has been interrupted by such transfer ; or

(*ii*) the terms and conditions of service applicable to the workman after such transfer are in any way less favourable to the workman than those applicable to him immediately before the transfer ; or

(*iii*) the new employer is, under the terms of such transfer or otherwise, legally not liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer ;

[65](*c*) the expressions "employer" and "workman" shall have the same meanings as in the Industrial Disputes Act, 1947 (14 of 1947);]

[66][(*10BB*) any payments made under the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 (21 of 1985), and any scheme framed thereunder except payment made to any assessee in connection with the Bhopal Gas Leak Disaster to the extent such assessee has been allowed a deduction under this Act on account of any loss or damage caused to him by such disaster ;]

[67][(*10BC*) any amount received or receivable from the Central Government or a State Government or a local authority by an individual or his legal heir by way of compensation on account of any disaster, except the amount received or receivable to the extent such individual or his legal heir has been allowed a deduction under this Act on account of any loss or damage caused by such disaster.

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65. For text of clause (*g*) and clause (*s*) of section 2 of the Industrial Disputes Act, 1947, defining "employer" and "workman", respectively, *see* **Appendix.**

66. Inserted by the Finance Act, 1992, w.e.f. 1-4-1992.

67. Inserted by the Finance Act, 2007, w.r.e.f. 1-4-2005.

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Explanation.—For the purposes of this clause, the expression "disaster" shall have the meaning assigned to it under clause (*d*) of section 2[68] of the Disaster Management Act, 2005 (53 of 2005);]

[69][(*10C*) [70]any amount received[71] [72][or receivable] by an employee of—

(*i*) a public sector company ; or

(*ii*) any other company ; or

(*iii*) an authority established under a Central, State or Provincial Act ; or

(*iv*) a local [73][authority ; or]

[74][(*v*) a co-operative society ; or

(*vi*) a University established or incorporated by or under a Central, State or Provincial Act and an institution declared to be a University under section 3 of the University Grants Commission Act, 1956 (3 of 1956) ; or

(*vii*) an Indian Institute of Technology within the meaning of clause (*g*) of section 3[75] of the Institutes of Technology Act, 1961 (59 of 1961) ; or

[76][(*viia*) any State Government; or]

[77][(*viib*) the Central Government; or]

[78][(*viic*) an institution, having importance throughout India or in any State or States, as the Central Government may, by notification in the Official Gazette[79], specify in this behalf; or]

(*viii*) such institute of management as the Central Government may, by notification[80] in the Official Gazette, specify in this behalf,]

[81][on his] [82][voluntary retirement or termination of his service, in accordance with any scheme or schemes of voluntary retirement or

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68. For the definition of term "disaster", *see* **Appendix**.

69. Substituted by the Finance Act, 1993, w.e.f. 1-4-1993. Prior to substitution, clause (*10C*) was inserted by the Finance Act, 1987, w.e.f. 1-4-1987 and later substituted by the Finance Act, 1992, w.e.f. 1-4-1993.

70. *See* also Circular No. 640, dated 26-11-1992 and Circular F. No. 184/7/2003-ITAT, dated 4-3-2004. For details, *see* Taxmann's Master Guide to Income-tax Act.

71. For the meaning of expression "amount received", *see* Taxmann's Direct Taxes Manual, Vol. 3.

72. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

73. Substituted for "authority," by the Finance Act, 1994, w.e.f. 1-4-1995.

74. Inserted, *ibid*.

75. Clause (*g*) of section 3 of the Institutes of Technology Act, 1961, defines "Institute" as follows :

'(*g*) "Institute" means any of the Institutions mentioned in section 2 and includes the Indian Institute of Technology, Kharagpur, incorporated under the Indian Institute of Technology (Kharagpur) Act, 1956 (5 of 1956);'

76. Inserted by the Finance Act, 2001, w.e.f. 1-4-2001.

77. Inserted, *ibid*., w.e.f. 1-4-2002.

78. Inserted by the Finance Act, 2002, w.e.f. 1-4-2002.

79. For notified institutions, *see* Taxmann's Master Guide to Income-tax Act.

80. For notified Institutes of Management, *see* Taxmann's Master Guide to Income-tax Act.

81. Substituted for "at the time of his" by the Finance Act, 2003, w.e.f. 1-4-2004.

82. Substituted for "voluntary retirement, in accordance with any scheme or schemes of voluntary retirement, to the extent such amount does not exceed five lakh rupees" by the Finance Act, 2000, w.e.f. 1-4-2001.

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in the case of a public sector company referred to in sub-clause (*i*), a scheme of voluntary separation, to the extent such amount does not exceed five lakh rupees] :

Provided that the schemes of the said companies or authorities [83][or societies or Universities or the Institutes referred to in sub-clauses (*vii*) and (*viii*)], as the case may be, governing the payment of such amount are framed in accordance with such guidelines (including *inter alia* criteria of economic viability) as may be [84]prescribed [85][***] :

Provided further that where exemption has been allowed to an employee under this clause for any assessment year, no exemption thereunder shall be allowed to him in relation to any other assessment year :]

[86][**Provided also** *that where any relief has been allowed to an assessee under section 89 for any assessment year in respect of any amount received or receivable on his voluntary retirement or termination of service or voluntary separation, no exemption under this clause shall be allowed to him in relation to such, or any other, assessment year;*]

[87][(*10CC*) in the case of an employee, being an individual deriving income in the nature of a perquisite, not provided for by way of monetary payment, within the meaning of clause (*2*) of section 17, the tax on such income actually paid by his employer, at the option of the employer, on behalf of such employee, notwithstanding anything contained in section 200[88] of the Companies Act, 1956 (1 of 1956);]

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83. Inserted by the Finance Act, 1994, w.e.f. 1-4-1995.

84. Rule 2BA prescribes requirements for a Scheme of Voluntary Retirement, which are as follows :

(*1*) It applies to an employee who has completed ten years of service or completed 40 years of age. This condition is not applicable in case of amount received by an employee of a public sector company under scheme of voluntary separation framed by the said company. (*2*) It applies to all employees (by whatever name called), including workers and executives of the company/authority/co-operative society excepting directors of the company/co-operative society. (*3*) The scheme of voluntary retirement/separation has been drawn to result in overall reduction in the existing strength of the employees. (*4*) The vacancy caused by voluntary retirement/separation is not to be filled up, nor, the retiring employee is to be employed in another company or concern belonging to the same management. (*5*) The amount receivable on account of voluntary retirement/separation of the employees, does not exceed the amount equivalent to three months' salary for each completed year of service or salary at the time of retirement multiplied by the balance months of service left before the date of his retirement on superannuation.

85. Words "and such schemes in relation to companies referred to in sub-clause (*ii*) or co-operative societies referred to in sub-clause (*v*) are approved by the Chief Commissioner or, as the case may be, Director-General in this behalf" omitted by the Finance Act, 2000, w.e.f. 1-4-2001. Earlier the quoted words were amended by the Finance Act, 1994, w.e.f. 1-4-1995.

86. Inserted by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2010.**

87. Inserted by the Finance Act, 2002, w.e.f. 1-4-2003.

88. For text of section 200 of the Companies Act, 1956, *see* **Appendix.**

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[89][(*10D*) any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy, other than—

(*a*) any sum received under sub-section (3) of section 80DD or sub-section (3) of section 80DDA*; or

(*b*) any sum received under a Keyman insurance policy; or

(*c*) any sum received under an insurance policy issued on or after the 1st day of April, 2003 in respect of which the premium payable for any of the years during the term of the policy exceeds twenty per cent of the actual capital sum assured:

Provided that the provisions of this sub-clause shall not apply to any sum received on the death of a person:

Provided further that for the purpose of calculating the actual capital sum assured under this sub-clause, effect shall be given to the [90][*Explanation* to sub-section (3) of section 80C or the *Explanation* to sub-section (2A) of section 88, as the case may be].

Explanation.—For the purposes of this clause, "Keyman insurance policy" means a life insurance policy taken by a person on the life of another person who is or was the employee of the first-mentioned person or is or was connected in any manner whatsoever with the business of the first-mentioned person;]

(*11*) any payment from a provident fund to which the Provident Funds Act, 1925 (19 of 1925), applies [91][or from any other provident fund set up by the Central Government and notified[92] by it in this behalf in the Official Gazette];

(*12*) the accumulated balance due and becoming payable to an employee participating in a recognised provident fund, to the extent provided in rule 8 of Part A of the Fourth Schedule ;

[93][(*13*) any payment from an approved superannuation fund made—

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89. Substituted by the Finance Act, 2003, w.e.f. 1-4-2004. Prior to its substitution, clause (*10D*), as inserted by the Finance (No. 2) Act, 1991, w.r.e.f. 1-4-1962, and later on amended by the Finance Act, 1995, w.e.f. 1-4-1996 and Finance (No. 2) Act, 1996, w.e.f. 1-10-1996, read as under :

'(*10D*) any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy other than any sum received under sub-section (3) of section 80DDA or under a Keyman insurance policy.

Explanation.—For the purposes of this clause, "Keyman insurance policy" means a life insurance policy taken by a person on the life of another person who is or was the employee of the first mentioned person or is or was connected in any manner whatsoever with the business of the first mentioned person;'

90. Substituted for "*Explanation* to sub-section (2A) of section 88" by the Finance Act, 2005, w.e.f. 1-4-2006.

91. Inserted by the Finance Act, 1968, w.e.f. 1-4-1969.

92. For notified public provident fund, *see* Notification No. SO 2430, dated 2-7-1968. For details, *see* Taxmann's Master Guide to Income-tax Act.

93. Substituted by the Finance Act, 1965, w.r.e.f. 1-4-1962.

*With effect from 1-4-2004, section 80DD has been substituted for sections 80DD & 80DDA.

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(*i*) on the death of a beneficiary ; or

(*ii*) to an employee in lieu of or in commutation of an annuity on his retirement at or after a specified age or on his becoming incapacitated prior to such retirement ; or

(*iii*) by way of refund of contributions on the death of a beneficiary ; or

(*iv*) by way of refund of contributions to an employee on his leaving the service in connection with which the fund is established otherwise than by retirement at or after a specified age or on his becoming incapacitated prior to such retirement, to the extent to which such payment does not exceed the contributions made prior to the commencement of this Act and any interest thereon;]

[94][[95](*13A*) any special allowance specifically granted to an assessee by his employer to meet expenditure actually incurred on payment of rent (by whatever name called) in respect of residential accommodation occupied by the assessee, to such extent [96][* * *] as may be prescribed[97] having regard to the area or place in which such accommodation is situate and other relevant considerations.]

[98][*Explanation*.—For the removal of doubts, it is hereby declared that nothing contained in this clause shall apply in a case where—

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94. Inserted by the Direct Taxes (Amendment) Act, 1964, w.e.f. 6-10-1964.

95. *See* also Circular No. 90, dated 26-6-1972, Letter F. No. 12/19/64-IT (A-I), dated 2-1-1967 and Circular No. 9/2003, dated 18-11-2003. For details, *see* Taxmann's Master Guide to Income-tax Act.

96. "(not exceeding four hundred rupees per month)" omitted by the Finance Act, 1986, w.e.f. 1-4-1987. Earlier, in this omitted expression "four" was substituted for "three" by the Finance Act, 1975, w.e.f. 1-4-1975.

97. Rule 2A prescribes the quantum of exemption available, which will be the *least* of the following :

Bombay/Calcutta/Delhi/Madras	*Other Cities*
■ Allowance actually received	■ Allowance actually received
■ Rent paid in excess of 10% of salary	■ Rent paid in excess of 10% of salary
■ 50 per cent of salary	■ 40 per cent of salary

'Salary' for this purpose includes basic salary as well as dearness allowance if the terms of employment so provide. It also includes commission based on a fixed percentage of turnover achieved by an employee as per terms of contract of employment but excludes all other allowances and perquisites. In view of *Explanation (ii)* to rule 2A, basic pay, dearness allowance and commission are determined on 'due' basis in respect of the period during which rental accommodation is occupied by the employee in the previous year. Thus, emoluments of a period other than previous year are not to be considered, even though such amount is received (as well as taxed) during the previous year. Again, emoluments of the period during which rental accommodation is not occupied in the previous year are left out of computation. It is important to note that where rent paid is 10 per cent or less than 10 per cent of salary, no exemption will be admissible. Again exemption is denied where an employee lives in his own house, or in a house for which he does not pay rent.

98. Inserted by the Taxation Laws (Amendment) Act, 1984, w.r.e.f. 1-4-1976.

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(*a*) the residential accommodation occupied by the assessee is owned by him ; or

(*b*) the assessee has not actually incurred expenditure on payment of rent (by whatever name called) in respect of the residential accommodation occupied by him ;]

[99][(*14*) (*i*) any such special allowance or benefit, not being in the nature of a perquisite within the meaning of clause (*2*) of section 17, specifically granted to meet expenses wholly, necessarily and exclusively incurred[1] in the performance of the duties of an office or employment of profit[2], [3][as may be prescribed], to the extent to which such expenses are actually incurred for that purpose ;

(*ii*) any such allowance granted to the assessee either to meet his personal expenses at the place where the duties of his office or employment of profit[2] are ordinarily performed by him or at the place where he ordinarily resides, or to compensate him for the increased cost of living, [4][as may be prescribed and to the extent as may be prescribed] :]

[5][**Provided** that nothing in sub-clause (*ii*) shall apply to any allowance in the nature of personal allowance granted to the assessee to remunerate or compensate him for performing duties of a special nature relating to his office or employment unless such allowance is related to the place of his posting or residence ;]

(*14A*) [6][***]

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99. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Prior to its substitution, clause (*14*) was amended by the Finance Act, 1975, w.r.e.f. 1-4-1962.

1. For the meaning of the terms/expressions "incurred" and "office or employment of profit", *see* Taxmann's Direct Taxes Manual, Vol. 3.

2. For the meaning of the expression "office or employment of profit", *see* Taxmann's Direct Taxes Manual, Vol. 3.

3. Substituted for "as the Central Government may, by notification in the Official Gazette, specify" by the Finance Act, 1995, w.e.f. 1-7-1995.
For prescribed allowances, *see* rule 2BB(1).

4. Substituted for "as the Central Government may, by notification in the Official Gazette, specify, to the extent specified in the notification" by the Finance Act, 1995, w.e.f. 1-7-1995.
For prescribed allowances, *see* rule 2BB(2).

5. Inserted by the Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-4-1989.

6. Omitted by the Finance Act, 2002, w.e.f. 1-4-2003. Prior to its omission, clause (*14A*), as inserted by the Finance Act, 1989, w.e.f. 1-4-1989, read as under :

'(*14A*) any income received by a public financial institution as exchange risk premium from any person borrowing foreign currency from such institution, provided the amount of such premium is credited by such institution to a fund specified under clause (*23E*).

Explanation.—For the purposes of this clause,—

(*i*) the expression "public financial institution" shall have the meaning assigned to it in section 4A of the Companies Act, 1956 (1 of 1956) ;

(*ii*) the expression "exchange risk premium" means a premium paid by a person borrowing foreign currency from a public financial institution to cover the risk which may be borne by such institution on account of fluctuations in exchange rate of foreign currencies borrowed by such institution ;'

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(*15*) [7][(*i*) income by way of interest, premium on redemption or other payment on such securities, bonds, annuity certificates, savings certificates, other certificates issued by the Central Government and deposits as the Central Government may, by notification[8] in the Official Gazette, specify in this behalf, subject to such conditions and limits as may be specified in the said notification ;]

[9][(*iib*) [10][in the case of an individual or a Hindu undivided family,] interest on such Capital Investment Bonds as the Central Government may, by notification[11] in the Official Gazette, specify in this behalf :]

[12][**Provided** that the Central Government shall not specify, for the purposes of this sub-clause, such Capital Investment Bonds on or after the 1st day of June, 2002;]

[13][(*iic*) in the case of an individual or a Hindu undivided family, interest on such Relief Bonds[14] as the Central Government may, by notification in the Official Gazette, specify in this behalf ;]

[15][(*iid*) interest on such bonds, as the Central Government may, by notification[16] in the Official Gazette, specify, arising to—

(*a*) a non-resident Indian, being an individual owning the bonds ; or

(*b*) any individual owning the bonds by virtue of being a nominee or survivor of the non-resident Indian ; or

(*c*) any individual to whom the bonds have been gifted by the non-resident Indian :

Provided that the aforesaid bonds are purchased by a non-resident Indian in foreign exchange and the interest and principal received in respect of such bonds, whether on their maturity or otherwise, is not allowable to be taken out of India :

Provided further that where an individual, who is a non-resident Indian in any previous year in which the bonds are acquired, becomes a resident in India in any subsequent year, the provisions of this sub-clause shall continue to apply in relation to such individual :

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7. Substituted for sub-clauses (*i*), (*ia*), (*ib*), (*ii*) and (*iia*) by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Original sub-clauses (*ia*) and (*ib*) were inserted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1965, w.e.f. 4-12-1965 and Special Bearer Bonds (Immunities & Exemptions) Act, 1981, w.e.f. 12-1-1981, respectively ; sub-clause (*ii*) was amended by the Finance (No. 2) Act, 1965, w.e.f. 11-9-1965, the Finance Act, 1979, w.e.f. 1-4-1980 and the Finance Act, 1987, w.r.e.f. 1-4-1983 ; and sub-clause (*iia*) was inserted by the Finance Act, 1968, w.e.f. 1-4-1969.

8. For notified securities, bonds, annuity certificates, savings certificates, etc., *see* Taxmann's Master Guide to Income-tax Act.

9. Inserted by the Finance Act, 1982, w.e.f. 1-4-1983.

10. Inserted by the Finance Act, 1983, w.e.f. 1-4-1983.

11. For notified capital investment bonds, *see* Taxmann's Master Guide to Income-tax Act.

12. Inserted by the Finance Act, 2002, w.e.f. 1-4-2003.

13. Inserted by the Finance Act, 1988, w.e.f. 1-4-1989.

14. For details, *see* Taxmann's Master Guide to Income-tax Act.

15. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

16. For specified NRI bonds, *see* Taxmann's Master Guide to Income-tax Act.

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Provided also that in a case where the bonds are encashed in a previous year prior to their maturity by an individual who is so entitled, the provisions of this sub-clause shall not apply to such individual in relation to the assessment year relevant to such previous year :

[17][**Provided also** that the Central Government shall not specify, for the purposes of this sub-clause, such bonds on or after the 1st day of June, 2002.]

Explanation.—For the purposes of this sub-clause, the expression "non-resident Indian" shall have the meaning assigned to it in clause (*e*) of section 115C;]

(*iii*) interest on securities held by the Issue Department of the Central Bank of Ceylon constituted under the Ceylon Monetary Law Act, 1949;

[18][(*iiia*) interest payable to any bank incorporated in a country outside India and authorised to perform central banking functions in that country on any deposits made by it, with the approval of the Reserve Bank of India, with any scheduled bank.

Explanation.—For the purposes of this sub-clause, "scheduled bank" shall have the meaning assigned to it in [19][clause (*ii*) of the *Explanation* to clause (*viia*) of sub-section (1) of section 36];]

[20][(*iiib*) interest payable to the Nordic Investment Bank, being a multilateral financial institution constituted by the Governments of Denmark, Finland, Iceland, Norway and Sweden, on a loan advanced by it to a project approved by the Central Government in terms of the Memorandum of Understanding entered into by the Central Government with that Bank on the 25th day of November, 1986;]

[21][(*iiic*) interest payable to the European Investment Bank, on a loan granted by it in pursuance of the framework-agreement for financial co-operation entered into on the 25th day of November, 1993 by the Central Government with that Bank;]

(*iv*) interest payable—

[22][(*a*) by Government or a local authority on moneys borrowed by it before the 1st day of June, 2001 from, or debts owed by it before the 1st day of June, 2001 to, sources outside India;]

(*b*) by an industrial undertaking in India on moneys borrowed by it under [23][a loan agreement entered into before the 1st day

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17. Inserted by the Finance Act, 2002, w.e.f. 1-4-2003.

18. Inserted by the Finance Act, 1985, w.e.f. 1-4-1985.

19. Substituted for "the *Explanation* to clause (*iii*) of sub-section (5) of section 11" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

20. Inserted by the Taxation Laws (Amendment) Act, 2003, w.r.e.f. 1-4-2001.

21. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005.

22. Substituted by the Finance Act, 2001, w.e.f. 1-4-2002. Prior to its substitution, item (*a*), as amended by the Finance Act, 1983, w.e.f. 1-4-1983, read as under :

"(*a*) by Government or a local authority on moneys borrowed by it from, or debts owed by it to, sources outside India ;"

23. Substituted for "a loan agreement entered into with any such financial institution" by the Finance Act, 2001, w.e.f. 1-4-2002.

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of June, 2001 with any such financial institution] in a foreign country as may be approved[24] in this behalf by the Central Government by general or special order ;

[25](*c*) by an industrial undertaking in India on any moneys borrowed or debt incurred by it [26][before the 1st day of June, 2001] in a foreign country in respect of the purchase outside India of raw materials [27][or components] or capital plant and machinery, [28][to the extent to which such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this behalf[29], having regard to the terms of the loan or debt and its repayment.]

[30][[31][*Explanation 1*.]—For the purposes of this item, "purchase of capital plant and machinery" includes the purchase of such capital plant and machinery under a hire-purchase agreement or a lease agreement with an option to purchase such plant and machinery.]

[32][*Explanation 2.*—For the removal of doubts, it is hereby declared that the usance interest payable outside India by an undertaking engaged in the business of ship-breaking in respect of purchase of a ship from outside India shall be deemed to be the interest payable on a debt incurred in a foreign country in respect of the purchase outside India;]

[33][(*d*) by the Industrial Finance Corporation of India established by the Industrial Finance Corporation Act, 1948 (15 of 1948), or the Industrial Development Bank of India established under the Industrial Development Bank of India Act, 1964 (18 of 1964), [34][or the Export-Import Bank of India established under the Export-Import Bank of India Act, 1981 (28 of 1981),] [35][or the National Housing Bank established under section 3 of the National Housing Bank Act, 1987 (53 of 1987),]

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24. For approved institutions, *see* Taxmann's Master Guide to Income-tax Act.

25. *See* also Letter [F. No. 21/221/64-IT(A-I)], dated 24-8-1964. For details, *see* Taxmann's Master Guide to Income-tax Act. For form of application for obtaining exemption, refer Taxmann's Direct Taxes Circulars.

26. Inserted by the Finance Act, 2001, w.e.f. 1-4-2002.

27. Inserted by the Finance Act, 1983, w.e.f. 1-4-1983.

28. Substituted for "in any case where the loan or debt is approved by the Central Government, having regard to its terms generally and in particular to the terms of its repayment" by the Finance Act, 1964, w.e.f. 1-4-1964.

29. For the meaning of the term "in this behalf", *see* Taxmann's Direct Taxes Manual, Vol. 3.

30. Inserted by the Finance Act, 1983, w.e.f. 1-4-1983.

31. *Explanation* renumbered as *Explanation 1* by the Taxation Laws (Amendment) Act, 2003, w.r.e.f. 1-4-1962.

32. Inserted, *ibid.*

33. Inserted by the Direct Taxes (Amendment) Act, 1974, w.r.e.f. 1-4-1973.

34. Inserted by the Finance Act, 1983, w.e.f. 1-4-1983.

35. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1991.

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[36][or the Small Industries Development Bank of India established under section 3 of the Small Industries Development Bank of India Act, 1989 (39 of 1989),] or the Industrial Credit and Investment Corporation of India [a company formed and registered under the Indian Companies Act, 1913 (7 of 1913)], on any moneys borrowed by it from sources outside India [37][before the 1st day of June, 2001], to the extent to which such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this behalf, having regard to the terms of the loan and its repayment;]

[38][(*e*) by any other financial institution established in India or a banking company to which the Banking Regulation Act, 1949 (10 of 1949), applies (including any bank or banking institution referred to in section 51 of that Act), on any moneys borrowed by it from sources outside India [39][before the 1st day of June, 2001] under a loan agreement approved by the Central Government where the moneys are borrowed either for the purpose of advancing loans to industrial undertakings in India for purchase outside India of raw materials or capital plant and machinery or for the purpose of importing any goods which the Central Government may consider necessary to import in the public interest, to the extent to which such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this behalf, having regard to the terms of the loan and its repayment;]

[40][(*f*) by an industrial undertaking in India on any moneys borrowed by it in foreign currency from sources outside India under a loan agreement approved by the Central Government [41][before the 1st day of June, 2001] having regard to the need for industrial development in India, to the extent to which such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this behalf, having regard to the terms of the loan and its repayment;

[42][(*fa*) by a scheduled bank [43][***] [44][to a non-resident or to a person who is not ordinarily resident within the meaning of sub-

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36. Inserted by the Finance Act, 1992, w.e.f. 1-4-1992.

37. Inserted by the Finance Act, 2001, w.e.f. 1-4-2002.

38. Inserted by the Direct Taxes (Amendment) Act, 1974, w.r.e.f. 1-4-1973.

39. Inserted by the Finance Act, 2001, w.e.f. 1-4-2002.

40. Inserted by the Finance Act, 1976, w.e.f. 1-6-1976.

41. Inserted by the Finance Act, 2001, w.e.f. 1-4-2002.

42. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1991.

43. Words "before the 1st day of April, 2005" omitted by the Finance Act, 2005, w.e.f. 1-4-2006. Earlier the quoted words were inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2006.

44. Inserted by the Finance Act, 1993, w.e.f. 1-4-1993.

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section (6)† of section 6] on deposits in foreign currency where the acceptance of such deposits by the bank is approved by the Reserve Bank of India.

[45][*Explanation.*—For the purposes of this item, the expression "scheduled bank" means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955), a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), or any other bank being a bank included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934), but does not include a co-operative bank;]

[46][(*g*) by a public company formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes, [47][being a company eligible for deduction under clause (*viii*) of sub-section (1) of section 36] on any moneys borrowed by it in foreign currency from sources outside India under a loan agreement approved by the Central Government [48][before the 1st day of June, 2003], to the extent to which such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this behalf, having regard to the terms of the loan and its repayment.]

Explanation.—For the purposes of [49][items (*f*) [50][, (*fa*)] and (*g*)], the expression [51]"foreign currency" shall have the meaning assigned to it in the Foreign Exchange Regulation Act, 1973 (46 of 1973);]

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45. Substituted by the Finance Act, 2007, w.e.f. 1-4-2007. Prior to its substitution, the *Explanation* read as under :

'*Explanation.*—For the purposes of this item, the expression "scheduled bank" shall have the meaning assigned to it in clause (*ii*) of the *Explanation* to clause (*viia*) of sub-section (1) of section 36;'

46. Inserted by the Finance Act, 1983, w.e.f. 1-4-1983.

47. Substituted for "being a company approved by the Central Government for the purposes of clause (*viii*) of sub-section (1) of section 36" by the Finance Act, 2000, w.e.f. 1-4-2000.

48. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

49. Substituted for "this item" by the Finance Act, 1983, w.e.f. 1-4-1983.

50. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1991.

51. Clause (*g*) of section 2 of the Foreign Exchange Regulation Act, 1973, defines "foreign currency" as follows:

'(*g*) "foreign currency" means any currency other than *Indian currency;'

*"Indian currency" has been defined in clause (*k*), *see* footnote 32 on p. 1.437 *post.*

For definitions of above terms under FEMA, 1999, *see* **Appendix.**

†Should be read as 'clause (*6*)'.

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[52][(*h*) by any public sector company in respect of such bonds or debentures and subject to such conditions, including the condition that the holder of such bonds or debentures registers his name and the holding with that company, as the Central Government may, by notification[53] in the Official Gazette, specify in this behalf;]

[54][(*i*) by Government on deposits made by an employee of the Central Government or a State Government [55][or a public sector company], in accordance with such scheme as the Central Government may, by notification[56] in the Official Gazette, frame in this behalf, out of the moneys due to him on account of his retirement, whether on superannuation or otherwise.]

[57][[58][*Explanation 1*].—For the purposes of this sub-clause, the expression "industrial undertaking" means any undertaking which is engaged in—

(*a*) the manufacture or processing of goods; or

[59][(*aa*) the manufacture of computer software or recording of programme on any disc, tape, perforated media or other information device; or]

(*b*) the business of generation or distribution of electricity or any other form of power; or

[60][(*ba*) the business of providing telecommunication services; or]

(*c*) mining; or

(*d*) the construction of ships; or

[61][(*da*) the business of ship-breaking; or]

[62][(*e*) the operation of ships or aircrafts or construction or operation of rail systems.]]

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52. Inserted by the Finance Act, 1987, w.e.f. 1-4-1987.

53. For specified bonds/debentures of public sector companies, *see* Taxmann's Direct Taxes Circulars.

54. Inserted by the Finance Act, 1989, w.e.f. 1-4-1990.

55. Inserted by the Finance Act, 1990, w.e.f. 1-4-1991.

56. For notified deposit schemes for retired Government employees/employees of public sector companies, refer Taxmann's Direct Taxes Circulars. No new account can be opened under the Schemes, from the close of business on 9-7-2004. For details, *see* Taxmann's Master Guide to Income-tax Act.

57. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1991.

58. *Explanation* renumbered as *Explanation 1* by the Finance Act, 1999, w.e.f. 1-4-2000.

59. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999**.**

60. Inserted by the Finance Act, 1997, w.e.f. 1-4-1998.

61. Inserted by the Taxation Laws (Amendment) Act, 2003, w.r.e.f. 1-4-1991.

62. Substituted by the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997. Prior to its substitution, clause (*e*) was inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1991.

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[63][*Explanation 1A.*—For the purposes of this sub-clause, the expression "interest" shall not include interest paid on delayed payment of loan or on default if it is in excess of two per cent per annum over the rate of interest payable in terms of such loan.]

[64][*Explanation 2.*—For the purposes of this clause, the expression "interest" includes hedging transaction charges on account of currency fluctuation;]

[65][(*v*) interest on—

(*a*) securities held by the Welfare Commissioner, Bhopal Gas Victims, Bhopal, in the Reserve Bank's SGL Account No. SL/DH 048;

(*b*) deposits for the benefit of the victims of the Bhopal gas leak disaster held in such account, with the Reserve Bank of India or with a public sector bank, as the Central Government may, by notification[66] in the Official Gazette, specify, whether prospectively or retrospectively but in no case earlier than the 1st day of April, 1994 in this behalf.

Explanation.—For the purposes of this sub-clause, the expression "public sector bank" shall have the meaning assigned to it in the *Explanation* to clause (*23D*);]

[67][(*vi*) interest on Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 notified by the Central Government;]

[68][(*vii*) interest on bonds—

(*a*) issued by a local authority or by a State Pooled Finance Entity; and

(*b*) specified by the Central Government by notification[69] in the Official Gazette.

Explanation.—For the purposes of this sub-clause, the expression "State Pooled Finance Entity" shall mean such entity which is set up

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63. Substituted by the Finance Act, 2001, w.e.f. 1-4-2002. Prior to its substitution, *Explanation 1A,* as inserted by the Finance Act, 2000, w.e.f. 1-4-2001, read as under :

'*Explanation 1A.*—For the purposes of this sub-clause, the expression "interest" shall not include interest paid on delayed payment of loan or on default.'

64. Inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

65. Substituted by the Finance Act, 1995, w.e.f. 1-4-1995. Prior to its substitution, sub-clause (*v*) was inserted by the Finance Act, 1990, w.r.e.f. 1-4-1989 and later amended by the Finance Act, 1993, w.r.e.f. 2-11-1992.

66. For notified accounts, *see* Taxmann's Master Guide to Income-tax Act.

67. Inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

68. Substituted by the Finance Act, 2007, w.e.f. 1-4-2008. Prior to its substitution, sub-clause (*vii*), as inserted by the Finance Act, 2000, w.e.f. 1-4-2001, read as under :

"(*vii*) interest on bonds—

(*a*) issued by a local authority; and

(*b*) specified by the Central Government by notification in the Official Gazette;"

69. For notified bonds issued by local authorities, *see* Taxmann's Master Guide to Income-tax Act.

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in accordance with the guidelines for the Pooled Finance Development Scheme notified by the Central Government in the Ministry of Urban Development;]

[70][(*viii*) any income by way of interest received by a non-resident or a person who is not ordinarily resident, in India on a deposit made on or after the 1st day of April, 2005, in an Offshore Banking Unit[71] referred to in clause (*u*) of section 2 of the Special Economic Zones Act, 2005;]

[72][(*15A*) any payment made, by an Indian company engaged in the business of operation of aircraft, to acquire an aircraft or an aircraft engine (other than a payment for providing spares, facilities or services in connection with the operation of leased aircraft) on lease from the Government of a foreign State or a foreign enterprise under an agreement [73][[74][, not being an agreement entered into between the 1st day of April, 1997 and the 31st day of March, 1999,] and] approved by the Central Government in this behalf :

[75][**Provided** that nothing contained in this clause shall apply to any such agreement entered into on or after the [76][1st day of April, [77][2007]].]

Explanation.—For the purposes of this clause, the expression "foreign enterprise" means a person who is a non-resident;]

[78](*16*) [79]scholarships granted to meet the cost of education;

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70. Inserted by the Special Economic Zones Act, 2005, w.e.f. 10-2-2006.

71. For definition of "offshore banking unit", *see* **Appendix**.

72. Substituted by the Finance Act, 1995, w.e.f. 1-4-1996. Prior to its substitution, clause (*15A*) was inserted by the Income-tax (Amendment) Act, 1989, w.e.f. 24-1-1989.

73. Inserted by the Finance Act, 1997, w.e.f. 1-4-1998.

74. Substituted for "entered before the 1st day of April, 1997" by the Finance Act, 1999, w.e.f. 1-4-2000.

75. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2006.

76. Substituted for "1st day of October, 2005" by the Taxation Laws (Amendment) Act, 2005, w.e.f. 1-4-2006. Earlier "1st day of October, 2005" was substituted for "1st day of April, 2005" by the Finance Act, 2005, w.e.f. 1-4-2006.

77. Substituted for "2006" by the Finance Act, 2006, w.e.f. 1-4-2007.

78. *See* also Letter [F. No. 24/35/66-IT(A-I)], dated 4-10-1966, Letter [F. No. 24/2/69-IT (A-I)], dated 14-1-1968, Letter [F. No. 24/25/68-IT(A-I)], dated 18-9-1966, Letter [F. No. 24/22/67-IT(A-I)], dated 7-7-1967, Letter [F. No. 25/37/66-IT(A-I)], dated 2-12-1966, Letter [F. No. 24/7/64-IT(A-I)], dated 24-3-1964, Letter [F. No. 24/4/64-IT(A-I)], dated 12-2-1964, Letter [F. No. 24/34/62-IT(A-I)], dated 25-1-1963, Circular No. 3(XXIII-23), dated 12-1-1961, Circular No. 49(XXIII-12), dated 13-12-1956, Income-tax Circulars, published by Directorate of Inspection (Research, Statistics and Publication), 1968 edn., p. 89 and Circular No. 11(XXIII-24), dated 4-4-1961. For details, *see* Taxmann's Master Guide to Income-tax Act.

79. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

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[80][(*17*) any income by way of—

(*i*) daily allowance received by any person by reason of his membership of Parliament or of any State Legislature or of any Committee thereof; [81][* * *]

[82][(*ii*) any allowance received by any person by reason of his membership of Parliament under the Members of Parliament (Constituency Allowance) Rules, 1986;

[83][(*iii*) any constituency allowance received by any person by reason of his membership of any State Legislature under any Act or rules made by that State Legislature;]]]

[84][(*17A*) any payment made, whether in cash or in kind,—

(*i*) in pursuance of any award instituted in the public interest by the Central Government or any State Government or instituted by any other body and approved[85] by the Central Government in this behalf; or

(*ii*) as a reward by the Central Government or any State Government for such purposes as may be approved[85] by the Central Government in this behalf in the public interest;]

[86][(*18*) any income by way of—

(*i*) pension received by an individual who has been in the service of the Central Government or State Government and has been awarded "Param Vir Chakra" or "Maha Vir Chakra" or "Vir Chakra" or such other gallantry award as the Central Government may, by notification[87] in the Official Gazette, specify in this behalf;

(*ii*) family pension received by any member of the family of an individual referred to in sub-clause (*i*).

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80. Substituted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1986. Prior to its substitution, clause (*17*) was amended by the Finance Act, 1976, w.e.f. 1-4-1976.

81. Word "and" omitted by the Finance Act, 1987, w.r.e.f. 1-4-1986.

82. Substituted by the Finance Act, 1987, w.r.e.f. 1-4-1986. Earlier sub-clause (*ii*) was amended by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1986.

83. Substituted by the Finance Act, 2006, w.e.f. 1-4-2007. Prior to its substitution, sub-clause (*iii*), as amended by the Finance Act, 1997, w.e.f. 1-4-1998, read as under :

"(*iii*) all other allowances not exceeding two thousand rupees per month in the aggregate received by any person by reason of his membership of any State Legislature or of any Committee thereof, which the Central Government may, by notification* in the Official Gazette, specify in this behalf;"

*For notified allowances, *see* Taxmann's Master Guide to Income-tax Act.

84. Substituted for clauses (*17A*), (*17B*) and (*18*) by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Original clauses (*17A*) and (*17B*) were inserted by the Direct Taxes (Amendment) Act, 1974, w.r.e.f. 1-4-1973. Clause (*17A*) was later on amended by the Finance Act, 1980, w.e.f. 1-4-1980.

85. For notified awards/rewards, *see* Taxmann's Master Guide to Income-tax Act.

86. Inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

87. For notified gallantry awards, *see* Taxmann's Master Guide to Income-tax Act.

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Explanation.—For the purposes of this clause, the expression "family" shall have the meaning assigned to it in the *Explanation* to clause (*5*);]

(*18A*) [88][*Omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999;*]

[89][(*19*) family pension received by the widow or children or nominated heirs, as the case may be, of a member of the armed forces (including para-military forces) of the Union, where the death of such member has occurred in the course of operational duties, in such circumstances and subject to such conditions, as may be prescribed[90];]

[91][(*19A*) the annual value of any one palace in the occupation of a Ruler, being a palace, the annual value whereof was exempt from income-tax before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, by virtue of the provisions of the Merged States (Taxation Concessions) Order, 1949, or the Part B States (Taxation Concessions) Order, 1950, or, as the case may be, the Jammu and Kashmir (Taxation Concessions) Order, 1958:

Provided that for the assessment year commencing on the 1st day of April, 1972, the annual value of every such palace in the occupation[92] of such Ruler during the relevant previous year shall be exempt from income-tax;]

[93](*20*) the income of a local authority which is chargeable under the head [94][***] "Income from house property", "Capital gains" or "Income from other sources" or from a trade or business carried on by it which accrues or arises from the supply of a commodity or service [95][(not being water or electricity) within its own jurisdictional area or from the supply of water or electricity within or outside its own jurisdictional area].

[96][*Explanation*.—For the purposes of this clause, the expression "local authority" means—

(*i*) Panchayat as referred to in clause (*d*) of article 243 of the Constitution[97]; or

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88. Prior to its omission, clause (*18A*) was inserted by the Rulers of Indian States (Abolition of Privileges) Act, 1972, w.e.f. 9-9-1972.

89. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005. Earlier original clause (*19*) was omitted by the Rulers of Indian States (Abolition of Privileges) Act, 1972, w.e.f. 2-4-1973.

90. *See* rule 2BBA for prescribed circumstances and conditions.

91. Inserted by the Rulers of Indian States (Abolition of Privileges) Act, 1972, w.r.e.f. 28-12-1971.

92. For the meaning of the term "occupation", *see* Taxmann's Direct Taxes Manual, Vol. 3.

93. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

94. ' "Interest on securities", ' omitted by the Finance Act, 1988, w.e.f. 1-4-1989.

95. Substituted for "within its own jurisdictional area" by the Finance (No. 2) Act, 1971, w.e.f. 1-4-1972.

96. Inserted by the Finance Act, 2002, w.e.f. 1-4-2003.

97. *See* **Appendix.**

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(*ii*) Municipality as referred to in clause (*e*) of article 243P of the Constitution[98]; or

(*iii*) Municipal Committee and District Board,

legally entitled to, or entrusted by the Government with, the control or management of a Municipal or local fund; or

(*iv*) Cantonment Board as defined in section 3[98] of the Cantonments Act, 1924 (2 of 1924);]

(*20A*) [99][***]

[1][[2](*21*) [3]any income of a [3a]**[***scientific research association***]** for the time being approved for the purpose of clause (*ii*) [3b]**[***or clause (*iii*)***]** of sub-section (1) of section 35:

Provided that the [3a]**[***scientific research association***]**—

(*a*) applies its income, or accumulates it for application, wholly and exclusively to the objects for which it is established, and the provisions of sub-section (2) and sub-section (3) of section 11 shall apply in relation to such accumulation subject to the following modifications, namely :—

(*i*) in sub-section (2),—

(*1*) the words, brackets, letters and figure "referred to in clause (*a*) or clause (*b*) of sub-section (1) read with the *Explanation* to that sub-section" shall be omitted;

(*2*) for the words "to charitable or religious purposes", the words "for the purposes of [3c]**[***scientific research***]**" shall be substituted;

(*3*) the reference to "Assessing Officer" in clause (*a*) thereof shall be construed as a reference to the "prescribed authority" referred to in clause (*ii*) [3b]**[***or clause (*iii*)***]** of sub-section (1) of section 35;

(*ii*) in sub-section (3), in clause (*a*), for the words "charitable or religious purposes", the words "the purposes of [3c]**[***scientific research***]**" shall be substituted; and

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98. *See* **Appendix.**

99. Omitted by the Finance Act, 2002, w.e.f. 1-4-2003. Prior to its omission, clause (*20A*), as inserted by the Finance Act, 1970, w.r.e.f. 1-4-1962, read as under :

"(*20A*) any income of an authority constituted in India by or under any law enacted either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both;"

1. Substituted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1990. Earlier clause (*21*) was amended by the Finance Act, 1983, w.e.f. 1-4-1984, Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989 and Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

2. *See* also Circular No. 400, dated 19-10-1984 and Circular No. 584, dated 13-11-1990. For details, *see* Taxmann's Master Guide to Income-tax Act.

For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

3. *See* rule 17 and Form No. 10, for notice of accumulation of income by charitable trust or institution [to be furnished before expiry of time allowed under section 139(1)].

3a. Words "research association" shall be substituted for "scientific research association" by the Finance Act, 2010, w.e.f. **1-4-2011**.

3b. Shall be inserted, *ibid.*

3c. Words "scientific research or research in social science or statistical research" shall be substituted for "scientific research" by the Finance Act, 2010, w.e.f. **1-4-2011**.

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[4][(*b*) does not invest or deposit its funds, other than—

(*i*) any assets held by the [4a]**[***scientific research association***]** where such assets form part of the corpus of the fund of the association as on the 1st day of June, 1973;

(*ii*) any assets (being debentures issued by, or on behalf of, any company or corporation), acquired by the [4a]**[***scientific research association***]** before the 1st day of March, 1983;

(*iii*) any accretion to the shares, forming part of the corpus of the fund mentioned in sub-clause (*i*), by way of bonus shares allotted to the [4a]**[***scientific research association***]**;

(*iv*) voluntary contributions received and maintained in the form of jewellery, furniture or any other article as the Board may, by notification in the Official Gazette, specify,

for any period during the previous year otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11:]

[5][**Provided further** that the exemption under this clause shall not be denied in relation to voluntary contribution, other than voluntary contribution in cash or voluntary contribution of the nature referred to in clause (*b*) of the first proviso to this clause, subject to the condition that such voluntary contribution is not held by the [4a]**[***scientific research association***]**, otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11, after the expiry of one year from the end of the previous year in which such asset is acquired or the 31st day of March, 1992, whichever is later:

Provided also] that nothing contained in this clause shall apply in relation to any income of the [4a]**[***scientific research association***]**, being profits and gains of business, unless the business is incidental to the attainment of its objectives and separate books of account are maintained by it in respect of such business:]

[6][**Provided also** that where the [4a]**[***scientific research association***]** is approved by the Central Government and subsequently that Government is satisfied that—

(*i*) the [4a]**[***scientific research association***]** has not applied its income in accordance with the provisions contained in clause (*a*) of the first proviso; or

(*ii*) the [4a]**[***scientific research association***]** has not invested or deposited its funds in accordance with the provisions contained in clause (*b*) of the first proviso; or

(*iii*) the activities of the [4a]**[***scientific research association***]** are not genuine; or

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4. Substituted by the Finance Act, 1992, w.r.e.f. 1-4-1990.

4a. Words "research association" shall be substituted for "scientific research association" by the Finance Act, 2010, w.e.f. **1-4-2011**.

5. Substituted for the words "Provided further" by the Finance (No. 2) Act, 1991, w.r.e.f. 1-4-1990.

6. Inserted by the Finance Act, 2002, w.e.f. 1-4-2003.

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(*iv*) the activities of the [6a]**[***scientific research association***]** are not being carried out in accordance with all or any of the conditions subject to which such association was approved,

it may, at any time after giving a reasonable opportunity of showing cause against the proposed withdrawal to the concerned association, by order, withdraw the approval and forward a copy of the order withdrawing the approval to such association and to the Assessing Officer;]

(*22*) [7][*Omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999;*]

(*22A*) [8][*Omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999;*]

[9][(*22B*) any income of such news agency set up in India solely for collection and distribution of news as the Central Government may, by notification[10] in the Official Gazette, specify in this behalf:

Provided that the news agency applies its income or accumulates it for application solely for collection and distribution of news and does not distribute its income in any manner to its members:

Provided further that any notification issued by the Central Government under this clause shall, at any one time, have effect for such assessment year or years, not exceeding three assessment years (including an assessment year or years commencing before the date on which such notification is issued) as may be specified in the notification:]

[11][**Provided also** that where the news agency has been specified, by notification, by the Central Government and subsequently that Government is satisfied that such news agency has not applied or accumulated or distributed its income in accordance with the provisions contained in the first proviso, it may, at any time after giving a reasonable opportunity of showing cause, rescind the notification and forward a copy of the order rescinding the notification to such agency and to the Assessing Officer;]

(*23*) [12][*Omitted by the Finance Act, 2002, w.e.f. 1-4-2003;*]

6a. Words "research association" shall be substituted for "scientific research association" by the Finance Act, 2010, w.e.f. **1-4-2011**.

7. Clauses (*22*) and (*22A*) are now re-enacted in section 10(*23C*).

8. Prior to its omission, clause (*22A*) was inserted by the Finance Act, 1970, w.e.f. 1-4-1970.

9. Inserted by the Finance Act, 1994, w.e.f. 1-4-1994.

10. For notified news agencies, *see* Taxmann's Master Guide to Income-tax Act.

11. Inserted by the Finance Act, 2002, w.e.f. 1-4-2003.

12. Prior to its omission, clause (*23*), as amended by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989, Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989, substituted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1990 and further amended by the Finance (No. 2) Act, 1991, w.r.e.f. 1-4-1990, Finance Act, 1992, w.r.e.f. 1-4-1990/w.e.f. 1-4-1992 and Finance Act, 2000, w.e.f. 1-4-2001, read as under :

'(*23*) any income of an association or institution established in India which may be notified by the Central Government in the Official Gazette having regard to the fact that the association or institution has as its object the control, supervision, regulation or encouragement in India of the games of cricket, hockey, football, tennis or such other games or sports as the Central Government may, by notification in the Official Gazette, specify in this behalf :

(Contd. on p. 1.73)

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(Contd. from p. 1.72)

Provided that the association or institution shall make an application in the prescribed form and manner to the prescribed authority for the purpose of grant of the exemption, or continuance thereof, under this clause:

Provided further that the Central Government may, before notifying the association or institution under this clause, call for such documents (including audited annual accounts) or information from the association or institution as it thinks necessary in order to satisfy itself about the genuineness of the activities of the association or institution and that Government may also make such inquiries as it may deem necessary in this behalf :

Provided also that the association or institution,—

(*a*) applies its income or accumulates it for application, wholly and exclusively to the objects for which it is established and the provisions of sub-section (2) and sub-section (3) of section 11 shall apply in relation to such accumulation subject to the following modifications, namely :—

(*i*) in sub-section (2),—

(*1*) the words, brackets, letters and figure "referred to in clause (*a*) or clause (*b*) of sub-section (1) read with the *Explanation* to that sub-section" shall be omitted;

(*2*) for the words "to charitable or religious purposes", the words "for the purposes of games or sports" shall be substituted;

(*3*) the reference to "Assessing Officer" in clause (*a*) thereof shall be construed as a reference to the "prescribed authority" referred to in the first proviso to this clause;

(*ii*) in sub-section (3), in clause (*a*), for the words "charitable or religious purposes", the words "the purposes of games or sports" shall be substituted; and

(*b*) does not invest or deposit its funds, other than—

(*i*) any assets held by the association or institution where such assets form part of the corpus of the fund of the association or institution as on the 1st day of June, 1973;

(*ii*) any assets (being debentures issued by, or on behalf of, any company or corporation), acquired by the association or institution before the 1st day of March, 1983;

(*iii*) any accretion to the shares, forming part of the corpus of the fund mentioned in sub-clause (*i*), by way of bonus shares allotted to the association or institution;

(*iv*) voluntary contributions received and maintained in the form of jewellery, furniture or any other article as the Board may, by notification in the Official Gazette, specify,

for any period during the previous year otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11; and

(*c*) does not distribute any part of its income in any manner to its members except as grants to any association or institution affiliated to it;

(*d*) applies the amount received by way of donations referred to in clause (*c*) of sub-section (2) of section 80G for purposes of development of infrastructure for games or sports in India or for sponsoring of games and sports in India :

Provided also that the exemption under this clause shall not be denied in relation to any funds invested or deposited before the 1st day of April, 1989 otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11 if such funds do not continue to remain so invested or deposited after the 30th day of March, 1993 :

(Contd. on p. 1.74)

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[13][[14](*23A*) any income (other than income chargeable under the head [15][* * *] "Income from house property" or any income received for rendering any specific services or income by way of interest or dividends derived from its investments) of an association or institution established in India having as its object the control, supervision, regulation or encouragement of the profession of law, medicine, accountancy, engineering or architecture or such other profession[16] as the Central Government may specify in this behalf, from time to time, by notification in the Official Gazette:

Provided that—

(*i*) the association or institution applies its income, or accumulates it for application, solely to the objects for which it is established; and

(*ii*) the association or institution is for the time being approved[17] for the purpose of this clause by the Central Government by general or special order:]

[18][**Provided further** that where the association or institution has been approved by the Central Government and subsequently that Government is satisfied that—

(*i*) such association or institution has not applied or accumulated its income in accordance with the provisions contained in the first proviso; or

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(Contd. from p. 1.73)

Provided also that the exemption under this clause shall not be denied in relation to voluntary contribution, other than voluntary contribution in cash or voluntary contribution of the nature referred to in clause (*b*) of the third proviso to this clause, subject to the condition that such voluntary contribution is not held by the association or institution, otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11, after the expiry of one year from the end of the previous year in which such asset is acquired or the 31st day of March, 1992, whichever is later :

Provided also that nothing contained in this clause shall apply in relation to any income of the association or institution, being profits and gains of business, unless the business is incidental to the attainment of its objectives and separate books of account are maintained by it in respect of such business :

Provided also that any notification issued by the Central Government under this clause in relation to any association or institution shall, at any one time, have effect for such assessment year or years, not exceeding three assessment years (including an assessment year or years commencing before the date on which such notification is issued), as may be specified in the notification*;'

*For approved sports associations/institutions, *see* Taxmann's Direct Taxes Circulars.

13. Inserted by the Finance (No. 2) Act, 1965, w.r.e.f. 1-4-1962.
14. *See* also Circular No. 584, dated 13-11-1990. For details, *see* Taxmann's Master Guide to Income-tax Act.
15. ' "Interest on securities" or' omitted by the Finance Act, 1988, w.e.f. 1-4-1989.
16. For specified professions, *see* Taxmann's Master Guide to Income-tax Act.
17. For approved association/institution, *see* Taxmann's Master Guide to Income-tax Act.
18. Inserted by the Finance Act, 2002, w.e.f. 1-4-2003.

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(*ii*) the activities of the association or institution are not being carried out in accordance with all or any of the conditions subject to which such association or institution was approved,

it may, at any time after giving a reasonable opportunity of showing cause against the proposed withdrawal to the concerned association or institution, by order, withdraw the approval and forward a copy of the order withdrawing the approval to such association or institution and to the Assessing Officer;]

[19][(*23AA*) any income received by any person on behalf of any Regimental Fund or Non-Public Fund established by the armed forces of the Union for the welfare of the past and present members of such forces or their dependants;]

[20][(*23AAA*) any income received by any person on behalf of a fund established, for such purposes as may be notified[21] by the Board in the Official Gazette, for the welfare of employees or their dependants and of which fund such employees are members if such fund fulfils the following conditions, namely :—

(*a*) the fund—

(*i*) applies its income or accumulates it for application, wholly and exclusively to the objects for which it is established; and

(*ii*) invests its funds and contributions and other sums received by it in the forms or modes specified in sub-section (5) of section 11;

(*b*) the fund is approved by the Commissioner in accordance with the rules[22] made in this behalf:

Provided that any such approval shall at any one time have effect for such assessment year or years not exceeding three assessment years as may be specified in the order of approval;]

[23][(*23AAB*) any income of a fund, by whatever name called, set up by the Life Insurance Corporation of India on or after the 1st day of August, 1996 [24][or any other insurer] under a pension scheme,—

(*i*) to which contribution is made by any person for the purpose of receiving pension from such fund;

(*ii*) which is approved by the Controller of Insurance [25][or the Insurance Regulatory and Development Authority established under

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19. Inserted by the Finance (No. 2) Act, 1980, w.r.e.f. 1-4-1962.

20. Inserted by the Finance Act, 1995, w.e.f. 1-4-1996.

21. For notified purposes, *see* Taxmann's Master Guide to Income-tax Act.

22. *See* rule 16C and Form No. 9.

23. Inserted by the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997.

24. Inserted by the Finance Act, 2001, w.e.f. 1-4-2002.

25. Inserted, *ibid*.

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sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999), as the case may be].

Explanation.—For the purposes of this clause, the expression "Controller of Insurance" shall have the meaning assigned to it in clause (*5B*) of section 2 of the Insurance Act, 1938 (4 of 1938)[26];]

[27][(*23B*) any income of an institution constituted as a public charitable trust or registered under the Societies Registration Act, 1860 (21 of 1860), or under any law corresponding to that Act in force in any part of India, and existing solely for the development of khadi or village industries or both, and not for purposes of profit, to the extent such income is attributable to the business of production, sale, or marketing, of khadi or products of village industries:

Provided that—

(*i*) the institution applies its income, or accumulates it for application, solely for the development of khadi or village industries or both; and

(*ii*) the institution is, for the time being, approved for the purpose of this clause by the Khadi and Village Industries Commission:

Provided further that the Commission shall not, at any one time, grant such approval for more than three assessment years beginning with the assessment year next following the financial year in which it is granted:

[28][**Provided also** that where the institution has been approved by the Khadi and Village Industries Commission and subsequently that Commission is satisfied that—

(*i*) the institution has not applied or accumulated its income in accordance with the provisions contained in the first proviso; or

(*ii*) the activities of the institution are not being carried out in accordance with all or any of the conditions subject to which such institution was approved,

it may, at any time after giving a reasonable opportunity of showing cause against the proposed withdrawal to the concerned institution, by order, withdraw the approval and forward a copy of the order withdrawing the approval to such institution and to the Assessing Officer.]

Explanation.—For the purposes of this clause,—

(*i*) "Khadi and Village Industries Commission" means the Khadi and Village Industries Commission established under the Khadi and Village Industries Commission Act, 1956 (61 of 1956);

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26. For text of section 2(*5B*) of the Insurance Act, 1938, *see* **Appendix.**

27. Inserted by the Finance Act, 1974, w.e.f. 1-6-1974.

28. Inserted by the Finance Act, 2002, w.e.f. 1-4-2003.

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(*ii*) [29]"khadi" and "village industries" have the meanings respectively assigned to them in that Act;]

[30][(*23BB*) any income of an authority (whether known as the Khadi and Village Industries Board or by any other name) established in a State by or under a State or Provincial Act for the development of khadi or village industries in the State.

Explanation.—For the purposes of this clause, [29]"khadi" and "village industries" have the meanings respectively assigned to them in the Khadi and Village Industries Commission Act, 1956 (61 of 1956);]

[30][(*23BBA*) any income of any body or authority (whether or not a body corporate or corporation sole) established, constituted or appointed by or under any Central, State or Provincial Act which provides for the administration of any one or more of the following, that is to say, public religious or charitable trusts or endowments (including maths, temples, gurdwaras, wakfs, churches, synagogues, agiaries or other places of public religious worship) or societies for religious or charitable purposes registered as such under the Societies Registration Act, 1860 (21 of 1860), or any other law for the time being in force:

Provided that nothing in this clause shall be construed to exempt from tax the income of any trust, endowment or society referred to therein;]

[31][(*23BBB*) any income of the European Economic Community derived in India by way of interest, dividends or capital gains from investments made out of its funds under such scheme[32] as the Central Government may, by notification in the Official Gazette, specify in this behalf.

Explanation.—For the purposes of this clause, "European Economic Community" means the European Economic Community established by the Treaty of Rome of 25th March, 1957;]

[33][(*23BBC*) any income of the SAARC Fund for Regional Projects set up by Colombo Declaration issued on the 21st day of December, 1991 by the Heads of State or Government of the Member Countries of South Asian Association for Regional Cooperation established on the 8th day of December, 1985 by the Charter of the South Asian Association for Regional Cooperation;]

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29. Clauses (*d*) and (*h*) of section 2 of the Khadi and Village Industries Commission Act, 1956, define "khadi" and "village industries" as follows :

'(*d*) "khadi" means any cloth woven on handlooms in India from cotton, silk or woollen yarn handspun in India or from a mixture of any two or all of such yarns;

(*h*) "village industries" means all or any of the industries specified in the Schedule and includes any other industry deemed to be specified in the Schedule by reason of a notification under section 3.'

30. Inserted by the Finance Act, 1979, w.r.e.f. 1-4-1962.

31. Inserted by the Finance Act, 1993, w.e.f. 1-4-1994.

32. For notified scheme, *see* Taxmann's Master Guide to Income-tax Act.

33. Inserted by the Finance (No. 2) Act, 1996, w.r.e.f. 1-4-1992.

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[34][(*23BBD*) any income of the Secretariat of the Asian Organisation of the Supreme Audit Institutions registered as "ASOSAI-SECRETARIAT" under the Societies Registration Act, 1860 (21 of 1860) for [35][ten previous years relevant to the assessment years beginning on the 1st day of April, 2001 and ending on the 31st day of March, 2011];

(*23BBE*) any income of 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);]

[36][(*23BBF*) any income of the North-Eastern Development Finance Corporation Limited, being a company formed and registered under the Companies Act, 1956 (1 of 1956) :

Provided that in computing the total income of the North-Eastern Development Finance Corporation Limited, the amount to the extent of—

(*i*) twenty per cent of the total income for assessment year beginning on the 1st day of April, 2006;

(*ii*) forty per cent of the total income for assessment year beginning on the 1st day of April, 2007;

(*iii*) sixty per cent of the total income for assessment year beginning on the 1st day of April, 2008;

(*iv*) eighty per cent of the total income for assessment year beginning on the 1st day of April, 2009;

(*v*) one hundred per cent of the total income for assessment year beginning on the 1st day of April, 2010 and any subsequent assessment year or years,

shall be included in such total income;]

[37][(*23BBG*) any income of the Central Electricity Regulatory Commission constituted under sub-section (1) of section 76 of the Electricity Act, 2003 (36 of 2003);]

[38][[39](*23C*) any income received by any person on behalf of—

(*i*) the Prime Minister's National Relief Fund; or

(*ii*) the Prime Minister's Fund (Promotion of Folk Art); or

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34. Inserted by the Finance Act, 2001, w.e.f. 1-4-2001.

35. Substituted for "seven previous years relevant to the assessment years beginning on the 1st day of April, 2001 and ending on the 31st day of March, 2008" by the Finance Act, 2007, w.e.f. 1-4-2008. Earlier the quoted words were substituted for "three previous years relevant to the assessment years beginning on the 1st day of April, 2001 and ending on the 31st day of March, 2004" by the Finance Act, 2003, w.e.f. 1-4-2004.

36. Inserted by the Taxation Laws (Amendment) Act, 2006, w.r.e.f. 1-4-2006.

37. Inserted by the Finance Act, 2007, w.e.f. 1-4-2008.

38. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

39. *See* also Circular No. 557, dated 19-3-1990, Circular No. 580, dated 14-9-1990 and Circular No. 584, dated 13-11-1990. For details, *see* Taxmann's Master Guide to Income-tax Act.

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(*iii*) the Prime Minister's Aid to Students Fund; [40][or]

[41][(*iiia*) the National Foundation for Communal Harmony; or]

[42][(*iiiab*) any university or other educational institution[43] existing[43] solely[43] for educational purposes and not for purposes of profit, and which is wholly or substantially financed by the Government; or

(*iiiac*) any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, and which is wholly or substantially financed by the Government; or

(*iiiad*) any university or other educational institution[43] existing[43] solely[43] for educational purposes and not for purposes of profit if the aggregate annual receipts of such university or educational institution do not exceed the amount of annual receipts as may be prescribed[44]; or

(*iiiae*) any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, if the aggregate annual receipts of such hospital or institution do not exceed the amount of annual receipts as may be prescribed[44]; or]

[45][(*iv*) [46]any other fund or institution established for charitable purposes [47][which may be approved by the prescribed authority[48]], having regard to the objects of the fund or institution and its importance throughout India or throughout any State or States; or

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40. Reintroduced by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Earlier, it was omitted by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date.

41. Inserted by the Finance Act, 1993, w.e.f. 1-4-1993.

42. Sub-clauses (*iiiab*) to (*iiiae*) inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999.

43. For the meaning of the terms/expressions "education", "educational institution", "other educational institution", "existing" and "solely", *see* Taxmann's Direct Taxes Manual, Vol. 3.

44. Amount prescribed is Rs. 1 crore *vide* rule 2BC.

45. Substituted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1990. Earlier, sub-clauses (*iv*) and (*v*) were omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989 and later reintroduced by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

46. For complete list of approved funds/institutions, *see* Taxmann's Direct Taxes Circulars and Taxmann's Yearly Tax Digest & Referencer.

47. Substituted for "which may be notified by the Central Government in the Official Gazette" by the Finance Act, 2007, w.e.f. 1-6-2007.

48. Prescribed authority is Chief Commissioner or Director General. *See* rule 2C and Form No. 56. *See* also Notification No. SO 851(E), dated 30-5-2007. For details, *see* Taxmann's Master Guide to Income-tax Act.

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(*v*) [49]any trust (including any other legal obligation) or institution wholly for public religious purposes or wholly for public religious and charitable purposes, [50][which may be approved by the prescribed authority[51]], having regard to the manner in which the affairs of the trust or institution are administered and supervised for ensuring that the income accruing thereto is properly applied for the objects thereof;

[52][(*vi*) any university or other educational institution[53] existing[53] solely[53] for educational purposes and not for purposes of profit, other than those mentioned in sub-clause (*iiiab*) or sub-clause (*iiiad*) and which may be approved[54] by the prescribed authority[55]; or

(*via*) any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, other than those mentioned in sub-clause (*iiiac*) or sub-clause (*iiiae*) and which may be approved[56] by the prescribed authority[57] :]

Provided that the fund or trust or institution [58][or any university or other educational institution[59] or any hospital or other medical institution] referred to in sub-clause (*iv*) or sub-clause (*v*) [58][or sub-clause (*vi*) or sub-clause (*via*)] shall make an application in the prescribed form[60] and manner to the prescribed authority[61] for the purpose of

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49. For complete list of approved trusts/institutions, *see* Taxmann's Direct Taxes Circulars and Taxmann's Yearly Tax Digest & Referencer.

50. Substituted for "which may be notified by the Central Government in the Official Gazette" by the Finance Act, 2007, w.e.f. 1-6-2007.

51. Prescribed authority is Chief Commissioner or Director General. *See* rule 2C and Form No. 56. *See* also Notification No. SO 851(E), dated 30-5-2007. For details, *see* Taxmann's Master Guide to Income-tax Act.

52. Sub-clauses (*vi*) and (*via*) inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999**.**

53. For the meaning of the terms/expressions "other educational institution", "existing" and "solely", *see* Taxmann's Direct Taxes Manual, Vol. 3.

54. For notified university/educational institutions, *see* Taxmann's Direct Taxes Circulars and Taxmann's Yearly Tax Digest & Referencer.

55. Prescribed authority is Chief Commissioner or Director General. *See* rule 2CA and Form No. 56D. *See* also Notification No. SO 852(E), dated 30-5-2007. For details, *see* Taxmann's Master Guide to Income-tax Act.

56. For notified hospital/institution, *see* Taxmann's Direct Taxes Circulars.

57. Prescribed authority is Chief Commissioner or Director General. *See* rule 2CA and Form No. 56D. *See* also Notification No. SO 852(E), dated 30-5-2007. For details, *see* Taxmann's Master Guide to Income-tax Act.

58. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999**.**

59. For the meaning of the expression "other educational institution", *see* Taxmann's Direct Taxes Manual, Vol. 3.

60. *See* rule 2C/Form No. 56 and rule 2CA/Form No. 56D.

61. The prescribed authority for purposes of section 10(*23C*)(*iv*)/(*v*), under rule 2C, as well as for purposes of section 10(*23C*)(*vi*)/(*via*), under rule 2CA, is Chief Commissioner or Director General.

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grant of the exemption, or continuance thereof, under sub-clause (*iv*) or sub-clause (*v*) [62][or sub-clause (*vi*) or sub-clause (*via*)] :

[63][**Provided further** that the prescribed authority, before approving any fund or trust or institution or any university or other educational institution or any hospital or other medical institution, under sub-clause (*iv*) or sub-clause (*v*) or sub-clause (*vi*) or sub-clause (*via*), may call for such documents (including audited annual accounts) or information from the fund or trust or institution or any university or other educational institution or any hospital or other medical institution, as the case may be, as it thinks necessary in order to satisfy itself about the genuineness of the activities of such fund or trust or institution or any university or other educational institution or any hospital or other medical institution, as the case may be, and the prescribed authority may also make such inquiries as it deems necessary in this behalf:]

Provided also that the fund or trust or institution [64][or any university or other educational institution[65] or any hospital or other medical institution] referred to in sub-clause (*iv*) or sub-clause (*v*) [64][or sub-clause (*vi*) or sub-clause (*via*)]—

[66][(*a*) applies its income, or accumulates it for application, wholly and exclusively to the objects for which it is established and in a case where more than fifteen per cent of its income is accumulated on or after the 1st day of April, 2002, the period of the accumulation of the amount exceeding fifteen per cent of its income shall in no case exceed five years; and]

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62. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999.

63. Substituted by the Finance Act, 2007, w.e.f. 1-6-2007. Prior to its substitution, the second proviso, as amended by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999 and later on substituted by the Finance Act, 1999, w.e.f. 1-4-1999, read as under :

"**Provided further** that the Central Government, before notifying the fund or trust or institution, or the prescribed authority, before approving any university or other educational institution or any hospital or other medical institution, under sub-clause (*iv*) or sub-clause (*v*) or sub-clause (*vi*) or sub-clause (*via*), may call for such documents (including audited annual accounts) or information from the fund or trust or institution or any university or other educational institution or any hospital or other medical institution, as the case may be, as it thinks necessary in order to satisfy itself about the genuineness of the activities of the fund or trust or institution or any university or other educational institution or any hospital or other medical institution, as the case may be, and the Central Government or the prescribed authority, as the case may be, may also make such inquiries as it deems necessary in this behalf :"

64. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999.

65. For the meaning of the expression "other educational institution", *see* Taxmann's Direct Taxes Manual, Vol. 3.

66. Substituted by the Finance Act, 2002, w.e.f. 1-4-2003. Prior to its substitution, clause (*a*), as amended by the Finance Act, 2001, w.e.f. 1-4-2002, read as under :

"(*a*) applies its income, or accumulates it for application, wholly and exclusively to the objects for which it is established and in a case where more than twenty-five per cent of its income is accumulated on or after the 1st day of April, 2001, the period of the accumulation of the amount exceeding twenty-five per cent of its income shall in no case exceed five years; and"

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[67][(*b*) does not invest or deposit its funds, other than—

(*i*) any assets held by the fund, trust or institution [68][or any university or other educational institution[69] or any hospital or other medical institution] where such assets form part of the corpus of the fund, trust or institution [70][or any university or other educational institution or any hospital or other medical institution] as on the 1st day of June, 1973;

[71][(*ia*) any asset, being equity shares of a public company, held by any university or other educational institution or any hospital or other medical institution where such assets form part of the corpus of any university or other educational institution or any hospital or other medical institution as on the 1st day of June, 1998;]

(*ii*) any assets (being debentures issued by, or on behalf of, any company or corporation), acquired by the fund, trust or institution [72][or any university or other educational institution[73] or any hospital or other medical institution] before the 1st day of March, 1983;

(*iii*) any accretion to the shares, forming part of the corpus mentioned in sub-clause (*i*) [74][and sub-clause (*ia*)], by way of bonus shares allotted to the fund, trust or institution [72][or any university or other educational institution or any hospital or other medical institution] ;

(*iv*) voluntary contributions received and maintained in the form of jewellery, furniture or any other article as the Board may, by notification in the Official Gazette, specify,

for any period during the previous year otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11;]

Provided also that the exemption under sub-clause (*iv*) or sub-clause (*v*) shall not be denied in relation to any funds invested or deposited before the 1st day of April, 1989, otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11 if such

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67. Substituted by the Finance Act, 1992, w.r.e.f. 1-4-1990.

68. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999.

69. For the meaning of the expression "other educational institution", *see* Taxmann's Direct Taxes Manual, Vol. 3.

70. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999.

71. Inserted by the Finance Act, 2001, w.e.f. 1-4-2001.

72. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999.

73. For the meaning of the expression "other educational institution", *see* Taxmann's Direct Taxes Manual, Vol. 3.

74. Inserted by the Finance Act, 2001, w.e.f. 1-4-2001.

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funds do not continue to remain so invested or deposited after the 30th day of March, [75][1993] :

[76][**Provided also** that the exemption under sub-clause (*vi*) or sub-clause (*via*) shall not be denied in relation to any funds invested or deposited before the 1st day of June, 1998, otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11 if such funds do not continue to remain so invested or deposited after the 30th day of March, 2001 :]

[77][**Provided also** that the exemption under sub-clause (*iv*) or sub-clause (*v*) [76][or sub-clause (*vi*) or sub-clause (*via*)] shall not be denied in relation to voluntary contribution, other than voluntary contribution in cash or voluntary contribution of the nature referred to in clause (*b*) of the third proviso to this sub-clause, subject to the condition that such voluntary contribution is not held by the trust or institution [78][or any university or other educational institution or any hospital or other medical institution], otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11, after the expiry of one year from the end of the previous year in which such asset is acquired or the 31st day of March, 1992, whichever is later:]

Provided also that nothing contained in sub-clause (*iv*) or sub-clause (*v*) [79][or sub-clause (*vi*) or sub-clause (*via*)] shall apply in relation to any income of the fund or trust or institution [79][or any university or other educational institution or any hospital or other medical institution], being profits and gains of business, unless the business is incidental to the attainment of its objectives and separate books of account are maintained by it in respect of such business:

Provided also that any [80][notification issued by the Central Government under sub-clause (*iv*) or sub-clause (*v*), before the date on which the Taxation Laws (Amendment) Bill, 2006 receives the assent of the President*, shall, at any one time, have effect for such assessment year or years, not exceeding three assessment years] (including an assessment year or years commencing before the date on which such notification is issued) as may be specified in the notification:]

[81][**Provided also** that where an application under the first proviso is made on or after the date on which the Taxation Laws (Amendment)

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75. Substituted for "1992" by the Finance Act, 1992, w.e.f. 1-4-1992. Earlier "1992" was substituted for "1990" by the Finance (No. 2) Act, 1991, w.r.e.f. 1-4-1990.

76. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999**.**

77. Inserted by the Finance (No. 2) Act, 1991, w.r.e.f. 1-4-1990.

78. Inserted by the Finance Act, 1998, w.e.f. 1-4-1999.

79. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999.

80. Substituted for "notification issued by the Central Government under sub-clause (*iv*) or sub-clause (*v*) shall, at any one time, have effect for such assessment year or years, not exceeding three assessment years" by the Taxation Laws (Amendment) Act, 2006, w.r.e.f. 1-4-2006.

81. Inserted, *ibid.*

*13-7-2006.

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Bill, 2006 receives the assent of the President,* every notification under sub-clause (*iv*) or sub-clause (*v*) shall be issued or approval under [82][sub-clause (*iv*) or sub-clause (*v*) or] sub-clause (*vi*) or sub-clause (*via*) shall be granted or an order rejecting the application shall be passed within the period of twelve months from the end of the month in which such application was received:

Provided also that where the total income, of the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (*iv*) or sub-clause (*v*) or sub-clause (*vi*) or sub-clause (*via*), without giving effect to the provisions of the said sub-clauses, exceeds the maximum amount which is not chargeable to tax in any previous year, such trust or institution or any university or other educational institution or any hospital or other medical institution shall get its accounts audited in respect of that year by an accountant as defined in the *Explanation* below sub-section (2) of section 288 and furnish along with the return of income for the relevant assessment year, the report of such audit in the prescribed form[83] duly signed and verified by such accountant and setting forth such particulars as may be prescribed:]

[84][**Provided also** that any amount of donation received by the fund or institution in terms of clause (*d*) of sub-section (2) of section 80G [85][in respect of which accounts of income and expenditure have not been rendered to the authority prescribed under clause (*v*) of sub-section (5C) of that section, in the manner specified in that clause, or] which has been utilised for purposes other than providing relief to the victims of earthquake in Gujarat or which remains unutilised in terms of sub-section (5C) of section 80G and not transferred to the Prime Minister's National Relief Fund on or before the 31st day of March, [86][2004] shall be deemed to be the income of the previous year and shall accordingly be charged to tax:]

[87][***]

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82. Inserted by the Finance Act, 2007, w.e.f. 1-6-2007.

83. *See* rule 16CC and Form No. 10BB. Rule 12 provides that the return of income shall not be accompanied by any document or copy of any account or form or report of audit required to be attached with return of income under any of the provisions of the Act.

84. Inserted by the Taxation Laws (Amendment) Act, 2001, w.r.e.f. 3-2-2001.

85. Inserted by the Finance Act, 2002, w.r.e.f. 3-2-2001.

86. Substituted for "2003" by the Finance Act, 2003, w.r.e.f. 3-2-2001. Earlier "2003" was substituted for "2002" by the Finance Act, 2002, w.r.e.f. 3-2-2001.

87. Omitted by the Finance Act, 2002, w.e.f. 1-4-2002. Prior to its omission, the proviso, as inserted by the Finance Act, 2001, w.e.f. 1-4-2002, read as under :

"**Provided also** that where the total receipts of the fund or institution referred to in sub-clause (*iv*) or of any trust or institution referred to in sub-clause (*v*) or of any University or other educational institution referred to in sub-clause (*vi*) or of any hospital or other institution referred to in sub-clause (*via*) exceed one crore rupees in any preceding year, the fund or trust or institution or University or other educational institution or hospital or other institution, as the case may be, shall—

(*i*) publish its accounts in a local newspaper; and

(*ii*) furnish along with the application prescribed in the first proviso to this clause, the copy of the local newspaper in which such accounts have been published;"

*13-7-2006.

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[88][**Provided also** that where the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (*iv*) or sub-clause (*v*) or sub-clause (*vi*) or sub-clause (*via*) does not apply its income during the year of receipt and accumulates it, any payment or credit out of such accumulation to any trust or institution registered under section 12AA or to any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (*iv*) or sub-clause (*v*) or sub-clause (*vi*) or sub-clause (*via*) shall not be treated as application of income to the objects for which such fund or trust or institution or university or educational institution or hospital or other medical institution, as the case may be, is established :

Provided also that where the fund or institution referred to in sub-clause (*iv*) or trust or institution referred to in sub-clause (*v*) is notified by the Central Government [89][or is approved by the prescribed authority, as the case may be,] or any university or other educational institution referred to in sub-clause (*vi*) or any hospital or other medical institution referred to in sub-clause (*via*), is approved by the prescribed authority and subsequently that Government or the prescribed authority is satisfied that—

(*i*) such fund or institution or trust or any university or other educational institution or any hospital or other medical institution has not—

(*A*) applied its income in accordance with the provisions contained in clause (*a*) of the third proviso; or

(*B*) invested or deposited its funds in accordance with the provisions contained in clause (*b*) of the third proviso; or

(*ii*) the activities of such fund or institution or trust or any university or other educational institution or any hospital or other medical institution—

(*A*) are not genuine; or

(*B*) are not being carried out in accordance with all or any of the conditions subject to which it was notified or approved,

it may, at any time after giving a reasonable opportunity of showing cause against the proposed action to the concerned fund or institution or trust or any university or other educational institution or any hospital or other medical institution, rescind the notification or, by order, withdraw the approval, as the case may be, and forward a copy of the order rescinding the notification or withdrawing the approval to such fund or institution or trust or any university or other educational institution or any hospital or other medical institution and to the Assessing Officer:]

[90][**Provided also** that in case the fund or trust or institution or any university or other educational institution or any hospital or other

88. Inserted by the Finance Act, 2002, w.e.f. 1-4-2003.

89. Inserted by the Finance Act, 2007, w.e.f. 1-6-2007.

90. Inserted by the Finance Act, 2006, w.e.f. 1-6-2006.

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medical institution referred to in the first proviso makes an application on or after the 1st day of June, 2006 for the purposes of grant of exemption or continuance thereof, such application shall be [91][made on or before the 30th day of September of the relevant assessment year] from which the exemption is sought :]

[92][**Provided also** that any anonymous donation referred to in section 115BBC on which tax is payable in accordance with the provisions of the said section shall be included in the total income :]

[93][**Provided also** that all pending applications, on which no notification has been issued under sub-clause (*iv*) or sub-clause (*v*) before the 1st day of June, 2007, shall stand transferred on that day to the prescribed authority and the prescribed authority may proceed with such applications under those sub-clauses from the stage at which they were on that day;]

[94][(*23D*) [95][[96][[97][subject to the provisions of Chapter XII-E, any income of]—]

(*i*) a Mutual Fund registered under the Securities and Exchange Board of India Act, 1992 (15 of 1992) or regulations made thereunder;

(*ii*) such other Mutual Fund set up by a public sector bank or a public financial institution or authorised by the Reserve Bank of India and subject to such conditions as the Central Government may, by notification[98] in the Official Gazette, specify in this behalf.]

Explanation.—For the purposes of this clause,—

(*a*) the expression "public sector bank" means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955), a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), a corresponding new Bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Under-

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91. Substituted for "made at any time during the financial year immediately preceding the assessment year" by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-2009.

92. Inserted by the Finance Act, 2006, w.e.f. 1-4-2007.

93. Inserted by the Finance Act, 2007, w.e.f. 1-6-2007.

94. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

95. Substituted for the portion beginning with the words "any income of such Mutual Fund" and ending with the words "specify in this behalf" by the Finance Act, 1995, w.e.f. 1-7-1995. Prior to substitution, the said portion, as amended by the Finance Act, 1988, w.e.f. 1-4-1988, the Direct Tax Laws (Amendment) Act, 1989, w.r.e.f. 1-4-1988 and the Finance Act, 1992, w.e.f. 1-4-1993, read as under :

"any income of such Mutual Fund set up by a public sector bank or a public financial institution or authorised by the Securities and Exchange Board of India or the Reserve Bank of India and subject to such conditions as the Central Government may, by notification in the Official Gazette, specify in this behalf."

96. Substituted for "any income of—" by the Finance Act, 1999, w.e.f. 1-4-2000.

97. Substituted for "any income of" by the Finance Act, 2003, w.e.f. 1-4-2004. Earlier the words "subject to the provisions of Chapter XII-E," were omitted by the Finance Act, 2002, w.e.f. 1-4-2003.

98. For notified mutual funds, *see* Taxmann's Master Guide to Income-tax Act.

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takings) Act, 1970 (5 of 1970), or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980) [99][*and a bank included in the category "other public sector banks" by the Reserve Bank of India*];

(*b*) the expression "public financial institution" shall have the meaning assigned to it in section 4A of the Companies Act, 1956 (1 of 1956)[1];]

[2][(*c*) the expression [3]"Securities and Exchange Board of India" shall have the meaning assigned to it in clause (*a*) of sub-section (1) of section 2 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);]

(23E) [4][*Omitted by the Finance Act, 2002, w.e.f. 1-4-2003;*]

[5][(*23EA*) any income [6][, by way of contributions received from recognised stock exchanges and the members thereof,] of such Investor Protection Fund set up by recognised stock exchanges in India, either jointly or separately, as the Central Government may, by notification[7] in the Official Gazette, specify in this behalf:

Provided that where any amount standing to the credit of the Fund and not charged to income-tax during any previous year is shared, either wholly or in part, with a recognised stock exchange, the whole of the amount so shared shall be deemed to be the income of the previous year in which such amount is so shared and shall accordingly be chargeable to income-tax;]

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99. Inserted by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2010**.

1. For text of section 4A of the Companies Act, 1956, and notified institutions thereunder, *see* **Appendix**.

2. Inserted by the Finance Act, 1992, w.e.f. 1-4-1993.

3. Clause (*a*) of section 2(1) of the Securities and Exchange Board of India Act, 1992, defines "Board" as follows:

'(*a*) "Board" means the Securities and Exchange Board of India established under section 3;'

4. Prior to its omission, clause (*23E*), as inserted by the Finance Act, 1989, w.e.f. 1-4-1989, read as under :

'(*23E*) any income of such Exchange Risk Administration Fund set up by public financial institutions, either jointly or separately, as the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that where any amount standing to the credit of the Fund and not charged to income-tax during any previous year is shared, either wholly or in part, with a public financial institution, the whole of the amount so shared shall be deemed to be the income of the previous year in which such amount is so shared and shall accordingly be chargeable to income-tax.

Explanation.—For the purposes of this clause, the expression "public financial institution" shall have the meaning assigned to it in section 4A of the Companies Act, 1956 (1 of 1956);'

5. Inserted by the Finance Act, 2000, w.e.f. 1-4-2001.

6. Inserted by the Finance Act, 2006, w.e.f. 1-4-2007.

7. For notified Investor Protection Fund set up by recognised stock exchanges, *see* Taxmann's Master Guide to Income-tax Act.

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[8][(*23EB*) any income of the Credit Guarantee Fund Trust for Small [9][***] Industries, being a trust created by the Government of India and the Small Industries Development Bank of India established under sub-section (1) of section 3 of the Small Industries Development Bank of India Act, 1989 (39 of 1989), for five previous years relevant to the assessment years beginning on the 1st day of April, 2002 and ending on the 31st day of March, 2007;]

[10][(*23EC*) any income, by way of contributions received from commodity exchanges and the members thereof, of such Investor Protection Fund set up by commodity exchanges in India, either jointly or separately, as the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that where any amount standing to the credit of the said Fund and not charged to income-tax during any previous year is shared, either wholly or in part, with a commodity exchange, the whole of the amount so shared shall be deemed to be the income of the previous year in which such amount is so shared and shall accordingly be chargeable to income-tax.

Explanation.—For the purposes of this clause, "commodity exchange" shall mean a "registered association" as defined in clause (*jj*) of section 2 of the Forward Contracts (Regulation) Act, 1952 (74 of 1952)[11];]

[12][(*23F*) any income by way of dividends or long-term capital gains of a venture capital fund or a venture capital company from investments made by way of equity shares in a venture capital undertaking :

Provided that such venture capital fund or venture capital company is approved for the purposes of this clause by the prescribed authority[13] in accordance with the rules[14] made in this behalf and satisfies the prescribed conditions :

Provided further that any approval by the prescribed authority shall, at any one time, have effect for such assessment year or years, not exceeding three assessment years, as may be specified in the order of approval :

[15][**Provided also** that nothing contained in this clause shall apply in respect of any investment made after the 31st day of March, 1999.]

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8. Inserted by the Finance Act, 2002, w.e.f. 1-4-2002.
9. Word "Scale" omitted by the Finance Act, 2003, w.r.e.f. 1-4-2002.
10. Inserted by the Finance Act, 2007, w.e.f. 1-4-2008.
11. For definition of "Commodity exchange", *see* **Appendix**.
12. Inserted by the Finance Act, 1995, w.e.f. 1-4-1996.
13. Prescribed authority is Director of Income-tax (Exemptions).
14. *See* rule 2D and Form Nos. 56A, 56B and 56C.
15. Inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

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[16][* * *]

[16][* * *]

Explanation.—For the purposes of this clause,—

(*a*) "venture capital fund" means such fund, operating under a trust deed registered under the provisions of the Registration Act, 1908 (16 of 1908), established to raise monies by the trustees for investments mainly by way of acquiring equity shares of a venture capital undertaking in accordance with the prescribed guidelines;

(*b*) "venture capital company" means such company as has made investments by way of acquiring equity shares of venture capital undertakings in accordance with the prescribed guidelines;

[17][(*c*) "venture capital undertaking" means such domestic company whose shares are not listed in a recognised stock exchange in India and which is engaged in the business of generation or generation and distribution of electricity or any other form of power or engaged in the business of providing telecommunication services or in the business of developing, maintaining and operating any infrastructure facility or engaged in the manufacture or production of such articles or things (including computer software) as may be notified[18] by the Central Government in this behalf; and

(*d*) "infrastructure facility" means a road, highway, bridge, airport, port, rail system, a water supply project, irrigation project, sanitation and sewerage system or any other public facility of a similar nature as may be notified by the Board in this behalf in the Official Gazette and which fulfils the conditions specified in sub-section (4A) of section 80-IA;]

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16. Third and fourth provisos omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999. Prior to their omission, the third and fourth provisos, as inserted by the Finance Act, 1995, w.e.f. 1-4-1996, read as under :

"**Provided also** that if the aforesaid equity shares are transferred (other than in the event of the said shares being listed in a recognised stock exchange in India) by a venture capital fund or a venture capital company to any person at any time within a period of three years from the date of their acquisition, the aggregate amount of income by way of dividends on such equity shares which has not been included in the total income of the previous year or years preceding the previous year in which such transfer has taken place shall be deemed to be the income of the venture capital fund or of the venture capital company of the previous year in which such transfer has taken place:

Provided also that the exemption shall not be allowed in respect of the long-term capital gains, if any, arising on such transfer of equity shares as is mentioned in the third proviso."

17. Clauses (*c*) and (*d*) substituted for clause (*c*) by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999**.** Prior to substitution, clause (*c*) was amended by the Finance Act, 1997, w.e.f. 1-4-1998.

18. For notified articles or things, *see* Taxmann's Master Guide to Income-tax Act.

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[19][(*23FA*) any income by way of dividends [20][, other than dividends referred to in section 115-O], or long-term capital gains of a venture capital fund or a venture capital company from investments made by way of equity shares in a venture capital undertaking :

Provided that such venture capital fund or venture capital company is approved, for the purposes of this clause, by the Central Government on an application made to it in accordance with the rules[21] made in this behalf and which satisfies the prescribed conditions :

Provided further that any approval by the Central Government shall, at any one time, have effect for such assessment year or years, not exceeding three assessment years, as may be specified in the order of approval :

[22][**Provided also** that nothing contained in this clause shall apply in respect of any investment made after the 31st day of March, 2000.]

Explanation.—For the purposes of this clause,—

(*a*) "venture capital fund" means such fund, operating under a trust deed registered under the provisions of the Registration Act, 1908 (16 of 1908), established to raise monies by the trustees for investments mainly by way of acquiring equity shares of a venture capital undertaking in accordance with the prescribed guidelines;

(*b*) "venture capital company" means such company as has made investments by way of acquiring equity shares of venture capital undertakings in accordance with the prescribed guidelines; and

(*c*) "venture capital undertaking" means such domestic company whose shares are not listed in a recognised stock exchange in India and which is engaged in the—

(*i*) business of—

(*A*) software;

(*B*) information technology;

(*C*) production of basic drugs in the pharmaceutical sector;

(*D*) bio-technology;

(*E*) agriculture and allied sectors; or

(*F*) such other sectors as may be notified[23] by the Central Government in this behalf; or

(*ii*) production or manufacture of any article or substance for which patent has been granted to the National Research

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19. Inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

20. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004. Earlier, it was omitted by the Finance Act, 2002, w.e.f. 1-4-2003.

21. *See* rule 2DA and Form Nos. 56AA, 56BA and 56CA.

22. Inserted by the Finance Act, 2000, w.e.f. 1-4-2001.

23. *See* also notification issued under section 10(*23F*). For details, *see* Taxmann's Master Guide to Income-tax Act.

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Laboratory or any other scientific research institution approved by the Department of Science and Technology;]

[24][(*23FB*) any income of a venture capital company or venture capital fund [25][from investment] in a venture capital undertaking.

Explanation [26][*1*].—For the purposes of this clause,—

(*a*) "venture capital company" means such company—

(*i*) which has been granted a certificate of registration under the Securities and Exchange Board of India Act, 1992 (15 of 1992), and regulations made thereunder;

(*ii*) which fulfils the conditions as may be specified, with the approval of the Central Government, by the Securities and Exchange Board of India, by notification in the Official Gazette, in this behalf;

(*b*) "venture capital fund" means such fund—

[27][(*i*) operating under a trust deed registered under the provisions of the Registration Act, 1908 (16 of 1908) or operating as a venture capital scheme made by the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963);]

(*ii*) which has been granted a certificate of registration under the Securities and Exchange Board of India Act, 1992 (15 of 1992), and regulations made thereunder;

(*iii*) which fulfils the conditions as may be specified, with the approval of the Central Government, by the Securities and Exchange Board of India, by notification in the Official Gazette, in this behalf; and

[28][(*c*) "venture capital undertaking" means such domestic company whose shares are not listed in a recognised stock exchange in India and which is engaged in the—

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24. Inserted by the Finance Act, 2000, w.e.f. 1-4-2001.

25. Substituted for "set up to raise funds for investment" by the Finance Act, 2007, w.e.f. 1-4-2008.

26. *Explanation* numbered as *Explanation 1* by the Finance Act, 2001, w.e.f. 1-4-2001.

27. Substituted, *ibid*. Prior to its substitution, sub-clause (*i*) read as under :

"(*i*) operating under a trust deed registered under the provisions of the Registration Act, 1908 (16 of 1908);"

28. Substituted by the Finance Act, 2007, w.e.f. 1-4-2008. Prior to its substitution, clause (*c*) of *Explanation 1*, as substituted by the Finance (No. 2) Act, 2004, w.e.f. 1-10-2004, read as under:

'(*c*) "venture capital undertaking" means a venture capital undertaking referred to in the Securities and Exchange Board of India (Venture Capital Funds) Regulations, 1996 made under the Securities and Exchange Board of India Act, 1992 (15 of 1992) and notified as such in the Official Gazette by the Board for the purposes of this clause;'

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(*i*) business of—

(*A*) nanotechnology;

(*B*) information technology relating to hardware and software development;

(*C*) seed research and development;

(*D*) bio-technology;

(*E*) research and development of new chemical entities in the pharmaceutical sector;

(*F*) production of bio-fuels;

(*G*) building and operating composite hotel-*cum*-convention centre with seating capacity of more than three thousand; or

(*H*) developing or operating and maintaining or developing, operating and maintaining any infrastructure facility as defined in the *Explanation* to clause (*i*) of sub-section (4) of section 80-IA; or

(*ii*) dairy or poultry industry;]

[29][***]

(*23G*) [30][*Omitted by the Finance Act, 2006, w.e.f. 1-4-2007;*]

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29. Omitted by the Finance (No. 2) Act, 2004, w.e.f. 1-10-2004. Prior to its omission, *Explanation 2*, as inserted by the Finance Act, 2001, w.e.f. 1-4-2001, read as under :

"Explanation 2.—For the removal of doubts it is hereby declared that the income of a venture capital company or venture capital fund shall continue to be exempt if the shares of the venture capital undertaking, in which the venture capital company or venture capital fund has made the initial investment, are subsequently listed in a recognised stock exchange in India;"

30. Prior to its omission, clause (*23G*), as inserted by the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997 and later on amended by the Finance Act, 1997, w.e.f. 1-4-1998, substituted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999 and further amended by the Income-tax (Second Amendment) Act, 1998, w.e.f. 1-4-1999, Finance Act, 1999, w.e.f. 1-4-2000, Finance Act, 2000, w.e.f. 1-4-2000/1-4-2001, Finance Act, 2001, w.e.f. 1-4-2002, Finance Act, 2002, w.e.f. 1-4-2003, Finance Act, 2003, w.e.f. 1-4-2004/w.r.e.f. 1-4-2002, Finance (No. 2) Act, 2004, w.e.f. 1-4-2005 and Special Economic Zones Act, 2005, w.e.f. 10-2-2006, read as under :

'(*23G*) any income by way of dividends, other than dividends referred to in section 115-O, interest or long-term capital gains of an infrastructure capital fund or an infrastructure capital company or a co-operative bank from investments made on or after the 1st day of June, 1998 by way of shares or long-term finance in any enterprise or undertaking wholly engaged in the business referred to in sub-section (4) of section 80-IA or sub-section (3) of section 80-IAB or a housing project referred to in sub-section (10) of section 80-IB or a hotel project or a hospital project and which has been approved by the Central Government on an application made by it in accordance with the rules made in this behalf and which satisfies the prescribed conditions :

Provided that the income, by way of dividends, other than dividends referred to in section 115-O, interest or long-term capital gains of an infrastructure capital company, shall be taken into account in computing the book profit and income-tax payable under section 115JB.

(Contd. on p. 1.93)

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[31][[32](*24*) any income chargeable under the heads "Income from house property" and "Income from other sources" of—

(*a*) a registered union within the meaning of the Trade Unions Act, 1926 (16 of 1926), formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen;

(*b*) an association of registered unions referred to in sub-clause (*a*);]

(*25*) (*i*) interest on securities which are held by, or are the property of, any provident fund to which the Provident Funds Act, 1925 (19 of 1925), applies, and any capital gains of the fund arising from the sale, exchange or transfer of such securities;

(*ii*) any income received by the trustees on behalf of a recognised provident fund;

(*iii*) any income received by the trustees on behalf of an approved superannuation fund;

(Contd. from p. 1.92)

Explanation 1.—For the purposes of this clause,—

(*a*) "infrastructure capital company" means such company as has made investments by way of acquiring shares or providing long-term finance to an enterprise wholly engaged in the business referred to in this clause;

(*b*) "infrastructure capital fund" means such fund operating under a trust deed registered under the provisions of the Registration Act, 1908 (16 of 1908) established to raise monies by the trustees for investment by way of acquiring shares or providing long-term finance to an enterprise wholly engaged in the business referred to in this clause;

(*c*) [***]

(*d*) "long-term finance" shall have the meaning assigned to it in clause (*viii*) of sub-section (1) of section 36;

(*e*) "co-operative bank" shall have the meaning assigned to it in clause (*dd*) of section 2 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961);

(*f*) "interest" includes any fee or commission received by a financial institution for giving any guarantee to, or enhancing credit in respect of, an enterprise which has been approved by the Central Government for the purposes of this clause;

(*g*) "hotel project" means a project for constructing a hotel of not less than three-star category as classified by the Central Government;

(*h*) "hospital project" means a project for constructing a hospital with at least one hundred beds for patients.

Explanation 2.—For the removal of doubts, it is hereby declared that any income by way of dividends, interest or long-term capital gains of an infrastructure capital fund or an infrastructure capital company from investments made before the 1st day of June, 1998 by way of shares or long-term finance in any enterprise carrying on the business of developing, maintaining and operating any infrastructure facility shall not be included and the provisions of this clause as it stood immediately before its amendment by the Finance (No. 2) Act, 1998 (21 of 1998) shall apply to such income;'

31. Substituted by the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997. Prior to its substitution, clause (*24*) was amended by the Finance Act, 1988, w.e.f. 1-4-1989.

32. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

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[33][(*iv*) any income received by the trustees on behalf of an approved gratuity fund;]

[34][(*v*) any income received—

(*a*) by the Board of Trustees constituted under the Coal Mines Provident Funds and Miscellaneous Provisions Act, 1948 (46 of 1948), on behalf of the Deposit-linked Insurance Fund established under section 3G of that Act; or

(*b*) by the Board of Trustees constituted under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), on behalf of the Deposit-linked Insurance Fund established under section 6C of that Act;]

[35][(*25A*) any income of the Employees' State Insurance Fund set up under the provisions of the Employees' State Insurance Act, 1948 (34 of 1948);]

[36][(*26*) [37]in the case of a member of a [38]Scheduled Tribe as defined in clause (*25*) of article 366 of the Constitution, residing[39] in any area specified in Part I or Part II of the Table appended to paragraph 20 of the Sixth Schedule to the Constitution or in the [40][States of Arunachal Pradesh, Manipur, Mizoram, Nagaland and Tripura] or in the areas covered by notification No. TAD/R/35/50/109, dated the 23rd February, 1951, issued by the Governor of Assam under the proviso to sub-paragraph (3) of the said paragraph 20 [as it stood immediately before the commencement of the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971)] [41][or in the Ladakh region of the State of Jammu and Kashmir], any income which accrues or arises to him,—

(*a*) from any source in the areas [42][or States aforesaid], or

(*b*) by way of dividend or interest on securities;]

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33. Inserted by the Finance Act, 1972, w.e.f. 1-4-1973.

34. Inserted by the Labour Provident Fund Laws (Amendment) Act, 1976, w.e.f. 1-8-1976.

35. Inserted by the Finance Act, 1995, w.r.e.f. 1-4-1962.

36. Substituted by the North-Eastern Areas (Reorganisation) (Adaptation of Laws on Union Subjects) Order, 1974, with retrospective effect from 21-1-1972. Earlier, clause (*26*) was amended first by the State of Nagaland (Adaptation of Laws on Union Subjects) Order, 1965, with retrospective effect from 1-12-1963 and then by the Taxation Laws (Amendment) Act, 1970, with retrospective effect from 1-4-1962.

37. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

38. Clause (*25*) of article 366 of the Constitution defines "Scheduled Tribes" as under :

'(*25*) "Scheduled Tribes" means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under article 342 to be Scheduled Tribes for the purposes of this Constitution;'

39. For the meaning of the term "residing", *see* Taxmann's Direct Taxes Manual, Vol. 3.

40. Substituted for "States of Nagaland, Manipur and Tripura or in the Union territories of Arunachal Pradesh and Mizoram" by the Finance Act, 1994, w.e.f. 1-4-1995.

41. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999**.**

42. Substituted for ", States or Union territories aforesaid" by the Finance Act, 1994, w.e.f. 1-4-1995.

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[43][(*26A*) any income accruing or arising to any person [44][* * *] from any source in the district of Ladakh or outside India in any previous year relevant to any assessment year commencing before the 1st day of April, [45][1989], where such person is resident in the said district in that previous year :

Provided that this clause shall not apply in the case of any such person unless he was resident in that district in the previous year relevant to the assessment year commencing on the 1st day of April, 1962.

[46][*Explanation 1*].—For the purposes of this clause, a person shall be deemed to be resident in the district of Ladakh if he fulfils the requirements of sub-section (1)[47] or sub-section (2) or sub-section (3) or sub-section (4) of section 6, as the case may be, subject to the modifications that—

(*i*) references in those sub-sections to India shall be construed as references to the said district; and

(*ii*) in clause (*i*) of sub-section (3), reference to Indian company shall be construed as reference to a company formed and registered under any law for the time being in force in the State of Jammu and Kashmir and having its registered office in that district in that year.]

[48][*Explanation 2*.—In this clause, references to the district of Ladakh shall be construed as references to the areas comprised in the said district on the 30th day of June, 1979;]

(*26AA*) [49][* * *]

[50][(*26AAA*) [51]in case of an individual, being a Sikkimese, any income which accrues or arises to him—

(*a*) from any source in the State of Sikkim; or

(*b*) by way of dividend or interest on securities:

Provided that nothing contained in this clause shall apply to a Sikkimese woman who, on or after the 1st day of April, 2008, marries an individual who is not a Sikkimese.

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43. Inserted by the Finance (No. 2) Act, 1965, w.r.e.f. 1-4-1962.

44. "(not being an individual who is in the service of Government)" omitted by the Finance (No. 2) Act, 1971, w.r.e.f. 1-4-1962.

45. Substituted for "1986" by the Finance Act, 1985, w.e.f. 1-4-1985. Earlier "1986" was substituted for "1983" by the Finance Act, 1983, w.e.f. 1-4-1983, "1983" was substituted for "1980" by the Finance Act, 1980, w.e.f. 1-4-1980, "1980" was substituted for "1975" by the Finance (No. 2) Act, 1977, with retrospective effect from 1-4-1975 and "1975" was substituted for "1970" by the Finance (No. 2) Act, 1971, w.r.e.f. 1-4-1970.

46. Existing *Explanation* renumbered as *Explanation 1* by the Finance Act, 1983, w.r.e.f. 1-4-1980.

47. Should be read as clause (*1*), etc.

48. Inserted by the Finance Act, 1983, w.r.e.f. 1-4-1980.

49. Omitted by the Finance Act, 1997, w.e.f. 1-4-1998. Prior to its omission, clause (*26AA*) was inserted by the Finance Act, 1989, w.e.f. 1-4-1990.

50. Inserted by the Finance Act, 2008, w.r.e.f. 1-4-1990.

51. *See* Instruction No. 8/2008, dated 29-7-2008. For details *see* Taxmann's Master Guide to Income-tax Act.

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Explanation.—For the purposes of this clause, "Sikkimese" shall mean—

(*i*) an individual, whose name is recorded in the register maintained under the Sikkim Subjects Regulation, 1961 read with the Sikkim Subject Rules, 1961 (hereinafter referred to as the "Register of Sikkim Subjects"), immediately before the 26th day of April, 1975; or

(*ii*) an individual, whose name is included in the Register of Sikkim Subjects by virtue of the Government of India Order No. 26030/36/90-I.C.I., dated the 7th August, 1990 and Order of even number dated the 8th April, 1991; or

(*iii*) any other individual, whose name does not appear in the Register of Sikkim Subjects, but it is established beyond doubt that the name of such individual's father or husband or paternal grand-father or brother from the same father has been recorded in that register;]

[52][(*26AAB*) any income of an agricultural produce market committee or board constituted under any law for the time being in force for the purpose of regulating the marketing of agricultural produce;]

[53][(*26B*) any income of a corporation established by a Central, State or Provincial Act or of any other body, institution or association (being a body, institution or association wholly financed by Government) where such corporation or other body or institution or association has been established or formed for promoting the interests of the [54][members of the Scheduled Castes or the Scheduled Tribes or backward classes or of any two or all of them].

[55][*Explanation.*—For the purposes of this clause,—

(*a*) [56]Scheduled Castes" and [57]"Scheduled Tribes" shall have the meanings respectively assigned to them in clauses (*24*) and (*25*) of article 366 of the Constitution;

(*b*) "backward classes" means such classes of citizens, other than the Scheduled Castes and the Scheduled Tribes, as may be notified—

(*i*) by the Central Government; or

(*ii*) by any State Government,

as the case may be, from time to time;]

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52. Inserted by the Finance Act, 2008, w.e.f. 1-4-2009.

53. Inserted by the Finance Act, 1980, w.r.e.f. 1-4-1972.

54. Substituted for "members of either the Scheduled Castes or the Scheduled Tribes or of both" by the Finance Act, 1994, w.r.e.f. 1-4-1993.

55. Substituted, *ibid*. Earlier, *Explanation* was inserted by the Finance Act, 1980, w.r.e.f. 1-4-1972.

56. Clause (*24*) of article 366 of the Constitution defines "Scheduled Castes" as under:

'(*24*) "Scheduled Castes" means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under article 341 to be Scheduled Castes for the purposes of this Constitution;'

57. For definition of "Scheduled Tribes", *see* footnote 38 on p. 1.94 *ante.*

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[58][(*26BB*) any income of a corporation established by the Central Government or any State Government for promoting the interests of the members of a minority community.

Explanation.—For the purposes of this clause, "minority community" means a community notified[59] as such by the Central Government in the Official Gazette in this behalf;]

[60][(*26BBB*) any income of a corporation established by a Central, State or Provincial Act for the welfare and economic upliftment of ex-service-men being the citizens of India.

Explanation.—For the purposes of this clause, "ex-serviceman" means a person who has served in any rank, whether as combatant or non-combatant, in the armed forces of the Union or armed forces of the Indian States before the commencement of the Constitution (but excluding the Assam Rifles, Defence Security Corps, General Reserve Engineering Force, Lok Sahayak Sena, Jammu and Kashmir Militia and Territorial Army) for a continuous period of not less than six months after attestation and has been released, otherwise than by way of dismissal or discharge on account of misconduct or inefficiency, and in the case of a deceased or incapacitated ex-serviceman includes his wife, children, father, mother, minor brother, widowed daughter and widowed sister, wholly dependant upon such ex-serviceman immediately before his death or incapacitation;]

[61][(*27*) any income of a co-operative society formed for promoting the interests of the members of either the Scheduled Castes or Scheduled Tribes or both referred to in clause (*26B*) :

Provided that the membership of the co-operative society consists of only other co-operative societies formed for similar purposes and the finances of the society are provided by the Government and such other societies;]

(*28*) [62][* * *]

(*29*) [63][*Omitted by the Finance Act, 2002, w.e.f. 1-4-2003;*]

[64][(*29A*) any income accruing or arising to—

(*a*) the Coffee Board constituted under section 4 of the Coffee Act, 1942 (7 of 1942) in any previous year relevant to any assessment

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58. Inserted by the Finance Act, 1995, w.e.f. 1-4-1995.

59. For notified minority communities, *see* Taxmann's Master Guide to Income-tax Act.

60. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

61. Inserted by the Finance Act, 1992, w.r.e.f. 1-4-1989. Earlier clause (*27*) was omitted by the Finance Act, 1975, w.e.f. 1-4-1976 and re-enacted in section 80JJ with modification. Originally, clause (*27*) was inserted by the Finance Act, 1964, w.e.f. 1-4-1964 and later on amended by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

62. Omitted by the Finance Act, 1997, w.e.f. 1-4-1998. Prior to its omission, clause (*28*) was inserted by the Finance Act, 1965, w.e.f. 1-4-1965 and substituted by the Finance (No. 2) Act, 1965, w.e.f. 11-9-1965.

63. Prior to its omission, clause (*52*) was inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968.

64. Inserted by the Finance Act, 1999, w.e.f. 11-5-1999.

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year commencing on or after the 1st day of April, 1962 or the previous year in which such Board was constituted, whichever is later;

(*b*) the Rubber Board constituted under sub-section (1) of section 4 of the Rubber Board Act, 1947 (24 of 1947) in any previous year relevant to any assessment year commencing on or after the 1st day of April, 1962 or the previous year in which such Board was constituted, whichever is later;

(*c*) the Tea Board established under section 4 of the Tea Act, 1953 (29 of 1953) in any previous year relevant to any assessment year commencing on or after the 1st day of April, 1962 or the previous year in which such Board was constituted, whichever is later;

(*d*) the Tobacco Board constituted under the Tobacco Board Act, 1975 (4 of 1975) in any previous year relevant to any assessment year commencing on or after the 1st day of April, 1975 or the previous year in which such Board was constituted, whichever is later;

(*e*) the Marine Products Export Development Authority established under section 4 of the Marine Products Export Development Authority Act, 1972 (13 of 1972) in any previous year relevant to any assessment year commencing on or after the 1st day of April, 1972 or the previous year in which such Authority was constituted, whichever is later;

(*f*) the Agricultural and Processed Food Products Export Development Authority established under section 4 of the Agricultural and Processed Food Products Export Development Act, 1985 (2 of 1986) in any previous year relevant to any assessment year commencing on or after the 1st day of April, 1985 or the previous year in which such Authority was constituted, whichever is later;

(*g*) the Spices Board constituted under sub-section (1) of section 3 of the Spices Board Act, 1986 (10 of 1986) in any previous year relevant to any assessment year commencing on or after the 1st day of April, 1986 or the previous year in which such Board was constituted, whichever is later;]

[65][(*h*) the Coir Board established under section 4 of the Coir Industry Act, 1953 (45 of 1953);]

[66][(*30*) [67]in the case of an assessee who carries on the business of growing and manufacturing tea in India, the amount of any subsidy received from or through the Tea Board under any such scheme[68] for replantation or replacement of tea bushes [69][or for rejuvenation or consolidation

65. Inserted by the Finance Act, 2008, w.r.e.f. 1-4-2002.

66. Inserted by the Taxation Laws (Amendment) Act, 1970, w.r.e.f. 1-4-1969.

67. *See* rule 8(2).

68. For specified schemes, *see* Taxmann's Master Guide to Income-tax Act.

69. Inserted by the Finance Act, 1984, w.e.f. 1-4-1985.

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of areas used for cultivation of tea] as the Central Government may, by notification in the Official Gazette, specify:

Provided that the assessee furnishes to the [70][Assessing] Officer, along with his return of income[71] for the assessment year concerned or within such further time as the [70][Assessing] Officer may allow, a certificate from the Tea Board as to the amount of such subsidy paid to the assessee during the previous year.

Explanation.—In this clause, "Tea Board" means the Tea Board established under section 4 of the Tea Act, 1953 (29 of 1953);]

[72][(*31*) in the case of an assessee who carries on the business of growing and manufacturing rubber, coffee, cardamom or such other commodity in India, as the Central Government may, by notification in the Official Gazette, specify in this behalf, the amount of any subsidy received from or through the concerned Board under any such scheme for replantation or replacement of rubber plants, coffee plants, cardamom plants or plants for the growing of such other commodity or for rejuvenation or consolidation of areas used for cultivation of rubber, coffee, cardamom or such other commodity as the Central Government may, by notification in the Official Gazette, specify:

Provided that the assessee furnishes to the Assessing Officer, along with his return of income[71] for the assessment year concerned or within such further time as the Assessing Officer may allow, a certificate from the concerned Board, as to the amount of such subsidy paid to the assessee during the previous year.

Explanation.—In this clause, "concerned Board" means,—

(*i*) in relation to rubber, the Rubber Board constituted under section 4 of the Rubber Act, 1947 (24 of 1947),

(*ii*) in relation to coffee, the Coffee Board constituted under section 4 of the Coffee Act, 1942 (7 of 1942),

(*iii*) in relation to cardamom, the Spices Board constituted under section 3 of the Spices Board Act, 1986 (10 of 1986),

(*iv*) in relation to any other commodity specified under this clause, any Board or other authority established under any law for the time being in force which the Central Government may, by notification in the Official Gazette, specify in this behalf;]

[73][(*32*) in the case of an assessee referred to in sub-section (1A) of section 64, any income includible in his total income under that sub-section, to the extent such income does not exceed one thousand five

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70. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

71. Rule 12 provides that the return of income shall not be accompanied by any document or copy of any account or form or report of audit required to be attached with return of income under any of the provisions of the Act.

72. Inserted by the Finance Act, 1988, w.e.f. 1-4-1989.

73. Inserted by the Finance Act, 1992, w.e.f. 1-4-1993.

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hundred rupees in respect of each minor child whose income is so includible;]

[74][(*33*) any income arising from the transfer of a capital asset, being a unit of the Unit Scheme, 1964 referred to in Schedule I to the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 (58 of 2002)[75] and where the transfer of such asset takes place on or after the 1st day of April, 2002;]

[76][(*34*) any income by way of dividends referred to in section 115-O.

[77][*Explanation.*—For the removal of doubts, it is hereby declared that the dividend referred to in section 115-O shall not be included in the total income of the assessee, being a Developer or entrepreneur ;]

(*35*) any income by way of,—

(*a*) income received in respect of the units of a Mutual Fund specified under clause (*23D*); or

(*b*) income received in respect of units from the Administrator of the specified undertaking; or

(*c*) income received in respect of units from the specified company:

Provided that this clause shall not apply to any income arising from transfer of units of the Administrator of the specified undertaking or of the specified company or of a mutual fund, as the case may be.

Explanation.—For the purposes of this clause,—

(*a*) "Administrator" means the Administrator as referred to in clause (*a*) of section 2 of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 (58 of 2002)[78];

(*b*) "specified company" means a company as referred to in clause (*h*) of section 2 of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 (58 of 2002)[78];

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74. Inserted by the Finance Act, 2003, w.e.f. 1-4-2003. Earlier clause (*33*) was inserted by the Finance Act, 1997, w.e.f. 1-4-1998, substituted by the Finance Act, 1999, w.e.f. 1-4-2000, amended by the Finance Act, 2001, w.r.e.f. 1-4-2000 and later on omitted by the Finance Act, 2002, w.e.f. 1-4-2003. Prior to omission, clause (*33*) read as under :

"(*33*) any income by way of—

(*i*) dividends referred to in section 115-O; or

(*ii*) income received in respect of units from the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963); or

(*iii*) income received in respect of the units of a mutual fund specified under clause (*23D*) :

Provided that this clause shall not apply to any income arising from transfer of units of the Unit Trust of India or of a mutual fund, as the case may be."

75. For text of the Unit Trust of India (Transfer of Undertaking & Repeal) Act, 2002, *see* Taxmann's Direct Taxes Manual, Vol. 3.

76. Clauses (*34*), (*35*) and (*36*) inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

77. Inserted by the Special Economic Zones Act, 2005, w.e.f. 10-2-2006.

78. For text of the Unit Trust of India (Transfer of Undertaking & Repeal) Act, 2002, *see* Taxmann's Direct Taxes Manual, Vol. 3.

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(*36*) any income arising from the transfer of a long-term capital asset, being an eligible equity share in a company purchased on or after the 1st day of March, 2003 and before the 1st day of March, 2004 and held for a period of twelve months or more.

Explanation.—For the purposes of this clause, "eligible equity share" means,—

(*i*) any equity share in a company being a constituent of BSE-500 Index of the Stock Exchange, Mumbai as on the 1st day of March, 2003 and the transactions of purchase and sale of such equity share are entered into on a recognised stock exchange in India;

(*ii*) any equity share in a company allotted through a public issue on or after the 1st day of March, 2003 and listed in a recognised stock exchange in India before the 1st day of March, 2004 and the transaction of sale of such share is entered into on a recognised stock exchange in India;]

[79][(*37*) in the case of an assessee, being an individual or a Hindu undivided family, any income chargeable under the head "Capital gains" arising from the transfer of agricultural land, where—

(*i*) such land is situate in any area referred to in item (*a*) or item (*b*) of sub-clause (*iii*) of clause (*14*) of section 2;

(*ii*) such land, during the period of two years immediately preceding the date of transfer, was being used for agricultural purposes by such Hindu undivided family or individual or a parent of his;

(*iii*) such transfer is by way of compulsory acquisition under any law, or a transfer the consideration for which is determined or approved by the Central Government or the Reserve Bank of India;

(*iv*) such income has arisen from the compensation or consideration for such transfer received by such assessee on or after the 1st day of April, 2004.

Explanation.—For the purposes of this clause, the expression "compensation or consideration" includes the compensation or consideration enhanced or further enhanced by any court, Tribunal or other authority;

(*38*) any income arising from the transfer of a long-term capital asset, being an equity share in a company or a unit of an equity oriented fund where—

(*a*) the transaction of sale of such equity share or unit is entered into on or after the date on which Chapter VII of the Finance (No. 2) Act, 2004 comes into force; and

(*b*) such transaction is chargeable to securities transaction tax under that Chapter :

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79. Clauses (*37*) and (*38*) inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005.

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[80][**Provided** that the income by way of long-term capital gain of a company shall be taken into account in computing the book profit and income-tax payable under section 115JB.]

Explanation.—For the purposes of this clause, "equity oriented fund" means a fund—

(*i*) where the investible funds are invested by way of equity shares in domestic companies to the extent of more than [81][sixty-five] per cent of the total proceeds of such fund; and

(*ii*) which has been set up under a scheme of a Mutual Fund specified under clause (*23D*) :

Provided that the percentage of equity shareholding of the fund shall be computed with reference to the annual average of the monthly averages of the opening and closing figures;]

[82][(*39*) any specified income, arising from any international sporting event held in India, to the person or persons notified[83] by the Central Government in the Official Gazette, if such international sporting event—

(*a*) is approved by the international body regulating the international sport relating to such event;

(*b*) has participation by more than two countries;

(*c*) is notified[83] by the Central Government in the Official Gazette for the purposes of this clause.

Explanation.—For the purposes of this clause, "the specified income" means the income, of the nature and to the extent, arising from the international sporting event, which the Central Government may notify[83] in this behalf;

(*40*) any income of any subsidiary company by way of grant or otherwise received from an Indian company, being its holding company engaged in the business of generation or transmission or distribution of power if receipt of such income is for settlement of dues in connection with reconstruction or revival of an existing business of power generation:

Provided that the provisions of this clause shall apply if reconstruction or revival of any existing business of power generation is by way of transfer of such business to the Indian company notified under sub-clause (*a*) of clause (*v*) of sub-section (4) of section 80-IA;

(*41*) any income arising from transfer of a capital asset, being an asset of an undertaking engaged in the business of generation or transmission or distribution of power where such transfer is effected on or before the 31st day of March, 2006, to the Indian company notified under sub-clause (*a*) of clause (*v*) of sub-section (4) of section 80-IA;]

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80. Inserted by the Finance Act, 2006, w.e.f. 1-4-2007.

81. Substituted for "fifty", *ibid.*, w.e.f. 1-6-2006.

82. Clauses (*39*) to (*41*) inserted by the Taxation Laws (Amendment) Act, 2005, w.e.f. 1-4-2006.

83. For notified persons, notified sporting events and specified income, *see* Taxmann's Master Guide to Income-tax Act.

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[84][(*42*) any specified income arising to a body or authority which—

(*a*) has been established or constituted or appointed under a treaty or an agreement entered into by the Central Government with two or more countries or a convention signed by the Central Government;

(*b*) is established or constituted or appointed not for the purposes of profit;

(*c*) is notified by the Central Government in the Official Gazette[85] for the purposes of this clause.

Explanation.—For the purposes of this clause, "specified income" means the income, of the nature and to the extent, arising to the body or authority referred to in this clause, which the Central Government may notify[85] in this behalf;]

[86][(*43*) any amount received by an individual as a loan, either in lump sum or in instalment, in a transaction of reverse mortgage referred to in clause (*xvi*) of section 47;]

[87][(44) any income received by any person for, or on behalf of, the New Pension System Trust established on the 27th day of February, 2008 under the provisions of the Indian Trusts Act, 1882 (2 of 1882).]

[88][**Special provision in respect of newly established undertakings in free trade zone, etc.**[89]

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 :

Provided that where in computing the total income of the undertaking for any assessment year, its profits and gains had not been included by application of the provisions of this section as it stood immediately before its substitution by the Finance Act, 2000, the undertaking shall be entitled to deduction referred to in this sub-section only for the unexpired period of the aforesaid ten consecutive assessment years :

Provided further that where an undertaking initially located in any free trade zone or export processing zone is subsequently located in a special economic

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84. Inserted by the Finance Act, 2006, w.e.f. 1-4-2006.

85. For notified authority, *see* Taxmann's Master Guide to Income-tax Act.

86. Inserted by the Finance Act, 2008, w.e.f. 1-4-2008.

87. Inserted by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-2009.

88. Substituted by the Finance Act, 2000, w.e.f. 1-4-2001. Prior to its substitution, section 10A was inserted by the Finance Act, 1981, w.e.f. 1-4-1981, and later on amended by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1987, Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988/1-4-1989, Finance Act, 1987, w.r.e.f. 1-4-1981/w.e.f. 1-4-1988, Finance Act, 1988, w.e.f. 1-4-1989, Finance Act, 1993, w.e.f. 1-4-1994/w.r.e.f. 1-4-1991, Finance Act, 1995, w.e.f. 1-4-1996, Income-tax (Second Amendment) Act, 1998, w.e.f. 1-4-1999 and Finance Act, 1999, w.e.f. 1-4-2000.

89. *See* Instruction No. 1/2006, dated 31-3-2006. For details, *see* Taxmann's Master Guide to Income-tax Act.

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zone by reason of conversion of such free trade zone or export processing zone into a special economic zone, the period of ten consecutive assessment years referred to in this sub-section shall be reckoned from the assessment year relevant to the previous year in which the [90][undertaking began to manufacture or produce such articles or things or computer software] in such free trade zone or export processing zone :

[91][**Provided also** that for the assessment year beginning on the 1st day of April, 2003, the deduction under this sub-section shall be ninety per cent of the profits and gains derived by an undertaking from the export of such articles or things or computer software :]

Provided also that no deduction under this section shall be allowed to any undertaking for the assessment year beginning on the 1st day of April, [92][2012] and subsequent years.

[93][(1A) Notwithstanding anything contained in sub-section (1), the deduction, in computing the total income of an undertaking, which begins to manufacture or produce articles or things or computer software during the previous year relevant to any assessment year commencing on or after the 1st day of April, 2003, in any special economic zone, shall be,—

(*i*) hundred per cent of profits and gains derived from the export of such articles or things or computer software for a period of five 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, and thereafter, fifty per cent of such profits and gains for further two consecutive assessment years, and thereafter;

(*ii*) for the next three consecutive assessment years, so much of the amount not exceeding fifty per cent of the profit as is debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account (to be called the "Special Economic Zone Re-investment Allowance Re-

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90. Substituted for "undertaking was first set up" by the Finance Act, 2001, w.e.f. 1-4-2001.

91. Inserted by the Finance Act, 2002, w.e.f. 1-4-2003. Earlier the third proviso was omitted by the Finance Act, 2001, w.e.f. 1-4-2002. Prior to omission, third proviso read as under :

"**Provided also** that the profits and gains derived from such domestic sales of articles or things or computer software as do not exceed twenty-five per cent of total sales shall be deemed to be the profits and gains derived from the export of articles or things or computer software:"

92. Substituted for "2011" by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-2009. Earlier "2011" was substituted for "2010" by the Finance Act, 2008, w.e.f. 1-4-2008.

93. Sub-sections (1A) to (1C) substituted for sub-section (1A) by the Finance Act, 2003, w.e.f. 1-4-2004. Prior to its substitution, sub-section (1A), as inserted by the Finance Act, 2002, w.e.f. 1-4-2003, read as under :

"(1A) Notwithstanding anything contained in sub-section (1), the deduction, in computing the total income of an undertaking, which begins to manufacture or produce articles or things or computer software during the previous year relevant to any assessment year commencing on or after the 1st day of April, 2003, in any special economic zone, shall be hundred per cent of profits and gains derived from the export of such articles or things or computer software for a period of five 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, and thereafter, fifty per cent of such profits and gains for further two assessment years."

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serve Account") to be created and utilised for the purposes of the business of the assessee in the manner laid down in sub-section (1B) :

[94][**Provided** that no deduction under this section shall be allowed to an assessee who does not furnish a return of his income on or before the due date specified under sub-section (1) of section 139.]

(1B) The deduction under clause (*ii*) of sub-section (1A) shall be allowed only if the following conditions are fulfilled, namely:—

(*a*) the amount credited to the Special Economic Zone Re-investment Allowance Reserve Account is to be utilised—

(*i*) for the purposes of acquiring new machinery or plant which is first put to use before the expiry of a period of three years next following the previous year in which the reserve was created; and

(*ii*) until the acquisition of new machinery or plant as aforesaid, for the purposes of the business of the undertaking other than for distribution by way of dividends or profits or for remittance outside India as profits or for the creation of any asset outside India;

(*b*) the particulars, as may be prescribed[95] in this behalf, have been furnished by the assessee in respect of new machinery or plant along with the return of income for the assessment year relevant to the previous year in which such plant or machinery was first put to use.

(1C) Where any amount credited to the Special Economic Zone Re-investment Allowance Reserve Account under clause (*ii*) of sub-section (1A),—

(*a*) has been utilised for any purpose other than those referred to in sub-section (1B), the amount so utilised; or

(*b*) has not been utilised before the expiry of the period specified in sub-clause (*i*) of clause (*a*) of sub-section (1B), the amount not so utilised,

shall be deemed to be the profits,—

(*i*) in a case referred to in clause (*a*), in the year in which the amount was so utilised; or

(*ii*) in a case referred to in clause (*b*), in the year immediately following the period of three years specified in sub-clause (*i*) of clause (*a*) of sub-section (1B),

and shall be charged to tax accordingly.]

(2) This section applies to any undertaking which fulfils all the following conditions, namely :—

(*i*) it has begun or begins to manufacture or produce articles or things or computer software during the previous year relevant to the assessment year—

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94. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

95. *See* rule 16DD & Form No. 56FF. Rule 12 provides that the return of income shall not be accompanied by any document or copy of any account or form or report of audit required to be attached with return of income under any of the provisions of the Act.

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(*a*) commencing on or after the 1st day of April, 1981, in any free trade zone; or

(*b*) commencing on or after the 1st day of April, 1994, in any electronic hardware technology park, or, as the case may be, software technology park;

(*c*) commencing on or after the 1st day of April, 2001 in any special economic zone;

(*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 undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertakings 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.

Explanation.—The provisions of *Explanation 1* and *Explanation 2* to sub-section (2) of section 80-I shall apply for the purposes of clause (*iii*) of this sub-section as they apply for the purposes of clause (*ii*) of that sub-section.

(3) This section applies to the undertaking, if the sale proceeds of articles or things or computer software exported out of India are received in, or brought into, India by the assessee in convertible foreign exchange, within a period of six months from the end of the previous year or, within such further period as the competent authority may allow in this behalf.

Explanation 1.—For the purposes of this sub-section, the expression "competent authority" means the Reserve Bank of India or such other authority as is authorised under any law for the time being in force for regulating payments and dealings in foreign exchange.

Explanation 2.—The sale proceeds referred to in this sub-section shall be deemed to have been received in India where such sale proceeds are credited to a separate account maintained for the purpose by the assessee with any bank outside India with the approval of the Reserve Bank of India.

[96][(4) For the purposes of [97][sub-sections (1) and (1A)], the profits derived from export of articles or things or computer software shall be the amount which bears to the profits of the business of the undertaking, the same proportion as the export turnover in respect of such articles or things or computer software bears to the total turnover of the business carried on by the undertaking.]

(5) The deduction under [97][this section] shall not be admissible for any assessment year beginning on or after the 1st day of April, 2001, unless the assessee

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96. Substituted by the Finance Act, 2001, w.e.f. 1-4-2001. Prior to its substitution, sub-section (4) read as under :

"(4) For the purposes of sub-section (1), the profits derived from export of articles or things or computer software shall be the amount which bears to the profits of the business, the same proportion as the export turnover in respect of such articles or things or computer software bears to the total turnover of the business carried on by the assessee."

97. Substituted for "sub-section (1)" by the Finance Act, 2003, w.e.f. 1-4-2003.

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furnishes in the prescribed form[98], alongwith the return of income, the report of an accountant, as defined in the *Explanation* below sub-section (2) of section 288, certifying that the deduction has been correctly claimed in accordance with the provisions of this section.

(6) Notwithstanding anything contained in any other provision of this Act, in computing the total income of the assessee of the previous year relevant to the assessment year immediately succeeding the last of the relevant assessment years, or of any previous year, relevant to any subsequent assessment year,—

(*i*) section 32, section 32A, section 33, section 35 and clause (*ix*) of sub-section (1) of section 36 shall apply as if every allowance or deduction referred to therein and relating to or allowable for any of the relevant assessment years [99][ending before the 1st day of April, 2001], in relation to any building, machinery, plant or furniture used for the purposes of the business of the undertaking in the previous year relevant to such assessment year or any expenditure incurred for the purposes of such business in such previous year had been given full effect to for that assessment year itself and accordingly sub-section (2) of section 32, clause (*ii*) of sub-section (3) of section 32A, clause (*ii*) of sub-section (2) of section 33, sub-section (4) of section 35 or the second proviso to clause (*ix*) of sub-section (1) of section 36, as the case may be, shall not apply in relation to any such allowance or deduction;

(*ii*) no loss referred to in sub-section (1) of section 72 or sub-section (1) or sub-section (3) of section 74, in so far as such loss relates to the business of the undertaking, shall be carried forward or set off where such loss relates to any of the relevant assessment years [99][ending before the 1st day of April, 2001];

(*iii*) no deduction shall be allowed under section 80HH or section 80HHA or section 80-I or section 80-IA or section 80-IB in relation to the profits and gains of the undertaking; and

(*iv*) in computing the depreciation allowance under section 32, the written down value of any asset used for the purposes of the business of the undertaking shall be computed as if the assessee had claimed and been actually allowed the deduction in respect of depreciation for each of the relevant assessment year.

(7) The provisions of sub-section (8) and sub-section (10) of section 80-IA shall, so far as may be, apply in relation to the undertaking referred to in this section as they apply for the purposes of the undertaking referred to in section 80-IA.

[1][(7A) Where any undertaking of an Indian company which is entitled to the deduction under this section is transferred, before the expiry of the period

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98. *See* rule 16D and Form No. 56F. Rule 12 provides that the return of income shall not be accompanied by any document or copy of any account or form or report of audit required to be attached with return of income under any of the provisions of the Act.

99. Inserted by the Finance Act, 2003, w.r.e.f. 1-4-2001.

1. Inserted, *ibid.*, w.e.f. 1-4-2004.

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specified in this section, to another Indian company in a scheme of amalgamation or demerger,—

(*a*) no deduction shall be admissible under this section to the amalgamating or the demerged company for the previous year in which the amalgamation or the demerger takes place; and

(*b*) the provisions of this section shall, as far as may be, apply to the amalgamated or the resulting company as they would have applied to the amalgamating or the demerged company if the amalgamation or demerger had not taken place.]

[2][(7B) The provisions of this section shall not apply to any undertaking, being a Unit referred to in clause (*zc*) of section 2[3] of the Special Economic Zones Act, 2005, which has begun or begins to manufacture or produce articles or things or computer software during the previous year relevant to the assessment year commencing on or after the 1st day of April, 2006 in any Special Economic Zone.]

(8) Notwithstanding anything contained in the foregoing provisions of this section, where the assessee, before the due date for furnishing the return of income under sub-section (1) of section 139, furnishes to the Assessing Officer a declaration in writing that the provisions of this section may not be made applicable to him, the provisions of this section shall not apply to him for any of the relevant assessment years.

(9) [4][*Omitted by the Finance Act, 2003, w.e.f. 1-4-2004.*]

(9A) [5][*Omitted by the Finance Act, 2003, w.e.f. 1-4-2004.*]

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2. Inserted by the Special Economic Zones Act, 2005, w.e.f. 10-2-2006.

3. For text of section 2(*zc*) of Special Economic Zones Act, 2005, *see* **Appendix**.

4. Prior to its omission, sub-section (9) read as under :

"(9) Where during any previous year, the ownership or the beneficial interest in the undertaking is transferred by any means, the deduction under sub-section (1) shall not be allowed to the assessee for the assessment year relevant to such previous year and the subsequent years."

5. Prior to its omission, sub-section (9A), as inserted by the Finance Act, 2002, w.e.f. 1-4-2003, read as under :

"(9A) Notwithstanding anything contained in sub-section (9), where as a result of reorganisation of business, a firm or a sole proprietary concern is succeeded by a company and the ownership or beneficial interest in the undertaking of the firm or the sole proprietary concern is transferred to the company, the deduction under sub-section (1) in respect of such undertaking shall be allowed to the company, as the same would have been allowed to such firm or sole proprietary concern, as the case may be, if the reorganisation had not taken place:

Provided that,—

(*a*) in the case of a firm, the aggregate of the shareholding in the company of the partners of the firm is not less than fifty-one per cent of the total voting power in the company and their shareholding continues to be as such for the period for which the company is eligible for deduction under this section;

(*b*) in the case of a sole proprietary concern, the shareholding of the sole proprietor in the company is not less than fifty-one per cent of the total voting power in the company and his shareholding continues to remain as such for the period for which the company is eligible for deduction under this section."

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Explanation 1.— [6][*Omitted by the Finance Act, 2003, w.e.f. 1-4-2004.*]

Explanation 2.—For the purposes of this section,—

(*i*) "computer software" means—

(*a*) any computer programme recorded on any disc, tape, perforated media or other information storage device; or

(*b*) any customized electronic data or any product or service of similar nature, as may be notified[7] by the Board,

which is transmitted or exported from India to any place outside India by any means;

(*ii*) "convertible foreign exchange" means foreign exchange which is for the time being treated by the Reserve Bank of India as convertible foreign exchange for the purposes of the Foreign Exchange Regulation Act, 1973 (46 of 1973), and any rules made thereunder or any other corresponding law for the time being in force;

(*iii*) "electronic hardware technology park" means any park set up in accordance with the Electronic Hardware Technology Park (EHTP) Scheme notified[8] by the Government of India in the Ministry of Commerce and Industry;

(*iv*) "export turnover" means the consideration in respect of export [9][by the undertaking] of articles or things or computer software received in, or brought into, India by the assessee in convertible foreign exchange in accordance with sub-section (3), but does not include freight, telecommunication charges or insurance attributable to the delivery of the articles or things or computer software outside India or expenses, if any, incurred in foreign exchange in providing the technical services outside India;

(*v*) "free trade zone" means the Kandla Free Trade Zone and the Santacruz Electronics Export Processing Zone and includes any other free trade zone which the Central Government may, by notification in the Official Gazette,[10] specify for the purposes of this section;

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6. Prior to its omission, *Explanation 1*, as amended by the Finance Act, 2001, w.e.f. 1-4-2001, read as under :

"*Explanation 1.*—For the purposes of this section, in the case of a company, where on the last day of any previous year, the shares of the company carrying not less than fifty-one per cent of the voting power are not beneficially held by persons who held the shares of the company carrying not less than fifty-one per cent of the voting power on the last day of the year in which the undertaking was set up, the company shall be presumed to have transferred its ownership or the beneficial interest in the undertaking :

Provided that nothing contained in this *Explanation* shall apply to any change in the shareholding of the company as a result of—

(*a*) its becoming a company in which the public are substantially interested; or

(*b*) disinvestment of its equity shares by any venture capital company or venture capital fund."

7. For notified Information Technology enabled products or services, *see* Taxmann's Master Guide to Income-tax Act.

8. For notified Schemes, *see* Taxmann's Direct Taxes Manual, Vol. 3.

9. Inserted by the Finance Act, 2001, w.e.f. 1-4-2001.

10. For notified Free Trade Zones, *see* Taxmann's Master Guide to Income-tax Act.

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(*vi*) "relevant assessment year" means any assessment year falling within a period of ten consecutive assessment years referred to in this section;

(*vii*) "software technology park" means any park set up in accordance with the Software Technology Park Scheme notified[11] by the Government of India in the Ministry of Commerce and Industry;

(*viii*) "special economic zone" means a zone which the Central Government may, by notification in the Official Gazette, specify as a special economic zone for the purposes of this section.]

[12][*Explanation 3.*—For the removal of doubts, it is hereby declared that the profits and gains derived from on site development of computer software (including services for development of software) outside India shall be deemed to be the profits and gains derived from the export of computer software outside India.]

[13][*Explanation 4.*—For the purposes of this section, "manufacture or produce" shall include the cutting and polishing of precious and semi-precious stones.]

[14][**Special provisions in respect of newly established Units in Special Economic Zones.**

10AA. (1) Subject to the provisions of this section, in computing the total income of an assessee, being an entrepreneur as referred to in clause (*j*) of section 2[15] of the Special Economic Zones Act, 2005, from his Unit, who begins to manufacture or produce articles or things or provide any services during the previous year relevant to any assessment year commencing on or after the 1st day of April, 2006, a deduction of—

(*i*) hundred per cent of profits and gains derived from the export, of such articles or things or from services for a period of five consecutive assessment years beginning with the assessment year relevant to the previous year in which the Unit begins to manufacture or produce such articles or things or provide services, as the case may be, and fifty per cent of such profits and gains for further five assessment years and thereafter;

(*ii*) for the next five consecutive assessment years, so much of the amount not exceeding fifty per cent of the profit as is debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account (to be called the "Special Economic Zone Re-investment Reserve Account") to be created and utilized for the purposes of the business of the assessee in the manner laid down in sub-section (2).

(2) The deduction under clause (*ii*) of sub-section (1) shall be allowed only if the following conditions are fulfilled, namely :—

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11. For notified Free Trade Zones, *see* Taxmann's Master Guide to Income-tax Act.

12. Inserted by the Finance Act, 2001, w.e.f. 1-4-2001.

13. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

14. Inserted by the Special Economic Zones Act, 2005, w.e.f. 10-2-2006.

15. *See* **Appendix**.

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(*a*) the amount credited to the Special Economic Zone Re-investment Reserve Account is to be utilised—

(*i*) for the purposes of acquiring machinery or plant which is first put to use before the expiry of a period of three years following the previous year in which the reserve was created; and

(*ii*) until the acquisition of the machinery or plant as aforesaid, for the purposes of the business of the undertaking other than for distribution by way of dividends or profits or for remittance outside India as profits or for the creation of any asset outside India;

(*b*) the particulars, as may be specified by the Central Board of Direct Taxes in this behalf, under clause (*b*) of sub-section (1B) of section 10A have been furnished by the assessee in respect of machinery or plant along with the return of income[16] for the assessment year relevant to the previous year in which such plant or machinery was first put to use.

(3) Where any amount credited to the Special Economic Zone Re-investment Reserve Account under clause (*ii*) of sub-section (1),—

(*a*) has been utilised for any purpose other than those referred to in sub-section (2), the amount so utilised; or

(*b*) has not been utilised before the expiry of the period specified in sub-clause (*i*) of clause (*a*) of sub-section (2), the amount not so utilised,

shall be deemed to be the profits,—

(*i*) in a case referred to in clause (*a*), in the year in which the amount was so utilised; or

(*ii*) in a case referred to in clause (*b*), in the year immediately following the period of three years specified in sub-clause (*i*) of clause (*a*) of sub-section (2),

and shall be charged to tax accordingly :

Provided that where in computing the total income of the Unit for any assessment year, its profits and gains had not been included by application of the provisions of sub-section (7B) of section 10A, the undertaking, being the Unit shall be entitled to deduction referred to in this sub-section only for the unexpired period of ten consecutive assessment years and thereafter it shall be eligible for deduction from income as provided in clause (*ii*) of sub-section (1).

Explanation.—For the removal of doubts, it is hereby declared that an undertaking, being the Unit, which had already availed, before the commencement of the Special Economic Zones Act, 2005, the deductions referred to in section 10A for ten consecutive assessment years, such Unit shall not be eligible for deduction from income under this section :

Provided further that where a Unit initially located in any free trade zone or export processing zone is subsequently located in a Special Economic Zone by reason of conversion of such free trade zone or export processing zone into

16. Rule 12 provides that the return of income shall not be accompanied by any document or copy of any account or form or report of audit required to be attached with return of income under any of the provisions of the Act.

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a Special Economic Zone, the period of ten consecutive assessment years referred to above shall be reckoned from the assessment year relevant to the previous year in which the Unit began to manufacture, or produce or process such articles or things or services in such free trade zone or export processing zone :

Provided also that where a Unit initially located in any free trade zone or export processing zone is subsequently located in a Special Economic Zone by reason of conversion of such free trade zone or export processing zone into a Special Economic Zone and has completed the period of ten consecutive assessment years referred to above, it shall not be eligible for deduction from income as provided in clause (*ii*) of sub-section (1) with effect from the 1st day of April, 2006.

[17][(4) This section applies to any undertaking, being the Unit, which fulfils all the following conditions, namely:—

(*i*) it has begun or begins to manufacture or produce articles or things or provide services during the previous year relevant to the assessment year commencing on or after the 1st day of April, 2006 in any Special Economic Zone;

(*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 undertaking, being the Unit, which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such 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.

Explanation.—The provisions of *Explanations 1* and *2* to sub-section (3) of section 80-IA shall apply for the purposes of clause (*iii*) of this sub-section as they apply for the purposes of clause (*ii*) of that sub-section.]

(5) Where any undertaking being the Unit which is entitled to the deduction under this section is transferred, before the expiry of the period specified in this section, to another undertaking, being the Unit in a scheme of amalgamation or demerger,—

(*a*) no deduction shall be admissible under this section to the amalgamating or the demerged Unit, being the company for the previous year in which the amalgamation or the demerger takes place; and

(*b*) the provisions of this section shall, as they would have applied to the amalgamating or the demerged Unit being the company as if the amalgamation or demerger had not taken place.

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17. Substituted by the Finance Act, 2007, w.r.e.f. 10-2-2006. Prior to its substitution, sub-section (4) read as under :

"(4) This section applies to any undertaking being the Unit, which has begun or begins to manufacture or produce articles or things or services during the previous year relevant to the assessment year commencing on or after the 1st day of April, 2006, in any Special Economic Zone."

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(6) Loss referred to in sub-section (1) of section 72 or sub-section (1) or sub-section (3) of section 74, in so far as such loss relates to the business of the undertaking, being the Unit shall be allowed to be carried forward or set off.

(7) For the purposes of sub-section (1), the profits derived from the export of articles or things or services (including computer software) shall be the amount which bears to the profits of the business of the undertaking, being the Unit, the same proportion as the export turnover in respect of such articles or things or services bears to the total turnover of the business carried on [18][*by the undertaking*] :

[18a]**[Provided** *that the provisions of this sub-section [as amended by section 6 of the Finance (No. 2) Act, 2009 (33 of 2009)] shall have effect for the assessment year beginning on the 1st day of April, 2006 and subsequent assessment years.***]**

(8) The provisions of sub-sections (5) and (6) of section 10A shall apply to the articles or things or services referred to in sub-section (1) as if—

(*a*) for the figures, letters and word "1st April, 2001", the figures, letters and word "1st April, 2006" had been substituted;

(*b*) for the word "undertaking", the words "undertaking, being the Unit" had been substituted.

(9) The provisions of sub-section (8) and sub-section (10) of section 80-IA shall, so far as may be, apply in relation to the undertaking referred to in this section as they apply for the purposes of the undertaking referred to in section 80-IA.

Explanation 1.—For the purposes of this section,—

(*i*) "export turnover" means the consideration in respect of export by the undertaking, being the Unit of articles or things or services received in, or brought into, India by the assessee but does not include freight, telecommunication charges or insurance attributable to the delivery of the articles or things outside India or expenses, if any, incurred in foreign exchange in rendering of services (including computer software) outside India;

(*ii*) "export in relation to the Special Economic Zones" means taking goods or providing services out of India from a Special Economic Zone by land, sea, air, or by any other mode, whether physical or otherwise;

(*iii*) "manufacture" shall have the same meaning as assigned to it in clause (*r*) of section 2 of the Special Economic Zones Act, 2005[19];

(*iv*) "relevant assessment year" means any assessment year falling within a period of fifteen consecutive assessment years referred to in this section;

(*v*) "Special Economic Zone" and "Unit" shall have the same meanings as assigned to them under clauses (*za*) and (*zc*)[19] of section 2 of the Special Economic Zones Act, 2005.

Explanation 2.—For the removal of doubts, it is hereby declared that the profits and gains derived from on site development of computer software (including services for development of software) outside India shall be deemed to be the profits and gains derived from the export of computer software outside India.]

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18. Substituted for "by the assessee" by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2010**.

18a. Inserted by the Finance Act, 2010, w.e.f. **1-4-2010**.

19. For text of section 2(*r*), (*za*) and (*zc*) of the Special Economic Zones Act, 2005, *see* **Appendix**.

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[20][**Special provisions in respect of newly established hundred per cent export-oriented undertakings**[21]**.**

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

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20. Substituted by the Finance Act, 2000, w.e.f. 1-4-2001. Prior to its substitution, section 10B, as inserted by the Finance Act, 1988, w.e.f. 1-4-1989 and later on amended by the Finance Act, 1993, w.r.e.f. 1-4-1991, Finance Act, 1994, w.e.f. 1-4-1994/1-4-1995, Income-tax (Second Amendment) Act, 1998, w.e.f. 1-4-1999 and Finance Act, 1999, w.e.f. 1-4-2000, read as under :

'10B. *Special provision in respect of newly established hundred per cent export-oriented undertakings.*—(1) 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.

(2) This section applies to any undertaking which fulfils all the following conditions, namely :—

(*i*) it manufactures or produces any article or thing;

(*ia*) in relation to an undertaking which begins to manufacture or produce any article or thing on or after the 1st day of April, 1994, its exports of such articles and things are not less than seventy-five per cent of the total sales thereof during the previous year;

(*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 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 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.

Explanation.—The provisions of *Explanation 1* and *Explanation 2* to sub-section (2) of section 80-I shall apply for the purposes of clause (*iii*) of this sub-section as they apply for the purposes of clause (*ii*) of that sub-section.

(3) The profits and gains referred to in sub-section (1) shall not be included in the total income of the assessee in respect of any 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.

(4) Notwithstanding anything contained in any other provision of this Act, in computing the total income of the assessee of the previous year relevant to the assessment year immediately succeeding the last of the relevant assessment years, or of any previous year relevant to any subsequent assessment year,—

(*i*) section 32, section 32A, section 33 and clause (*ix*) of sub-section (1) of section 36 shall apply as if every allowance or deduction referred to therein and relating to or allowable for any of the relevant assessment years, in relation to any building, machinery, plant or furniture used for the purposes of the business of the undertaking in the previous year relevant to such assessment year or any expenditure incurred for the purposes of such business in such previous year had been given full effect to for that assessment year itself and accordingly sub-section (2) of section 32, clause (*ii*) of sub-section (3) of section 32A, clause (*ii*) of sub-section (2) of section 33 or the second proviso to clause (*ix*) of sub-section (1) of section 36, as the case may be, shall not apply in relation to any such allowance or deduction;

(Contd. on p. 1.115)

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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 :

Provided that where in computing the total income of the undertaking for any assessment year, its profits and gains had not been included by application of the

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(Contd. from p. 1.114)

(*ii*) no loss referred to in sub-section (1) of section 72 or sub-section (1) or sub-section (3) of section 74, in so far as such loss relates to the business of the undertaking, shall be carried forward or set off where such loss relates to any of the relevant assessment years;

(*iii*) no deduction shall be allowed under section 80HH or section 80HHA or section 80-I or section 80-IA or section 80-IB in relation to the profits and gains of the undertaking; and

(*iv*) in computing the depreciation allowance under section 32, the written down value of any asset used for the purposes of the business of the undertaking shall be computed as if the assessee had claimed and been actually allowed the deduction in respect of depreciation for each of the relevant assessment years.

(5) Where the undertaking has begun to manufacture or produce articles or things in any previous year relevant to the assessment year commencing before the 1st day of April, 1989, the assessee may, at his option, before the due date for furnishing the return of his income under sub-section (1) of section 139 for the assessment year commencing on the 1st day of April, 1989, furnish to the Assessing Officer a declaration in writing that the provisions of sub-section (1) may be made applicable to him for any five consecutive assessment years falling within a period of eight years beginning with the assessment year commencing on the 1st day of April, 1989, and if he does so, then, the provisions of sub-section (1) shall apply to him for each of such assessment years and the provisions of sub-section (4) shall also apply in computing the total income of the assessee for the assessment year immediately succeeding the last of such assessment years and any subsequent assessment year.

(6) The provisions of sub-section (8) and sub-section (9) of section 80-I shall, so far as may be, apply in relation to the undertaking referred to in this section as they apply for the purposes of the industrial undertaking referred to in section 80-I.

(7) Notwithstanding anything contained in the foregoing provisions of this section, where the assessee, before the due date for furnishing the return of his income under sub-section (1) of section 139, furnishes to the Assessing Officer a declaration in writing that the provisions of this section may not be made applicable to him, the provisions of this section shall not apply to him for any of the relevant assessment years.

Explanation.— For the purposes of this section,—

(*i*) "hundred per cent export-oriented undertaking" means an undertaking which has been approved as a hundred per cent export-oriented undertaking by the Board appointed in this behalf by the Central Government in exercise of the powers conferred by section 14 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), and the rules made under that Act;

(*ii*) "relevant assessment years" means the ten consecutive assessment years referred to in sub-section (3);

(*iii*) "manufacture" includes any—

(*a*) process, or

(*b*) assembling, or

(*c*) recording of programmes on any disc, tape, perforated media or other information storage device;

(*iv*) "produce", in relation to any article or thing referred to in clause (*i*) of sub-section (2) includes production of computer programmes.'

21. *See* Circular No. 1/2005, dated 6-1-2005 and Instruction No. 2/2009, dated 9-3-2009. For details, *see* Taxmann's Master Guide to Income-tax Act.

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provisions of this section as it stood immediately before its substitution by the Finance Act, 2000, the undertaking shall be entitled to the deduction referred to in this sub-section only for the unexpired period of aforesaid ten consecutive assessment years :

[22][**Provided** [23][**further**] that for the assessment year beginning on the 1st day of April, 2003, the deduction under this sub-section shall be ninety per cent of the profits and gains derived by an undertaking from the export of such articles or things or computer software:]

Provided also that no deduction under this section shall be allowed to any undertaking for the assessment year beginning on the 1st day of April, [24][2012] and subsequent years :

[25][**Provided also** that no deduction under this section shall be allowed to an assessee who does not furnish a return of his income on or before the due date specified under sub-section (1) of section 139.]

(2) This section applies to any undertaking which fulfils all the following conditions, namely :—

(*i*) it manufactures or produces any articles or things or computer software;

(*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 undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such 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.

Explanation.—The provisions of *Explanation 1* and *Explanation 2* to sub-section (2) of section 80-I shall apply for the purposes of clause (*iii*) of this sub-section as they apply for the purposes of clause (*ii*) of that sub-section.

(3) This section applies to the undertaking, if the sale proceeds of articles or things or computer software exported out of India are received in, or brought into, India by the assessee in convertible foreign exchange, within a period of six months from the end of the previous year or, within such further period as the competent authority may allow in this behalf.

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22. Inserted by the Finance Act, 2002, w.e.f. 1-4-2003. Earlier the second proviso was omitted by the Finance Act, 2001, w.e.f. 1-4-2002. Prior to omission, it read as under :
"**Provided further** that the profits and gains derived from such domestic sales of articles or things or computer software as do not exceed twenty-five per cent of the total sales shall be deemed to be the profits and gains derived from the export of articles or things or computer software:"

23. Substituted for "also" by the Finance Act, 2006, w.e.f. 1-4-2006.

24. Substituted for "2011" by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-2009. Earlier "2011" was substituted for "2010" by the Finance Act, 2008, w.e.f. 1-4-2008.

25. Inserted by the Finance Act, 2006, w.e.f. 1-4-2006.

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Explanation 1.—For the purposes of this sub-section, the expression "competent authority" means the Reserve Bank of India or such other authority as is authorised under any law for the time being in force for regulating payments and dealings in foreign exchange.

Explanation 2.—The sale proceeds referred to in this sub-section shall be deemed to have been received in India where such sale proceeds are credited to a separate account maintained for the purpose by the assessee with any bank outside India with the approval of the Reserve Bank of India.

[26][(4) For the purposes of sub-section (1), the profits derived from export of articles or things or computer software shall be the amount which bears to the profits of the business of the undertaking, the same proportion as the export turnover in respect of such articles or things or computer software bears to the total turnover of the business carried on by the undertaking.]

(5) The deduction under sub-section (1) shall not be admissible for any assessment year beginning on or after the 1st day of April, 2001, unless the assessee furnishes in the prescribed form[27], along with the return of income, the report of an accountant, as defined in the *Explanation* below sub-section (2) of section 288, certifying that the deduction has been correctly claimed in accordance with the provisions of this section.

(6) Notwithstanding anything contained in any other provision of this Act, in computing the total income of the assessee of the previous year relevant to the assessment year immediately succeeding the last of the relevant assessment years, or of any previous year, relevant to any subsequent assessment year,—

(*i*) section 32, section 32A, section 33, section 35 and clause (*ix*) of sub-section (1) of section 36 shall apply as if every allowance or deduction referred to therein and relating to or allowable for any of the relevant assessment years [28][ending before the 1st day of April, 2001], in relation to any building, machinery, plant or furniture used for the purposes of the business of the undertaking in the previous year relevant to such assessment year or any expenditure incurred for the purposes of such business in such previous year had been given full effect to for that assessment year itself and accordingly sub-section (2) of section 32, clause (*ii*) of sub-section (3) of section 32A, clause (*ii*) of sub-section (2) of section 33, sub-section (4) of section 35 or the second proviso to clause (*ix*) of sub-section (1) of section 36, as the case may be, shall not apply in relation to any such allowance or deduction;

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26. Substituted by the Finance Act, 2001, w.e.f. 1-4-2001. Prior to its substitution, sub-section (4) read as under :

"(4) For the purposes of sub-section (1), the profits derived from export of articles or things or computer software shall be the amount which bears to the profits of the business, the same proportion as the export turnover in respect of such articles or things or computer software bears to the total turnover of the business carried on by the assessee."

27. See rule 16E and Form No. 56G. Rule 12 provides that the return of income shall not be accompanied by any document or copy of any account or form or report of audit required to be attached with return of income under any of the provisions of the Act.

28. Inserted by the Finance Act, 2003, w.r.e.f. 1-4-2001.

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(*ii*) no loss referred to in sub-section (1) of section 72 or sub-section (1) or sub-section (3) of section 74, in so far as such loss relates to the business of the undertaking, shall be carried forward or set-off where such loss relates to any of the relevant assessment years [29][ending before the 1st day of April, 2001];

(*iii*) no deduction shall be allowed under section 80HH or section 80HHA or section 80-I or section 80-IA or section 80-IB in relation to the profits and gains of the undertaking; and

(*iv*) in computing the depreciation allowance under section 32, the written down value of any asset used for the purposes of the business of the undertaking shall be computed as if the assessee had claimed and been actually allowed the deduction in respect of depreciation for each of the relevant assessment year.

(7) The provisions of sub-section (8) and sub-section (10) of section 80-IA shall, so far as may be, apply in relation to the undertaking referred to in this section as they apply for the purposes of the undertaking referred to in section 80-IA.

[30][(7A) Where any undertaking of an Indian company which is entitled to the deduction under this section is transferred, before the expiry of the period specified in this section, to another Indian company in a scheme of amalgamation or demerger—

(*a*) no deduction shall be admissible under this section to the amalgamating or the demerged company for the previous year in which the amalgamation or the demerger takes place; and

(*b*) the provisions of this section shall, as far as may be, apply to the amalgamated or resulting company as they would have applied to the amalgamating or the demerged company if the amalgamation or the demerger had not taken place.]

(8) Notwithstanding anything contained in the foregoing provisions of this section, where the assessee, before the due date for furnishing the return of income under sub-section (1) of section 139, furnishes to the Assessing Officer a declaration in writing that the provisions of this section may not be made applicable to him, the provisions of this section shall not apply to him for any of the relevant assessment year.

(9) [31][*Omitted by the Finance Act, 2003, w.e.f. 1-4-2004.*]

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29. Inserted by the Finance Act, 2003, w.r.e.f. 1-4-2001.

30. Inserted, *ibid.*, w.e.f. 1-4-2004.

31. Prior to its omission, sub-section (9) read as under :

"(9) Where during any previous year, the ownership or the beneficial interest in the undertaking is transferred by any means, the deduction under sub-section (1) shall not be allowed to the assessee for the assessment year relevant to such previous year and the subsequent years."

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(9A) [32][*Omitted by the Finance Act, 2003, w.e.f. 1-4-2004.*]

Explanation 1.— [33][*Omitted by the Finance Act, 2003, w.e.f. 1-4-2004.*]

Explanation 2.—For the purposes of this section,—

(*i*) "computer software" means—

(*a*) any computer programme recorded on any disc, tape, perforated media or other information storage device; or

(*b*) any customized electronic data or any product or service of similar nature as may be notified[34] by the Board,

which is transmitted or exported from India to any place outside India by any means;

(*ii*) "convertible foreign exchange" means foreign exchange which is for the time being treated by the Reserve Bank of India as convertible foreign exchange for the purposes of the Foreign Exchange Regulation Act, 1973 (46 of 1973), and any rules made thereunder or any other corresponding law for the time being in force;

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32. Prior to its omission, sub-section (9A), as inserted by the Finance Act, 2002, w.e.f. 1-4-2003, read as under :

"(9A) Notwithstanding anything contained in sub-section (9), where as a result of reorganisation of business, a firm or a sole proprietary concern is succeeded by a company and the ownership or beneficial interest in the undertaking of the firm or the sole proprietary concern is transferred to the company, the deduction under sub-section (1) in respect of such undertaking shall be allowed to the company, as the same would have been allowed to such firm or sole proprietary concern, as the case may be, if the reorganisation had not taken place:

Provided that,—

(*a*) in the case of a firm, the aggregate of the shareholding in the company of the partners of the firm is not less than fifty-one per cent of the total voting power in the company and their shareholding continues to be as such for the period for which the company is eligible for deduction under this section;

(*b*) in the case of a sole proprietary concern, the shareholding of the sole proprietor in the company is not less than fifty-one per cent of the total voting power in the company and his shareholding continues to remain as such for the period for which the company is eligible for deduction under this section."

33. Prior to its omission, *Explanation 1*, as amended by the Finance Act, 2001, w.e.f. 1-4-2001, read as under :

"*Explanation 1.*—For the purposes of this section, in the case of a company, where on the last day of any previous year, the shares of the company carrying not less than fifty-one per cent of the voting power are not beneficially held by persons who held the shares of the company carrying not less than fifty-one per cent of the voting power on the last day of the year in which the undertaking was set up, the company shall be presumed to have transferred its ownership or the beneficial interest in the undertaking :

Provided that nothing contained in this *Explanation* shall apply to any change in the shareholding of the company as a result of—

(*a*) its becoming a company in which the public are substantially interested; or

(*b*) disinvestment of its equity shares by any venture capital company or venture capital fund."

34. For notified Information Technology enabled products or services, *see* Taxmann's Master Guide to Income-tax Act.

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(*iii*) "export turnover" means the consideration in respect of export [35][by the undertaking] of articles or things or computer software received in, or brought into, India by the assessee in convertible foreign exchange in accordance with sub-section (3), but does not include freight, telecommunication charges or insurance attributable to the delivery of the articles or things or computer software outside India or expenses, if any, incurred in foreign exchange in providing the technical services outside India;

(*iv*) "hundred per cent export-oriented undertaking" means an undertaking which has been approved as a hundred per cent export-oriented undertaking by the Board appointed in this behalf by the Central Government in exercise of the powers conferred by section 14[36] of the Industries (Development and Regulation) Act, 1951 (65 of 1951), and the rules made under that Act;

(*v*) "relevant assessment years" means any assessment years falling within a period of ten consecutive assessment years, referred to in this section.]

[37][*Explanation 3.*—For the removal of doubts, it is hereby declared that the profits and gains derived from on site development of computer software (including services for development of software) outside India shall be deemed to be the profits and gains derived from the export of computer software outside India.]

[38][*Explanation 4.*—For the purposes of this section, "manufacture or produce" shall include the cutting and polishing of precious and semi-precious stones.]

[39][**Special provisions in respect of export of certain articles or things.**

10BA. (1) Subject to the provisions of this section, a deduction of such profits and gains as are derived by an undertaking from the export out of India of eligible articles or things, shall be allowed from the total income of the assessee :

Provided that where in computing the total income of the undertaking for any assessment year, deduction under section 10A or section 10B has been claimed, the undertaking shall not be entitled to the deduction under this section :

Provided further that no deduction under this section shall be allowed to any undertaking for the assessment year beginning on the 1st day of April, 2010 and subsequent years.

(2) This section applies to any undertaking which fulfils the following conditions, namely :—

(*a*) it manufactures or produces the eligible articles or things without the use of imported raw materials;

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35. Inserted by the Finance Act, 2001, w.e.f. 1-4-2001.

36. For text of section 14 of the Industries (Development and Regulation) Act, 1951, *see* **Appendix**.

37. Inserted by the Finance Act, 2001, w.e.f. 1-4-2001.

38. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

39. Inserted by the Taxation Laws (Amendment) Act, 2003, w.e.f. 1-4-2004.

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(*b*) 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 undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section;

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

Explanation.—The provisions of *Explanation 1* and *Explanation 2* to sub-section (2) of section 80-I shall apply for the purposes of this clause as they apply for the purposes of clause (*ii*) of sub-section (2) of that section;

(*d*) ninety per cent or more of its sales during the previous year relevant to the assessment year are by way of exports of the eligible articles or things;

(*e*) it employs twenty or more workers during the previous year in the process of manufacture or production.

(3) This section applies to the undertaking, if the sale proceeds of the eligible articles or things exported out of India are received in or brought into, India by the assessee in convertible foreign exchange, within a period of six months from the end of the previous year or, within such further period as the competent authority may allow in this behalf.

Explanation.—For the purposes of this sub-section, the expression "competent authority" means the Reserve Bank of India or such other authority as is authorised under any law for the time being in force for regulating payments and dealings in foreign exchange.

(4) For the purposes of sub-section (1), the profits derived from export out of India of the eligible articles or things shall be the amount which bears to the profits of the business of the undertaking, the same proportion as the export turnover in respect of such articles or things bears to the total turnover of the business carried on by the undertaking.

(5) The deduction under sub-section (1) shall not be admissible, unless the assessee furnishes in the prescribed form[40], along with the return of income, the report of an accountant, as defined in the *Explanation* below sub-section (2) of section 288, certifying that the deduction has been correctly claimed in accordance with the provisions of this section.

(6) Notwithstanding anything contained in any other provision of this Act, where a deduction is allowed under this section in computing the total income of the assessee, no deduction shall be allowed under any other section in respect of its export profits.

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40. See rule 16F and Form No. 56H. Rule 12 provides that the return of income shall not be accompanied by any document or copy of any account or form or report of audit required to be attached with return of income under any of the provisions of the Act.

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(7) The provisions of sub-section (8) and sub-section (10) of section 80-IA shall, so far as may be, apply in relation to the undertaking referred to in this section as they apply for the purposes of the undertaking referred to in section 80-IA.

Explanation.—For the purposes of this section,—

(*a*) "convertible foreign exchange" means foreign exchange which is for the time being treated by the Reserve Bank of India as convertible foreign exchange for the purposes of the Foreign Exchange Management Act, 1999 (42 of 1999), and any rules made thereunder or any other corresponding law for the time being in force;

(*b*) "eligible articles or things" means all hand-made articles or things, which are of artistic value and which requires the use of wood as the main raw material;

(*c*) "export turnover" means the consideration in respect of export by the undertaking of eligible articles or things received in, or brought into, India by the assessee in convertible foreign exchange in accordance with sub-section (3), but does not include freight, telecommunication charges or insurance attributable to the delivery of the articles or things outside India;

(*d*) "export out of India" shall not include any transaction by way of sale or otherwise, in a shop, emporium or any other establishment situate in India, not involving clearance of any customs station[41] as defined in the Customs Act, 1962 (52 of 1962).]

[42][**Meaning of computer programmes in certain cases.**

10BB. The profits and gains derived by an undertaking from the production of computer programmes under section 10B, as it stood prior to its substitution by section 7 of the Finance Act, 2000 (10 of 2000), shall be construed as if for the words "computer programmes", the words "computer programmes or processing or management of electronic data" had been substituted in that section.]

[43][**Special provision in respect of certain industrial undertakings in North-Eastern Region.**

10C. (1) Subject to the provisions of this section, any profits and gains derived by an assessee from an industrial undertaking, which has begun or begins to manufacture or produce any article or thing on or after the 1st day of April, 1998 in any Integrated Infrastructure Development Centre or Industrial Growth Centre located in the North-Eastern Region (hereafter in this section referred to as the industrial undertaking) shall not be included in the total income of the assessee.

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

(*i*) it is not formed by the splitting up, or the reconstruction of, a business already in existence :

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41. For definition of 'customs station', *see* footnote No. 90 on page 1.431 *post.*

42. Inserted by the Finance Act, 2001, w.r.e.f. 1-4-1994.

43. Inserted by the Finance Act, 1999, w.e.f. 1-4-1999.

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Provided that this condition 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 referred to in section 33B, in the circumstances and within the period specified in that section ;

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

Explanation.—The provisions of *Explanation 1* and *Explanation 2* to sub-section (3) of section 80-IA shall apply for the purposes of clause (*ii*) of this sub-section as they apply for the purposes of clause (*ii*) of that sub-section.

(3) The profits and gains referred to in sub-section (1) shall not be included in the total income of the assessee in respect of ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce articles or things.

(4) Notwithstanding anything contained in any other provision of this Act, in computing the total income of the assessee of any previous year relevant to any subsequent assessment year,—

(*i*) section 32, section 35 and clause (*ix*) of sub-section (1) of section 36 shall apply as if deduction referred to therein and relating to or allowable for any of the relevant assessment years, in relation to any building, machinery, plant or furniture used for the purposes of the business of the industrial undertaking in the previous year relevant to such assessment year or any expenditure incurred for the purposes of such business in such previous year had been given full effect to for that assessment year itself and, accordingly, sub-section (2) of section 32, sub-section (4) of section 35 or the second proviso to clause (*ix*) of sub-section (1) of section 36, as the case may be, shall not apply in relation to any such deduction;

(*ii*) no loss referred to in sub-section (1) of section 72 or sub-section (1) or sub-section (3) of section 74, in so far as such loss relates to the business of the industrial undertaking, shall be carried forward or set off where such loss relates to any of the relevant assessment years;

(*iii*) no deduction shall be allowed under section 80HH or section 80HHA or section 80-I or section 80-IA or section 80-IB or section 80JJA in relation to the profits and gains of the industrial undertakings; and

(*iv*) in computing the depreciation allowance under section 32, the written down value of any asset used for the purposes of the business of the industrial undertaking shall be computed as if the assessee had claimed and been actually allowed the deduction in respect of depreciation for each of the relevant assessment years.

(5) The provisions of sub-section (8) and sub-section (10) of section 80-IA shall, so far as may be, apply in relation to the industrial undertaking referred to in this section as they apply for the purposes of the industrial undertaking referred to in section 80-IA or section 80-IB, as the case may be.

(6) Notwithstanding anything contained in the foregoing provisions of this section, where the assessee before the due date for furnishing the return of his income under sub-section (1) of section 139, furnishes to the Assessing Officer a

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declaration in writing that the provisions of this section may not be made applicable to him, the provisions of this section shall not apply to him in any of the relevant assessment years :

[44][**Provided** that no deduction under this section shall be allowed to any undertaking for the assessment year beginning on the 1st day of April, 2004 and subsequent years.]

Explanation.—For the purposes of this section,—

(*i*) "Integrated Infrastructure Development Centre" means such centres located in the States of the North-Eastern Region, which the Central Government, may, by notification in the Official Gazette, specify[45] for the purposes of this section;

(*ii*) "Industrial Growth Centre" means such centres located in the States of the North-Eastern Region, which the Central Government may, by notification in the Official Gazette, specify[45] for the purposes of this section;

(*iii*) "North-Eastern Region" means the region comprising the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura;

(*iv*) "relevant assessment years" means the ten consecutive years beginning with the year in which the industrial undertaking begins to manufacture or produce articles or things.]

[46]**Income**[47] **from property held for charitable or religious purposes.**

[48]**11.** (1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income—

[49][(*a*) income derived from property[47] held under trust wholly for charitable or religious purposes, to the extent to which such income[47] is applied[47] to such purposes in India; and, where any such income[47] is accumulated[47] or set apart for application to such purposes in India,

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44. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

45. For notified "Integrated Infrastructure Development Centre" and "Industrial Growth Centre", *see* Taxmann's Master Guide to Income-tax Act.

46. Section 11, which was omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989, was reintroduced by the Direct Tax Laws (Amendment) Act, 1989, with effect from the same date with modifications.

47. For the meaning of the terms/expressions "income", "property", "such income", "applied", "accumulated or set apart" and "in part", *see* Taxmann's Direct Taxes Manual, Vol. 3.

48. *See* also Circular No. 100, dated 24-1-1973, Circular No. 273, dated 3-6-1980, Circular No. 52, dated 30-12-1970, Circular No. 12-P (LXX-7 of 1968), dated 26-11-1968, Circular No. 5-P (LXX-6 of 1968), dated 19-6-1968, Circular No. 29, dated 23-8-1968, Circular No. 566, dated 17-7-1990, Circular No. 584, dated 13-11-1990; Instruction No. 1132, dated 5-1-1978; relevant extracts from Official Minutes of Twelfth Meeting of Direct Taxes Advisory Committee (Central) held in New Delhi on 17-8-1968 and Circular No. 335, dated 13-4-1982. For details, *see* Taxmann's Master Guide to Income-tax Act.

For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

49. Substituted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976. Earlier, clauses (*a*) and (*b*) were amended by the Finance Act, 1970, w.e.f. 1-4-1971.

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to the extent to which the income so accumulated or set apart[50] is not in excess of [51][fifteen] per cent of the income from such property;

(*b*) income derived from property held under trust in part[50] only for such purposes, the trust having been created before the commencement of this Act, to the extent to which such income is applied to such purposes in India; and, where any such income is finally set apart for application to such purposes in India, to the extent to which the income so set apart is not in excess of [51][fifteen] per cent of the income from such property;

(*c*) income [52][derived] from property held under trust—

(*i*) created on or after the 1st day of April, 1952, for a charitable purpose which tends to promote international welfare in which India is interested, to the extent to which such income is applied to such purposes outside India, and

(*ii*) for charitable or religious purposes, created before the 1st day of April, 1952, to the extent to which such income is applied to such purposes outside India:

Provided that the Board, by general or special order, has directed in either case that it shall not be included in the total income of the person in receipt of such income;

[53][(*d*) income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution.]

[54][*Explanation*.—For the purposes of clauses (*a*) and (*b*),—

(*1*) in computing the [55][fifteen] per cent of the income which may be accumulated or set apart, any such voluntary contributions as are referred to in section 12 shall be deemed to be part of the income;

(*2*) if, in the previous year, the income applied to charitable or religious purposes in India falls short of [56][eighty-five] per cent of the income derived during that year from property held under trust, or, as the case may be, held under trust in part, by any amount—

(*i*) for the reason that the whole or any part of the income has not been received during that year, or

(*ii*) for any other reason,

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50. For the meaning of the terms/expressions "income", "property", "such income", "applied", "accumulated or set apart" and "in part", *see* Taxmann's Direct Taxes Manual, Vol. 3.

51. Substituted for "twenty-five" by the Finance Act, 2002, w.e.f. 1-4-2003.

52. Inserted by the Finance Act, 1972, w.e.f. 1-4-1973.

53. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

54. Substituted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976. Earlier, the *Explanation* was also substituted by the Finance Act, 1970, w.e.f. 1-4-1971.

55. Substituted for "twenty-five" by the Finance Act, 2002, w.e.f. 1-4-2003.

56. Substituted for "seventy-five", *ibid.*

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then—

(*a*) in the case referred to in sub-clause (*i*), so much of the income applied to such purposes in India during the previous year in which the income is received or during the previous year immediately following as does not exceed the said amount, and

(*b*) in the case referred to in sub-clause (*ii*), so much of the income applied to such purposes in India during the previous year immediately following the previous year in which the income was derived as does not exceed the said amount,

may, at the option of the person in receipt of the income (such option to be exercised in writing before the expiry of the time allowed under sub-section (1) [57][* * *] of section 139 [58][* * *] for furnishing the return of income) be deemed to be income applied to such purposes during the previous year in which the income was derived; and the income so deemed to have been applied shall not be taken into account in calculating the amount of income applied to such purposes, in the case referred to in sub-clause (*i*), during the previous year in which the income is received or during the previous year immediately following, as the case may be, and, in the case referred to in sub-clause (*ii*), during the previous year immediately following the previous year in which the income was derived.]

[59][(1A) For the purposes of sub-section (1),—

(*a*) where a capital asset, being property held under trust wholly for charitable or religious purposes, is transferred and the whole or any part of the net consideration is utilised for acquiring another capital asset to be so held, then, the capital gain arising from the transfer shall be deemed to have been applied to charitable or religious purposes to the extent specified hereunder, namely:—

(*i*) where the whole of the net consideration is utilised in acquiring the new capital asset, the whole of such capital gain ;

(*ii*) where only a part of the net consideration is utilised for acquiring the new capital asset, so much of such capital gain as is equal to the amount, if any, by which the amount so utilised exceeds the cost of the transferred asset;

(*b*) where a capital asset, being property held under trust in part only for such purposes, is transferred and the whole or any part of the net consideration is utilised for acquiring another capital asset to be so held, then, the appropriate fraction of the capital gain arising from the transfer shall be deemed to have been applied to charitable or religious purposes to the extent specified hereunder, namely:—

(*i*) where the whole of the net consideration is utilised in acquiring the new capital asset, the whole of the appropriate fraction of such capital gain;

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57. "or sub-section (2)" omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

58. ", whether fixed originally or on extension" omitted, *ibid.*

59. Inserted by the Finance (No. 2) Act, 1971, w.r.e.f. 1-4-1962.

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(*ii*) in any other case, so much of the appropriate fraction of the capital gain as is equal to the amount, if any, by which the appropriate fraction of the amount utilised for acquiring the new asset exceeds the appropriate fraction of the cost of the transferred asset.

Explanation.—In this sub-section,—

(*i*) "appropriate fraction" means the fraction which represents the extent to which the income derived from the capital asset transferred was immediately before such transfer applicable to charitable or religious purposes;

(*ii*) "cost of the transferred asset" means the aggregate of the cost of acquisition (as ascertained for the purposes of sections 48 and 49) of the capital asset which is the subject of the transfer and the cost of any improvement thereto within the meaning assigned to that expression in sub-clause (*b*) of clause (*1*) of section 55;

(*iii*) "net consideration" means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.]

[60][(1B) Where any income in respect of which an option is exercised under clause (*2*) of the *Explanation* to sub-section (1) is not applied to charitable or religious purposes in India during the period referred to in sub-clause (*a*) or, as the case may be, sub-clause (*b*), of the said clause, then, such income shall be deemed to be the income of the person in receipt thereof—

(*a*) in the case referred to in sub-clause (*i*) of the said clause, of the previous year immediately following the previous year in which the income was received; or

(*b*) in the case referred to in sub-clause (*ii*) of the said clause, of the previous year immediately following the previous year in which the income was derived.]

[61][(2) [62][Where [63][eighty-five] per cent of the income referred to in clause (*a*) or clause (*b*) of sub-section (1) read with the *Explanation* to that sub-section is not applied, or is not deemed to have been applied, to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income, provided the following conditions are complied with, namely:—]

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60. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

61. Substituted by the Finance Act, 1970, w.e.f. 1-4-1971.

62. Substituted for the portion beginning with "Where any income referred to in" and ending with "are complied with, namely :—" by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

63. Substituted for "seventy-five" by the Finance Act, 2002, w.e.f. 1-4-2003.

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(*a*) such person specifies, by notice in writing given to the [64][Assessing] Officer in the prescribed[65] manner[66], the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed ten years;

[67][(*b*) the money so accumulated[68] or set apart is invested or deposited in the forms or modes specified in sub-section (5)]:]

[69][**Provided** that in computing the period of ten years referred to in clause (*a*), the period during which the income could not be applied for the purpose for which it is so accumulated or set apart, due to an order or injunction of any court, shall be excluded:]

[70][**Provided further** that in respect of any income accumulated or set apart on or after the 1st day of April, 2001, the provisions of this sub-section shall have effect as if for the words "ten years" at both the places where they occur, the words "five years" had been substituted.]

[71][*Explanation*.—Any amount credited or paid, out of income referred to in clause (*a*) or clause (*b*) of sub-section (1), read with the *Explanation* to that sub-section, which is not applied, but is accumulated or set apart, to any trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (*iv*) or sub-clause (*v*) or sub-clause (*vi*) or sub-clause (*via*) of clause (*23C*) of section 10, shall not be treated as application of income for charitable or religious purposes, either during the period of accumulation or thereafter.]

[72][(3) Any income referred to in sub-section (2) which—

(*a*) is applied to purposes other than charitable or religious purposes as aforesaid or ceases to be accumulated or set apart for application thereto, or

[73][(*b*) ceases to remain invested or deposited in any of the forms or modes specified in sub-section (5), or]

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64. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

65. *See* rule 17 and Form No. 10 for notice of accumulation of income by charitable trust or institution [to be furnished before expiry of time allowed under section 139(1)].

66. For the meaning of expression "in the prescribed manner", *see* Taxmann's Direct Taxes Manual, Vol. 3.

67. Substituted by the Finance Act, 1983, w.e.f. 1-4-1983. Original clause (*b*) was earlier amended by the Finance (No. 2) Act, 1977, w.e.f. 1-4-1978.

68. For the meaning of the expression "the money so accumulated", *see* Taxmann's Direct Taxes Manual, Vol. 3.

69. Inserted by the Finance Act, 1993, w.r.e.f. 1-4-1962.

70. Inserted by the Finance Act, 2001, w.e.f. 1-4-2002.

71. Inserted by the Finance Act, 2002, w.e.f. 1-4-2003.

72. Substituted by the Finance Act, 1970, w.e.f. 1-4-1971.

73. Substituted by the Finance Act, 1983, w.e.f. 1-4-1983.

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(*c*) is not utilised[74] for the purpose for which it is so accumulated or set apart during the period referred to in clause (*a*) of that sub-section or in the year immediately following the expiry thereof,

[75][(*d*) is credited or paid to any trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (*iv*) or sub-clause (*v*) or sub-clause (*vi*) or sub-clause (*via*) of clause (*23C*) of section 10,]

shall be deemed to be the income of such person of the previous year in which it is so applied or ceases to be so accumulated or set apart or ceases to remain so invested or deposited or [75][credited or paid or], as the case may be, of the previous year immediately following the expiry of the period aforesaid.]

[76][(3A) Notwithstanding anything contained in sub-section (3), where due to circumstances beyond the control of the person in receipt of the income, any income invested or deposited in accordance with the provisions of clause (*b*) of sub-section (2) cannot be applied for the purpose for which it was accumulated or set apart, the [77][Assessing] Officer may, on an application made to him in this behalf, allow such person to apply such income for such other charitable or religious purpose in India as is specified in the application by such person and as is in conformity with the objects of the trust; and thereupon the provisions of sub-section (3) shall apply as if the purpose specified by such person in the application under this sub-section were a purpose specified in the notice given to the [77][Assessing] Officer under clause (*a*) of sub-section (2):]

[78][**Provided** that the Assessing Officer shall not allow application of such income by way of payment or credit made for the purposes referred to in clause (*d*) of sub-section (3) of section 11:]

[79][**Provided further** that in case the trust or institution, which has invested or deposited its income in accordance with the provisions of clause (*b*) of sub-section (2), is dissolved, the Assessing Officer may allow application of such income for the purposes referred to in clause (*d*) of sub-section (3) in the year in which such trust or institution was dissolved.]

(4) For the purposes of this section "property held under trust" includes a business undertaking so held, and where a claim is made that the income of any such undertaking shall not be included in the total income of the persons in receipt thereof, the [80][Assessing] Officer shall have power to determine the income of such undertaking in accordance with the provisions of this Act relating to assessment; and where any income so determined is in excess of the income

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74. For the meaning of the term "utilised", *see* Taxmann's Direct Taxes Manual, Vol. 3.

75. Inserted by the Finance Act, 2002, w.e.f. 1-4-2003.

76. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

77. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

78. Inserted by the Finance Act, 2002, w.e.f. 1-4-2003.

79. Inserted by the Finance Act, 2003, w.e.f. 1-4-2003.

80. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

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as shown in the accounts of the undertaking, such excess shall be deemed to be applied to purposes other than charitable or religious purposes [81][* * *].

[82][(4A) Sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) shall not apply in relation to any income of a trust or an institution, being profits and gains of business, unless the business is incidental to the attainment of the objectives of the trust or, as the case may be, institution, and separate books of account are maintained by such trust or institution in respect of such business.]

[83][[84](5) The forms and modes of investing or depositing the money referred to in clause (*b*) of sub-section (2) shall be the following, namely :—

(*i*) investment in savings certificates as defined in clause (*c*) of section 2[85] of the Government Savings Certificates Act, 1959 (46 of 1959), and any other securities or certificates issued by the Central Government under the Small Savings Schemes of that Government;

(*ii*) deposit in any account with the Post Office Savings Bank;

(*iii*) deposit in any account with a scheduled bank or a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank).

Explanation.—In this clause, "scheduled bank" means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955), a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), or any other bank being a bank included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934);

(*iv*) investment in units of the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963);

(*v*) investment in any security for money created and issued by the Central Government or a State Government;

(*vi*) investment in debentures issued by, or on behalf of, any company or corporation both the principal whereof and the interest whereon are fully and unconditionally guaranteed by the Central Government or by a State Government;

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81. "and accordingly chargeable to tax within the meaning of sub-section (3)" omitted by the Finance Act, 1970, w.e.f. 1-4-1971.

82. Substituted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992. Earlier, sub-section (4A) was inserted by the Finance Act, 1983, w.e.f. 1-4-1984.

83. Inserted by the Finance Act, 1983, w.e.f. 1-4-1983.

84. *See* also Circular No. 566, dated 17-7-1990. For details, *see* Taxmann's Master Guide to Income-tax Act.

85. Clause (*c*) of section 2 of the Government Savings Certificates Act, 1959, defines "savings certificate" as under:

'(*c*) "savings certificate" means a savings certificate to which this Act applies.'

Section 1(3) provides that the Act would apply to such class of savings certificates as the Central Government specifies by notification in the Official Gazette.

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(*vii*) investment or deposit in any [86][public sector company]:

[87][**Provided** that where an investment or deposit in any public sector company has been made and such public sector company ceases to be a public sector company,—

(*A*) such investment made in the shares of such company shall be deemed to be an investment made under this clause for a period of three years from the date on which such public sector company ceases to be a public sector company;

(*B*) such other investment or deposit shall be deemed to be an investment or deposit made under this clause for the period up to the date on which such investment or deposit becomes repayable by such company;]

(*viii*) deposits with or investment in any bonds issued by a financial corporation which is engaged in providing long-term finance for industrial development in India and [88][which is eligible for deduction under clause (*viii*) of sub-section (1) of section 36];

(*ix*) deposits with or investment in any bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes and [88][which is eligible for deduction under clause (*viii*) of sub-section (1) of section 36];

[89][(*ixa*) deposits with or investment in any bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long-term finance for urban infrastructure in India.

Explanation.—For the purposes of this clause,—

(*a*) "long-term finance" means any loan or advance where the terms under which moneys are loaned or advanced provide for repayment along with interest thereof during a period of not less than five years;

(*b*) "public company"[90] shall have the meaning assigned to it in section 3 of the Companies Act, 1956 (1 of 1956);

(*c*) "urban infrastructure" means a project for providing potable water supply, sanitation and sewerage, drainage, solid waste management, roads, bridges and flyovers or urban transport;]

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86. Substituted for "Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956)" by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

87. Inserted by the Finance Act, 2000, w.e.f. 1-4-2001.

88. Substituted for "which is approved by the Central Government for the purposes of clause (*viii*) of sub-section (1) of section 36" by the Finance Act, 2000, w.e.f. 1-4-2000.

89. Inserted by the Finance Act, 2000, w.e.f. 1-4-2001.

90. For definition of "public company" under clause (*iv*) of section 3(1) of the Companies Act, 1956, *see* **Appendix**.

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(*x*) investment in immovable property.

Explanation.—"Immovable property" does not include any machinery or plant (other than machinery or plant installed in a building for the convenient occupation of the building) even though attached to, or permanently fastened to, anything attached to the earth;]

[91][(*xi*) deposits with the Industrial Development Bank of India established under the Industrial Development Bank of India Act, 1964 (18 of 1964);]

[92][(*xii*) any other form or mode of investment or deposit as may be prescribed.[93]]

[94][**Income of trusts or institutions from contributions.**

[95]**12.** [96][(1)] [97]Any voluntary contributions received by a trust created wholly for charitable or religious purposes or by an institution established wholly for such purposes (not being contributions made with a specific direction that they shall form part of the corpus of the trust or institution) shall for the purposes of section 11 be deemed to be income derived from property held under trust wholly for charitable or religious purposes and the provisions of that section and section 13 shall apply accordingly.]

[98][(2) The value of any services, being medical or educational services, made available by any charitable or religious trust running a hospital or medical

91. Inserted by the Finance Act, 1984, w.e.f. 1-4-1985.

92. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

93. Rule 17C specifies the following other modes: (*1*) Investments in units issued under any scheme of mutual fund referred to in section 10(*23D*); (*2*) Any transfer of deposits to Public Account of India; (*3*) Deposits made with an authority constituted in India by or under any law enacted either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both; (*4*) Investment by way of acquiring equity shares of a 'depository'; (*5*) Investment made, on or after 26-11-1999, by a recognised stock exchange referred to in clause (*f*) of section 2 of the Securities Contracts (Regulation) Act, 1956 (hereafter referred to as investor) in the equity share capital of a company (hereafter referred to as investee)—(*a*) which is engaged in dealing with securities or mainly associated with the securities market; (*b*) whose main object is to acquire the membership of another recognised stock exchange for the sole purpose of facilitating the members of the investor to trade on the said stock exchange through the investee in accordance with the directions or guidelines issued under the Securities and Exchange Board of India Act, 1992 by the Securities and Exchange Board of India established under section 3 of that Act; and (*c*) in which at least fifty-one per cent of equity shares are held by the investor and the balance equity shares are held by members of such investor; (*6*) Investment made on or after 1-3-2007 by way of acquiring equity shares of an incubatee by an incubator. [The term 'incubatee' shall mean such incubatee as may be notified by the Government of India in the Ministry of Science and Technology. The term 'incubator' shall mean such Technology Business Incubator or Science and Technology Entrepreneurship Park as may be notified by the Government of India in the Ministry of Science and Technology] and (*7*) Investment by way of acquiring shares of National Skill Development Corporation.

94. Reintroduced by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Earlier, section 12 was omitted by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date. Original section 12 was substituted by the Finance Act, 1972, w.e.f. 1-4-1973.

95. *See* also Circular No. 584, dated 13-11-1990. For details, *see* Taxmann's Master Guide to Income-tax Act.

96. Section 12 renumbered as section 12(1) by the Finance Act, 2000, w.e.f. 1-4-2001.

97. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

98. Inserted by the Finance Act, 2000, w.e.f. 1-4-2001.

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institution or an educational institution, to any person referred to in clause (*a*) or clause (*b*) or clause (*c*) or clause (*cc*) or clause (*d*) of sub-section (3) of section 13, shall be deemed to be income of such trust or institution derived from property held under trust wholly for charitable or religious purposes during the previous year in which such services are so provided and shall be chargeable to income-tax notwithstanding the provisions of sub-section (1) of section 11.

Explanation.—For the purposes of this sub-section, the expression "value" shall be the value of any benefit or facility granted or provided free of cost or at concessional rate to any person referred to in clause (*a*) or clause (*b*) or clause (*c*) or clause (*cc*) or clause (*d*) of sub-section (3) of section 13.]

[99][(3) Notwithstanding anything contained in section 11, any amount of donation received by the trust or institution in terms of clause (*d*) of sub-section (2) of section 80G [1][in respect of which accounts of income and expenditure have not been rendered to the authority prescribed under clause (*v*) of sub-section (5C) of that section, in the manner specified in that clause, or] which has been utilised for purposes other than providing relief to the victims of earthquake in Gujarat or which remains unutilised in terms of sub-section (5C) of section 80G and not transferred to the Prime Minister's National Relief Fund on or before the 31st day of March, [2][2004] shall be deemed to be the income of the previous year and shall accordingly be charged to tax.]

[3][[4][**Conditions for applicability of sections 11 and 12.**]

[5]**12A.** [6][(1)] [7]The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely:—

(*a*) the person in receipt of the income has made an application for registration of the trust or institution in the prescribed form[8] and in

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99. Inserted by the Taxation Laws (Amendment) Act, 2001, w.r.e.f. 3-2-2001.

1. Inserted by the Finance Act, 2002, w.r.e.f. 3-2-2001.

2. Substituted for "2003" by the Finance Act, 2003, w.r.e.f. 3-2-2001. Earlier "2003" was substituted for "2002" by the Finance Act, 2002, w.r.e.f. 3-2-2001.

3. Reintroduced by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Earlier, section 12A was omitted by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date. Original section 12A was inserted by the Finance Act, 1972, w.e.f. 1-4-1973.

4. Substituted for the heading "*Conditions as to registration of trusts, etc.*" by the Finance Act, 2007, w.e.f. 1-6-2007.

5. *See* Circular No. 143, dated 20-8-1974 and CBDT Instruction, dated 9-2-1978. For details, *see* Taxmann's Master Guide to Income-tax Act.

6. Inserted by the Finance Act, 2007, w.e.f. 1-6-2007.

7. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

8. *See* rule 17A and Form No. 10A for form of application for registration of charitable/religious trust, and the necessary accompanying documents, *viz., 1.* Original copy of instrument creating the trust/institution, *i.e.,* trust deed, with one copy thereof, where trust/institution is created under an instrument. Certified copy in lieu of original copy of trust deed can also be accepted by the Commissioner. *2.* Documents evidencing the creation of trust/institution, with one copy thereof, where trust/institution is created otherwise than under an instrument. *3.* Where the trust/institution has been in existence during any year(s) prior to financial year in which application for registration is made, the application should be accompanied by two copies of accounts of trust/institution relating to prior year or years (not being more than 3 years immediately preceding the year in which application is made) for which such accounts have been made up.

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the prescribed manner to the [9][***] Commissioner before the 1st day of July, 1973, or before the expiry of a period of one year from the date of the creation of the trust or the establishment of the institution, [10][whichever is later and such trust or institution is registered under section 12AA] :

[11][**Provided** that where an application for registration of the trust or institution is made after the expiry of the period aforesaid, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution,—

(*i*) from the date of the creation of the trust or the establishment of the institution if the [12][***] Commissioner is, for reasons to be recorded in writing, satisfied that the person in receipt of the income was prevented from making the application before the expiry of the period[13] aforesaid for sufficient reasons;

(*ii*) from the 1st day of the financial year in which the application is made, if the [14][***] Commissioner is not so satisfied:]

[15][**Provided further** that the provisions of this clause shall not apply in relation to any application made on or after the 1st day of June, 2007;]

[15][(*aa*) the person in receipt of the income has made an application for registration of the trust or institution on or after the 1st day of June, 2007 in the prescribed form[16] and manner to the Commissioner and such trust or institution is registered under section 12AA;]

(*b*) where the total income of the trust or institution as computed under this Act without giving effect to [17][the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to income-tax in any previous year], the accounts of the trust or institution for that year have been audited by an accountant as defined in

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9. Words "Chief Commissioner or" omitted by the Finance Act, 1999, w.e.f. 1-6-1999. Earlier the quoted words were inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

10. Substituted for "whichever is later" by the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997.

11. Substituted for the following by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991:
"**Provided** that the Chief Commissioner or Commissioner may, in his discretion, admit an application for the registration of any trust or institution after the expiry of the period aforesaid;"

12. Words "Chief Commissioner or" omitted by the Finance Act, 1999, w.e.f. 1-6-1999. Earlier the quoted words were inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

13. For the meaning of the expression "before the expiry of the period", *see* Taxmann's Direct Taxes Manual, Vol. 3.

14. Words "Chief Commissioner or" omitted by the Finance Act, 1999, w.e.f. 1-6-1999. Earlier the quoted words were inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

15. Inserted by the Finance Act, 2007, w.e.f. 1-6-2007.

16. *See* rule 17A and Form No. 10A. *See* also footnote No. 8 on page 1.133 *ante*.

17. Substituted for "the provisions of section 11 and section 12 exceeds fifty thousand rupees in any previous year" by the Taxation Laws (Amendment) Act, 2006, w.r.e.f. 1-4-2006. Earlier the quoted words were amended by the Finance Act, 1994, w.e.f. 1-4-1995.

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the *Explanation* below sub-section (2) of section 288 and the person in receipt of the income furnishes along with the return of income for the relevant assessment year the report of such audit in the prescribed form[18] duly signed and verified by such accountant and setting forth such particulars as may be prescribed.]

(*c*) [19][***]

[20][(2) Where an application has been made on or after the 1st day of June, 2007, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution from the assessment year immediately following the financial year in which such application is made.]

[21][**Procedure for registration.**

12AA. (1) The [22][***] Commissioner, on receipt of an application for registration of a trust or institution made under clause (*a*) [20][or clause (*aa*) of sub-section (1)] of section 12A, shall—

(*a*) call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and may also make such inquiries as he may deem necessary in this behalf; and

(*b*) after satisfying himself about the objects of the trust or institution and the genuineness of its activities, he—

(*i*) shall pass an order in writing registering the trust or institution;

(*ii*) shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution,

and a copy of such order shall be sent to the applicant :

Provided that no order under sub-clause (*ii*) shall be passed unless the applicant has been given a reasonable opportunity of being heard.

[23][(1A) All applications, pending before the Chief Commissioner on which no order has been passed under clause (*b*) of sub-section (1) before the 1st day of June, 1999, shall stand transferred on that day to the Commissioner and the

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18. *See* rule 17B and Form No. 10B for audit report in case of trust/institution. Rule 12 provides that the return of income shall not be accompanied by any document or copy of any account or form or report of audit required to be attached with return of income under any of the provisions of the Act.

19. Omitted by the Finance Act, 2002, w.e.f. 1-4-2002. Prior to its omission, clause (*c*) as inserted by the Finance Act, 2001, w.e.f. 1-4-2002, read as under :

"(*c*) where the total income of the trust or institution as computed under this Act without giving effect to the provisions of sections 11 and 12 exceeds one crore rupees in any previous year, the trust or institution—

(*i*) publishes its accounts in a local newspaper, before the due date for furnishing the return of income under sub-section (4A) of section 139; and

(*ii*) furnishes a copy of such newspaper along with such return."

20. Inserted by the Finance Act, 2007, w.e.f. 1-6-2007.

21. Inserted by the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997.

22. Words "Chief Commissioner or" omitted by the Finance Act, 1999, w.e.f. 1-6-1999. Earlier the quoted words were inserted by the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997.

23. Inserted by the Finance Act, 1999, w.e.f. 1-6-1999.

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Commissioner may proceed with such applications under that sub-section from the stage at which they were on that day.]

(2) Every order granting or refusing registration under clause (*b*) of sub-section (1) shall be passed before the expiry of six months from the end of the month in which the application was received under clause (*a*) [24][or clause (*aa*) of sub-section (1)] of section 12A.]

[25][(3) Where a trust or an institution has been granted registration under clause (*b*) of sub-section (1) [25a]**[***or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)]***]** and subsequently the Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution:

Provided that no order under this sub-section shall be passed unless such trust or institution has been given a reasonable opportunity of being heard.]

[26][**Section 11 not to apply in certain cases.**

[27]**13.** (1) Nothing contained in section 11 [28][or section 12] shall operate so as to exclude from the total income of the previous year of the person in receipt thereof—

(*a*) any part of the [29]income from the property held under a trust for private religious purposes which does not enure for the benefit of the public;

(*b*) in the case of a trust for charitable purposes or a charitable institution created or established after the commencement of this Act, any income thereof if the trust or institution is created or established for the benefit of any particular religious community or caste;

(*bb*) [30][* * *]

(*c*) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof—

(*i*) if such trust or institution has been created or established after the commencement of this Act and under the terms of the trust or the rules governing the institution, any part of such income enures, or

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24. Inserted by the Finance Act, 2007, w.e.f. 1-6-2007.

25. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-10-2004.

25a. Inserted by the Finance Act, 2010, w.e.f. **1-6-2010**.

26. Reintroduced by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Earlier, it was omitted by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date. Original section 13 was substituted by the Finance Act, 1970, w.e.f. 1-4-1971 and prior to its substitution, it was amended by the Finance Act, 1966, w.e.f. 1-4-1966 and the Finance Act, 1963, w.r.e.f. 1-4-1962.

27. *See* also Circular No. 596, dated 15-3-1991. For details, *see* Taxmann's Master Guide to Income-tax Act.

For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

28. Inserted by the Finance Act, 1972, w.e.f. 1-4-1973.

29. For the meaning of the term "income", *see* Taxmann's Direct Taxes Manual, Vol. 3.

30. Omitted by the Finance Act, 1983, w.e.f. 1-4-1984. Original clause (*bb*) was inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1977.

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(*ii*) if any part of such income or any property of the trust or the institution (whenever created or established) is during the previous year used or applied,

directly or indirectly for the benefit of any person referred to in sub-section (3) :

Provided that in the case of a trust or institution created or established before the commencement of this Act, the provisions of sub-clause (*ii*) shall not apply to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the benefit of any person referred to in sub-section (3), if such use or application is by way of compliance with a mandatory term of the trust or a mandatory rule governing the institution :

Provided further that in the case of a trust for religious purposes or a religious institution (whenever created or established) or a trust for charitable purposes or a charitable institution created or established before the commencement of this Act, the provisions of sub-clause (*ii*) shall not apply to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the benefit of any person referred to in sub-section (3) in so far as such use or application relates to any period before the 1st day of June, 1970;

[31][(*d*) [32]in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof, if for any period during the previous year—

(*i*) any funds[33] of the trust or institution are invested[33] or deposited[33] after the 28th day of February, 1983 otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11; or

(*ii*) any funds[33] of the trust or institution invested[33] or deposited[33] before the 1st day of March, 1983 otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11 continue to remain so invested or deposited after the 30th day of November, 1983; or

[34][(*iii*) any shares in a company, other than—

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31. Substituted by the Finance Act, 1983, w.e.f. 1-4-1983. Original clause was inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1977. It was later on amended by the Finance (No. 2) Act, 1977, w.e.f. 1-4-1978 and by the Finance Act, 1982, w.e.f. 1-4-1982.

32. *See* also Circular No. 596, dated 15-3-1991. For details, *see* Taxmann's Master Guide to Income-tax Act.

33. For the meaning of the terms "funds", "investments" and "deposits", *see* Taxmann's Direct Taxes Manual, Vol. 3.

34. Substituted by the Finance Act, 2007, w.r.e.f. 1-4-1999. Prior to its substitution, sub-clause (*iii*) read as under :

"(*iii*) any shares in a company not being a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956), or a corporation established by or under a Central, State or Provincial Act are held by the trust or institution after the 30th day of November, 1983:"

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(*A*) shares in a public sector company ;

(*B*) shares prescribed as a form or mode of investment under clause (*xii*) of sub-section (5) of section 11,

are held by the trust or institution after the 30th day of November, 1983:]

Provided that nothing in this clause shall apply in relation to—

(*i*) any assets held by the trust or institution where such assets form part of the corpus of the trust or institution as on the 1st day of June, 1973 [35][***];

[36][(*ia*) any accretion to the shares, forming part of the corpus mentioned in clause (*i*), by way of bonus shares allotted to the trust or institution;]

(*ii*) any assets (being debentures issued by, or on behalf of, any company or corporation) acquired by the trust or institution before the 1st day of March, 1983;

[37][(*iia*) any asset, not being an investment or deposit in any of the forms or modes specified in sub-section (5) of section 11, where such asset is not held by the trust or institution, otherwise than in any of the forms or modes specified in sub-section (5) of section 11, after the expiry of one year from the end of the previous year in which such asset is acquired or the 31st day of March, [38][1993], whichever is later;]

(*iii*) any funds representing the profits and gains of business, being profits and gains of any previous year relevant to the assessment year commencing on the 1st day of April, 1984 or any subsequent assessment year.

Explanation.—Where the trust or institution has any other income in addition to profits and gains of business, the provisions of clause (*iii*) of this proviso shall not apply unless the trust or institution maintains separate books of account in respect of such business.]

[39][*Explanation.*—For the purposes of sub-clause (*ii*) of clause (*c*), in determining whether any part of the income or any property of any trust or institution is during the previous year used or applied, directly or indirectly, for the benefit of any person referred to in sub-section (3), in so far as such use or application relates to any period before the 1st day of July, 1972, no regard shall be had to the amendments made to this section by section 7 [other than sub-clause (*ii*) of clause (*a*) thereof] of the Finance Act, 1972.]

(2) Without prejudice to the generality of the provisions of clause (*c*) [40][and clause (*d*)] of sub-section (1), the income or the property[41] of the trust or institution or

35. Words "and such assets were not purchased by the trust or institution or acquired by it by conversion of, or in exchange for, any other asset" omitted by the Finance Act, 1992, w.r.e.f. 1-4-1983.

36. Inserted, *ibid.*

37. Inserted by the Finance (No. 2) Act, 1991, w.r.e.f. 1-4-1983.

38. Substituted for "1992" by the Finance Act, 1992, w.e.f. 1-4-1992.

39. Inserted by the Finance Act, 1972, w.e.f. 1-4-1973.

40. Inserted by the Finance Act, 1983, w.e.f. 1-4-1983.

41. For the meaning of the terms "property" and "lent", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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any part of such income or property shall, for the purposes of that clause, be deemed to have been used or applied for the benefit of a person referred to in sub-section (3),—

(*a*) if any part of the income or property[42] of the trust or institution is, or continues to be, lent[42] to any person referred to in sub-section (3) for any period during the previous year without either adequate security or adequate interest or both;

(*b*) if any land, building or other property[42] of the trust or institution is, or continues to be, made available for the use of any person referred to in sub-section (3), for any period during the previous year without charging adequate rent or other compensation;

(*c*) if any amount is paid by way of salary, allowance or otherwise during the previous year to any person referred to in sub-section (3) out of the resources of the trust or institution for services rendered by that person to such trust or institution and the amount so paid is in excess of what may be reasonably paid for such services;

(*d*) if the services of the trust or institution are made available to any person referred to in sub-section (3) during the previous year without adequate remuneration or other compensation;

(*e*) if any share, security or other property is purchased by or on behalf of the trust or institution from any person referred to in sub-section (3) during the previous year for consideration which is more than adequate;

(*f*) if any share, security or other property is sold by or on behalf of the trust or institution to any person referred to in sub-section (3) during the previous year for consideration which is less than adequate;

[43][(*g*) if any income or property of the trust or institution is diverted during the previous year in favour of any person referred to in sub-section (3):

Provided that this clause shall not apply where the income, or the value of the property or, as the case may be, the aggregate of the income and the value of the property, so diverted does not exceed one thousand rupees;]

(*h*) if any funds[44] of the trust or institution are, or continue to remain, invested[44] for any period during the previous year (not being a period before the 1st day of January, 1971), in any concern[44] in which any person referred to in sub-section (3) has a substantial interest.

(3) The persons referred to in clause (*c*) of sub-section (1) and sub-section (2) are the following, namely :—

(*a*) the author of the trust or the founder[44] of the institution[44];

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42. For the meaning of the terms "property" and "lent", *see* Taxmann's Direct Taxes Manual, Vol. 3.

43. Substituted by the Finance Act, 1972, w.e.f. 1-4-1973.

44. For the meaning of the terms/expressions "funds", "founder", "invest", "any concern" and "institution", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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(*b*) any person who has made a substantial contribution to the trust or institution, [45][that is to say, any person whose total contribution up to the end of the relevant previous year exceeds [46][fifty] thousand rupees];

(*c*) where such author, founder or person is a Hindu undivided family, a member of the family;

[47][(*cc*) any trustee of the trust or manager (by whatever name called) of the institution;]

(*d*) any relative of any such author, founder, person, [48][member, trustee or manager] as aforesaid;

(*e*) any concern in which any of the persons referred to in clauses (*a*), (*b*), (*c*) [49][, (*cc*)] and (*d*) has a substantial interest.

(4) Notwithstanding anything contained in clause (*c*) of sub-section (1) [50][but without prejudice to the provisions contained in clause (*d*) of that sub-section], in a case where the aggregate of the funds of the trust or institution invested in a concern in which any person referred to in sub-section (3) has a substantial interest, does not exceed five per cent of the capital[51] of that concern, the exemption under section 11 [52][or section 12] shall not be denied in relation to any income other than the income arising to the trust or the institution from such investment, by reason only that the [53][funds] of the trust or the institution have been invested in a concern in which such person has a substantial interest.

[54][(5) Notwithstanding anything contained in clause (*d*) of sub-section (1), where any assets (being debentures issued by, or on behalf of, any company or corporation) are acquired by the trust or institution after the 28th day of February, 1983 but before the 25th day of July, 1991, the exemption under section 11 or section 12 shall not be denied in relation to any income other than the income arising to the trust or the institution from such assets, by reason only that the funds of the trust or the institution have been invested in such assets if such funds do not continue to remain so invested in such assets after the 31st day of March, 1992.]

[55][(6) Notwithstanding anything contained in sub-section (1) or sub-section (2), but without prejudice to the provisions contained in sub-section (2) of section 12, in the case of a charitable or religious trust running an educational institution or

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45. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1977.

46. Substituted for "twenty-five" by the Finance Act, 1994, w.e.f. 1-4-1995. Earlier, "twenty-five" was substituted for "five" by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-4-1985.

47. Inserted by the Finance Act, 1972, w.e.f. 1-4-1973.

48. Substituted for "or member", *ibid.*

49. Inserted, *ibid.*

50. Inserted by the Finance Act, 1983, w.e.f. 1-4-1983.

51. For the meaning of the term "capital", *see* Taxmann's Direct Taxes Manual, Vol. 3.

52. Inserted by the Finance Act, 1972, w.e.f. 1-4-1973.

53. Substituted for "moneys" by the Finance (No. 2) Act, 1971, w.e.f. 1-4-1971.

54. Inserted by the Finance (No. 2) Act, 1991, w.r.e.f. 1-4-1983. Original sub-section (5) was inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976 and omitted by the Finance Act, 1983, w.e.f. 1-4-1983.

55. Inserted by the Finance Act, 2000, w.e.f. 1-4-2001. Earlier sub-section (6) was omitted by the Finance Act, 1983, w.e.f. 1-4-1983. Original sub-section (6) was inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1977.

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a medical institution or a hospital, the exemption under section 11 or section 12 shall not be denied in relation to any income, other than the income referred to in sub-section (2) of section 12, by reason only that such trust has provided educational or medical facilities to persons referred to in clause (*a*) or clause (*b*) or clause (*c*) or clause (*cc*) or clause (*d*) of sub-section (3).]

[56][(7) Nothing contained in section 11 or section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof, any anonymous donation referred to in section 115BBC on which tax is payable in accordance with the provisions of that section.]

[57][*Explanation 1.*—For the purposes of sections 11, 12, 12A and this section, "trust" includes any other legal obligation and for the purposes of this section "relative", in relation to an individual, means—

(*i*) spouse of the individual;

(*ii*) brother or sister of the individual;

(*iii*) brother or sister of the spouse of the individual;

(*iv*) any lineal ascendant or descendant of the individual;

(*v*) any lineal ascendant or descendant of the spouse of the individual;

(*vi*) spouse of a person referred to in sub-clause (*ii*), sub-clause (*iii*), sub-clause (*iv*) or sub-clause (*v*);

(*vii*) any lineal descendant of a brother or sister of either the individual or of the spouse of the individual.]

Explanation 2.—A trust or institution created or established for the benefit of Scheduled Castes, backward classes, Scheduled Tribes or women and children shall not be deemed to be a trust or institution created or established for the benefit of a religious community or caste within the meaning of clause (*b*) of sub-section (1).

Explanation 3.—For the purposes of this section, a person shall be deemed to have a substantial interest in a concern,—

(*i*) in a case where the concern is a company, if its shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than twenty per cent of the voting power are, at any time during the previous year, owned beneficially by such person or partly by such person and partly by one or more of the other persons referred to in sub-section (3);

(*ii*) in the case of any other concern, if such person is entitled, or such person and one or more of the other persons referred to in sub-section (3) are entitled in the aggregate, at any time during the previous year, to not less than twenty per cent of the profits of such concern.]

[58][**Special provision relating to incomes of political parties.**

13A. Any income of a political party which is chargeable under the head [59][***] "Income from house property" or "Income from other sources" or [60]["Capital

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56. Inserted by the Finance Act, 2006, w.e.f. 1-4-2007.

57. Substituted by the Finance Act, 1972, w.e.f. 1-4-1973.

58. Inserted by the Taxation Laws (Amendment) Act, 1978, w.e.f. 1-4-1979.

59. ' "Interest on securities" ,' omitted by the Finance Act, 1988, w.e.f. 1-4-1989.

60. Inserted by the Finance Act, 2003, w.r.e.f. 1-4-1979.

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gains" or] any income by way of voluntary contributions received by a political party from any person shall not be included in the total income of the previous year of such political party :

Provided that—

(*a*) such political party keeps and maintains such books of account and other documents as would enable the [61][Assessing] Officer to properly deduce its income therefrom;

(*b*) in respect of each such voluntary contribution in excess of [62][twenty] thousand rupees, such political party keeps and maintains a record of such contribution and the name and address of the person who has made such contribution; and

(*c*) the accounts of such political party are audited by an accountant as defined in the *Explanation* below sub-section (2) of section 288 :

[63][**Provided further** that if the treasurer of such political party or any other person authorised by that political party in this behalf fails to submit a report under sub-section (3) of section 29C of the Representation of the People Act, 1951 (43 of 1951) for a financial year, no exemption under this section shall be available for that political party for such financial year.]

[64][*Explanation*.—For the purposes of this section, "political party" means a political party registered under section 29A of the Representation of the People Act, 1951 (43 of 1951).]

[64a][**Special provisions relating to voluntary contributions received by electoral trust.**

13B. *Any voluntary contributions received by an electoral trust shall not be included in the total income of the previous year of such electoral trust, if—*

(a) *such electoral trust distributes to any political party, registered under section 29A of the Representation of the People Act, 1951 (43 of 1951), during the said previous year, ninety-five per cent of the aggregate donations received by it during the said previous year along with the surplus, if any, brought forward from any earlier previous year; and*

(b) *such electoral trust functions in accordance with the rules made by the Central Government.*]

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61. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

62. Substituted for "ten" by the Election and Other Related Laws (Amendment) Act, 2003, w.e.f. 11-9-2003.

63. Inserted, *ibid.*

64. Substituted, *ibid.* Prior to its substitution, *Explanation* read as under :

'*Explanation*.—For the purposes of this section, "political party" means an association or body of individual citizens of India registered with the Election Commission of India as a political party under paragraph 3 of the Election Symbols (Reservation and Allotment) Order, 1968, and includes a political party deemed to be registered with that Commission under the proviso to sub-paragraph (2) of that paragraph.'

64a. Inserted by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2010.**

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CHAPTER IV

COMPUTATION OF TOTAL INCOME

Heads of income

Heads of income.

[65]**14.** Save as otherwise provided by this Act, all income shall, for the purposes of charge of income-tax and computation of total income, be classified under the following heads of income :—

A.—Salaries.

B.—[66][***]

C.—Income from house property.

D.—Profits and gains of business or profession.

E.—Capital gains.

F.—Income from other sources.

[67][**Expenditure incurred in relation to income not includible in total income**[68]**.**

14A. [69][(1)] For the purposes of computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act.]

[69][(2) The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed[70], if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act.

(3) The provisions of sub-section (2) shall also apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act :]

[71][**Provided** that nothing contained in this section shall empower the Assessing Officer either to reassess under section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under section 154, for any assessment year beginning on or before the 1st day of April, 2001.]

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65. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

66. *"B.—Interest on securities"* omitted by the Finance Act, 1988, w.e.f. 1-4-1989.

67. Inserted by the Finance Act, 2001, w.r.e.f. 1-4-1962.

68. *See* also Circular No. 11/2001, dated 23-7-2001. For details, *see* Taxmann's Master Guide to Income-tax Act.

69. Inserted by the Finance Act, 2006, w.e.f. 1-4-2007.

70. *See* rule 8D.

71. Inserted by the Finance Act, 2002, w.r.e.f. 11-5-2001.

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A.—Salaries

Salaries.

[72]**15.** [73]The following income shall be chargeable to income-tax under the head "Salaries"—

(*a*) any salary due[74] from an employer or a former employer to an assessee in the previous year, whether paid[74] or not;

(*b*) any salary paid[74] or allowed[74] to him in the previous year by or on behalf of an employer or a former employer though not due or before it became due to him;

(*c*) any arrears of salary paid or allowed to him in the previous year by or on behalf of an employer or a former employer, if not charged to income-tax for any earlier previous year.

[75][*Explanation 1*].—For the removal of doubts, it is hereby declared that where any salary paid in advance is included in the total income of any person for any previous year it shall not be included again in the total income of the person when the salary becomes due.

[76][*Explanation 2*.—Any salary, bonus, commission or remuneration, by whatever name called, due to, or received by, a partner of a firm from the firm shall not be regarded as "salary" for the purposes of this section.]

Deductions from salaries.

[77]**16.** The income chargeable under the head "Salaries" shall be computed after making the following deductions, namely :—

(*i*) [78][***]

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72. *See* also Circular No. 2(LVIII-32)-D of 1966, dated 21-2-1966, Circular No. 293, dated 10-2-1981, Letter [F. No. 45/118/66-ITJ], dated 21-8-1967, Circular No. 309, dated 3-7-1981, Letter No. 35/1/65-IT(B), dated 5-11-1965, Circular No. 312, dated 31-8-1981 and Letter F. No. 40/29/67-IT(A-I), dated 22-5-1967. For details, *see* Taxmann's Master Guide to Income-tax Act.

73. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

74. For the meaning of the terms "due", "paid" and "allowed", *see* Taxmann's Direct Taxes Manual, Vol. 3.

75. Existing *Explanation* renumbered as *Explanation 1* by the Finance Act, 1992, w.e.f. 1-4-1993.

76. Inserted, *ibid.* Earlier *Explanation 2* was inserted and omitted by the Direct Tax Laws (Amendment) Act, 1987/1989, w.e.f. 1-4-1989.

77. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

78. Omitted by the Finance Act, 2005, w.e.f. 1-4-2006. Prior to its omission, clause (*i*) as substituted by the Finance Act, 2001, w.e.f. 1-4-2002 and Finance Act, 2003, w.e.f. 1-4-2004, read as under :

"(*i*) in the case of an assessee whose income from salary, before allowing a deduction under this clause,—

(*A*) does not exceed five lakh rupees, a deduction of a sum equal to forty per cent of the salary or thirty thousand rupees, whichever is less;

(*B*) exceeds five lakh rupees, a deduction of a sum of twenty thousand rupees;"

Earlier clause (*i*) was amended by the Finance Act, 1974, w.e.f. 1-4-1975, Finance (No. 2) Act, 1980, w.e.f. 1-4-1981, Finance Act, 1981, w.e.f. 1-4-1982, Finance Act, 1982, w.e.f.

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[79][(*ii*) a deduction in respect of any allowance in the nature of an entertainment allowance specifically granted by an employer to the assessee who is in receipt of a salary from the Government, a sum equal to one-fifth of his salary (exclusive of any allowance, benefit or other perquisite) or five thousand rupees, whichever is less;]

[80][(*iii*) a deduction of any sum paid by the assessee on account of a tax on employment within the meaning of clause (*2*) of article 276[81] of the Constitution, leviable by or under any law.]

(*iv*) [82][***]

(*v*) [83][***]

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

[84]**17.** [85]For the purposes of sections 15 and 16 and of this section,—

(*1*) "salary"[86] includes[86]—

(*i*) wages;

(*ii*) any annuity or pension;

(*iii*) any gratuity[86];

(*iv*) any fees[86], commissions, perquisites or profits in lieu of or in addition to any salary or wages;

(*v*) any advance of salary;

(Contd. from p. 1.144)

1-4-1983, Finance Act, 1983, w.e.f. 1-4-1984, Taxation Laws (Amendment) Act, 1984, w.r.e.f. 1-4-1975, Finance Act, 1985, w.e.f. 1-4-1986, Finance Act, 1986, w.e.f. 1-4-1987, Finance Act, 1988, w.e.f. 1-4-1989, Finance Act, 1989, w.e.f. 1-4-1990, Finance Act, 1992, w.e.f. 1-4-1993, Finance Act, 1993, w.e.f. 1-4-1994, Finance (No. 2) Act, 1996, w.e.f. 1-4-1997, Finance Act, 1997, w.e.f. 1-4-1998 and Finance (No. 2) Act, 1998, w.e.f. 1-4-1999.

79. Substituted by the Finance Act, 2001, w.e.f. 1-4-2002. Earlier clause (*ia*) was inserted by the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997 and clause (*ii*) was amended by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1981, Finance Act, 1997, w.e.f. 1-4-1998 and Finance (No. 2) Act, 1998, w.e.f. 1-4-1999.

80. Inserted by the Finance Act, 1989, w.e.f. 1-4-1990. Earlier, it was omitted by the Finance Act, 1974, w.e.f. 1-4-1975.

81. Article 276(2) of the Constitution reads as under :

"276. (2) The total amount payable in respect of any one person to the State or to any one municipality, district board, local board or other local authority in the State by way of taxes on professions, trades, callings and employments shall not exceed two thousand and five hundred rupees per annum."

82. Omitted by the Finance Act, 1974, w.e.f. 1-4-1975. Earlier, clause (*iv*) was substituted/amended by the Finance Act, 1968, w.e.f. 1-4-1968, the Finance Act, 1969, w.e.f. 1-4-1970, the Finance Act, 1970, w.e.f. 1-4-1971 and the Finance (No. 2) Act, 1971, w.e.f. 1-4-1972.

83. Omitted by the Finance Act, 1974, w.e.f. 1-4-1975.

84. *See* also Circular No. 1/2010, dated 11-1-2010, Circular No. 9/2003, dated 18-11-2003, Circular No. 603, dated 6-6-1991 and Circular No. 710, dated 24-7-1995. For details, *see* Taxmann's Master Guide to Income-tax Act.

85. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

86. For the meaning of the terms/expressions "salary", "includes", "fee . . . in addition to any salary" and "any gratuity", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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[87][(*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

[88][(*viii*) the contribution made by the Central Government [89][or any other employer] in the previous year, to the account of an employee under a pension scheme referred to in section 80CCD;]

[90](*2*) "perquisite" includes—

[91](*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[92] respecting any accommodation provided to the assessee by his employer;

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

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

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87. Inserted by the Taxation Laws (Amendment) Act, 1984, w.r.e.f. 1-4-1978.

88. Inserted by the Finance (No. 2) Act, 2004, w.r.e.f. 1-4-2004.

89. Inserted by the Finance Act, 2007, w.r.e.f. 1-4-2004.

90. *See* rule 3.

91. In terms of section 10A of the Salaries and Allowances of Ministers Act, 1952/Salaries and Allowances of Officers of Parliament Act, 1953 and section 9A of the Salary and Allowances of Leaders of Opposition in Parliament Act, 1977, value of rent-free furnished residence (including maintenance thereof) provided to a minister/an officer of Parliament and a Leader of the Opposition is not to be included in the computation of his income chargeable to tax under the head "Salaries".

92. For the meaning of term "rent", *see* Taxmann's Direct Taxes Manual, Vol. 3.

93. Inserted by the Finance Act, 2007, w.r.e.f. 1-4-2002.

94. Substituted, *ibid.*, w.r.e.f. 1-4-2006. Clause (*a*) of *Explanation 1* to section 17(*2*)(*ii*), as applicable for the period 1-4-2002 to 31-3-2006 (*i.e.,* assessment years 2002-03 to 2005-06), read as under :

"(*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 rate of ten per cent of salary in cities having population exceeding four lakhs as per 1991 census and seven and one-half per cent of salary in other cities, in respect of the period during which the said accom-

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(*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 in-

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(Contd. from p. 1.146)

modation 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 ten 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;"

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creased 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.]

[95][*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;]

95. Inserted by the Finance Act, 2007, w.r.e.f. 1-4-2006.

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(*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 [96][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 [97][fifty] thousand rupees:]

[98][***]

[99][*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*) [1][***]

(*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 [2][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

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96. Substituted for 'under the head "Salaries", exclusive of the value of all benefits or amenities not provided for by way of monetary payment, exceeds eighteen thousand rupees;' by the Finance Act, 1985, w.e.f. 1-4-1986.

97. Substituted for "twenty-four" by the Finance Act, 2001, w.e.f. 1-4-2002.

98. Omitted by the Finance Act, 2007, w.e.f. 1-4-2008. Prior to its omission, proviso, as inserted by the Finance Act, 2000, w.e.f. 1-4-2001, and later on amended by the Finance Act, 2001, w.e.f. 1-4-2001, read as under :

"**Provided** that nothing contained in this sub-clause shall apply to the value of any benefit provided by a company free of cost or at a concessional rate to its employees by way of allotment of shares, debentures or warrants directly or indirectly under any Employees' Stock Option Plan or Scheme of the company offered to such employees in accordance with the guidelines issued in this behalf by the Central Government*."

**See* Notification No. SO 1021(E), dated 11-10-2001 for Guidelines regarding Employees' Stock Option Plan or Scheme.

99. Inserted by the Finance Act, 1989, w.e.f. 1-4-1990.

1. Omitted by the Finance Act, 2000, w.e.f. 1-4-2001. Earlier, sub-clause (*iiia*) was inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

2. Inserted by the Labour Provident Fund Laws (Amendment) Act, 1976, w.e.f. 1-8-1976.

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assurance on the life of the assessee or to effect a contract for an annuity; [3][***]

[4][(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*[4a] *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*[5] *as may be prescribed*[6]*;*]

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3. Word "and" omitted by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2010**.

4. Sub-clauses (*vi*), (*vii*) and (*viii*) substituted for sub-clause (*vi*) by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2010**. Prior to its substitution, sub-clause (*vi*), as inserted by the Finance Act, 2001, w.e.f. 1-4-2002, and later on substituted by the Finance Act, 2005, w.e.f. 1-4-2006 read as under :

"(*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 :"

4a. For definition of 'securities', *see* footnote No. 15, page 1.27.

5. For meaning of expressions "fringe benefit or amenity" and "as may be prescribed", *see* Taxmann's Direct Taxes Manual, Vol. 3.

6. See rule 3.

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[7][**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;

[8][(*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[9] by the Government for the purposes of medical treatment of its employees;

(*b*) in respect of the prescribed diseases[10] or ailments, in any hospital approved by the Chief Commissioner having regard to the prescribed guidelines[11] :

Provided that, in a case falling in sub-clause (*b*), the employee shall attach[12] 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 [13][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 [14][or the Insurance Regulatory and Develop-

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7. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1991.

8. Substituted by the Finance Act, 1994, w.r.e.f. 1-4-1993. Prior to its substitution, clause (*ii*) was substituted by the Finance Act, 1992, w.e.f. 1-4-1993.

9. For list of hospitals recognised under the Central Government Health Scheme *vide* Circular No. 603, dated 6-6-1991, *see* Taxmann's Master Guide to Income-tax Act.

10. *See* rule 3A(2) for prescribed diseases.

11. *See* rule 3A(1) for conditions to be fulfilled by a hospital to obtain Chief Commissioner's approval.

12. Rule 12 provides that the return of income shall not be accompanied by any document or copy of any account or form or report of audit required to be attached with return of income under any of the provisions of the Act.

13. Inserted by the Finance Act, 2006, w.e.f. 1-4-2007.

14. Inserted, *ibid.*

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ment 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 [15][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 [16][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,

[17][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 :

[18][**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 [19][or a nursing home];

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

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15. Substituted for "ten" by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999.

16. Substituted for "or" by the Finance Act, 1993, w.e.f. 1-4-1993.

17. Substituted, *ibid.* Prior to its substitution, it was amended by the Finance Act, 1992, w.e.f. 1-4-1993.

18. Inserted by the Finance Act, 2002, w.e.f. 1-4-2002.

19. Inserted by the Finance Act, 1992, w.e.f. 1-4-1993.

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

[20][* * *]

[21](*3*) "profits[22] in lieu of salary" includes—

(*i*) the amount of any compensation[22] 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*) [23][, clause (*10A*)] [24][, clause (*10B*)], clause (*11*), [25][clause (*12*) [26][, 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[27][* * *], to the extent to which it does not consist of contributions by the assessee or [28][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;]

[29][(*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.]

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20. Sub-clause (*vi*) along with consequential amendments in sub-clauses (*iv*) and (*v*), omitted by the Finance Act, 1985, w.e.f. 1-4-1985. Original sub-clause was inserted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-4-1985. Amendment thus never came into operation.

21. *See* also Letter F. No. 35/26/64-IT(B), dated 25-5-1964. For details, *see* Taxmann's Master Guide to Income-tax Act.

22. For the meaning of the terms "profits" and "compensation", *see* Taxmann's Direct Taxes Manual, Vol. 3.

23. Inserted by the Finance (No. 2) Act, 1965, w.r.e.f. 1-4-1962.

24. Inserted by the Finance Act, 1975, w.e.f. 1-4-1976.

25. Substituted for "or clause (*12*)" by the Direct Taxes (Amendment) Act, 1964, w.e.f. 6-10-1964.

26. Inserted by the Finance Act, 1995, w.e.f. 1-4-1996.

27. Words "(not being an approved superannuation fund)" omitted, *ibid.*

28. Substituted for "interest on such contributions" by the Finance (No. 2) Act, 1996, w.e.f. 1-10-1996.

29. Inserted by the Finance Act, 2001, w.e.f. 1-4-2002.

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[30][***]

C.—Income from house property

Income from house property.

[31]**22.** [32]The annual value of property consisting of any buildings[33] or lands appurtenant[33] thereto of which the assessee is the owner[33], other than such portions of such property as he may occupy[33] for the purposes of any business or profession carried on by him the profits of which are chargeable to income-tax, shall be chargeable to income-tax under the head "Income from house property".

[34][**Annual value how determined.**

23. (1) For the purposes of section 22, the annual value of any property shall be deemed to be—

(*a*) the sum for which the property might reasonably be expected to let from year to year; or

(*b*) where the property or any part of the property is let and the actual rent received or receivable[35] by the owner in respect thereof is in

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30. Sub-heading "*B.—Interest on securities*" and sections 18 to 21 omitted by the Finance Act, 1988, w.e.f. 1-4-1989. Prior to their omission, sub-heading and section 18 were amended by the Finance Act, 1965, w.e.f. 1-4-1965 and the Finance Act, 1988, w.e.f. 1-4-1988. Sections 19 and 20 were amended by the Finance Act, 1979, w.e.f. 1-4-1980.

31. *See* also Circular No. 9, dated 25-3-1969 and Circular No. 2(XLVIII-2), dated 13-6-1955. For details, *see* Taxmann's Master Guide to Income-tax Act.

32. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

33. For the meaning of the terms "building", "appurtenant", "owner" and "occupy", *see* Taxmann's Direct Taxes Manual, Vol. 3.

34. Substituted by the Finance Act, 2001, w.e.f. 1-4-2002. Prior to its substitution, section 23, as amended by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967, Finance Act, 1968, w.e.f. 1-4-1969, Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971, Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976, Finance Act, 1978, w.e.f. 1-4-1979, Finance Act, 1982, w.e.f. 1-4-1983, Taxation Laws (Amendment) Act, 1984, w.e.f. 1-4-1985/1-4-1984, Finance Act, 1986, w.e.f. 1-4-1987 and Finance Act, 1992, w.e.f. 1-4-1993, read as under :

'23. *Annual value how determined.*—(1) For the purposes of section 22, the annual value of any property shall be deemed to be—

(*a*) the sum for which the property might reasonably be expected to let from year to year; or

(*b*) where the property is let and the annual rent received or receivable by the owner in respect thereof is in excess of the sum referred to in clause (*a*), the amount so received or receivable :

Provided that where the property is in the occupation of a tenant, the taxes levied by any local authority in respect of the property shall, to the extent such taxes are borne by the owner, be deducted (irrespective of the previous year in which the liability to pay such taxes was incurred by the owner according to the method of accounting regularly employed by him) in determining the annual value of the property of that previous year in which such taxes are actually paid by him :

Provided further that the annual value as determined under this sub-section shall,—

(*a*) in the case of a building comprising one or more residential units, the erection of which is begun after the 1st day of April, 1961, and completed before the 1st day of April, 1970, for a period of three years from the date of completion of the building, be reduced by a sum equal to the aggregate of—

(Contd. on p. 1.155)

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(Contd. from p. 1.154)

(*i*) in respect of any residential unit whose annual value as so determined does not exceed six hundred rupees, the amount of such annual value;

(*ii*) in respect of any residential unit whose annual value as so determined exceeds six hundred rupees, an amount of six hundred rupees;

(*b*) in the case of a building comprising one or more residential units, the erection of which is begun after the 1st day of April, 1961, and completed after the 31st day of March, 1970, but before the 1st day of April, 1978, for a period of five years from the date of completion of the building, be reduced by a sum equal to the aggregate of—

(*i*) in respect of any residential unit whose annual value as so determined does not exceed one thousand two hundred rupees, the amount of such annual value;

(*ii*) in respect of any residential unit whose annual value as so determined exceeds one thousand two hundred rupees, an amount of one thousand two hundred rupees;

(*c*) in the case of a building comprising one or more residential units, the erection of which is completed after the 31st day of March, 1978, but before the 1st day of April, 1982, for a period of five years from the date of completion of the building, be reduced by a sum equal to the aggregate of—

(*i*) in respect of any residential unit whose annual value as so determined does not exceed two thousand four hundred rupees, the amount of such annual value;

(*ii*) in respect of any residential unit whose annual value as so determined exceeds two thousand four hundred rupees, an amount of two thousand four hundred rupees;

(*d*) in the case of a building comprising one or more residential units, the erection of which is completed after the 31st day of March, 1982 but before the 1st day of April, 1992, for a period of five years from the date of completion of the building, be reduced by a sum equal to the aggregate of—

(*i*) in respect of any residential unit whose annual value as so determined does not exceed three thousand six hundred rupees, the amount of such annual value ;

(*ii*) in respect of any residential unit whose annual value as so determined exceeds three thousand six hundred rupees, an amount of three thousand six hundred rupees.

Explanation 1.—For the purposes of this sub-section, "annual rent" means—

(*a*) in a case where the property is let throughout the previous year, the actual rent received or receivable by the owner in respect of such year; and

(*b*) in any other case, the amount which bears the same proportion to the amount of the actual rent received or receivable by the owner for the period for which the property is let, as the period of twelve months bears to such period.

Explanation 2.—For the removal of doubts, it is hereby declared that where a deduction in respect of any taxes referred to in the first proviso to this sub-section is allowed in determining the annual value of the property in respect of any previous year (being a previous year relevant to the assessment year commencing on the 1st day of April, 1984 or any earlier assessment year), no deduction shall be allowed under the first proviso in determining the annual value of the property in respect of the previous year in which such taxes are actually paid by the owner.

(2) Where the property consists of—

(*a*) a house or part of a house in the occupation of the owner for the purposes of his own residence,—

(Contd. on p. 1.156)

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excess of the sum referred to in clause (*a*), the amount so received or receivable; or

(*c*) where the property or any part of the property is let and was vacant during the whole or any part of the previous year and owing to such vacancy the actual rent received or receivable by the owner in respect thereof is less than the sum referred to in clause (*a*), the amount so received or receivable :

Provided that the taxes levied[36] by any local authority in respect of the property shall be deducted (irrespective of the previous year in which the liability to pay such taxes was incurred by the owner according to the method of accounting regularly employed by him) in determining the annual value of the property of that previous year in which such taxes are actually paid by him.

(Contd. from p. 1.155)

(*i*) which is not actually let during any part of the previous year and no other benefit therefrom is derived by the owner, the annual value of such house or part of the house shall be taken to be *nil* ;

(*ii*) which is let during any part or parts of the previous year, that part of the annual value (annual value being determined in the same manner as if the property had been let) which is proportionate to the period during which the property is in the occupation of the owner for the purposes of his own residence, or, as the case may be, where such property is let out in parts, that portion of the annual value appropriate to any part which was occupied by the owner for his own residence, which is proportionate to the period during which such part is wholly occupied by him for his own residence shall be deducted in determining the annual value.

Explanation.—The deduction under this sub-clause shall be made irrespective of whether the period during which the property or, as the case may be, part of the property was used for the residence of the owner precedes or follows the period during which it is let;

(*b*) more than one house in the occupation of the owner for the purposes of his own residence, the provisions of clause (*a*) shall apply only in respect of one of such houses, which the assessee may, at his option, specify in this behalf;

(*c*) more than one house and such houses are in the occupation of the owner for the purposes of his own residence, the annual value of the house or houses, other than the house in respect of which the assessee has exercised an option under clause (*b*), shall be determined under sub-section (1) as if such house or houses had been let.

Explanation.—Where any such residential unit as is referred to in the second proviso to sub-section (1) is in the occupation of the owner for the purposes of his own residence, nothing contained in that proviso shall apply in computing the annual value of that residential unit.

(2A) [***]

(3) Where the property referred to in sub-section (2) consists of one residential house only and it cannot actually be occupied by the owner by reason of the fact that owing to his employment, business or profession carried on at any other place, he has to reside at that other place in a building not belonging to him, the annual value of such house shall be taken to be *nil* :

Provided that the following conditions are fulfilled, namely :—

(*i*) such house is not actually let, and

(*ii*) no other benefit therefrom is derived by the owner.'

35. For the meaning of the term "receivable", *see* Taxmann's Direct Taxes Manual, Vol. 3.

36. For the meaning of the term "levied", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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Explanation.—For the purposes of clause (*b*) or clause (*c*) of this sub-section, the amount of actual rent received or receivable by the owner shall not include, subject to such rules[37] as may be made in this behalf, the amount of rent which the owner cannot realise.

(2) Where the property consists of a house or part of a house which—

(*a*) is in the occupation of the owner for the purposes of his own residence; or

(*b*) cannot actually be occupied by the owner by reason of the fact that owing to his employment, business or profession carried on at any other place, he has to reside at that other place in a building not belonging to him,

the annual value of such house or part of the house shall be taken to be *nil*.

(3) The provisions of sub-section (2) shall not apply if—

(*a*) the house or part of the house is actually let during the whole or any part of the previous year; or

(*b*) any other benefit therefrom is derived by the owner.

(4) Where the property referred to in sub-section (2) consists of more than one house—

(*a*) the provisions of that sub-section shall apply only in respect of one of such houses, which the assessee may, at his option, specify in this behalf;

(*b*) the annual value of the house or houses, other than the house in respect of which the assessee has exercised an option under clause (*a*), shall be determined under sub-section (1) as if such house or houses had been let.]

[38][**Deductions from income from house property**.

24. Income chargeable under the head "Income from house property" shall be computed after making the following deductions, namely:—

(*a*) a sum equal to thirty per cent of the annual value;

(*b*) where the property has been acquired, constructed, repaired, re-newed or reconstructed with borrowed capital, the amount of any interest payable on such capital:

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37. *See* rule 4.

38. Substituted by the Finance Act, 2001, w.e.f. 1-4-2002. Prior to its substitution, section 24, as amended by the Finance Act, 1968, w.e.f. 1-4-1969, Finance (No. 2) Act, 1977, w.e.f. 1-4-1977, Finance Act, 1983, w.e.f. 1-4-1984, Finance Act, 1986, w.e.f. 1-4-1987, Finance Act, 1992, w.e.f. 1-4-1993, Finance Act, 1994, w.e.f. 1-4-1995, Finance (No. 2) Act, 1996, w.e.f. 1-4-1997/w.r.e.f. 1-4-1995, Finance (No. 2) Act, 1998, w.e.f. 1-4-1999, Finance Act, 1999, w.e.f. 1-4-2000 and Finance Act, 2000, w.e.f. 1-4-2001, read as under:

'24. *Deductions from income from house property.*—(1) Income chargeable under the head "Income from house property" shall, subject to the provisions of sub-section (2), be computed after making the following deductions, namely:—

(Contd. on p. 1.158)

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Provided that in respect of property referred to in sub-section (2) of section 23, the amount of deduction shall not exceed thirty thousand rupees :

Provided further that where the property referred to in the first proviso is acquired or constructed with capital borrowed on or after the 1st day of April, 1999 and such acquisition or construction is

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(Contd. from p. 1.157)

(*i*) in respect of repairs of, and collection of rent from, the property, a sum equal to one-fourth of the annual value;

(*ii*) the amount of any premium paid to insure the property against risk of damage or destruction ;

(*iii*) [***]

(*iv*) where the property is subject to an annual charge (not being a charge created by the assessee voluntarily or a capital charge), the amount of such charge ;

(*v*) where the property is subject to a ground rent, the amount of such ground rent ;

(*vi*) where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital.

Explanation.—Where the property has been acquired or constructed with borrowed capital, the interest, if any, payable on such capital for the period prior to the previous year in which the property has been acquired or constructed, as reduced by any part thereof allowed as a deduction under any other provision of this Act, shall be deducted under this clause in equal instalments for the said previous year and for each of the four immediately succeeding previous years;

(*vii*) any sums paid on account of land revenue or any other tax levied by the State Government in respect of the property;

(*viii*) [***]

(*ix*) where the property is let and was vacant during a part of the year, that part of the annual value which is proportionate to the period during which the property is wholly unoccupied or, where the property is let out in parts, that portion of the annual value appropriate to any vacant part, which is proportionate to the period during which such part is wholly unoccupied.

Explanation.—The deduction under this clause shall be made irrespective of whether the period during which the property or, as the case may be, part of the property was vacant precedes or follows the period during which it is let;

(*x*) subject to such rules as may be made in this behalf, the amount in respect of rent from property let to a tenant which the assessee cannot realise.

(2) No deduction shall be allowed under sub-section (1) in respect of property of the nature referred to in sub-clause (*i*) of clause (*a*) of sub-section (2), or sub-section (3) of section 23 :

Provided that nothing in this sub-section shall apply to the allowance of a deduction under clause (*vi*) of sub-section (1) of an amount not exceeding thirty thousand rupees in respect of the property of the nature referred to in sub-clause (*i*) of clause (*a*) of sub-section (2) of section 23 or sub-section (3) of section 23 :

Provided further that where the property is acquired or constructed with capital borrowed on or after the 1st day of April, 1999 and such acquisition or construction is completed before the 1st day of April, 2003, the provisions of the first proviso shall have effect as if for the words “thirty thousand rupees”, the words “one lakh rupees” had been substituted.

(3) The total amount deductible under sub-section (1) in respect of property of the nature referred to in sub-clause (*ii*) of clause (*a*) of sub-section (2) of section 23 shall not exceed the annual value of the property as determined under that section.’

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completed [39][within three years from the end of the financial year in which capital was borrowed], the amount of deduction under this clause shall not exceed one lakh fifty thousand rupees.

Explanation.—Where the property has been acquired or constructed with borrowed capital, the interest, if any, payable on such capital borrowed for the period prior to the previous year in which the property has been acquired or constructed, as reduced by any part thereof allowed as deduction under any other provision of this Act, shall be deducted under this clause in equal instalments for the said previous year and for each of the four immediately succeeding previous years:]

[40][**Provided also** that no deduction shall be made under the second proviso unless the assessee furnishes a certificate, from the person to whom any interest is payable on the capital borrowed, specifying the amount of interest payable by the assessee for the purpose of such acquisition or construction of the property, or, conversion of the whole or any part of the capital borrowed which remains to be repaid as a new loan.

Explanation.—For the purposes of this proviso, the expression "new loan" means the whole or any part of a loan taken by the assessee subsequent to the capital borrowed, for the purpose of repayment of such capital.]

Amounts not deductible from income from house property.

25. Notwithstanding anything contained in section 24, any [41][***] interest chargeable under this Act which is payable outside India (not being interest on a loan issued for public subscription before the 1st day of April, 1938), on which tax has not been paid or deducted under Chapter XVII-B and in respect of which there is no person in India who may be treated as an agent under section 163 shall not be deducted in computing the income chargeable under the head "Income from house property".

[42][**Special provision for cases where unrealised rent allowed as deduction is realised subsequently.**

25A. Where a deduction has been made under clause (*x*) of sub-section (1) of section 24 [43][as it stood immediately before its substitution by the Finance Act, 2001] in the assessment for any year in respect of rent from property let to a tenant which the assessee cannot realise and subsequently during any previous year the assessee has realised any amount in respect of such rent, the amount so realised shall be deemed to be income chargeable under the head "Income from house property" and accordingly charged to income-tax (without making any

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39. Substituted for "before the 1st day of April, 2003" by the Finance Act, 2002, w.e.f. 1-4-2003.

40. Inserted, *ibid.*

41. Words "annual charge or" omitted by the Finance Act, 2001, w.e.f. 1-4-2002.

42. Inserted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-4-1985.

43. Inserted by the Finance Act, 2001, w.e.f. 1-4-2002.

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deduction under section 23 or section 24 [44][as it stood immediately before its substitution by the Finance Act, 2001]) as the income of that previous year, whether the assessee is the owner of that property in that year or not.]

[44][**Unrealised rent received subsequently to be charged to income-tax.**

25AA. Where the assessee cannot realise rent from a property let to a tenant and subsequently the assessee has realised any amount in respect of such rent, the amount so realised shall be deemed to be income chargeable under the head "Income from house property" and accordingly charged to income-tax as the income of that previous year in which such rent is realised whether or not the assessee is the owner of that property in that previous year.]

[45][**Special provision for arrears of rent received.**

25B. Where the assessee—

(*a*) is the owner of any property consisting of any buildings or lands appurtenant thereto which has been let to a tenant; and

(*b*) has received any amount, by way of arrears of rent from such property, not charged to income-tax for any previous year,

the amount so received, after deducting [46][a sum equal to thirty per cent of such amount], shall be deemed to be the income chargeable under the head "Income from house property" and accordingly charged to income-tax as the income of that previous year in which such rent is received, whether the assessee is the owner of that property in that year or not.]

Property owned by co-owners.

[47]**26.** [48]Where property consisting of buildings or buildings and lands appurtenant thereto is owned by two or more persons and their respective shares are definite and ascertainable, such persons shall not in respect of such property be assessed as an association of persons, but the share of each such person in the income from the property as computed in accordance with sections 22 to 25 shall be included in his total income.

[49][*Explanation.*—For the purposes of this section, in applying the provisions of sub-section (2) of section 23 for computing the share of each such person as is referred to in this section, such share shall be computed, as if each such person is individually entitled to the relief provided in that sub-section.]

"Owner of house property", "annual charge", etc., defined.

[50]**27.** For the purposes of sections 22 to 26—

(*i*) an individual who transfers otherwise than for adequate consideration any house property to his or her spouse, not being a transfer in

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44. Inserted by the Finance Act, 2001, w.e.f. 1-4-2002.

45. Inserted by the Finance Act, 2000, w.e.f. 1-4-2001.

46. Substituted for "a sum equal to one-fourth of such amount for repairs of, and collection of rent from, the property" by the Finance Act, 2001, w.e.f. 1-4-2002.

47. *See* also Letter F. No. 45/230/63-ITJ, dated 22-2-1965. For details, *see* Taxmann's Master Guide to Income-tax Act.

48. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

49. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

50. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

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connection with an agreement to live apart, or to a minor child not being a married daughter, shall be deemed to be the owner of the house property so transferred;

(*ii*) the holder of an impartible estate shall be deemed to be the individual owner of all the properties comprised in the estate ;

[51][(*iii*) a member of a co-operative society, company or other association of persons to whom a building or part thereof is allotted or leased under a house building scheme of the society, company or association, as the case may be, shall be deemed to be the owner of that building or part thereof ;

(*iiia*) a person who is allowed to take or retain possession of any building or part thereof in part performance of a contract of the nature referred to in [52]section 53A of the Transfer of Property Act, 1882 (4 of 1882), shall be deemed to be the owner of that building or part thereof ;

(*iiib*) a person who acquires any rights (excluding any rights by way of a lease from month to month or for a period not exceeding one year) in or with respect to any building or part thereof, by virtue of any such transaction as is referred to in clause (*f*) of section 269UA, shall be deemed to be the owner of that building or part thereof;]

(*iv*) [53][***]

(*v*) [53][***]

(*vi*) taxes levied by a local authority in respect of any property shall be deemed to include service taxes levied by the local authority in respect of the property.

D.—Profits and gains of business or profession

Profits and gains of business or profession.

[54]**28.** [55]The following income shall be chargeable to income-tax under the head "Profits and gains of business or profession",—

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51. Substituted by the Finance Act, 1987, w.e.f. 1-4-1988.

52. For text of section 53A of the Transfer of Property Act, 1882, *see* **Appendix**.

53. Clauses (*iv*) and (*v*) omitted by the Finance Act, 2001, w.e.f. 1-4-2002. Prior to their omission, clauses (*iv*) and (*v*) read as under :

'(*iv*) "annual charge" means a charge to secure an annual liability, but does not include any tax in respect of property or income from property imposed by a local authority, or the Central or a State Government ;

(*v*) "capital charge" means a charge to secure the discharge of a liability of a capital nature ;'

54. *See* also Press Note, dated 9-10-1952, issued by the Ministry of Finance, Instruction No. 971 [F.No. 228/12/76-IT(A-II)], dated 8-7-1976, Circular No. 1(XLVII-12), dated 16-1-1962, Circular No. 35-D(XLVII-20), dated 24-11-1965, Circular No. 25, SIA Series, dated 20-10-1975, Circular No. 599, dated 24-4-1991, Circular No. 665, dated 5-10-1993, Circular No. 742, dated 2-5-1996 (as amended by Circular No. 765, dated 15-4-1998); Letter dated 12-3-1996, Circular No. 787, dated 10-2-2000; Circular No. 6/2001, dated 5-3-2001, Circular No. 2/2002, dated 15-2-2002, Circular No. 4/2004, dated 13-5-2004 and Circular No. 4/2007, dated 15-6-2007. For details, *see* Taxmann's Master Guide to Income-tax Act.

55. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

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(*i*) the profits and gains[56] of any business or profession[56] which was carried on by the assessee at any time during the previous year ;

(*ii*) any compensation[56] or other payment due to[56] or received by[56],—

(*a*) any person, by whatever name called, managing the whole or substantially the whole of the affairs of an Indian company, at or in connection with the termination of his management or the modification of the terms and conditions relating thereto;

(*b*) any person, by whatever name called, managing the whole or substantially the whole of the affairs in India of any other company, at or in connection with the termination of his office or the modification of the terms and conditions relating thereto ;

(*c*) any person, by whatever name called, holding an agency in India for any part of the activities relating to the business of any other person, at or in connection with the termination of the agency or the modification of the terms and conditions relating thereto ;

[57][(*d*) any person, for or in connection with the vesting in the Government, or in any corporation owned or controlled by the Government, under any law for the time being in force, of the management of any property or business ;]

(*iii*) income derived by a trade, professional or similar[58] association from specific services[58] performed for its members ;

[59][(*iiia*) profits on sale of a licence granted under the Imports (Control) Order, 1955, made under the Imports and Exports (Control) Act, 1947 (18 of 1947) ;]

[60][(*iiib*) cash assistance (by whatever name called) received or receivable by any person against exports under any scheme of the Government of India ;]

[61][(*iiic*) any duty of customs or excise re-paid or re-payable as drawback to any person against exports under the Customs and Central Excise Duties Drawback Rules, 1971 ;]

[62][(*iiid*) any profit on the transfer of the Duty Entitlement Pass Book Scheme, being the Duty Remission Scheme under the export and import policy formulated and announced under section 5 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992);]

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56. For the meaning of the terms/expressions "profits and gains", "profession", "compensation", "due to" and "received by", *see* Taxmann's Direct Taxes Manual, Vol. 3.

57. Inserted by the Finance Act, 1973, w.r.e.f. 1-4-1972.

58. For the meaning of the terms/expressions "similar" and "specific services", *see* Taxmann's Direct Taxes Manual, Vol. 3.

59. Inserted by the Finance Act, 1990, w.r.e.f. 1-4-1962.

60. Inserted, *ibid.,* w.r.e.f. 1-4-1967.

61. Inserted, *ibid.,* w.r.e.f. 1-4-1972.

62. Inserted by the Taxation Laws (Amendment) Act, 2005, w.r.e.f. 1-4-1998.

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[63][(*iiie*) any profit on the transfer of the Duty Free Replenishment Certificate, being the Duty Remission Scheme under the export and import policy formulated and announced under section 5 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992) ;]

[64][(*iv*) the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession ;]

[65][(*v*) any interest, salary, bonus, commission or remuneration, by whatever name called, due to, or received by, a partner of a firm from such firm :

Provided that where any interest, salary, bonus, commission or remuneration, by whatever name called, or any part thereof has not been allowed to be deducted under clause (*b*) of section 40, the income under this clause shall be adjusted to the extent of the amount not so allowed to be deducted ;]

[66][(*va*) any sum, whether received or receivable, in cash or kind, under an agreement for—

(*a*) not carrying out any activity in relation to any business; or

(*b*) not sharing any know-how, patent, copyright, trade-mark, licence, franchise or any other business or commercial right of similar nature or information or technique likely to assist in the manufacture or processing of goods or provision for services:

Provided that sub-clause (*a*) shall not apply to—

(*i*) any sum, whether received or receivable, in cash or kind, on account of transfer of the right to manufacture, produce or process any article or thing or right to carry on any business, which is chargeable under the head "Capital gains";

(*ii*) any sum received as compensation, from the multilateral fund of the Montreal Protocol on Substances that Deplete the Ozone layer under the United Nations Environment Programme, in accordance with the terms of agreement entered into with the Government of India.

Explanation.—For the purposes of this clause,—

(*i*) "agreement" includes any arrangement or understanding or action in concert,—

(*A*) whether or not such arrangement, understanding or action is formal or in writing; or

(*B*) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings;

(*ii*) "service" means service of any description which is made available to potential users and includes the provision of services

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63. Inserted by the Taxation Laws (Amendment) Act, 2005, w.r.e.f. 1-4-2001.

64. Inserted by the Finance Act, 1964, w.e.f. 1-4-1964.

65. Inserted by the Finance Act, 1992, w.e.f. 1-4-1993. Earlier clause (*v*) was inserted by the Direct Tax Laws (Amdt.) Act, 1987, w.e.f. 1-4-1989 and was omitted by the Direct Tax Laws (Amdt.) Act, 1989, with effect from the same date.

66. Inserted by the Finance Act, 2002, w.e.f. 1-4-2003.

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in connection with business of any industrial or commercial nature such as accounting, banking, communication, conveying of news or information, advertising, entertainment, amusement, education, financing, insurance, chit funds, real estate, construction, transport, storage, processing, supply of electrical or other energy, boarding and lodging;]

[67][(*vi*) 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 clause, the expression "Keyman insurance policy" shall have the meaning assigned to it in clause (*10D*) of section 10;]

[68][(vii) *any sum, whether received or receivable, in cash or kind, on account of any capital asset (other than land or goodwill or financial instrument) being demolished, destroyed, discarded or transferred, if the whole of the expenditure on such capital asset has been allowed as a deduction under section 35AD.*]

Explanation 1.—[*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.*]

Explanation 2.—Where speculative transactions carried on by an assessee are of such a nature as to constitute a business, the business (hereinafter referred to as "speculation business") shall be deemed to be distinct and separate from any other business.

Income from profits and gains of business or profession, how computed.

29. [69]The income referred to in section 28 shall be computed in accordance with the provisions contained in sections 30 to [70][43D].

Rent, rates, taxes, repairs and insurance for buildings.

[69]**30.** In respect of rent, rates, taxes, repairs and insurance for premises, used for the purposes of the business or profession, the following deductions shall be allowed—

(*a*) where the premises are occupied by the assessee—

(*i*) as a tenant, the rent paid for such premises ; and further if he has undertaken to bear the cost of repairs to the premises, the amount paid on account of such repairs ;

(*ii*) otherwise than as a tenant, the amount paid by him on account of current repairs[71] to the premises ;

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67. Inserted by the Finance (No. 2) Act, 1996, w.e.f. 1-10-1996.

68. Inserted by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2010**.

69. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

70. Substituted for "43C" by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992. Earlier "43C" was substituted for "43B" by the Finance Act, 1988, w.e.f. 1-4-1988, "43B" was substituted for "43A" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989 and "43A" was substituted for "43" by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

71. For the meaning of the expression "current repairs", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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(*b*) any sums paid on account of land revenue, local rates or municipal taxes ;

(*c*) the amount of any premium paid in respect of insurance against risk of damage or destruction of the premises.

[72][*Explanation*.—For the removal of doubts, it is hereby declared that the amount paid on account of the cost of repairs referred to in sub-clause (*i*), and the amount paid on account of current repairs referred to in sub-clause (*ii*), of clause (*a*), shall not include any expenditure in the nature of capital expenditure.]

Repairs and insurance of machinery, plant and furniture.

[73]**31.** [74]In respect of repairs and insurance of machinery, plant or furniture used for the purposes of the business or profession, the following deductions shall be allowed—

(*i*) the amount paid on account of current repairs[75] thereto ;

(*ii*) the amount of any premium paid in respect of insurance against risk of damage or destruction thereof.

[76][*Explanation*.—For the removal of doubts, it is hereby declared that the amount paid on account of current repairs shall not include any expenditure in the nature of capital expenditure.]

Depreciation.

[77]**32.** (1) [78][In respect of depreciation of—

(*i*) buildings[79], machinery[79], plant or furniture, being tangible assets;

(*ii*) know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets acquired on or after the 1st day of April, 1998,

owned[79], wholly or partly, by the assessee[79] and used for the purposes of the business[79] or profession, the following deductions shall be allowed—]

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72. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

73. *See* also Circular No. 26-D(XLVI-22), dated 10-10-1966. For details, *see* Taxmann's Master Guide to Income-tax Act.

74. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

75. For the meaning of the expression "current repairs", *see* Taxmann's Direct Taxes Manual, Vol. 3.

76. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

77. *See* also Circular No. 9, dated 23-3-1943, Circular No. 29-D(XIX-14), dated 31-8-1965, Letter [F.No. 10/14/66-IT(A-I)], dated 12-12-1966, Circular No. 14 of 1955, dated 11-4-1955, Circular No. 609, dated 29-7-1991, Circular No. 622, dated 6-1-1992, Circular No. 652, dated 14-6-1993 and Circular No. 2/2001, dated 9-2-2001. For details, *see* Taxmann's Master Guide to Income-tax Act.

For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

78. Substituted for the opening portion beginning with the words "In respect of depreciation of buildings, machinery, plant or furniture owned, wholly or partly," and ending with the words and figures "section 34, be allowed—" by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999. Prior to its substitution, the quoted portion was amended by the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997.

79. For the meaning of the terms/expressions "buildings", "machinery", "owned by the assessee" and "used for the purposes of the business", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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[80][(*i*) in the case of assets of an undertaking engaged in generation or generation and distribution of power, such percentage on the actual cost thereof to the assessee as may be prescribed[81];]

(*ii*) [82][in the case of any block of assets, such percentage on the written down value thereof as may be prescribed[83]:]

[84][***]

[85][**Provided** [86][***] that no deduction shall be allowed under this clause in respect of—

(*a*) any motor car manufactured outside India, where such motor car is acquired by the assessee after the 28th day of February, 1975 [87][but before the 1st day of April, 2001], unless it is used—

(*i*) in a business of running it on hire for tourists ; or

(*ii*) outside India in his business or profession in another country ; and

(*b*) any machinery or plant if the actual cost thereof is allowed as a deduction in one or more years under an agreement entered into by the Central Government under section 42 :]

[88][**Provided further** that where an asset referred to in clause (*i*) or clause (*ii*) [89][or clause (*iia*)], as the case may be, is acquired by the assessee during the previous year and is put to use for the purposes of business or profession for a period of less than one hundred and eighty days in that previous year, the deduction under this sub-section in respect of such asset shall be restricted to fifty per cent of the amount calculated at the percentage prescribed for an asset under clause (*i*) or clause (*ii*) [89][or clause (*iia*)], as the case may be :]

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80. Inserted by the Income-tax (Amendment) Act, 1998, w.e.f. 1-4-1998. Earlier, original clause (*i*) was substituted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976 and later on omitted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988.

81. *See* rule 5(1A) and **Appendix IA**.

82. Substituted for "in the case of buildings, machinery, plant or furniture, other than ships covered by clause (*i*), such percentage on the written down value thereof as may in any case or class of cases be prescribed :" by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988.

83. *See* rule 5(1) and **Appendix I** of Income-tax Rules.

84. First proviso omitted by the Finance Act, 1995, w.e.f. 1-4-1996. Prior to its omission, first proviso was inserted by the Finance Act, 1966, w.e.f. 1-4-1966 and later on amended by the Finance Act, 1983, w.e.f. 1-4-1984.

85. Substituted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992. Prior to its substitution, second proviso was inserted by the Finance Act, 1975, w.e.f. 1-4-1975 and amended by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988.

86. Word "further" omitted by the Finance Act, 1995, w.e.f. 1-4-1996.

87. Inserted by the Finance Act, 2001, w.e.f. 1-4-2002.

88. Substituted by the Income-tax (Amendment) Act, 1998, w.e.f. 1-4-1998. Prior to its substitution, second proviso was inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992 and later on amended by the Finance Act, 1995, w.e.f. 1-4-1996.

89. Inserted by the Finance Act, 2002, w.e.f. 1-4-2003.

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[90][**Provided also** that where an asset being commercial vehicle is acquired by the assessee on or after the 1st day of October, 1998 but before the 1st day of April, 1999 and is put to use before the 1st day of April, 1999 for the purposes of business or profession, the deduction in respect of such asset shall be allowed on such percentage on the written down value thereof as may be prescribed.

Explanation.—For the purposes of this proviso,—

(*a*) the expression "commercial vehicle" means "heavy goods vehicle", "heavy passenger motor vehicle", "light motor vehicle", "medium goods vehicle" and "medium passenger motor vehicle" but does not include "maxi-cab", "motor-cab", "tractor" and "road-roller";

(*b*) the expressions "heavy goods vehicle"[91], "heavy passenger motor vehicle"[91], "light motor vehicle"[91], "medium goods vehicle"[91], "medium passenger motor vehicle"[91], "maxi-cab"[91], "motor-cab"[91], "tractor"[91] and "road roller" shall have the meanings respectively as assigned to them in section 2 of the Motor Vehicles Act, 1988 (59 of 1988):]

[92][**Provided also** that, in respect of the previous year relevant to the assessment year commencing on the 1st day of April, 1991, the deduction in relation to any block of assets under this clause shall, in the case of a company, be restricted to seventy-five per cent of the amount calculated at the percentage, on the written down value of such assets, prescribed under this Act immediately before the commencement of the Taxation Laws (Amendment) Act, 1991:]

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90. Inserted by the Income-tax (Second Amendment) Act, 1998, w.e.f. 1-4-1999.

91. Clauses (*17*), (*21*), (*23*), (*24*) and (*44*) of section 2 of the Motor Vehicles Act, 1988, define "heavy passenger motor vehicle", "light motor vehicle", "medium goods vehicle", "medium passenger motor vehicle" and "tractor", respectively, as follows :

'(*17*) "heavy passenger motor vehicle" means any public service vehicle or private service vehicle or educational institution bus or omnibus the gross vehicle weight of any of which, or a motor car the unladen weight of which, exceeds 12,000 kilograms;

** ** **

(*21*) "light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road roller the unladen weight of any of which, does not exceed 7,500 kilograms;

** ** **

(*23*) "medium goods vehicle" means any goods carriage other than a light motor vehicle or a heavy goods vehicle;

(*24*) "medium passenger motor vehicle" means any public service vehicle or private service vehicle, or educational institution bus other than a motor cycle, invalid carriage, light motor vehicle or heavy passenger motor vehicle;

** ** **

(*44*) "tractor" means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a road-roller;'

92. Inserted by the Taxation Laws (Amendment) Act, 1991, w.e.f. 15-1-1991.

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[93][**Provided also** that the aggregate deduction, in respect of depreciation of buildings, machinery, plant or furniture, being tangible assets or know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets allowable to the predecessor and the successor in the case of succession referred to in [93a]**[***clause (*xiii*) and clause (*xiv*)***]** of section 47 or section 170 or to the amalgamating company and the amalgamated company in the case of amalgamation, or to the demerged company and the resulting company in the case of demerger, as the case may be, shall not exceed in any previous year the deduction calculated at the prescribed rates as if the succession or the amalgamation or the demerger, as the case may be, had not taken place, and such deduction shall be apportioned between the predecessor and the successor, or the amalgamating company and the amalgamated company, or the demerged company and the resulting company, as the case may be, in the ratio of the number of days for which the assets were used by them.]

[94][*Explanation 1.*—Where the business or profession of the assessee is carried on in a building not owned by him but in respect of which the assessee holds a lease or other right of occupancy and any capital expenditure is incurred by the assessee for the purposes of the business or profession on the construction of any structure or doing of any work in or in relation to, and by way of renovation or extension of, or improvement to, the building, then, the provisions of this clause shall apply as if the said structure or work is a building owned by the assessee.

Explanation 2.—For the purposes of this [95][sub-section] "written down value of the block of assets" shall have the same meaning as in clause* (*c*) of sub-section† (*6*) of section 43.]

[96][*Explanation 3.*—For the purposes of this sub-section, [97][*the expression "assets"*] shall mean—

(*a*) tangible assets, being buildings, machinery, plant or furniture;

(*b*) intangible assets, being know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature.

Explanation 4.—For the purposes of this sub-section, the expression "know-how" means any industrial information or technique likely to assist in the manufacture or processing of goods or in the working of

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93. Fifth proviso substituted by the Finance Act, 1999, w.e.f. 1-4-2000. Prior to its substitution, fifth proviso was inserted by the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997 and later on amended by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999.

93a. Words "clause (*xiii*), clause (*xiiib*) and clause (*xiv*)" shall be substituted for "clause (*xiii*) and clause (*xiv*)" by the Finance Act, 2010, w.e.f. **1-4-2011**.

94. Inserted by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988.

95. Substituted for "clause" by the Finance Act, 2002, w.e.f. 1-4-2003.

96. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999.

97. Substituted for 'the expressions "assets" and "block of assets"' by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2010**.

*Should be read as 'sub-clause'.

†Should be read as 'clause'.

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a mine, oil-well or other sources of mineral deposits (including searching for discovery or testing of deposits for the winning of access thereto).

[98][*Explanation 5.*—For the removal of doubts, it is hereby declared that the provisions of this sub-section shall apply whether or not the assessee has claimed the deduction in respect of depreciation in computing his total income;]

[99][(*iia*) in the case of any new machinery or plant (other than ships and aircraft), which has been acquired and installed after the 31st day of

98. Inserted by the Finance Act, 2001, w.e.f. 1-4-2002.

99. Substituted by the Finance Act, 2005, w.e.f. 1-4-2006. Clause (*iia*), was originally inserted by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1981 and omitted by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988. Prior to its substitution, clause (*iia*) as inserted by the Finance (No. 2) Act, 2002, w.e.f. 1-4-2003 and amended by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005, read as under :

'(*iia*) in the case of any new machinery or plant (other than ships and aircraft), which has been acquired and installed after the 31st day of March, 2002, by an assessee engaged in the business of manufacture or production of any article or thing, a further sum equal to fifteen per cent of the actual cost of such machinery or plant shall be allowed as deduction under clause (*ii*) :

Provided that such further deduction of fifteen per cent shall be allowed to—

(*A*) a new industrial undertaking during any previous year in which such undertaking begins to manufacture or produce any article or thing on or after the 1st day of April, 2002; or

(*B*) any industrial undertaking existing before the 1st day of April, 2002, during any previous year in which it achieves the substantial expansion by way of increase in installed capacity by not less than ten per cent:

Provided further that no deduction shall be allowed in respect of—

(*a*) any machinery or plant which, before its installation by the assessee, was used either within or outside India by any other person; or

(*b*) any machinery or plant installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house; or

(*c*) any office appliances or road transport vehicles; or

(*d*) any 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 income chargeable under the head "Profits and gains of business or profession" of any one previous year:

Provided also that no deduction shall be allowed under clause (*A*) or, as the case may be, clause (*B*), of the first proviso unless the assessee furnishes the details of machinery or plant and increase in the installed capacity of production in such form, as may be prescribed† along with the return of income, and the report of an accountant, as defined in the *Explanation* below sub-section (2) of section 288 certifying that the deduction has been correctly claimed in accordance with the provisions of this clause.

Explanation.—For the purposes of this clause,—

(1) "new industrial undertaking" means an undertaking which is not formed,—

(*a*) by the splitting up, or the reconstruction, of a business already in existence; or

(*b*) by the transfer to a new business of machinery or plant previously used for any purpose;

(2) "installed capacity" means the capacity of production as existing on the 31st day of March, 2002;'

†*See* rule 5A and Form No. 3AA.

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March, 2005, by an assessee engaged in the business of manufacture or production of any article or thing, a further sum equal to twenty per cent of the actual cost of such machinery or plant shall be allowed as deduction under clause (*ii*) :

Provided that no deduction shall be allowed in respect of—

(*A*) any machinery or plant which, before its installation by the assessee, was used either within or outside India by any other person; or

(*B*) any machinery or plant installed in any office premises or any residential accommodation, including accommodation in the nature of a guest-house; or

(*C*) any office appliances or road transport vehicles; or

(*D*) any 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 income chargeable under the head "Profits and gains of business or profession" of any one previous year;]

[1][(*iii*) in the case of any building, machinery, plant or furniture in respect of which depreciation is claimed and allowed under clause (*i*) and which is sold, discarded, demolished or destroyed in the previous year (other than the previous year in which it is first brought into use), the amount by which the moneys payable in respect of such building, machinery, plant or furniture, together with the amount of scrap value, if any, fall short of the written down value thereof :

Provided that such deficiency is actually written off in the books of the assessee.

Explanation.—For the purposes of this clause,—

(*1*) "moneys payable" in respect of any building, machinery, plant or furniture includes—

(*a*) any insurance, salvage or compensation moneys payable in respect thereof;

(*b*) where the building, machinery, plant or furniture is sold, the price for which it is sold,

so, however, that where the actual cost of a motor car is, in accordance with the proviso to clause (*1*) of section 43, taken to be twenty-five thousand rupees, the moneys payable in respect of such motor car shall be taken to be a sum which bears to the amount for which the motor car is sold or, as the case may be, the amount of any insurance, salvage or compensation moneys payable in respect thereof (including the amount of scrap value,

1. Inserted by the Finance (No. 2) Act, 1998, w.r.e.f. 1-4-1998. Earlier, original clause (*iii*) was amended by the Finance Act, 1966, w.e.f. 1-4-1966 and the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967 and later on omitted by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988.

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if any) the same proportion as the amount of twenty-five thousand rupees bears to the actual cost of the motor car to the assessee as it would have been computed before applying the said proviso;

(*2*) "sold" includes a transfer by way of exchange or a compulsory acquisition under any law for the time being in force but does not include a transfer, in a scheme of amalgamation, of any asset by the amalgamating company to the amalgamated company where the amalgamated company is [2][an Indian company or in a scheme of amalgamation of a banking company, as referred to in clause (*c*) of section 5 of the Banking Regulation Act, 1949 (10 of 1949) with a banking institution as referred to in sub-section (15) of section 45 of the said Act, sanctioned and brought into force by the Central Government under sub-section (7) of section 45 of that Act[3], of any asset by the banking company to the banking institution.]]

(*iv*) [4][***]

(*v*) [5][***]

(*vi*) [6][***]

(1A) [7][***]

[8][(2) Where, in the assessment of the assessee, full effect cannot be given to any allowance under sub-section (1) in any previous year, owing to there being no

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2. Substituted for "an Indian company" by the Finance Act, 2005, w.e.f. 1-4-2005.

3. For text of section 5(*c*) of the Banking Regulation Act, 1949, *see* footnote No. 32 on page 1.241 *ante*. For text of section 45 of the Banking Regulation Act, 1949, *see* **Appendix**.

4. Clause (*iv*) was omitted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988. Original clause (*iv*) was amended by the Finance Act, 1983, w.e.f. 1-4-1984, the Finance Act, 1978, w.e.f. 1-4-1979, the Finance Act, 1976, w.e.f. 1-4-1977 and the Finance Act, 1966, w.e.f. 1-4-1966.

5. Clause (*v*) was omitted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988. Original clause (*v*) was inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968 and later amended by the Finance Act, 1983, w.e.f. 1-4-1984.

6. Clause (*vi*) was omitted by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988. Original clause (*vi*) was inserted by the Direct Taxes (Amendment) Act, 1974, w.e.f. 1-4-1975 and later amended by the Finance Act, 1976, w.e.f. 1-4-1976.

7. Sub-section (1A) was omitted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988. Original sub-section (1A) was inserted by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

8. Substituted by the Finance Act, 2001, w.e.f. 1-4-2002. Prior to its substitution, sub-section (2), as amended by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988, Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989 and Finance Act, 1992, w.e.f. 1-4-1993, substituted by the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997 and further amended by the Finance Act, 2000, w.e.f. 1-4-2001, read as under :

'(2) Where in the assessment of the assessee full effect cannot be given to any allowance under clause (*ii*) of sub-section (1) in any previous year owing to there being no profits or gains chargeable for that previous year or owing to the profits or gains being less than the allowance, then, the allowance or the part of allowance to which effect has not been given (hereinafter referred to as unabsorbed depreciation allowance), as the case may be,—

(Contd. on p. 1.172)

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profits or gains chargeable for that previous year [9], or owing to the profits or gains chargeable being less than the allowance, then, subject to the provisions of sub-section (2) of section 72 and sub-section (3) of section 73, the allowance or the part of the allowance to which effect has not been given, as the case may be, shall be added to the amount of the allowance for depreciation for the following previous year and deemed to be part of that allowance, or if there is no such allowance for that previous year, be deemed to be the allowance for that previous year, and so on for the succeeding previous years.]

[10][**Investment allowance.**[11]

[12]**32A.** (1) In respect of a ship or an aircraft or machinery or plant specified in sub-section (2), which is owned by the assessee and is wholly used for the purposes of the business[13] carried on by him, there shall, in accordance with and subject to the provisions of this section, be allowed a deduction, in respect of the previous year in which the ship or aircraft was acquired or the machinery or plant was installed[13] or, if the ship, aircraft, machinery or plant is first put to use

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(Contd. from p. 1.171)

(*i*) shall be set off against the profits and gains, if any, of any business or profession carried on by him and assessable for that assessment year ;

(*ii*) if the unabsorbed depreciation allowance cannot be wholly set off under clause (*i*), the amount not so set off shall be set off from the income under any other head, if any, assessable for that assessment year;

(*iii*) if the unabsorbed depreciation allowance cannot be wholly set off under clause (*i*) and clause (*ii*), the amount of allowance not so set off shall be carried forward to the following assessment year and—

(*a*) it shall be set off against the profits and gains, if any, of any business or profession carried on by him and assessable for that assessment year ;

(*b*) if the unabsorbed depreciation allowance cannot be wholly so set off, the amount of unabsorbed depreciation allowance not so set off shall be carried forward to the following assessment year not being more than eight assessment years immediately succeeding the assessment year for which the aforesaid allowance was first computed :

Provided that the time limit of eight assessment years specified in sub-clause (*b*) shall not apply in the case of a company for the assessment year beginning with the assessment year relevant to the previous year in which the said company has become a sick industrial company under sub-section (1) of section 17 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and ending with the assessment year relevant to the previous year in which the entire net worth of such company becomes equal to or exceeds the accumulated losses.

Explanation.— For the purposes of this clause, "net worth" shall have the meaning assigned to it in clause (*ga*) of sub-section (1) of section 3 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986).'

9. For the meaning of the expression "no profits or gains chargeable for that previous year", *see* Taxmann's Direct Taxes Manual, Vol. 3.

10. Inserted by the Finance Act, 1976, w.e.f. 1-4-1976.

11. *Vide* Notification No. SO 233(E), dated 19-3-1990, no investment allowance shall be allowed in respect of any new ship or aircraft acquired or any new machinery or plant installed after 31-3-1990.

12. *See* also Circular No. 305, dated 12-6-1981, Circular No. 324, dated 3-2-1982, Circular No. 314, dated 17-9-1981 and PIB Press Release, dated 23-10-1989.

13. For the meaning of the terms/expressions "wholly used for the purposes of the business" and "installed", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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in the immediately succeeding previous year, then, in respect of that previous year, of a sum by way of investment allowance equal to twenty-five per cent of the actual cost of the ship, aircraft, machinery or plant to the assessee :

[14][**Provided** that in respect of a ship or an aircraft or machinery or plant specified in sub-section (8B), this sub-section shall have effect as if for the words "twenty-five per cent", the words "twenty per cent" had been substituted :]

Provided [14][**further**] that no deduction shall be allowed under this section in respect of—

(*a*) any machinery or plant installed in any office premises or any residential accommodation, including any accommodation in the nature of a guest house ;

(*b*) any office appliances or road transport vehicles ;

(*c*) any ship, machinery or plant in respect of which the deduction by way of development rebate is allowable under section 33 ; and

(*d*) any 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 income chargeable under the head "Profits and gains of business or profession" of any one previous year.

[14][*Explanation.*—For the purposes of this sub-section, "actual cost" means the actual cost of the ship, aircraft, machinery or plant to the assessee as reduced by that part of such cost which has been met out of the amount released to the assessee under sub-section (6) of section 32AB.]

(2) The ship or aircraft or machinery or plant referred to in sub-section (1) shall be the following, namely :—

(*a*) a new ship or new aircraft acquired after the 31st day of March, 1976, by an assessee engaged in the business of operation of ships or aircraft ;

(*b*) any new machinery or plant installed after the 31st day of March, 1976,—

(*i*) for the purposes of business of generation or distribution of electricity or any other form of power ; or

[15][(*ii*) in a small-scale industrial undertaking[16] for the purposes of business of manufacture[16] or production[16] of any article or thing[16] ; or

(*iii*) in any other industrial undertaking[16] for the purposes of business of construction, manufacture[16] or production[16] of any article or thing[16], not being an article or thing[16] specified in the list in the Eleventh Schedule :]

[17][**Provided** that nothing contained in clauses (*a*) and (*b*) shall apply in relation to,—

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14. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

15. Substituted by the Finance (No. 2) Act, 1977, w.e.f. 1-4-1978.

16. For the meaning of the terms/expressions "industrial undertaking", "manufacture", "production" and "article or thing", *see* Taxmann's Direct Taxes Manual, Vol. 3.

17. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

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(*i*) a new ship or new aircraft acquired, or

(*ii*) any new machinery or plant installed,

after the 31st day of March, 1987 but before the 1st day of April, 1988, unless such ship or aircraft is acquired or such machinery or plant is installed in the circumstances specified in clause (*a*) of sub-section (8B) and the assessee furnishes evidence to the satisfaction of the Assessing Officer as specified in that clause ;]

[18][(*c*) any new machinery or plant installed after the 31st day of March, 1983, but before the [19][1st day of April, 1987], for the purposes 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[20] for the purposes of this clause by the Central Government.]

Explanation.—For the purposes of this sub-section and [21][sub-sections (2B) [22][, (2C)] and (4)],—

[23][(*1*)(*a*) "new ship" or "new aircraft" includes a ship or aircraft which before the date of acquisition by the assessee was used by any other person, if it was not at any time previous to the date of such acquisition owned by any person resident in India ;

(*b*) "new machinery or plant" includes machinery or plant which before its installation by the assessee was used outside India by any other person, if the following conditions are fulfilled, namely :—

(*i*) such machinery or plant was not, at any time previous to the date of such installation by the assessee, used in India ;

(*ii*) such machinery or plant is imported into India from any country outside India ; and

(*iii*) no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under 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,]

(*2*) an industrial undertaking shall be deemed to be a small-scale industrial undertaking, if the 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 purposes of the business of the undertaking [24][does not exceed,—

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18. Inserted by the Finance Act, 1983, w.e.f. 1-4-1984.

19. Substituted for "1st day of April, 1988" by the Finance Act, 1986, w.e.f. 1-4-1987.

20. For approved company, *see* Taxmann's Direct Taxes Circulars.

21. Substituted for "sub-section (4)" by the Finance (No. 2) Act, 1977, w.e.f. 1-4-1978.

22. Inserted by the Finance Act, 1983, w.e.f. 1-6-1983.

23. Substituted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988.

24. Substituted for "does not exceed ten lakh rupees" by the Finance Act, 1981, w.e.f. 1-4-1981.

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[25][(*i*) in a case where the previous year ends before the 1st day of August, 1980, ten lakh rupees ;

(*ii*) 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; and

(*iii*) 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,—

(*a*) in the case of any machinery or plant owned by the assessee, the actual cost thereof to the assessee ; and

(*b*) 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.

[26][(2A) The deduction under sub-section (1) shall not be denied in respect of any machinery or plant installed and used mainly for the purposes of business of construction, manufacture or production of any article or thing, not being an article or thing specified in the list in the Eleventh Schedule, by reason only that such machinery or plant is also used for the purposes of business of construction, manufacture or production of any article or thing specified in the said list.]

[26][(2B) Where any new machinery or plant is installed after the 30th day of June, 1977, but before the 1st day of April, [27][1987], for the purposes of business of manufacture or production of any article or thing and such article or thing—

(*a*) is manufactured or produced by using any technology (including any process) or other know-how developed in, or

(*b*) is an article or thing invented in,

a laboratory owned or financed by the Government, or a laboratory owned by a public sector company or a University or by an institution recognised in this behalf by the prescribed authority,[28]

the provisions of sub-section (1) shall have effect in relation to such machinery or plant as if for the words "twenty-five per cent", the words "thirty-five per cent" had been substituted, if the following conditions are fulfilled, namely :—

(*i*) the right to use such technology (including any process) or other know-how or to manufacture or produce such article or thing has been acquired from the owner of such laboratory or any person deriving title from such owner ;

(*ii*) the assessee furnishes, along with his return of income for the assessment year for which the deduction is claimed, a certificate from the prescribed authority[28] to the effect that such article or thing is

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25. Substituted by the Finance Act, 1986, w.r.e.f. 1-4-1985.

26. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 1-4-1978.

27. Substituted for "1982" by the Finance Act, 1982, w.e.f. 1-4-1982.

28. The prescribed authority under rule 5AA is Secretary, Department of Scientific & Industrial Research, Government of India.

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manufactured or produced by using such technology (including any process) or other know-how developed in such laboratory or is an article or thing invented in such laboratory ; and

(*iii*) the machinery or plant is not used for the purpose of business of manufacture or production of any article or thing specified in the list in the Eleventh Schedule.

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

(*a*) "laboratory financed by the Government" means a laboratory owned by any body [including a society registered under the Societies Registration Act, 1860 (21 of 1860)] and financed wholly or mainly by the Government;

(*b*) [29][***]

(*c*) "University" means a University established or incorporated by or under a Central, State or Provincial Act and includes an institution declared under section 3 of the University Grants Commission Act, 1956 (3 of 1956) to be a University for the purposes of that Act.]

[30][(2C) Where any new machinery or plant, being machinery or plant which would assist in control of pollution or protection of environment and which has been notified[31] in this behalf by the Central Government in the Official Gazette, is installed after the 31st day of May, 1983 [32][but before the 1st day of April, 1987], in any industrial undertaking referred to in sub-clause (*i*) or sub-clause (*ii*) or sub-clause (*iii*) of clause (*b*) of sub-section (2), the provisions of sub-section (1) shall have effect in relation to such machinery or plant as if for the words "twenty-five per cent", the words "thirty-five per cent" had been substituted.]

(3) Where the total income of the assessee assessable for the assessment year relevant to the previous year in which the ship or aircraft was acquired or the machinery or plant was installed, or, as the case may be, the immediately succeeding previous year (the total income for this purpose being computed after deduction of the allowances under section 33 and section 33A, but without making any deduction under sub-section (1) of this section or any deduction under Chapter VI-A) is *nil* or is less than the full amount of the investment allowance,—

(*i*) the sum to be allowed by way of investment allowance for that assessment year under sub-section (1) shall be only such amount as is sufficient to reduce the said total income to *nil* ; and

(*ii*) the amount of the investment allowance, to the extent to which it has not been allowed as aforesaid, shall be carried forward to the following assessment year, and the investment allowance to be allowed for the following assessment year shall be such amount as is

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29. Omitted by the Finance Act, 1987, w.e.f. 1-4-1987.

30. Inserted by the Finance Act, 1983, w.e.f. 1-6-1983.

31. *See* Notification No. SO 555(E), dated 1-8-1984. For details, *see* Taxmann's Direct Taxes Circulars.

32. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

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sufficient to reduce the total income of the assessee assessable for that assessment year, computed in the manner aforesaid, to *nil*, and the balance of the investment allowance, if any, still outstanding shall be carried forward to the following assessment year and so on, so, however, that no portion of the investment allowance shall be carried forward for more than eight assessment years immediately succeeding the assessment year relevant to the previous year in which the ship or aircraft was acquired or the machinery or plant was installed or, as the case may be, the immediately succeeding previous year.

Explanation.—Where for any assessment year, investment allowance is to be allowed in accordance with the provisions of this sub-section in respect of any ship or aircraft acquired or any machinery or plant installed in more than one previous year, and the total income of the assessee assessable for that assessment year (the total income for this purpose being computed after deduction of the allowances under section 33 and section 33A, but without making any deduction under sub-section (1) of this section or any deduction under Chapter VI-A) is less than the aggregate of the amounts due to be allowed in respect of the assets aforesaid for that assessment year, the following procedure shall be followed, namely :—

(*a*) the allowance under clause (*ii*) shall be made before any allowance under clause (*i*) is made; and

(*b*) where an allowance has to be made under clause (*ii*) in respect of amounts carried forward from more than one assessment year, the amount carried forward from an earlier assessment year shall be allowed before any amount carried forward from a later assessment year.

(4) The deduction under sub-section (1) shall be allowed only if the following conditions are fulfilled, namely :—

(*i*) the particulars prescribed in this behalf have been furnished by the assessee in respect of the ship or aircraft or machinery or plant;

(*ii*) an amount equal to seventy-five per cent of the investment allowance to be actually allowed is debited to the profit and loss account of [33][any previous year in respect of which the deduction is to be allowed under sub-section (3) or any earlier previous year (being a previous year not earlier than the year in which the ship or aircraft was acquired or the machinery or plant was installed or the ship, aircraft, machinery or plant was first put to use)] and credited to a reserve account (to be called the "Investment Allowance Reserve Account") to be utilised—

(*a*) for the purposes of acquiring, before the expiry of a period of ten years next following the previous year in which the ship or aircraft was acquired or the machinery or plant was installed, a new ship or a new aircraft or new machinery or plant [other than machinery or plant of the nature referred to in clauses (*a*), (*b*) and

33. Substituted for "the previous year in respect of which the deduction is to be allowed" by the Finance Act, 1990, w.r.e.f. 1-4-1976.

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(*d*) of the [34][second] proviso to sub-section (1)] for the purposes of the business of the undertaking; and

(*b*) until the acquisition of a new ship or a new aircraft or new machinery or plant as aforesaid, for the purposes of the business of the undertaking other than for distribution by way of dividends or profits or for remittance outside India as profits or for the creation of any asset outside India:

Provided that this clause shall have effect in respect of a ship as if for the word "seventy-five", the word "fifty" had been substituted.

Explanation.—Where the amount debited to the profit and loss account and credited to the Investment Allowance Reserve Account under this sub-section is not less than the amount required to be so credited on the basis of the amount of deduction in respect of investment allowance claimed in the return made by the assessee under section 139, but a higher deduction in respect of the investment allowance is admissible on the basis of the total income as proposed to be computed by the [35][Assessing] Officer under section 143, the [35][Assessing] Officer shall, by notice in writing in this behalf, allow the assessee an opportunity to credit within the time specified in the notice or within such further time as the [35][Assessing] Officer may allow, a further amount to the Investment Allowance Reserve Account out of the profits and gains of the previous year in which such notice is served on the assessee or of the immediately preceding previous year, if the accounts for that year have not been made up; and, if the assessee credits any further amount to such account within the time aforesaid, the amount so credited shall be deemed to have been credited to the Investment Allowance Reserve Account of the previous year in which the deduction is admissible and such amount shall not be taken into account in determining the adequacy of the reserve required to be created by the assessee in respect of the previous year in which such further credit is made:

Provided that such opportunity shall not be allowed by the [35][Assessing] Officer in a case where the difference in the total income as proposed to be computed by him and the total income as returned by the assessee arises out of the application of the proviso to sub-section (1) of section 145 or sub-section (2) of that section or the omission by the assessee to disclose his income fully and truly.

(5) Any allowance made under this section in respect of any ship, aircraft, machinery or plant shall be deemed to have been wrongly made for the purposes of this Act—

(*a*) if the ship, aircraft, machinery or plant is sold or otherwise transferred by the assessee to any person at any time before the expiry of eight years from the end of the previous year in which it was acquired or installed; or

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34. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

35. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

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(*b*) if at any time before the expiry of ten years from the end of the previous year in which the ship or aircraft was acquired or the machinery or plant was installed, the assessee does not utilise the amount credited to the reserve account under sub-section (4) for the purposes of acquiring a new ship or a new aircraft or new machinery or plant [other than machinery or plant of the nature referred to in clauses (*a*), (*b*) and (*d*) of the [36][second] proviso to sub-section (1)] for the purposes of the business of the undertaking; or

(*c*) if at any time before the expiry of the ten years aforesaid, the assessee utilises the amount credited to the reserve account under sub-section (4) for distribution by way of dividends or profits or for remittance outside India as profits or for the creation of any assets outside India or for any other purpose which is not a purpose of the business of the undertaking,

and the provisions of sub-section (4A) of section 155 shall apply accordingly:

Provided that nothing in clause (*a*) shall apply—

(*i*) where the ship, aircraft, machinery or plant is sold or otherwise transferred by the assessee to the Government, a local authority, a corporation established by a Central, State or Provincial Act or a [37]Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956); or

(*ii*) where the sale or transfer of the ship, aircraft, machinery or plant is made in connection with the amalgamation or succession, referred to in sub-section (6) or sub-section (7).

(6) Where, in a scheme of amalgamation, the amalgamating company sells or otherwise transfers to the amalgamated company any ship, aircraft, machinery or plant, in respect of which investment allowance has been allowed to the amalgamating company under sub-section (1),—

(*a*) the amalgamated company shall continue to fulfil the conditions mentioned in sub-section (4) in respect of the reserve created by the amalgamating company and in respect of the period within which such ship, aircraft, machinery or plant shall not be sold or otherwise transferred and in default of any of these conditions, the provisions of sub-section (4A) of section 155 shall apply to the amalgamated company as they would have applied to the amalgamating company had it committed the default; and

(*b*) the balance of investment allowance, if any, still outstanding to the amalgamating company in respect of such ship, aircraft, machinery or plant, shall be allowed to the amalgamated company in accordance with the provisions of sub-section (3), so, however, that the total period for which the balance of investment allowance shall be carried forward in the assessments of the amalgamating company and the amalgamated company shall not exceed the period of eight years

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36. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

37. For definition of "Government company", *see* footnote 71 on p. 1.23 *ante*.

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specified in sub-section (3) and the amalgamated company shall be treated as the assessee in respect of such ship, aircraft, machinery or plant for the purposes of this section.

(7) Where a firm is succeeded to by a company in the business carried on by it as a result of which the firm sells or otherwise transfers to the company any ship, aircraft, machinery or plant, the provisions of clauses (*a*) and (*b*) of sub-section (6) shall, so far as may be, apply to the firm and the company.

Explanation.—The provisions of this sub-section shall apply only where—

(*i*) all the property of the firm relating to the business immediately before the succession becomes the property of the company;

(*ii*) all the liabilities of the firm relating to the business immediately before the succession become the liabilities of the company; and

(*iii*) all the shareholders of the company were partners of the firm immediately before the succession.

(8) The Central Government, if it considers necessary or expedient so to do, may, by notification in the Official Gazette, direct that the deduction allowable under this section shall not be allowed in respect of any ship or aircraft acquired or any machinery or plant installed after such date [38][***] as may be specified therein.

[39][(8A) The Central Government, if it considers necessary or expedient so to do, may, by notification in the Official Gazette, omit any article or thing from the list of articles or things specified in the Eleventh Schedule.]

[40][(8B) Notwithstanding anything contained in sub-section (8) or the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. GSR 870(E), dated the 12th June, 1986, issued thereunder, the provisions of this section shall apply in respect of,—

(*a*) (*i*) a new ship or new aircraft acquired after the 31st day of March, 1987 but before the 1st day of April, 1988, if the assessee furnishes evidence to the satisfaction of the Assessing Officer that he had, before the 12th day of June, 1986, entered into a contract for the purchase of such ship or aircraft with the builder or manufacturer or owner thereof, as the case may be;

(*ii*) any new machinery or plant installed after the 31st day of March, 1987 but before the 1st day of April, 1988, if the assessee furnishes evidence to the satisfaction of the Assessing Officer that before the 12th day of June, 1986, he had purchased such machinery or plant or had entered into a contract for the purchase of such machinery or plant with the manufacturer or owner of, or a dealer in, such machinery or plant, or had, where such machinery or plant has been manufactured in an undertaking owned by the assessee, taken steps for the manufacture of such machinery or plant:

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38. "not being earlier than three years from the date of such notification," omitted by the Finance Act, 1986, w.e.f. 1-4-1986.

39. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 1-4-1978.

40. Substituted for sub-section (8B) by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Earlier sub-section (8B) was inserted by the Finance Act, 1986, w.e.f. 1-4-1987.

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Provided that nothing contained in sub-section (1) shall entitle the assessee to claim deduction in respect of a ship or aircraft or machinery or plant referred to in this clause in any previous year except the previous year relevant to the assessment year commencing on the 1st day of April, 1989;

(*b*) a new ship or new aircraft acquired or any new machinery or plant installed after the 31st day of March, 1988, but before such date as the Central Government, if it considers necessary or expedient so to do, may, by notification in the Official Gazette[41], specify in this behalf.

(8C) Subject to the provisions of clause (*ii*) of sub-section (3), where a deduction has been allowed to an assessee under sub-section (1) in any assessment year, no deduction shall be allowed to the assessee under section 32AB in the said assessment year (hereinafter referred to as the initial assessment year) and a block of further period of four years beginning with the assessment year immediately succeeding the initial assessment year.]

(9) [*Omitted by the Finance Act, 1990, w.r.e.f. 1-4-1976.*]

[42][**Investment deposit account.**

32AB. (1) Subject to the other provisions of this section, where an assessee, whose total income includes income chargeable to tax under the head "Profits and gains of business or profession", has, out of such income,—

(*a*) deposited any amount in an account (hereafter in this section referred to as deposit account) maintained by him with the Development Bank before the expiry of six months from the end of the previous year or before furnishing the return of his income, whichever is earlier; or

(*b*) utilised any amount during the previous year for the purchase of any new ship, new aircraft, new machinery or plant, without depositing any amount in the deposit account under clause (*a*),

in accordance with, and for the purposes specified in, a scheme[43] (hereafter in this section referred to as the scheme) to be framed by the Central Government, or if the assessee is carrying on the business of growing and manufacturing tea in India, to be approved in this behalf by the Tea Board, the assessee shall be allowed a deduction [44][(such deduction being allowed before the loss, if any, brought forward from earlier years is set off under section 72)] of—

(*i*) a sum equal to the amount, or the aggregate of the amounts, so deposited and any amount so utilised; or

(*ii*) a sum equal to twenty per cent of the profits of [45][***] business or profession as computed in the accounts of the assessee audited in accordance with sub-section (5),

whichever is less :

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41. *See* footnote 11 on page 1.172 *ante.*

42. Inserted by the Finance Act, 1986, w.e.f. 1-4-1987.

43. Investment Deposit Account Scheme, 1986 is the scheme framed by the Government under sub-section (1). For details of the Scheme, *see* Taxmann's Direct Taxes Circulars.

44. Inserted by the Finance Act, 1987, w.e.f. 1-4-1987.

45. Word "eligible" omitted by the Finance Act, 1989, w.e.f. 1-4-1991.

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[46][**Provided** that where such assessee is a firm, or any association of persons or any body of individuals, the deduction under this section shall not be allowed in the computation of the income of any partner, or as the case may be, any member of such firm, association of persons or body of individuals:]

[47][**Provided further** that no such deduction shall be allowed in relation to the assessment year commencing on the 1st day of April, 1991, or any subsequent assessment year.]

(2) For the purposes of this section,—

(*i*) [48][***]

[49][(*ii*) "new ship" or "new aircraft" includes a ship or aircraft which before the date of acquisition by the assessee was used by any other person, if it was not at any time previous to the date of such acquisition owned by any person resident in India;

(*iii*) "new machinery or plant" includes machinery or plant which before its installation by the assessee was used outside India by any other person, if the following conditions are fulfilled, namely :—

(*a*) such machinery or plant was not, at any time previous to the date of such 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 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;

(*iv*) "Tea Board" means the Tea Board established under section 4 of the Tea Act, 1953 (29 of 1953).]

(3) [50][The profits of business or profession of an assessee for the purposes of sub-section (1) shall] be an amount arrived at after deducting an amount equal to the depreciation computed in accordance with the provisions of sub-section (1) of section 32 from the amounts of profits computed in accordance with the requirements of [51]Parts II and III of the [52][Schedule VI] to the Companies Act, 1956 (1 of 1956), [53][as increased by the aggregate of—

(*i*) the amount of depreciation;

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46. Inserted by the Finance Act, 1987, w.e.f. 1-4-1987.

47. Inserted by the Finance Act, 1990, w.e.f. 1-4-1990.

48. Omitted by the Finance Act, 1989, w.e.f. 1-4-1991.

49. Substituted by the Finance Act, 1987, w.e.f. 1-4-1987.

50. Substituted for the portion beginning with the words "The profits of eligible business or profession" and ending with the words "eligible business or profession are maintained," by the Finance Act, 1989, w.e.f. 1-4-1991.

51. For text of Parts II and III of Schedule VI to the Companies Act, 1956, *see* **Appendix**.

52. Substituted for "Sixth Schedule" by the Finance Act, 1989, w.e.f. 1-4-1991.

53. Substituted for "as increased by an amount equal to the depreciation, if any, debited in the audited profit and loss account; and" by the Finance Act, 1987, w.e.f. 1-4-1987.

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(*ii*) the amount of income-tax paid or payable, and provision therefor;

(*iii*) the amount of surtax paid or payable under the Companies (Profits) Surtax Act, 1964 (7 of 1964);

(*iv*) the amounts carried to any reserves, by whatever name called;

(*v*) the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities;

(*vi*) the amount by way of provision for losses of subsidiary companies; and

(*vii*) the amount or amounts of dividends paid or proposed,

if any debited to the profit and loss account; and as reduced by any amount or amounts withdrawn from reserves or provisions, if such amounts are credited to the profit and loss account [54][***].]

[55][***]

(4) No deduction under sub-section (1) shall be allowed in respect of any amount utilised for the purchase of—

(*a*) any machinery or plant to be installed in any office premises or residential accommodation, including any accommodation in the nature of a guest-house;

(*b*) any office appliances (not being computers);

(*c*) any road transport vehicles;

(*d*) any 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 income chargeable under the head "Profits and gains of business or profession" of any one previous year;

[56][(*e*) any new machinery or plant to be installed in an industrial undertaking, other than a small-scale industrial undertaking, as defined in section 80HHA, for the purposes of business of construction, manufacture or production of any article or thing specified in the list in the Eleventh Schedule.]

(5) The deduction under sub-section (1) shall not be admissible unless the accounts of the business or profession of the assessee 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[57] duly signed and verified by such accountant :

Provided that in a case where the assessee is required by or under any other law to get his accounts audited, it shall be sufficient compliance with the provisions of this sub-section if such assessee gets the accounts of such business or profession audited under such law and furnishes the report of the audit as

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54. "and" omitted by the Finance Act, 1989, w.e.f. 1-4-1991.

55. Omitted, *ibid.*

56. Inserted, *ibid.*

57. *See* rule 5AB and Form No. 3AAA for audit report required under section 32AB(5).

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required under such other law and a further report in the form prescribed under this sub-section.

[58][(5A) Any amount standing to the credit of the assessee in the deposit account shall not be allowed to be withdrawn before the expiry of a period of five years from the date of deposit except for the purposes specified in the scheme [59][or] in the circumstances specified below :—

(*a*) closure of business;

(*b*) death of an assessee;

(*c*) partition of a Hindu undivided family;

(*d*) dissolution of a firm;

(*e*) liquidation of a company.]

[60][*Explanation*.—For the removal of doubts, it is hereby declared that nothing contained in this sub-section shall affect the operation of the provisions of sub-section (5AA) or sub-section (6) in relation to any withdrawals made from the deposit account either before or after the expiry of a period of five years from the date of deposit.]

[60][(5AA) Where any amount, standing to the credit of the assessee in the deposit account, is withdrawn during any previous year by the assessee in the circumstance specified in clause (*a*) or clause (*d*) of sub-section (5A), the whole of such amount shall be deemed to be the profits and gains of business or profession of that previous year and shall accordingly be chargeable to income-tax as the income of that previous year, as if the business had not closed or, as the case may be, the firm had not been dissolved.]

[61][(5B) Where any amount standing to the credit of the assessee in the deposit account is utilised by the assessee for the purposes of any expenditure in connection with the [62][***] business or profession in accordance with the scheme, such expenditure shall not be allowed in computing the income chargeable under the head "Profits and gains of business or profession".]

(6) Where any amount, standing to the credit of the assessee in the deposit account, released during any previous year by the Development Bank for being utilised by the assessee for the purposes specified in the scheme or at the closure of the account [63][[in circumstances other than the circumstances specified in clauses (*b*), (*c*) and (*e*) of sub-section (5A)]], is not utilised in accordance with [64][, and within the time specified in,] the scheme, either wholly or in part, [65][***] the whole of such amount or, as the case may be, part thereof which is not so utilised shall be deemed to be the profits and gains of business or profession of

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58. Inserted by the Finance Act, 1987, w.e.f. 1-4-1987.

59. Substituted for "and" by the Finance Act, 1989, w.r.e.f. 1-4-1987.

60. Inserted, *ibid.*

61. Inserted by the Finance Act, 1987, w.e.f. 1-4-1987.

62. "eligible" omitted by the Finance Act, 1989, w.e.f. 1-4-1991.

63. Inserted, *ibid.*, w.r.e.f. 1-4-1987.

64. Inserted by the Finance Act, 1987, w.e.f. 1-4-1987.

65. "within that previous year" omitted, *ibid.*

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that previous year and shall accordingly be chargeable to income-tax as the income of that previous year.

(7) Where any asset acquired in accordance with the scheme is sold or otherwise transferred in any previous year by the assessee to any person at any time before the expiry of eight years from the end of the previous year in which it was acquired, such part of the cost of such asset as is relatable to the deductions allowed under sub-section (1) shall be deemed to be the profits and gains of business or profession of the previous year in which the asset is sold or otherwise transferred and shall accordingly be chargeable to income-tax as the income of that previous year:

Provided that nothing in this sub-section shall apply—

(*i*) where the asset is sold or otherwise transferred by the assessee to Government, a local authority, a corporation established by or under a Central, State or Provincial Act or a [66]Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956); or

(*ii*) where the sale or transfer of the asset is made in connection with the succession of a firm by a company in the business or profession carried on by the firm as a result of which the firm sells or otherwise transfers to the company any asset and the scheme continues to apply to the company in the manner applicable to the firm.

Explanation.—The provisions of clause (*ii*) of the proviso shall apply only where—

(*i*) all the properties of the firm relating to the business or profession immediately before the succession become the properties of the company;

(*ii*) all the liabilities of the firm relating to the business or profession immediately before the succession become the liabilities of the company; and

(*iii*) all the shareholders of the company were partners of the firm immediately before the succession.

(8) The Central Government may, if it considers it necessary or expedient so to do, by notification in the Official Gazette, omit any article or thing from the list of articles or things specified in the Eleventh Schedule.

(9) The Central Government may, after making such inquiry as it may think fit, direct, by notification in the Official Gazette, that the provisions of this section shall not apply to any class of assessees, with effect from such date as it may specify in the notification.

[67][(10) Where a deduction has been allowed to an assessee under this section in any assessment year, no deduction shall be allowed to the assessee under sub-section (1) of section 32A in the said assessment year (hereinafter referred to as the initial assessment year) and a block of further period of four years beginning with the assessment year immediately succeeding the initial assessment year].

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66. For definition of "Government company", *see* footnote 71 on p. 1.23 *ante.*

67. Substituted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

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Explanation.—In this section,—

(*a*) "computers" does not include calculating machines and calculating devices;

(*b*) "Development Bank" means—

(*i*) in the case of an assessee carrying on business of growing and manufacturing tea in India, the National Bank for Agriculture and Rural Development established under section 3 of the National Bank for Agriculture and Rural Development Act, 1981 (61 of 1981);

(*ii*) in the case of other assessees, the Industrial Development Bank of India established under the Industrial Development Bank of India Act, 1964 (18 of 1964) and includes such bank or institution as may be specified in the scheme in this behalf.]

Development rebate.

33. [68][(1)(*a*) In respect of a new ship[69] or new machinery or plant (other than office appliances or road transport vehicles) which is owned by the assessee and is wholly used for the purposes of the business carried on by him, there shall, in accordance with and subject to the provisions of this section and of section 34, be allowed a deduction, in respect of the previous year in which the ship was acquired or the machinery or plant was installed or, if the ship, machinery or plant is first put to use in the immediately succeeding previous year, then, in respect of that previous year, a sum by way of development rebate as specified in clause (*b*).

(*b*) The sum referred to in clause (*a*) shall be—

(*A*) in the case of a ship, forty per cent of the actual cost thereof to the assessee;

(*B*) in the case of machinery or plant,—

(*i*) where the machinery or plant is installed for the purposes of business of construction, manufacture or production of any one or more of the articles or things specified in the list in the Fifth Schedule,—

(*a*) thirty-five per cent of the actual cost of the machinery or plant to the assessee, where it is installed before the 1st day of April, 1970, and

(*b*) twenty-five per cent of such cost, where it is installed after the 31st day of March, 1970;

(*ii*) where the machinery or plant is installed after the 31st day of March, 1967, by an assessee being an Indian company in premises used by it as a hotel and such hotel is for the time being approved in this behalf by the Central Government,—

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68. Substituted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968. Sub-section (1) was first amended by the Income-tax (Amendment) Act, 1963, w.e.f. 1-4-1963 and then by the Finance Act, 1965, and by the Finance (No. 2) Act, 1965, w.e.f. 1-4-1965.

69. For the meaning of the term "ship", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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(*a*) thirty-five per cent of the actual cost of the machinery or plant to the assessee, where it is installed before the 1st day of April, 1970, and

(*b*) twenty-five per cent of such cost, where it is installed after the 31st day of March, 1970;

(*iii*) where the machinery or plant is installed after the 31st day of March, 1967, being an asset representing expenditure of a capital nature on scientific research related to the business carried on by the assessee,—

(*a*) thirty-five per cent of the actual cost of the machinery or plant to the assessee, where it is installed before the 1st day of April, 1970, and

(*b*) twenty-five per cent of such cost, where it is installed after the 31st day of March, 1970;

(*iv*) in any other case,—

(*a*) twenty per cent of the actual cost of the machinery or plant to the assessee, where it is installed before the 1st day of April, 1970, and

(*b*) fifteen per cent of such cost, where it is installed after the 31st day of March, 1970.]

[70][[71](1A)(*a*) An assessee who, after the 31st day of March, 1964, acquires any ship which before the date of acquisition by him was used by any other person shall, subject to the provisions of section 34, also be allowed as a deduction a sum by way of development rebate at such rate or rates as may be prescribed, provided that the following conditions are fulfilled, namely :—

(*i*) such ship was not previous to the date of such acquisition owned at any time by any person resident in India;

(*ii*) such ship is wholly used for the purposes of the business carried on by the assessee; and

(*iii*) such other conditions as may be prescribed.

(*b*) An assessee who installs any machinery or plant (other than office appliances or road transport vehicles) which before such installation by the assessee was used outside India by any other person shall, subject to the provisions of section 34, also be allowed as a deduction a sum by way of development rebate at such rate or rates as may be prescribed, provided that the following conditions are fulfilled, namely :—

(*i*) such machinery or plant was not used in India at any time previous to the date of such installation by the assessee;

(*ii*) it is imported in India by the assessee from any country outside India;

(*iii*) no deduction on account of depreciation or development rebate in respect of such machinery or plant has been allowed or is allowable

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70. Inserted by the Finance Act, 1964, w.e.f. 1-4-1964.

71. *See* rule 5B.

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under 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;

(*iv*) such machinery or plant is wholly used for the purposes of the business carried on by the assessee; and

(*v*) such other conditions as may be prescribed.

(*c*) The development rebate under this sub-section shall be allowed as a deduction in respect of the previous year in which the ship was acquired or the machinery or plant was installed or, if the ship, machinery or plant is first put to use in the immediately succeeding previous year, then, in respect of that previous year.]

(2) In the case of a ship acquired or machinery or plant installed after the 31st day of December, 1957, where the total income of the assessee assessable for the assessment year relevant to the previous year in which the ship was acquired or the machinery or plant installed or the immediately succeeding previous year, as the case may be (the total income for this purpose being computed without making any allowance under sub-section (1) [72][or sub-section (1A)] [73][of this section or sub-section (1) of section 33A] [74][or any deduction under Chapter VI-A [75][***]]) is *nil* or is less than the full amount of the development rebate calculated at the rate applicable thereto under [76][sub-section (1) or sub-section (1A), as the case may be],—

(*i*) the sum to be allowed by way of development rebate for that assessment year under sub-section (1) [77][or sub-section (1A)] shall be only such amount as is sufficient to reduce the said total income to *nil* ;and

(*ii*) the amount of the development rebate, to the extent to which it has not been allowed as aforesaid, shall be carried forward to the following assessment year, and the development rebate to be allowed for the following assessment year shall be such amount as is sufficient to reduce the total income of the assessee assessable for that assessment year, computed in the manner aforesaid, to *nil*, and the balance of the development rebate, if any, still outstanding shall be carried forward to the following assessment year and so on, so however, that no portion of the development rebate shall be carried forward for more than eight assessment years immediately succeeding the assessment year relevant to the previous year in which the ship was acquired or the machinery or plant installed or the immediately succeeding previous year, as the case may be.

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72. Inserted by the Finance Act, 1964, w.e.f. 1-4-1964.

73. Inserted by the Finance Act, 1965, w.e.f. 1-4-1965.

74. Inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968.

75. "or section 280-O" omitted by the Finance Act, 1988, w.e.f. 1-4-1988.

76. Substituted for "that sub-section" by the Finance Act, 1964, w.e.f. 1-4-1964.

77. Inserted, *ibid.*

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Explanation.—Where for any assessment year development rebate is to be allowed in accordance with the provisions of sub-section (2) in respect of ships acquired or machinery or plant installed in more than one previous year, and the total income of the assessee assessable for that assessment year (the total income for this purpose being computed without making any allowance under sub-section (1) [78][or sub-section (1A)] [79][of this section or sub-section (1) of section 33A] [80][or any deduction under Chapter VI-A [81][***]]) is less than the aggregate of the amounts due to be allowed in respect of the assets aforesaid for that assessment year, the following procedure shall be followed, namely :—

(*i*) the allowance under clause (*ii*) of sub-section (2) shall be made before any allowance under clause (*i*) of that sub-section is made; and

(*ii*) where an allowance has to be made under clause (*ii*) of sub-section (2) in respect of amounts carried forward from more than one assessment year, the amount carried forward from an earlier assessment year shall be allowed before any amount carried forward from a later assessment year.

[82][(3) Where, in a scheme of amalgamation, the amalgamating company sells or otherwise transfers to the amalgamated company any ship, machinery or plant in respect of which development rebate has been allowed to the amalgamating company under sub-section (1) or sub-section (1A),—

(*a*) the amalgamated company shall continue to fulfil the conditions mentioned in sub-section (3) of section 34 in respect of the reserve created by the amalgamating company and in respect of the period within which such ship, machinery or plant shall not be sold or otherwise transferred and in default of any of these conditions, the provisions of sub-section (5) of section 155 shall apply to the amalgamated company as they would have applied to the amalgamating company had it committed the default; and

(*b*) the balance of development rebate, if any, still outstanding to the amalgamating company in respect of such ship, machinery or plant shall be allowed to the amalgamated company in accordance with the provisions of sub-section (2), so, however, that the total period for which the balance of development rebate shall be carried forward in the assessments of the amalgamating company and the amalgamated company shall not exceed the period of eight years specified in sub-section (2) and the amalgamated company shall be treated as the assessee in respect of such ship, machinery or plant for the purposes of this section and section 34.]

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78. Inserted by the Finance Act, 1964, w.e.f. 1-4-1964.

79. Inserted by the Finance Act, 1965, w.e.f. 1-4-1965.

80. Inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968.

81. "or section 280-O" omitted by the Finance Act, 1988, w.e.f. 1-4-1988.

82. Substituted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967. Sub-section (3) was first amended by the Finance Act, 1964, w.e.f. 1-4-1964 and then by the Finance Act, 1966, w.e.f. 1-4-1966.

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(4) Where a firm is succeeded to by a company in the business carried on by it as a result of which the firm sells or otherwise transfers to the company any ship, machinery or plant, the provisions of clauses (*a*) and (*b*) of sub-section (3) shall, so far as may be, apply to the firm and the company.

Explanation.—The provisions of this clause shall apply only where—

(*i*) all the property of the firm relating to the business immediately before the succession becomes the property of the company;

(*ii*) all the liabilities of the firm relating to the business immediately before the succession become the liabilities of the company; and

(*iii*) all the shareholders of the company were partners of the firm immediately before the succession.

[83][(5) The Central Government, if it considers it necessary or expedient so to do, may, by notification[84] in the Official Gazette, direct that the deduction allowable under this section shall not be allowed in respect of a ship acquired or machinery or plant installed after such date, not being earlier than three years from the date of such notification, as may be specified therein.]

[85][(6) Notwithstanding anything contained in the foregoing provisions of this section, no deduction by way of development rebate shall be allowed in respect of any machinery or plant installed after the 31st day of March, 1965, in any office premises or any residential accommodation, including any accommodation in the nature of a guest-house:]

[86][**Provided** that the provisions of this sub-section shall not apply in the case of an assessee being an Indian company, in respect of any machinery or plant installed by it in premises used by it as a hotel, where the hotel is for the time being approved in this behalf by the Central Government.]

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83. Inserted by the Finance Act, 1964, w.e.f. 1-4-1964.

84. In terms of Notification No. SO 2167, dated 28-5-1971 issued under sub-section (5) of section 33, the grant of development rebate has been discontinued in respect of ships acquired or machinery or plant installed after 31-5-1974. However, section 16 of the Finance Act, 1974, as amended by section 30 of the Finance Act, 1975, has made an independent provision for the continuance of development rebate for a limited period in certain cases. As a result grant of the rebate was continued, subject to certain conditions, for limited period, *i.e.,* from 1-6-1974 to 31-5-1977 in respect of—

(*a*) ship which was acquired after 31-5-1974 but before 1-1-1977;

(*b*) any machinery or plant [other than mentioned in (*c*) below] which was installed after 31-5-1974 but before 1-6-1975; and

(*c*) coal-fired equipment or any machinery or plant for converting oil-fired equipment into coal-fired equipment which was installed after 31-5-1974 but before 1-6-1977.

See Taxmann's Direct Taxes Circulars.

85. Inserted by the Finance Act, 1965, w.e.f. 1-4-1965.

86. Inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968.

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[87][**Development allowance.**

[88]**33A.** (1) In respect of planting of tea bushes on any land in India owned by an assessee who carries on business of growing and manufacturing tea in India, a sum by way of development allowance equivalent to—

(*i*) where tea bushes have been planted on any land not planted at any time with tea bushes or on any land which had been previously abandoned, [89][fifty] per cent of the actual cost of planting; and

(*ii*) where tea bushes are planted in replacement of tea bushes that have died or have become permanently useless on any land already planted, [90][thirty] per cent of the actual cost of planting,

shall, subject to the provisions of this section, be allowed as a deduction [91][in the manner specified hereunder, namely :—

(*a*) the amount of the development allowance shall, in the first instance, be computed with reference to that portion of the actual cost of planting which is incurred during the previous year in which the land is prepared for planting or replanting, as the case may be, and in the previous year next following, and the amount so computed shall be allowed as a deduction in respect of such previous year next following; and

(*b*) thereafter, the development allowance shall again be computed with reference to the actual cost of planting, and if the sum so computed exceeds the amount allowed as a deduction under clause (*a*), the amount of the excess shall be allowed as a deduction in respect of the third succeeding previous year next following the previous year in which the land has been prepared for planting or replanting, as the case may be :]

[92][**Provided** that no deduction under clause (*i*) shall be allowed unless the planting has commenced after the 31st day of March, 1965, and been completed before the 1st day of April, 1990 :

Provided further that no deduction shall be allowed under clause (*ii*) unless the planting has commenced after the 31st day of March, 1965, and been completed before the 1st day of April, 1970.]

(2) Where the total income of the assessee assessable for the assessment year relevant to [93][the previous year in respect of which the deduction is required to

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87. Inserted by the Finance Act, 1965, w.e.f. 1-4-1965.

88. *See* also Circular No. 325, dated 3-2-1982. For details, *see* Taxmann's Master Guide to Income-tax Act.

89. Substituted for "forty" by the Finance Act, 1966, w.e.f. 1-4-1966.

90. Substituted for "twenty", *ibid.*

91. Substituted for "in respect of the third succeeding previous year next following the previous year in which the land is prepared for planting or replanting, as the case may be", *ibid.*

92. Substituted by the Finance Act, 1990, w.e.f. 1-4-1990.

93. Substituted for "the third succeeding previous year next following the previous year in which the land has been prepared" by the Finance Act, 1966, w.e.f. 1-4-1966.

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be allowed under sub-section (1)] [94][(the total income for this purpose being computed after deduction of the allowance under sub-section (1) or sub-section (1A) or clause (*ii*) of sub-section (2) of section 33, but without making any deduction under sub-section (1) of this section or any deduction under Chapter VI-A [95][***])] is *nil* or is less than the full amount of the development allowance calculated at the rates [96][and in the manner] specified in sub-section (1)—

(*i*) the sum to be allowed by way of development allowance for that assessment year under sub-section (1) shall be only such amount as is sufficient to reduce the said total income to *nil* ; and

(*ii*) the amount of the development allowance, to the extent to which it has not been allowed as aforesaid, shall be carried forward to the following assessment year, and the development allowance to be allowed for the following assessment year shall be such amount as is sufficient to reduce the total income of the assessee assessable for that assessment year, computed in the manner aforesaid, to *nil*, and the balance of the development allowance, if any, still outstanding shall be carried forward to the following assessment year and so on, so, however, that no portion of the development allowance shall be carried forward for more than eight assessment years immediately succeeding the assessment year in which the deduction was first allowable.

Explanation.—Where for any assessment year development allowance is to be allowed in accordance with the provisions of sub-section (2) in respect of more than one previous year, and the total income of the assessee assessable for that assessment year [97][(the total income for this purpose being computed after deduction of the allowance under sub-section (1) or sub-section (1A) or clause (*ii*) of sub-section (2) of section 33, but without making any deduction under sub-section (1) of this section or any deduction under Chapter VI-A [98][***])] is less than the amount of the development allowance due to be made in respect of that assessment year, the following procedure shall be followed, namely :—

(*i*) the allowance under clause (*ii*) of sub-section (2) of this section shall be made before any allowance under clause (*i*) of that sub-section is made; and

(*ii*) where an allowance has to be made under clause (*ii*) of sub-section (2) of this section in respect of amounts carried forward from more than one assessment year, the amount carried forward from an earlier

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94. Substituted for "(the total income for this purpose being computed after making the allowance under sub-section (1) or sub-section (1A) or clause (*ii*) of sub-section (2) of section 33 but without making any allowance under sub-section (1) of this section)" by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968.

95. "or section 280-O" omitted by the Finance Act, 1988, w.e.f. 1-4-1988.

96. Inserted by the Finance Act, 1966, w.e.f. 1-4-1966.

97. Substituted for "(the total income for this purpose being computed after making the allowance under sub-section (1) or sub-section (1A) or clause (*ii*) of sub-section (2) of section 33 but without making any allowance under sub-section (1) of this section)" by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968.

98. "or section 280-O" omitted by the Finance Act, 1988, w.e.f. 1-4-1988.

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assessment year shall be allowed before any amount carried forward from a later assessment year.

(3) The deduction under sub-section (1) shall be allowed only if the following conditions are fulfilled, namely :—

(*i*) the particulars prescribed[99] in this behalf have been furnished by the assessee;

(*ii*) an amount equal to seventy-five per cent of the development allowance to be actually allowed is debited to the profit and loss account of the relevant previous year and credited to a reserve account to be utilised by the assessee during a period of eight years next following for the purposes of the business of the undertaking, other than—

(*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; and

(*iii*) such other conditions as may be prescribed.

(4) If any such land is sold or otherwise transferred by the assessee to any person at any time before the expiry of eight years from the end of the previous year in which the deduction under sub-section (1) was allowed, any allowance under this section shall be deemed to have been wrongly made for the purposes of this Act, and the provisions of sub-section (5A) of section 155 shall apply accordingly :

Provided that this sub-section shall not apply—

(*i*) where the land is sold or otherwise transferred by the assessee to the Government, a local authority, a corporation established by a Central, State or Provincial Act, or a [1]Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956); or

(*ii*) where the sale or transfer of the land is made in connection with the amalgamation or succession referred to in sub-section (5) or sub-section (6).

[2][(5) Where, in a scheme of amalgamation, the amalgamating company sells or otherwise transfers to the amalgamated company any land in respect of which development allowance has been allowed to the amalgamating company under sub-section (1),—

(*a*) the amalgamated company shall continue to fulfil the conditions mentioned in sub-section (3) in respect of the reserve created by the amalgamating company and in respect of the period within which such land shall not be sold or otherwise transferred and in default of any of these conditions, the provisions of sub-section (5A) of section 155 shall apply to the amalgamated company as they would have applied to the amalgamating company had it committed the default; and

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99. See rule 8A and Form Nos. 4, 5 and 5A.

1. For definition of "Government company", *see* footnote 71 on p. 1.23 *ante.*

2. Substituted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

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(*b*) the balance of development allowance, if any, still outstanding to the amalgamating company in respect of such land shall be allowed to the amalgamated company in accordance with the provisions of sub-section (2), so, however, that the total period for which the balance of development allowance shall be carried forward in the assessments of the amalgamating company and the amalgamated company shall not exceed the period of eight years specified in sub-section (2) and the amalgamated company shall be treated as the assessee in respect of such land for the purposes of this section.]

(6) Where a firm is succeeded to by a company in the business carried on by it as a result of which the firm sells or otherwise transfers to the company any land on which development allowance has been allowed, the provisions of clauses (*a*) and (*b*) of sub-section (5) shall, so far as may be, apply to the firm and the company.

Explanation.—The provisions of this sub-section shall apply if the conditions laid down in the *Explanation* to sub-section (4) of section 33 are fulfilled.

(7) For the purposes of this section, "actual cost of planting" means the aggregate of—

(*i*) the cost of preparing the land;

(*ii*) the cost of seeds, cutting and nurseries;

(*iii*) the cost of planting and replanting; and

(*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,

reduced by that portion of the cost, if any, as has been met directly or indirectly by any other person or authority:

[3][**Provided** that where such cost exceeds—

(*i*) forty thousand rupees per hectare in respect of land situate in a hilly area comprised in the district of Darjeeling; or

(*ii*) thirty-five thousand rupees per hectare in respect of land situate in a hilly area comprised in an area other than the district of Darjeeling; or

(*iii*) thirty thousand rupees per hectare in any other area,

then, the excess shall be ignored.

Explanation.—For the purposes of this proviso, "district of Darjeeling" means the district of Darjeeling as on the 28th day of February, 1981, being the date of introduction of the Finance Bill, 1981, in the House of the People.]

(8) The Board may, having regard to the elevation and topography, by general or special order, declare any areas to be [4]hilly areas for the purposes of this section and such order shall not be questioned before any court of law or any other authority.

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3. Substituted by the Finance Act, 1981, w.e.f. 1-4-1982.

4. For notified hilly areas, *see* Taxmann's Master Guide to Income-tax Act.

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[5][*Explanation*.—For the purposes of this section, an assessee having a leasehold or other right of occupancy in any land shall be deemed to own such land and where the assessee transfers such right, he shall be deemed to have sold or otherwise transferred such land.]

[6][**Tea development account** [7][**, coffee development account and rubber development account**].

33AB. (1) Where an assessee carrying on business of growing and manufacturing tea [7][or coffee or rubber] in India has, before the expiry of six months from the end of the previous year or before [7][the due date of] furnishing the return of his income, [8][whichever is earlier,—

(*a*) deposited with the National Bank any amount or amounts in an account (hereafter in this section referred to as the special account) maintained by the assessee with that Bank in accordance with, and for the purposes specified in, a scheme (hereafter in this section referred to as the scheme) approved in this behalf by the Tea Board [9][or the Coffee Board or the Rubber Board] ; or

(*b*) [10][deposited any amount in an account (hereafter in this section referred to as the Deposit Account) opened by the assessee in accordance with, and for the purposes specified in, a scheme framed by the Tea Board or the Coffee Board or the Rubber Board, as the case may be (hereafter in this section referred to as the deposit scheme), with the previous approval of the Central Government,]

the assessee shall, subject to the provisions of this section,] be allowed a deduction (such deduction being allowed before the loss, if any, brought forward from earlier years is set off under section 72) of—

(*a*) a sum equal to the amount or the aggregate of the amounts so deposited ; or

(*b*) a sum equal to [11][forty] per cent of the profits of such business (computed under the head "Profits and gains of business or profession" before making any deduction under this section),

whichever is less :

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5. Inserted by the Finance Act, 1975, w.r.e.f. 1-4-1965.

6. Substituted by the Finance Act, 1990, w.e.f. 1-4-1991. Prior to its substitution, section 33AB was inserted by the Finance Act, 1985, w.e.f. 1-4-1986 and later amended by the Finance Act, 1987, w.e.f. 1-4-1988.

7. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

8. Substituted for words beginning with "whichever is earlier, deposited with the National Bank" and ending with "the assessee shall, subject to the provisions of this section," by the Finance Act, 1994, w.e.f. 1-4-1995.

9. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

10. Substituted for the portion beginning with the words "deposited any amount" and ending with the words "approval of the Central Government," by the Finance Act, 2003, w.e.f. 1-4-2004. Prior to its substitution, the quoted portion read as under :

"deposited any amount in an account (hereafter in this section referred to as the Tea Deposit Account) opened by the assessee in accordance with, and for the purposes specified in, a scheme framed by the Tea Board (hereafter in this section referred to as the deposit scheme) with the previous approval of the Central Government,"

11. Substituted for "twenty" by the Finance Act, 2001, w.e.f. 1-4-2002.

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Provided that where such assessee is a firm, or any association of persons or any body of individuals, the deduction under this section shall not be allowed in the computation of the income of any partner, or as the case may be, any member of such firm, association of persons or body of individuals :

Provided further that where any deduction, in respect of any amount deposited in the special account [12][, or in the [13][***] Deposit Account], has been allowed under this sub-section in any previous year, no deduction shall be allowed in respect of such amount in any other previous year.

(2) The deduction under sub-section (1) shall not be admissible unless the accounts of such business of the assessee 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[14] duly signed and verified by such accountant :

Provided that in a case where the assessee is required by or under any other law to get his accounts audited, it shall be sufficient compliance with the provisions of this sub-section if such assessee gets the accounts of such business audited under such law and furnishes the report of the audit as required under such other law and a further report in the form prescribed under this sub-section.

(3) Any amount standing to the credit of the assessee in [15][the special account or the [16][***] Deposit Account shall not be allowed to be withdrawn except for the purposes specified in the scheme or, as the case may be, in the deposit scheme] or in the circumstances specified below :—

(*a*) closure of business ;

(*b*) death of an assessee ;

(*c*) partition of a Hindu undivided family ;

(*d*) dissolution of a firm ;

(*e*) liquidation of a company.

[17][(4) Notwithstanding anything contained in sub-section (3), where any amount standing to the credit of the assessee in the special account or in the Deposit Account is released during any previous year by the National Bank or withdrawn by the assessee from the Deposit Account, and such amount is utilised for the purchase of—

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12. Inserted by the Finance Act, 1994, w.e.f. 1-4-1995.

13. Word "Tea" omitted by the Finance Act, 2003, w.e.f. 1-4-2004.

14. *See* rule 5AC and Form No. 3AC for audit report required under section 33AB(2). Rule 12 provides that the return of income shall not be accompanied by any document or copy of any account or form or report of audit required to be attached with return of income under any of the provisions of the Act.

15. Substituted for "the special account shall not be allowed to be withdrawn except for the purposes specified in the scheme" by the Finance Act, 1994, w.e.f. 1-4-1995.

16. Word "Tea" omitted by the Finance Act, 2003, w.e.f. 1-4-2004.

17. Substituted by the Finance Act, 2003, w.e.f. 1-4-2004. Prior to its substitution, sub-section (4) read as under :

(Contd. on p. 1.197)

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(*a*) any machinery or plant to be installed in any office premises or residential accommodation, including any accommodation in the nature of a guest-house;

(*b*) any office appliances (not being computers);

(*c*) any 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 income chargeable under the head "Profits and gains of business or profession" of any one previous year;

(*d*) any new machinery or plant to be installed in an industrial undertaking for the purposes of business of construction, manufacture or production of any article or thing specified in the list in the Eleventh Schedule,

the whole of such amount so utilised shall be deemed to be the profits and gains of business of that previous year and shall accordingly be chargeable to income-tax as the income of that previous year.]

(5) Where any amount, standing to the credit of the assessee in the special account [18][or in the [19][***] Deposit Account], is withdrawn during any previous year by the assessee in the circumstance specified in clause (*a*) or clause (*d*) of sub-section (3), the whole of such amount shall be deemed to be the profits and gains of business or profession of that previous year and shall accordingly be chargeable to income-tax as the income of that previous year, as if the business had not closed or, as the case may be, the firm had not been dissolved.

(6) Where any amount standing to the credit of the assessee in the special account [20][or in the [19][***] Deposit Account] is utilised by the assessee for the purposes of any expenditure in connection with such business in accordance with the scheme [20][or the deposit scheme], such expenditure shall not be allowed in computing the income chargeable under the head "Profits and gains of business or profession".

(Contd. from p. 1.196)

'(4) Notwithstanding anything contained in sub-section (3), no deduction under sub-section (1) shall be allowed in respect of any amount utilised for the purchase of—

(*a*) any machinery or plant to be installed in any office premises or residential accommodation, including any accommodation in the nature of a guest-house ;

(*b*) any office appliances (not being computers) ;

(*c*) any 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 income chargeable under the head "Profits and gains of business or profession" of any one previous year ;

(*d*) any new machinery or plant to be installed in an industrial undertaking for the purposes of business of construction, manufacture or production of any article or thing specified in the list in the Eleventh Schedule.'

18. Inserted by the Finance Act, 1994, w.e.f. 1-4-1995.

19. Word "Tea" omitted by the Finance Act, 2003, w.e.f. 1-4-2004.

20. Inserted by the Finance Act, 1994, w.e.f. 1-4-1995.

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(7) Where any amount, standing to the credit of the assessee in the special account [21][or in the [22][***] Deposit Account], which is released during any previous year by the National Bank [21][or which is withdrawn by the assessee from the [22][***] Deposit Account] for being utilised by the assessee for the purposes of such business in accordance with the scheme [21][or the deposit scheme] is not so utilised, either wholly or in part, within that previous year, the whole of such amount or, as the case may be, part thereof which is not so utilised shall be deemed to be profits and gains of business and accordingly chargeable to income-tax as the income of that previous year :

Provided that this sub-section shall not apply in a case where such amount is released during any previous year at the closure of the account in circumstances specified in clauses (*b*), (*c*) and (*e*) of sub-section (3).

(8) Where any asset acquired in accordance with the scheme [21][or the deposit scheme] is sold or otherwise transferred in any previous year by the assessee to any person at any time before the expiry of eight years from the end of the previous year in which it was acquired, such part of the cost of such asset as is relatable to the deduction allowed under sub-section (1) shall be deemed to be the profits and gains of business or profession of the previous year in which the asset is sold or otherwise transferred and shall accordingly be chargeable to income-tax as the income of that previous year :

Provided that nothing in this sub-section shall apply—

(*i*) where the asset is sold or otherwise transferred by the assessee to Government, a local authority, a corporation established by or under a Central, State or Provincial Act or a Government company[23] as defined in section 617 of the Companies Act, 1956 (1 of 1956) ; or

(*ii*) where the sale or transfer of the asset is made in connection with the succession of a firm by a company in the business or profession carried on by the firm as a result of which the firm sells or otherwise transfers to the company any asset and the scheme [24][or the deposit scheme] continues to apply to the company in the manner applicable to the firm.

Explanation.—The provisions of clause (*ii*) of the proviso shall apply only where—

(*i*) all the properties of the firm relating to the business or profession immediately before the succession become the properties of the company ;

(*ii*) all the liabilities of the firm relating to the business or profession immediately before the succession become the liabilities of the company ; and

(*iii*) all the shareholders of the company were partners of the firm immediately before the succession.

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21. Inserted by the Finance Act, 1994, w.e.f. 1-4-1995.

22. Word "Tea" omitted by the Finance Act, 2003, w.e.f. 1-4-2004.

23. For definition of "Government company", *see* footnote 71 on p. 1.23 *ante.*

24. Inserted by the Finance Act, 1994, w.e.f. 1-4-1995.

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(9) The Central Government, if it considers necessary or expedient so to do, may, by notification in the Official Gazette, direct that the deduction allowable under this section shall not be allowed after such date as may be specified therein.

Explanation.—In this section,—

[25][(*a*) "Coffee Board" means the Coffee Board constituted under section 4 of the Coffee Act, 1942 (7 of 1942);

(*aa*) "National Bank" means the National Bank for Agriculture and Rural Development established under section 3 of the National Bank for Agriculture and Rural Development Act, 1981 (61 of 1981);

(*ab*) "Rubber Board" means the Rubber Board constituted under sub-section (1) of section 4 of the Rubber Act, 1947 (24 of 1947);]

(*b*) "Tea Board" means the Tea Board established under section 4 of the Tea Act, 1953 (29 of 1953).]

[26][**Site Restoration Fund.**[27]

33ABA. (1) Where an assessee is carrying on business consisting of the prospecting for, or extraction or production of, petroleum or natural gas or both in India and in relation to which the Central Government has entered into an agreement with such assessee for such business, has before the end of the previous year—

(*a*) deposited with the State Bank of India any amount or amounts in an account (hereafter in this section referred to as the special account) maintained by the assessee with that Bank in accordance with, and for the purposes specified in, a scheme (hereafter in this section referred to as the scheme) approved in this behalf by the Government of India in the Ministry of Petroleum and Natural Gas; or

(*b*) deposited any amount in an account (hereafter in this section referred to as the Site Restoration Account) opened by the assessee in accordance with, and for the purposes specified in, a scheme framed by the Ministry referred to in clause (*a*) (hereafter in this section referred to as the deposit scheme),

the assessee shall, subject to the provisions of this section, be allowed a deduction (such deduction being allowed before the loss, if any, brought forward from earlier years is set off under section 72) of—

(*i*) a sum equal to the amount or the aggregate of the amounts so deposited; or

(*ii*) a sum equal to twenty per cent of the profits of such business (computed under the head "Profits and gains of business or profession" before making any deduction under this section),

whichever is less :

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25. Clauses (*a*), (*aa*) and (*ab*) substituted for clause (*a*) by the Finance Act, 2003, w.e.f. 1-4-2004. Prior to its substitution, clause (*a*) read as under :

'(*a*) "National Bank" means the National Bank for Agriculture and Rural Development established under section 3 of the National Bank for Agriculture and Rural Development Act, 1981 (61 of 1981) ;'

26. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999.

27. *See* Site Restoration Fund Scheme, 1999. For details, *see* Taxmann's Income-tax Rules.

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Provided that where such assessee is a firm, or any association of persons or any body of individuals, the deduction under this section shall not be allowed in the computation of the income of any partner or, as the case may be, any member of such firm, association of persons or body of individuals :

Provided further that where any deduction, in respect of any amount deposited in the special account, or in the Site Restoration Account, has been allowed under this sub-section in any previous year, no deduction shall be allowed in respect of such amount in any other previous year :

Provided also that any amount credited in the special account or the Site Restoration Account by way of interest shall be deemed to be a deposit.

(2) The deduction under sub-section (1) shall not be admissible unless the accounts of such business of the assessee 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[28] duly signed and verified by such accountant :

Provided that in a case where the assessee is required by or under any other law to get his accounts audited, it shall be sufficient compliance with the provisions of this sub-section if such assessee gets the accounts of such business audited under such law and furnishes the report of the audit as required under such other law and a further report in the form prescribed under this sub-section.

(3) Any amount standing to the credit of the assessee in the special account or the Site Restoration Account shall not be allowed to be withdrawn except for the purposes specified in the scheme or, as the case may be, in the deposit scheme.

(4) Notwithstanding anything contained in sub-section (3), no deduction under sub-section (1) shall be allowed in respect of any amount utilised for the purchase of—

(*a*) any machinery or plant to be installed in any office premises or residential accommodation, including any accommodation in the nature of a guest-house;

(*b*) any office appliances (not being computers);

(*c*) any 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 income chargeable under the head "Profits and gains of business or profession" of any one previous year;

(*d*) any new machinery or plant to be installed in an industrial undertaking for the purposes of business of construction, manufacture or production of any article or thing specified in the list in the Eleventh Schedule.

(5) Where any amount standing to the credit of the assessee in the special account or in the Site Restoration Account is withdrawn on closure of the account during any previous year by the assessee, the amount so withdrawn from the account, as reduced by the amount, if any, payable to the Central Government by way of

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28. See rule 5AD and Form No. 3AD. Rule 12 provides that the return of income shall not be accompanied by any document or copy of any account or form or report of audit required to be attached with return of income under any of the provisions of the Act.

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profit or production share as provided in the agreement referred to in section 42, shall be deemed to be the profits and gains of business or profession of that previous year and shall accordingly be chargeable to income-tax as the income of that previous year.

Explanation.—Where any amount is withdrawn on closure of the account in a previous year in which the business carried on by the assessee is no longer in existence, the provisions of this sub-section shall apply as if the business is in existence in that previous year.

(6) Where any amount standing to the credit of the assessee in the special account or in the Site Restoration Account is utilised by the assessee for the purposes of any expenditure in connection with such business in accordance with the scheme or the deposit scheme, such expenditure shall not be allowed in computing the income chargeable under the head "Profits and gains of business or profession".

(7) Where any amount, standing to the credit of the assessee in the special account or in the Site Restoration Account, which is released during any previous year by the State Bank of India or which is withdrawn by the assessee from the Site Restoration Account for being utilised by the assessee for the purposes of such business in accordance with the scheme or the deposit scheme is not so utilised, either wholly or in part, within that previous year, the whole of such amount or, as the case may be, part thereof which is not so utilised shall be deemed to be profits and gains of business and accordingly chargeable to income-tax as the income of that previous year.

[29][***]

(8) Where any asset acquired in accordance with the scheme or the deposit scheme is sold or otherwise transferred in any previous year by the assessee to any person at any time before the expiry of eight years from the end of the previous year in which it was acquired, such part of the cost of such asset as is relatable to the deduction allowed under sub-section (1) shall be deemed to be the profits and gains of business or profession of the previous year in which the asset is sold or otherwise transferred and shall accordingly be chargeable to income-tax as the income of that previous year :

Provided that nothing in this sub-section shall apply—

(*i*) where the asset is sold or otherwise transferred by the assessee to Government, a local authority, a corporation established by or under a Central, State or Provincial Act or a Government company[30] as defined in section 617 of the Companies Act, 1956 (1 of 1956); or

(*ii*) where the sale or transfer of the asset is made in connection with the succession of a firm by a company in the business or profession carried on by the firm as a result of which the firm sells or otherwise transfers to the company any asset and the scheme or the deposit

29. Proviso omitted by the Finance Act, 1999, w.e.f. 1-4-1999. Earlier, proviso was inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999.

30. For definition of "Government company", *see* footnote 71 on p. 1.23 *ante.*

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scheme continues to apply to the company in the manner applicable to the firm.

Explanation.—The provisions of clause (*ii*) of the proviso shall apply only where—

(*i*) all the properties of the firm relating to the business or profession immediately before the succession become the properties of the company;

(*ii*) all the liabilities of the firm relating to the business or profession immediately before the succession become the liabilities of the company; and

(*iii*) all the shareholders of the company were partners of the firm immediately before the succession.

(9) The Central Government may, if it considers necessary or expedient so to do, by notification in the Official Gazette, direct that the deduction allowable under this section shall not be allowed after such date as may be specified therein.

Explanation.—For the purposes of this section,—

(*a*) "State Bank of India" means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955);

(*b*) the expression "amount standing to the credit of the assessee in the special account or the Site Restoration Account" includes interest accrued to such accounts.]

[31][**Reserves for shipping business.**

33AC. (1) [32][In the case of an assessee, being a Government company or a public company formed and registered in India with the main object of carrying on the business of operation of ships, there shall, in accordance with and subject to the provisions of this section, be allowed a deduction of an amount not exceeding fifty per cent of profits derived from the business of operation of ships (computed under the head "Profits and gains of business or profession" and before making any deduction under this section), as is debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account, to be utilised in the manner laid down in sub-section (2) :]

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31. Inserted by the Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-4-1990.

32. Substituted for the portion beginning with the words "In the case of an assessee" and ending with the words "manner laid down in sub-section (2) :" by the Finance Act, 1995, w.e.f. 1-4-1996. Prior to substitution, the quoted portion, as amended by the Finance Act, 1992, w.e.f. 1-4-1993, read as under :

"In the case of an assessee, being a Government company or a public company formed and registered in India with the main object of carrying on the business of operation of ships, there shall, in accordance with and subject to the provisions of this section, be allowed a deduction of an amount, not exceeding the total income (computed before making any deduction under this section and Chapter VI-A), as is debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account to be utilised in the manner laid down in sub-section (2) :"

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[33][**Provided** that where the aggregate of the amounts carried to such reserve account from time to time exceeds twice the aggregate of the amounts of the paid-up share capital, the general reserves and amount credited to the share premium account of the assessee, no allowance under this sub-section shall be made in respect of such excess :]

[34][**Provided further** that for five assessment years commencing on or after the 1st day of April, 2001 and ending before the 1st day of April, 2006, the provisions of this sub-section shall have effect as if for the words "an amount not exceeding fifty per cent of profits", the words "an amount not exceeding the profits" had been substituted:]

[35][**Provided also** that no deduction shall be allowed under this section for any assessment year commencing on or after the 1st day of April, 2005.]

(2) The amount credited to the reserve account under sub-section (1) shall be utilised by the assessee before the expiry of a period of eight years next following the previous year in which the amount was credited—

(*a*) for acquiring a new ship for the purposes of the business of the assessee ; and

(*b*) until the acquisition of a new ship, for the purposes of the business of the assessee other than for distribution by way of dividends or profits or for remittance outside India as profits or for the creation of any asset outside India.

(3) Where any amount credited to the reserve account under sub-section (1),—

(*a*) has been utilised for any purpose other than that referred to in clause (*a*) or clause (*b*) of sub-section (2), the amount so utilised ; or

(*b*) has not been utilised for the purpose specified in clause (*a*) of sub-section (2), the amount not so utilised ; or

(*c*) has been utilised for the purpose of acquiring a new ship as specified in clause (*a*) of sub-section (2), but such ship is sold or otherwise transferred [36][, other than in any scheme of demerger] by the assessee to any person at any time before the expiry of [37][three] years from the end of the previous year in which it was acquired, the amount so utilised in acquiring the ship,

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33. Substituted by the Finance Act, 2002, w.e.f. 1-4-2003. Prior to its substitution, first proviso read as under :

"**Provided** that where the aggregate of the amounts carried to such reserve account from time to time exceeds twice the amount of the paid-up share capital (excluding the amounts capitalised from reserves) of the assessee, no allowance under this sub-section shall be made in respect of such excess."

34. Inserted by the Finance Act, 2000, w.e.f. 1-4-2001.

35. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005.

36. Inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

37. Substituted for "eight" by the Finance Act, 2003, w.e.f. 1-4-2004.

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shall be deemed to be the profits,—

(*i*) in a case referred to in clause (*a*), in the year in which the amount was so utilised ; or

(*ii*) in a case referred to in clause (*b*), in the year immediately following the period of eight years specified in sub-section (2) ; or

(*iii*) in a case referred to in clause (*c*), in the year in which the sale or transfer took place,

and shall be charged to tax accordingly.

[38][(4) Where the ship is sold or otherwise transferred (other than in any scheme of demerger) after the expiry of the period specified in clause (*c*) of sub-section (3) and the sale proceeds are not utilised for the purpose of acquiring a new ship within a period of one year from the end of the previous year in which such sale or transfer took place, [39][so much of such sale proceeds which represent the amount credited to the reserve account and utilised for the purposes mentioned in clause (*c*) of sub-section (3)] shall be deemed to be the profits of the assessment year immediately following the previous year in which the ship is sold or transferred.]

Explanation.—For the purposes of this section,—

(*a*) [40]"public company" shall have the meaning assigned to it in section 3 of the Companies Act, 1956 (1 of 1956) ;

[41][(*aa*) [42]"Government company" shall have the meaning assigned to it in section 617 of the Companies Act, 1956 (1 of 1956) ;]

(*b*) "new ship" shall have the same meaning as in clause (*ii*) of sub-section (2) of section 32AB.]

[43][**Rehabilitation allowance.**

33B. Where the business of any industrial undertaking carried on in India is discontinued in any previous year by reason of extensive damage to, or destruction of, any building, machinery, plant or furniture owned by the assessee and used for the purposes of such business as a direct result of—

(*i*) flood, typhoon, hurricane, cyclone, earthquake or other convulsion of nature ; or

(*ii*) riot or civil disturbance ; or

(*iii*) accidental fire or explosion ; or

(*iv*) action by an enemy or action taken in combating an enemy (whether with or without a declaration of war),

and, thereafter, at any time before the expiry of three years from the end of such previous year, the business is re-established, reconstructed or revived by the

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38. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

39. Substituted for "such sale proceeds" by the Finance Act, 2005, w.r.e.f. 1-4-2004.

40. For definition of "public company" under clause (*iv*) of section 3(1) of the Companies Act, 1956, *see* **Appendix**.

41. Inserted by the Finance Act, 1992, w.e.f. 1-4-1993.

42. For definition of "Government company", *see* footnote 71 on page 1.23 *ante*.

43. Inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

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assessee, he shall, in respect of the previous year in which the business is so re-established, reconstructed or revived, be allowed a deduction of a sum by way of rehabilitation allowance equivalent to sixty per cent of the amount of the deduction allowable to him under clause (*iii*) of sub-section (1) of section 32 in respect of the building, machinery, plant or furniture so damaged or destroyed :

[44][**Provided** that no deduction under this section shall be allowed in relation to the assessment year commencing on the 1st day of April, 1985, or any subsequent assessment year.]

Explanation.—In this section, "industrial undertaking" means any undertaking which is mainly engaged in the business of generation or distribution of electricity or any other form of power or in the construction of ships or in the manufacture or processing of goods or in mining.]

Conditions for depreciation allowance and development rebate.

34. (1) [45][***]

(2) [46][***]

(3)(*a*) The deduction referred to in section 33 shall not be allowed unless an amount equal to seventy-five per cent of the development rebate to be actually allowed is debited to the profit and loss account of [47][any previous year in respect of which the deduction is to be allowed under sub-section (2) of that section or any earlier previous year (being a previous year not earlier than the year in which the ship was acquired or the machinery or plant was installed or the ship, machinery or plant was first put to use)] and credited to a reserve account to be utilised by the assessee during a period of eight years next following for the purposes of the business of the undertaking, other than—

(*i*) for distribution by way of dividends or profits ; or

(*ii*) for remittance outside India as profits or for the creation of any asset outside India :

Provided that this clause shall not apply where the assessee is a company, being a licensee within the meaning of the Electricity (Supply) Act, 1948 (54 of 1948)[48], or where the ship has been acquired or the machinery or plant has been installed before the 1st day of January, 1958 :

[49][**Provided further** that where a ship has been acquired after the 28th day of February, 1966, this clause shall have effect in respect of such ship as if for the words "seventy-five", the word "fifty" had been substituted.]

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44. Inserted by the Finance Act, 1984, w.e.f. 1-4-1985.

45. Omitted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988. Original sub-section (1) was amended by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

46. Omitted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988. Original sub-section (2) was amended by the Finance Act, 1965, w.e.f. 1-4-1965, the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967, the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971, the Direct Taxes (Amendment) Act, 1974, w.e.f. 1-4-1975 and the Finance (No. 2) Act, 1980, w.e.f. 1-4-1981.

47. Substituted for "the relevant previous year" by the Finance Act, 1990, w.r.e.f. 1-4-1962.

48. For the meaning of the expression "a licensee within the meaning of the Electricity (Supply) Act, 1948 (54 of 1948)", *see* Taxmann's Direct Taxes Manual, Vol. 3.

49. Inserted by the Finance Act, 1966, w.e.f. 1-4-1966.

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Explanation.—[*Omitted by the Finance Act, 1990, w.r.e.f. 1-4-1962. Earlier, it was inserted by the Finance Act, 1966, w.r.e.f. 1-4-1962.*]

(*b*) If any ship, machinery or plant is sold or otherwise transferred by the assessee to any person at any time before the expiry of eight years from the end of the previous year in which it was acquired or installed, any allowance made under section 33 or under the corresponding provisions of the Indian Income-tax Act, 1922 (11 of 1922), in respect of that ship, machinery or plant shall be deemed to have been wrongly made for the purposes of this Act, and the provisions of sub-section (5) of section 155 shall apply accordingly :

Provided that this clause shall not apply—

(*i*) where the ship has been acquired or the machinery or plant has been installed before the 1st day of January, 1958 ; or

(*ii*) where the ship, machinery or plant is sold or otherwise transferred by the assessee to the Government, a local authority, a corporation established by a Central, State or Provincial Act or a [50]Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956) ; or

(*iii*) where the sale or transfer of the ship, machinery or plant is made in connection with the amalgamation or succession, referred to in sub-section (3) or sub-section (4) of section 33.

[51][**Restriction on unabsorbed depreciation and unabsorbed investment allowance for limited period in case of certain domestic companies.**

34A. (1) In computing the profits and gains of the business of a domestic company in relation to the previous year relevant to the assessment year commencing on the 1st day of April, 1992, where effect is to be given to the unabsorbed depreciation allowance or unabsorbed investment allowance or both in relation to any previous year relevant to the assessment year commencing on or before the 1st day of April, 1991, the deduction shall be restricted to two-third of such allowance or allowances and the balance,—

(*a*) where it relates to depreciation allowance, be added to the depreciation allowance for the previous year relevant to the assessment year commencing on the 1st day of April, 1993 and be deemed to be part of that allowance or if there is no such allowance for that previous year, be deemed to be the allowance for that previous year and so on for the succeeding previous years ;

(*b*) where it relates to investment allowance, be carried forward to the assessment year commencing on the 1st day of April, 1993 and the balance of the investment allowance, if any, still outstanding shall be carried forward to the following assessment year and where the period of eight years has expired before the portion of such balance is adjusted, the said period shall be extended beyond eight years till such time the portion of the said balance is absorbed in the profits and gains of the business of the domestic company.

(2) For the assessment year commencing on the 1st day of April, 1992, the provisions of sub-section (2) of section 32 and sub-section (3) of section 32A shall

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50. For definition of "Government company", *see* footnote 71 on p. 1.23 *ante.*

51. Inserted by the Finance Act, 1992, w.e.f. 1-4-1992.

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apply to the extent such provisions are not inconsistent with the provisions of sub-section (1) of this section.

(3) Nothing contained in sub-section (1) shall apply where the amount of unabsorbed depreciation allowance or of the unabsorbed investment allowance, as the case may be, or the aggregate amount of such allowances in the case of a domestic company is less than one lakh rupees.

(4) Nothing contained in sections 234B and 234C shall apply to any shortfall in the payment of any tax due on the assessed tax or, as the case may be, returned income where such shortfall is on account of restricting the amount of depreciation allowance or investment allowance under this section and the assessee has paid the amount of shortfall before furnishing the return of income under sub-section (1) of section 139.]

[52][**Expenditure on scientific research.**

[53]**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 [54]business.

[55][*Explanation.*—Where any such expenditure has been laid 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*[56] below sub-section (5) of section 40A] to an employee engaged in such scientific research or on the purchase of materials used in such scientific research, the aggregate of the expenditure 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[57] to have been laid out or expended on such scientific

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52. Reintroduced with modification by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Earlier section 35 was omitted by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date.

53. *See* also Circular No. 778, dated 20-8-1999 and Press Note, dated 5-6-1982, issued by the Ministry of Finance (Department of Revenue). For details, *see* Taxmann's Master Guide to Income-tax Act. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

54. For the meaning of the term "business", *see* Taxmann's Direct Taxes Manual, Vol. 3.

55. Inserted by the Direct Taxes (Amendment) Act, 1974, w.e.f. 1-4-1974.

56. Section 40A(5) has now been omitted. *Explanation 2(a)* to section 40A(5) defined "salary" as under :

'*Explanation 2.*—In this sub-section,—

(*a*) "salary" has the meaning assigned to it in clause (*1*) read with clause (*3*) of section 17 subject to the following modifications, namely :—

(*1*) in the said clause (*1*), the word "perquisites" occurring in sub-clause (*iv*) and the whole of sub-clause (*vii*) shall be omitted;

(*2*) in the said clause (*3*), the references to "assessee" shall be construed as references to "employee or former employee" and the references to "his employer or former employer" and "an employer or a former employer" shall be construed as references to "the assessee";

(*b*) ** ** **'

57. *See* rule 6(1). The prescribed authority under rule 6(1) is Director General (Income-tax Exemptions) in concurrence with Secretary, Department of Scientific and Industrial Research, Government of India.

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research, be deemed to have been laid out or expended in the previous year in which the business is commenced ;]

[58](*ii*) [59][an amount equal to [59a]**[***one and one-fourth***]** times of any sum paid] to a [59b]**[***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 :

[60][**Provided** that such association, university, college or other institution for the purposes of this clause—

(*A*) is for the time being approved, in accordance with the guidelines, in the manner and subject to such conditions as may be prescribed; and

(*B*) such association, university, college or other institution is specified as such, by notification[61] in the Official Gazette, by the Central Government;]

[62][(*iia*) an amount equal to one and one-fourth times of any sum paid to a company to be used by it for scientific research:

Provided that such company—

(*A*) is registered in India,

(*B*) has as its main object the scientific research and development,

(*C*) is, for the purposes of this clause, for the time being approved by the prescribed authority in the prescribed manner, and

(*D*) fulfils such other conditions as may be prescribed[63];]

[64][[65](*iii*) [66][an amount equal to one and one-fourth times of [66a]**[***any sum paid***]** *to a university***]**, college or other institution to be used for research in social science or statistical research :

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58. *See* rules 5C, 5D and 5E and Form Nos. 3CF-I and 3CF-II.

59. Substituted for "any sum paid" by the Finance Act, 1999, w.e.f. 1-4-2000.

59a. Words "one and three-fourth" shall be substituted for "one and one-fourth" by the Finance Act, 2010, w.e.f. **1-4-2011**.

59b. Words "research association" shall be substituted for "scientific research association" by the Finance Act, 2010, w.e.f. **1-4-2011**.

60. Substituted by the Taxation Laws (Amendment) Act, 2006, w.r.e.f. 1-4-2006. Prior to its substitution, proviso, as amended by the Finance Act, 1999, w.e.f. 1-4-2000 and Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989, read as under :

"**Provided** that such association, university, college or institution is for the time being approved for the purposes of this clause by the Central Government by notification in the Official Gazette;"

61. For complete list of approved scientific research university/institutions, etc., under this clause, *see* Taxmann's Direct Taxes Circulars & Taxmann's Yearly Tax Digest & Referencer.

62. Inserted by the Finance Act, 2008, w.e.f. 1-4-2009.

63. *See* rule 5F and Form No. 3CF-III.

64. Substituted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992. Prior to substitution, clause (*iii*) was amended by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

65. *See* rules 5C, 5D and 5E and Form Nos. 3CF-I and 3CF-II.

66. Substituted for "any sum paid" by the Finance Act, 1999, w.e.f. 1-4-2000.

66a. Words "any sum paid to a research association which has as its object the undertaking of research in social science or statistical research or to a university" shall be substituted for "any sum paid to a university" by the Finance Act, 2010, w.e.f. **1-4-2011**.

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[67][**Provided** that [67a]**[***such university***]**, college or other institution for the purposes of this clause—

(*A*) is for the time being approved, in accordance with the guidelines, in the manner and subject to such conditions as may be prescribed; and

(*B*) [67a]**[***such university***]**, college or other institution is specified as such, by notification[68] in the Official Gazette, by the Central Government.]

[69][*Explanation*.—The deduction, to which the assessee is entitled in respect of any sum paid to a [69a]**[***scientific research association***]**, university, college or other institution to which clause (*ii*) or clause (*iii*) applies, shall not be denied merely on the ground that, subsequent to the payment of such sum by the assessee, the approval granted to the association, university, college or other institution referred to in clause (*ii*) or clause (*iii*) has been withdrawn;]

(*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) :

[70][**Provided** that the [69a]**[***scientific research association***]**, university, college or other institution referred to in clause (*ii*) or clause (*iii*) shall make an application in the prescribed form and manner to the [71][Central Government] for the purpose of grant of approval, or continuance thereof, under clause (*ii*) or, as the case may be, clause (*iii*) :

Provided further that the [71][Central Government] may, before granting approval under clause (*ii*) or clause (*iii*), call for such documents (including audited annual accounts) or information from the [69a]**[***scientific research association***]**, university, college or other institution as it thinks necessary in order to satisfy itself about the genuineness of the activities of the [69a]**[***scientific research association***]**, university, college or other institution and that [72][Government] may also make such inquiries as it may deem necessary in this behalf :

Provided also that any [73][notification issued, by the Central Government under clause (*ii*) or clause (*iii*), before the date on which the Taxation Laws (Amend-

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67. Substituted by the Taxation Laws (Amendment) Act, 2006, w.r.e.f. 1-4-2006. Prior to its substitution, proviso, as amended by the Finance Act, 1999, w.e.f. 1-4-2000, read as under: "**Provided** that such university, college or institution is for the time being approved for the purposes of this clause by the Central Government by notification in the Official Gazette;"

67a. Words "such association, university" shall be substituted for "such university" by the Finance Act, 2010, w.e.f. **1-4-2011**.

68. For complete list of approved social science or statistical research university/institutions, etc., under this clause, *see* Taxmann's Direct Taxes Circulars & Taxmann's Yearly Tax Digest & Referencer.

69. Inserted by the Taxation Laws (Amendment) Act, 2006, w.r.e.f. 1-4-2006.

69a. Words "research association" shall be substituted for "scientific research association" by the Finance Act, 2010, w.e.f. **1-4-2011**.

70. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

71. Substituted for "prescribed authority" by the Finance Act, 1999, w.e.f. 1-4-2000.

72. Substituted for "authority" by the Taxation Laws (Amendment) Act, 2006, w.r.e.f. 1-4-2006.

73. Substituted for "notification issued by the Central Government under clause (*ii*) or clause (*iii*) shall, at any one time, have effect for such assessment year or years, not exceeding three assessment years" by the Taxation Laws (Amendment) Act, 2006, w.r.e.f. 1-4-2006. Earlier the proviso was amended by the Finance Act, 1999, w.e.f. 1-4-2000.

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ment) Bill, 2006 receives the assent of the President†, shall, at any one time, have effect for such assessment year or years, not exceeding three assessment years] (including an assessment year or years commencing before the date on which such notification is issued) as may be specified in the notification:]

[74][**Provided also** that where an application under the first proviso is made on or after the date on which the Taxation Laws (Amendment) Bill, 2006 receives the assent of the President†, every notification under clause (*ii*) or clause (*iii*) shall be issued or an order rejecting the application shall be passed within the period of twelve months from the end of the month in which such application was received by the Central Government.]

(2) For the purposes of clause (*iv*) of sub-section (1),—

[75][(*i*) in a case where such capital expenditure is incurred before the 1st day of April, 1967, one-fifth of the capital expenditure incurred in any 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 years ;

(*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[76] shall be deducted for that previous year :]

[77][**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.]

[78][*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.

[77][*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 thereof in part performance of a contract of the nature referred to in section 53A[79] of the Transfer of Property Act, 1882 (4 of 1882), the date on which he has so taken or retained possession of such land or part ;]

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74. Inserted by the Taxation Laws (Amendment) Act, 2006, w.r.e.f. 1-4-2006.

75. Substituted for clause (*i*) by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968.

76. For the meaning of the expression "incurred in any previous year", *see* Taxmann's Direct Taxes Manual, Vol. 3.

77. Inserted by the Finance Act, 1984, w.e.f. 1-4-1984.

78. Existing *Explanation* renumbered as *Explanation 1, ibid.*

79. For text of section 53A of the Transfer of Property Act, 1882 *see* **Appendix**.

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(*ii*) notwithstanding anything contained in clause (*i*), where an asset representing expenditure of a capital nature [80][incurred 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 with the aggregate of deductions 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 sale 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 the sale price falls short of the value of the asset taken into account at the time of cessation, an amount equal to the deficiency 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 deduction shall be allowed under [81][clause (*ii*) of sub-section (1)] of section 32 for the same [82][or any other] previous year in respect of that asset ;

(*v*) where the asset [83][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 [84][clause (*ii*) of sub-section (1)] of section 32.

[85][(2A) [86]Where [87][, before the 1st day of March, 1984,] the assessee pays any sum [88][(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 (1) [89][or to a public sector company] to be used for scientific research undertaken under a programme approved in this

80. Inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968.

81. Substituted for "clauses (*i*), (*ii*), (*iia*), (*iii*) and (*iv*) of sub-section (1) or under sub-section (1A)" by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988.

82. Inserted by the Finance (No. 2) Act, 1980, w.r.e.f. 1-4-1962.

83. Inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968.

84. Substituted for "clauses (*i*), (*ii*) and (*iii*) of sub-section (1)" by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988.

85. Inserted by the Direct Taxes (Amendment) Act, 1974, w.e.f. 1-4-1974.

86. For guidelines for approval of scientific research programmes and list of approved programmes, *see* Taxmann's Direct Taxes Circulars.

87. Inserted by the Finance Act, 1984, w.e.f. 1-4-1984.

88. Inserted by the Finance (No. 2) Act, 1983, w.e.f. 1-4-1984.

89. Inserted by the Finance (No. 2) Act, 1980, w.e.f. 1-9-1980.

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behalf by the prescribed authority[90] 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

(*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.]

[91][*Explanation.*—For the purposes of this sub-section, "public sector company" shall have the same meaning as in clause (*b*) of the *Explanation* below sub-section (2B) of section 32A.]

[92][(2AA) [93]Where the assessee pays any sum to a National Laboratory [94][or a [95][University or an Indian Institute of Technology or a specified person] with a specific direction that the said sum shall be used for scientific research undertaken under a programme approved in this behalf by the prescribed authority[96], then—

(*a*) there shall be allowed a deduction of a sum equal to [96a]**[***one and one-fourth***]** times the sum so paid ; and

(*b*) no deduction in respect of such sum shall be allowed under any other provision of this Act :

[97][**Provided** that the prescribed authority shall, before granting approval, satisfy itself about the feasibility of carrying out the scientific research and shall submit its report to the Director General in such form as may be prescribed.[98]]

[99][*Explanation 1.*—The deduction, to which the assessee is entitled in respect of any sum paid to a National Laboratory, University, Indian Institute of Technology or a specified person for the approved programme referred to in this

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90. *See* rule 6(1). *See* also footnote No. 57 on page 1.207.

91. Inserted by the Finance (No. 2) Act, 1980, w.e.f. 1-9-1980.

92. Inserted by the Finance Act, 1993, w.e.f. 1-4-1994.

93. *See* rule 6(1A), 6(3), 6(5), 6(6) and 6(7) and Form Nos. 3CG to 3CJ. The procedure laid down by rule 6 is, *inter alia*, as follows :

- Prescribed authority is Head of National Laboratory, University or IIT and in case of specified person, the Principal Scientific Adviser to the Government of India.
- The application for approval is to be made by the sponsor in Form No. 3CG.
- The National Laboratory, University or Indian Institute of Technology, etc., shall issue a receipt of payment for carrying out an approved programme of scientific research, in Form No. 3CI.
- The prescribed authority will grant approval only if the conditions mentioned in sub-rule (7) of rule 6 are satisfied.

94. Inserted by the Finance Act, 1994, w.e.f. 1-4-1995.

95. Substituted for "University or an Indian Institute of Technology" by the Finance Act, 2001, w.e.f. 1-4-2002.

96. *See* footnote No. 93 (*supra*).

96a. Words "one and three-fourth" shall be substituted for "one and one-fourth" by the Finance Act, 2010, w.e.f. **1-4-2011**.

97. Substituted by the Finance (No. 2) Act, 1996, w.e.f. 1-10-1996. Prior to their substitution, the said proviso was amended by the Finance Act, 1994, w.e.f. 1-4-1995.

98. *See* rule 6(7)(*b*) and Form No. 3CJ.

99. Inserted by the Taxation Laws (Amendment) Act, 2006, w.r.e.f. 1-4-2006.

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sub-section, shall not be denied merely on the ground that, subsequent to the payment of such sum by the assessee, the approval granted to,—

(*a*) such Laboratory, or specified person has been withdrawn; or

(*b*) the programme, undertaken by the National Laboratory, University, Indian Institute of Technology or specified person, has been withdrawn.]

[1][*Explanation* [2][*2*].—For the purposes of this section,—

(*a*) "National Laboratory" means a scientific laboratory functioning at the national level under the aegis of the Indian Council of Agricultural Research, the Indian Council of Medical Research, the Council of Scientific and Industrial Research, the Defence Research and Development Organisation, the Department of Electronics, the Department of Bio-Technology or the Department of Atomic Energy and which is approved as a National Laboratory by the prescribed authority in such manner as may be prescribed ;

(*b*) "University" shall have the same meaning as in *Explanation* to clause (*ix*) of section 47 ;

(*c*) "Indian Institute of Technology" shall have the same meaning as that of "Institute" in clause (*g*) of section 3[3] of the Institutes of Technology Act, 1961 (59 of 1961)];

[4][(*d*) "specified person" means such person as is approved by the prescribed authority.]

[5][(2AB)(*1*) Where a company engaged in the business of [6][bio-technology or in [7][*any business of manufacture or production of any article or thing, not being an article or thing specified in the list of the Eleventh Schedule*]] incurs any expenditure on scientific research (not being expenditure in the nature of cost of any land or building) on in-house research and development facility as approved by the prescribed authority[8], then, there shall be allowed a deduction of [9][a sum equal to [10]**[***one and one-half***]** times of the expenditure] so incurred.

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1. Substituted by the Finance Act, 1994, w.e.f. 1-4-1995. Prior to its substitution, the *Explanation* was inserted by the Finance Act, 1993, w.e.f. 1-4-1994.
2. Renumbered as *Explanation 2* by the Taxation Laws (Amendment) Act, 2006, w.r.e.f. 1-4-2006.
3. For definition of "Institute", *see* footnote 75 on p. 1.55 *ante*.
4. Inserted by the Finance Act, 2001, w.e.f. 1-4-2002.
5. Inserted by the Finance Act, 1997, w.e.f. 1-4-1998. *See* rule 6(1B), (4), (5A) and (7A) and Form Nos. 3CK to 3CM.
6. Inserted by the Finance Act, 2001, w.e.f. 1-4-2002.
7. Substituted for "the business of manufacture or production of any drugs, pharmaceuticals, electronic equipments, computers, telecommunication equipments, chemicals or any other article or thing notified by the Board" by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2010**.
8. Prescribed authority is Secretary, Department of Scientific & Industrial Research, Government of India.
9. Substituted for "a sum equal to one and one-fourth times of the expenditure" by the Finance Act, 2000, w.e.f. 1-4-2001.
10. Word "two" shall be substituted for "one and one-half" by the Finance Act, 2010, w.e.f. **1-4-2011**.

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[11][*Explanation.*—For the purposes of this clause, "expenditure on scientific research", in relation to drugs and pharmaceuticals, shall include expenditure incurred on clinical drug trial, obtaining approval from any regulatory authority under any Central, State or Provincial Act and filing an application for a patent under the Patents Act, 1970 (39 of 1970).]

(*2*) No deduction shall be allowed in respect of the expenditure mentioned in clause (*1*) under any other provision of this Act.

(*3*) No company shall be entitled for deduction under clause (*1*) unless it enters into an agreement with the prescribed authority for co-operation in such research and development facility and for audit of the accounts maintained for that facility.

(*4*) The prescribed authority shall submit its report in relation to the approval of the said facility to the Director General in such form and within such time as may be prescribed.]

[12][(*5*) No deduction shall be allowed in respect of the expenditure referred to in clause (*1*) which is incurred after the 31st day of March, [13][2012].

[14][(6) No deduction shall be allowed to a company approved under sub-clause (*C*) of clause (*iia*) of sub-section (1) in respect of the expenditure referred to in clause (*1*) which is incurred after the 31st day of March, 2008.]

[15][(2B)(*a*) Where [16][, 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.

(*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

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11. Inserted by the Finance Act, 2001, w.e.f. 1-4-2002.

12. Inserted by the Finance (No. 2) Act, 1998, w.r.e.f. 1-4-1998.

13. Substituted for "2007" by the Finance Act, 2007, w.e.f. 1-4-2008. Earlier "2007" was substituted for "2005" by the Finance Act, 2005, w.e.f. 1-4-2006 and "2005" was substituted for "2000" by the Finance Act, 1999, w.e.f. 1-4-2000.

14. Inserted by the Finance Act, 2008, w.e.f. 1-4-2009.

15. Inserted by the Finance (No. 2) Act, 1980, w.e.f. 1-9-1980.

For guidelines for approval of scientific research programmes under this sub-section, *see* Taxmann's Direct Taxes Circulars.

16. Inserted by the Finance Act, 1984, w.e.f. 1-4-1984.

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shall be allowed in respect of that asset under [17][clause (*ii*) of sub-section (1)] 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 accordingly.]

[18][(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—

(*a*) the Central Government, when such question relates to any activity under clauses (*ii*) and (*iii*) of sub-section (1), and its decision shall be final;

(*b*) the prescribed authority[19], when such question relates to any activity other than the activity specified in clause (*a*), whose decision shall be final.]

(4) The provisions of sub-section (2) of section 32 shall apply in relation to deductions allowable under clause (*iv*) of sub-section (1) as they apply in relation to deductions allowable in respect of depreciation.

[20][(5) Where, in a scheme of amalgamation, the amalgamating company sells or otherwise transfers to the amalgamated company (being an Indian company) any asset representing expenditure of a capital nature on 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 the asset.]]

[21][**Expenditure on acquisition of patent rights or copyrights.**

35A. (1) In respect of any expenditure of a capital nature incurred after the 28th day of February, 1966 [22][but before the 1st day of April, 1998], on the acquisition of patent rights or copyrights (hereafter, in this section, referred to as rights) used for the purposes of the business, there shall, subject to and in accordance with the provisions of this section, be allowed for each of the relevant

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17. Substituted for "clauses (*i*), (*ii*), (*iia*) and (*iii*) of sub-section (1) or under sub-section (1A)" by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988.

18. Substituted by the Finance Act, 1999, w.e.f. 1-4-2000.

19. *See* rule 6.

20. Inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

21. Inserted by the Finance Act, 1966, w.e.f. 1-4-1966. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

22. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999.

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previous years, a deduction equal to the appropriate fraction of the amount of such expenditure.

Explanation.—For the purposes of this section,—

(*i*) "relevant previous years" means the fourteen previous years beginning with the previous year in which such expenditure is incurred or, where such expenditure is incurred before the commencement of the business, the fourteen previous years beginning with the previous year in which the business commenced :

Provided that where the rights commenced, that is to say, became effective, in any year prior to the previous year in which expenditure on the acquisition thereof was incurred by the assessee, this clause shall have effect with the substitution for the reference to fourteen years of a reference to fourteen years less the number of complete years which, when the rights are acquired by the assessee, have elapsed since the commencement thereof, and if fourteen years have elapsed as aforesaid, of a reference to one year;

(*ii*) "appropriate fraction" means the fraction the numerator of which is one and the denominator of which is the number of the relevant previous years.

(2) Where the rights come to an end without being subsequently revived or where the whole or any part of the rights is sold and the proceeds of the sale (so far as they consist of capital sums) are not less than the cost of acquisition thereof remaining unallowed, no deduction under sub-section (1) shall be allowed in respect of the previous year in which the rights come to an end or, as the case may be, the whole or any part of the rights is sold or in respect of any subsequent previous year.

(3) Where the rights either come to an end without being subsequently revived or are sold in their entirety and the proceeds of the sale (so far as they consist of capital sums) are less than the cost of acquisition thereof remaining unallowed, a deduction equal to such cost remaining unallowed or, as the case may be, such cost remaining unallowed as reduced by the proceeds of the sale, shall be allowed in respect of the previous year in which the rights come to an end, or, as the case may be, are sold.

(4) Where the whole or any part of the rights is sold and the proceeds of the sale (so far as they consist of capital sums) exceed the amount of the cost of acquisition thereof remaining unallowed, so much of the excess as does not exceed the difference between the cost of acquisition of the rights and the amount of such cost remaining unallowed shall be chargeable to income-tax as income of the business of the previous year in which the whole or any part of the rights is sold.

Explanation.—Where the whole or any part of the rights is sold in a previous year in which the business is no longer in existence, the provisions of this sub-section shall apply as if the business is in existence in that previous year.

(5) Where a part of the rights is sold and sub-section (4) does not apply, the amount of the deduction to be allowed under sub-section (1) shall be arrived at by—

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(*a*) subtracting the proceeds of the sale (so far as they consist of capital sums) from the amount of the cost of acquisition of the rights remaining unallowed; and

(*b*) dividing the remainder by the number of relevant previous years which have not expired at the beginning of the previous year during which the rights are sold.]

[23][(6) Where, in a scheme of amalgamation, the amalgamating company sells or otherwise transfers the rights to the amalgamated company (being an Indian company),—

(*i*) the provisions of sub-sections (3) and (4) shall not apply in the case of the amalgamating company; 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 the rights.]

[24][(7) Where in a scheme of demerger, the demerged company sells or otherwise transfers the rights to the resulting company (being an Indian company),—

(*i*) the provisions of sub-sections (3) and (4) shall not apply in the case of the demerged company; and

(*ii*) the provisions of this section shall, as far as may be, apply to the resulting company as they would have applied to the demerged company, if the latter had not sold or otherwise transferred the rights.]

[25][**Expenditure on know-how.**

35AB. (1) Subject to the provisions of sub-section (2), where the assessee has paid in any previous year [26][relevant to the assessment year commencing on or before the 1st day of April, 1998] any lump sum consideration for acquiring[27] any know-how 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.

(2) Where the know-how referred to in sub-section (1) is developed in a laboratory, university or institution referred to in sub-section (2B) of section 32A, one-third of the said lump sum consideration paid in the previous year by the assessee shall be deducted in computing the profits and gains of the business for that year, and the balance amount shall be deducted in equal instalments for each of the two immediately succeeding previous years.

[28][(3) Where there is a transfer of an undertaking under a scheme of amalgamation or demerger and the amalgamating or the demerged company is entitled to a

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23. Inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

24. Inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

25. Inserted by the Finance Act, 1985, w.e.f. 1-4-1986.

26. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999.

27. For the meaning of term 'acquiring', *see* Taxmann's Direct Taxes Manual, Vol. 3.

28. Inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

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deduction under this section, then, the amalgamated company or the resulting company, as the case may be, shall be entitled to claim deduction under this section in respect of such undertaking to the same extent and in respect of the residual period as it would have been allowable to the amalgamating company or the demerged company, as the case may be, had such amalgamation or demerger not taken place.]

Explanation.—For the purposes of this section, "know-how" means any industrial information or technique likely to assist 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 access thereto).]

[29][**Expenditure for obtaining licence to operate telecommunication services.**

35ABB. (1) In respect of any expenditure, being in the nature of capital expenditure, incurred for acquiring any right to operate telecommunication services [30][either before the commencement of the business to operate telecommunication services or thereafter at any time during any previous year] and for which payment has actually been made to obtain a licence, there shall, subject to and in accordance with the provisions of this section, be allowed for each of the relevant previous years, a deduction equal to the appropriate fraction of the amount of such expenditure.

Explanation.—For the purposes of this section,—

[31][(*i*) "relevant previous years" means,—

(*A*) in a case where the licence fee is actually paid before the commencement of the business to operate telecommunication services, the previous years beginning with the previous year in which such business commenced;

(*B*) in any other case, the previous years beginning with the previous year in which the licence fee is actually paid,

and the subsequent previous year or years during which the licence, for which the fee is paid, shall be in force;]

(*ii*) "appropriate fraction" means the fraction the numerator of which is one and the denominator of which is the total number of the relevant previous years;

(*iii*) "payment has actually been made" means the actual payment of expenditure irrespective of the previous year in which the liability for the expenditure was incurred according to the method of accounting regularly employed by the assessee.

(2) Where the licence is transferred and the proceeds of the transfer (so far as they consist of capital sums) are less than the expenditure incurred remaining unallowed, a deduction equal to such expenditure remaining unallowed, as reduced by the proceeds of the transfer, shall be allowed in respect of the previous year in which the licence is transferred.

(3) Where the whole or any part of the licence is transferred and the proceeds of the transfer (so far as they consist of capital sums) exceed the amount of the

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29. Inserted by the Finance Act, 1997, w.r.e.f. 1-4-1996.

30. Inserted by the Finance Act, 1999, w.r.e.f. 1-4-1996.

31. Substituted, *ibid.* Prior to its substitution, clause (*i*) was inserted by the Finance Act, 1997, w.r.e.f. 1-4-1996.

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expenditure incurred remaining unallowed, so much of the excess as does not exceed the difference between the expenditure incurred to obtain the licence and the amount of such expenditure remaining unallowed shall be chargeable to income-tax as profits and gains of the business in the previous year in which the licence has been transferred.

Explanation.—Where the licence is transferred in a previous year in which the business is no longer in existence, the provisions of this sub-section shall apply as if the business is in existence in that previous year.

(4) Where the whole or any part of the licence is transferred and the proceeds of the transfer (so far as they consist of capital sums) are not less than the amount of expenditure incurred remaining unallowed, no deduction for such expenditure shall be allowed under sub-section (1) in respect of the previous year in which the licence is transferred or in respect of any subsequent previous year or years.

(5) Where a part of the licence is transferred in a previous year and sub-section (3) does not apply, the deduction to be allowed under sub-section (1) for expenditure incurred remaining unallowed shall be arrived at by—

(*a*) subtracting the proceeds of transfer (so far as they consist of capital sums) from the expenditure remaining unallowed; and

(*b*) dividing the remainder by the number of relevant previous years which have not expired at the beginning of the previous year during which the licence is transferred.

(6) Where, in a scheme of amalgamation, the amalgamating company sells or otherwise transfers the licence to the amalgamated company (being an Indian company),—

(*i*) the provisions of sub-sections (2), (3) and (4) shall not apply in the case of the amalgamating company; 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 transferred the licence.]

[32][(7) Where, in a scheme of demerger, the demerged company sells or otherwise transfers the licence to the resulting company (being an Indian company),—

(*i*) the provisions of sub-sections (2), (3) and (4) shall not apply in the case of the demerged company; and

(*ii*) the provisions of this section shall, as far as may be, apply to the resulting company as they would have applied to the demerged company if the latter had not transferred the licence.]

[33][(8) Where a deduction for any previous year under sub-section (1) is claimed and allowed in respect of any expenditure referred to in that sub-section, no deduction shall be allowed under sub-section (1) of section 32 for the same previous year or any subsequent previous year.]

[34][**Expenditure on eligible projects or schemes.**[35]

35AC. (1) Where an assessee incurs any expenditure by way of payment of any sum to a public sector company or a local authority or to an association

32. Inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

33. Inserted by the Finance Act, 1999, w.r.e.f. 1-4-1996.

34. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992.

35. See rules 11F to 11-O and Form Nos. 58A and 58B for 'Rules relating to National Committee for Promotion of Social and Economic Welfare'.

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or institution approved[36] by the National Committee[37] for carrying out any eligible project or scheme, the assessee shall, subject to the provisions of this section, be allowed a deduction of the amount of such expenditure incurred during the previous year :

Provided that a company may, for claiming the deduction under this sub-section, incur expenditure either by way of payment of any sum as aforesaid or directly on the eligible project or scheme.

(2) The deduction under sub-section (1) shall not be allowed unless the assessee furnishes along with his return of income a certificate—

[38](*a*) where the payment is to a public sector company or a local authority or an association or institution referred to in sub-section (1), from such public sector company or local authority or, as the case may be, association or institution;

[39](*b*) in any other case, from an accountant, as defined in the *Explanation* below sub-section (2) of section 288,

in such form, manner and containing such particulars (including particulars relating to the progress in the work relating to the eligible project or scheme during the previous year) as may be prescribed.

[40][*Explanation.*—The deduction, to which the assessee is entitled in respect of any sum paid to a public sector company or a local authority or to an association or institution for carrying out the eligible project or scheme referred to in this section applies, shall not be denied merely on the ground that subsequent to the payment of such sum by the assessee,—

(*a*) the approval granted to such association or institution has been withdrawn; or

(*b*) the notification notifying the eligible project or scheme carried out by the public sector company or local authority or association or institution has been withdrawn.]

(3) Where a deduction under this section is claimed and allowed for any assessment year in respect of any expenditure referred to in sub-section (1), deduction shall not be allowed in respect of such expenditure under any other provision of this Act for the same or any other assessment year.

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36. The prescribed authority under rule 11L is Secretary to National Committee for Promotion of Social and Economic Welfare, Department of Revenue, Government of India. *See* rule 11L for form of application (in two sets) to be submitted for approval of association/institution or for recommendation of project/scheme.

37. For constitution of National Committee for Promotion of Social and Economic Welfare and appointment of members thereof, *see* Taxmann's Direct Taxes Circulars and Taxmann's Yearly Tax Digest & Referencer.

38. *See* rule 11-O(1) and Form No. 58A for certificate of expenditure by way of payment *qua* eligible projects/schemes from public sector company/local authority, etc. Rule 12 provides that the return of income shall not be accompanied by any document or copy of any account or form or report of audit required to be attached with return of income under any of the provisions of the Act.

39. *See* rule 11-O(2) and Form No. 58B for certificate of payment/expenditure directly incurred by company *qua* eligible projects/schemes from chartered accountant. Rule 12 provides that the return of income shall not be accompanied by any document or copy of any account or form or report of audit required to be attached with return of income under any of the provisions of the Act.

40. Inserted by the Taxation Laws (Amendment) Act, 2006, w.r.e.f. 1-4-2006.

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[41][(4) Where an association or institution is approved by the National Committee under sub-section (1), and subsequently—

(*i*) that Committee is satisfied that the project or the scheme is not being carried on in accordance with all or any of the conditions subject to which approval was granted; or

(*ii*) such association or institution, to which approval has been granted, has not furnished to the National Committee, after the end of each financial year, a report in such form and setting forth such particulars and within such time as may be prescribed[42],

the National Committee may, at any time, after giving a reasonable opportunity of showing cause against the proposed withdrawal to the concerned association or institution, withdraw the approval:

Provided that a copy of the order withdrawing the approval shall be forwarded by the National Committee to the Assessing Officer having jurisdiction over the concerned association or institution.

(5) Where any project or scheme has been notified as an eligible project or scheme under clause (*b*) of the *Explanation,* and subsequently—

(*i*) the National Committee is satisfied that the project or the scheme is not being carried on in accordance with all or any of the conditions subject to which such project or scheme was notified; or

(*ii*) a report in respect of such eligible project or scheme has not been furnished after the end of each financial year, in such form and setting forth such particulars and within such time as may be prescribed[43],

such notification may be withdrawn in the same manner in which it was issued:

Provided that a reasonable opportunity of showing cause against the proposed withdrawal shall be given by the National Committee to the concerned association, institution, public sector company or local authority, as the case may be:

Provided further that a copy of the notification by which the notification of the eligible project or scheme is withdrawn shall be forwarded to the Assessing Officer having jurisdiction over the concerned association, institution, public sector company or local authority, as the case may be, carrying on such eligible project or scheme.]

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41. Substituted by the Finance (No. 2) Act, 2004, w.e.f. 1-10-2004. Prior to their substitution, sub-sections (4) and (5), as inserted by the Finance (No. 2) Act, 1996, w.e.f. 1-10-1996, read as under :

"(4) Where an association or institution is approved by the National Committee under sub-section (1), and subsequently that Committee is satisfied that the project or the scheme is not being carried on in accordance with all or any of the conditions subject to which approval was granted, it may, at any time, after giving a reasonable opportunity of showing cause against the proposed withdrawal to the concerned association or institution, withdraw the approval.

(5) Where any project or scheme has been notified as an eligible project or scheme under clause (*b*) of the *Explanation* and subsequently the National Committee is satisfied that the project or the scheme is not being carried out in accordance with all or any of the conditions subject to which such project or scheme was notified, such notification may be withdrawn in the same manner in which it was issued :

Provided that a reasonable opportunity of showing cause against the proposed withdrawal shall be given by the National Committee to the concerned association, institution, public sector company or the local authority, as the case may be."

42. *See* rule 11MA and Form No. 58C.

43. *See* rule 11MAA and Form No. 58D.

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[44][(6) Notwithstanding anything contained in any other provision of this Act, where—

(*i*) the approval of the National Committee, granted to an association or institution, is withdrawn under sub-section (4) or the notification in respect of eligible project or scheme is withdrawn in the case of a public sector company or local authority or an association or institution under sub-section (5); or

(*ii*) a company has claimed deduction under the proviso to sub-section (1) in respect of any expenditure incurred directly on the eligible project or scheme and the approval for such project or scheme is withdrawn by the National Committee under sub-section (5),

the total amount of the payment received by the public sector company or the local authority or the association or the institution, as the case may be, in respect of which such company or authority or association or institution has furnished a certificate referred to in clause (*a*) of sub-section (2) or the deduction claimed by a company under the proviso to sub-section (1) shall be deemed to be the income of such company or authority or association or institution, as the case may be, for the previous year in which such approval or notification is withdrawn and tax shall be charged on such income at the maximum marginal rate in force for that year.]

Explanation.—For the purposes of this section,—

(*a*) "National Committee" means the Committee constituted by the Central Government, from amongst persons of eminence in public life, in accordance with the rules made under this Act;

(*b*) "eligible project or scheme" means such project or scheme for promoting the social and economic welfare of, or the uplift of, the public as the Central Government may, by notification in the Official Gazette, specify[45] in this behalf on the recommendations of the National Committee.]

[46][**Deduction in respect of expenditure on specified business.**

35AD. *(1) An assessee shall be allowed a deduction in respect of the whole of any expenditure of capital nature incurred, wholly and exclusively, for the purposes of any specified business carried on by him during the previous year in which such expenditure is incurred by him :*

Provided *that the expenditure incurred, wholly and exclusively, for the purposes of any specified business, shall be allowed as deduction during the previous year in which he commences operations of his specified business, if—*

*(*a*) the expenditure is incurred prior to the commencement of its operations; and*

*(*b*) the amount is capitalised in the books of account of the assessee on the date of commencement of its operations.*

(2) This section applies to the specified business which fulfils all the following conditions, namely :—

*(*i*) it is not set up by splitting up, or the reconstruction, of a business already in existence;*

*(*ii*) it is not set up by the transfer to the specified business of machinery or plant previously used for any purpose;*

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44. Inserted by the Finance Act, 2002, w.e.f. 1-4-2003.

45. For notified eligible projects and schemes, *see* Taxmann's Direct Taxes Circulars and Taxmann's Yearly Tax Digest & Referencer.

46. Inserted by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2010**.

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(iii) *where the business is of the nature referred to in sub-clause (iii) of clause (c) of sub-section (8), such business,—*

(a) *is owned by a company formed and registered in India under the Companies Act, 1956 (1 of 1956) or by a consortium of such companies or by an authority or a board or a corporation established or constituted under any Central or State Act;*

(b) *has been approved by the Petroleum and Natural Gas Regulatory Board established under sub-section (1) of section 3 of the Petroleum and Natural Gas Regulatory Board Act, 2006 (19 of 2006) and notified by the Central Government in the Official Gazette in this behalf;*

(c) *has made not less than* [46a] **[***such proportion of its total pipeline capacity as specified by regulations made by the Petroleum and Natural Gas Regulatory Board established under sub-section (1) of section 3 of the Petroleum and Natural Gas Regulatory Board Act, 2006 (19 of 2006)***]** *available for use on common carrier basis by any person other than the assessee or an associated person; and*

(d) *fulfils any other condition as may be prescribed.*

*(3) The assessee shall not be allowed any deduction in respect of the specified business under the provisions of Chapter VIA under the heading "*C.—Deductions in respect of certain incomes".

The following sub-section (3) shall be substituted for the existing sub-section (3) of section 35AD by the Finance Act, 2010, w.e.f. 1-4-2011 :

*(3) Where a deduction under this section is claimed and allowed in respect of the specified business for any assessment year, no deduction shall be allowed under the provisions of Chapter VI-A under the heading "*C.—Deductions in respect of certain incomes" *in relation to such specified business for the same or any other assessment year.*

(4) No deduction in respect of the expenditure referred to in sub-section (1) shall be allowed to the assessee under any other section in any previous year or under this section in any other previous year.

(5) The provisions of this section shall apply to the specified business referred to in sub-section (2) if it commences its operations,—

(a) *on or after the 1st day of April, 2007, where the specified business is in the nature of laying and operating a cross-country natural gas pipeline network for distribution, including storage facilities being an integral part of such network;* [46b] **[***and***]**

The following clauses (*aa*), (*ab*) and (*ac*) shall be inserted after clause (*a*) of sub-section (5) of section 35AD by the Finance Act, 2010, w.e.f. 1-4-2011 :

(aa) *on or after the 1st day of April, 2010, where the specified business is in the nature of building and operating a new hotel of two-star or above category as classified by the Central Government;*

(ab) *on or after the 1st day of April, 2010, where the specified business is in the nature of building and operating a new hospital with at least one hundred beds for patients;*

(ac) *on or after the 1st day of April, 2010, where the specified business is in the nature of developing and building a housing project under a*

46a. Substituted for "one-third of its total pipeline capacity" by the Finance Act, 2010, w.e.f. **1-4-2010**.

46b. Word "and" shall be omitted by the Finance Act, 2010, w.e.f. **1-4-2011**.

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scheme for slum redevelopment or rehabilitation framed by the Central Government or a State Government, as the case may be, and which is notified by the Board in this behalf in accordance with guidelines as may be prescribed; and

(b) *on or after the 1st day of April, 2009, in all other cases not falling under* [46c] **[***clause (*a)**]**.

*(6) The assessee carrying on the business of the nature referred to in clause (*a*) of sub-section (5) shall be allowed, in addition to deduction under sub-section (1), a further deduction in the previous year relevant to the assessment year beginning on the 1st day of April, 2010, of an amount in respect of expenditure of capital nature incurred during any earlier previous year, if—*

(a) *the business referred to in clause (*a*) of sub-section (5) has commenced its operation at any time during the period beginning on or after the 1st day of April, 2007 and ending on the 31st day of March, 2009; and*

(b) *no deduction for such amount has been allowed or is allowable to the assessee in any earlier previous year.*

(7) The provisions contained in sub-section (6) of section 80A and the provisions of sub-sections (7) and (10) of section 80-IA shall, so far as may be, apply to this section in respect of goods or services or assets held for the purposes of the specified business.

(8) For the purposes of this section,—

(a) *an "associated person", in relation to the assessee, means a person,—*

(i) *who participates, directly or indirectly, or through one or more intermediaries in the management or control or capital of the assessee;*

(ii) *who holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in the capital of the assessee;*

(iii) *who appoints more than half of the Board of directors or members of the governing board, or one or more executive directors or executive members of the governing board of the assessee; or*

(iv) *who guarantees not less than ten per cent of the total borrowings of the assessee;*

(b) *"cold chain facility" means a chain of facilities for storage or transportation of agricultural and forest produce, meat and meat products, poultry, marine and dairy products, products of horticulture, floriculture and apiculture and processed food items under scientifically controlled conditions including refrigeration and other facilities necessary for the preservation of such produce;*

(c) *"specified business" means any one or more of the following business, namely :—*

(i) *setting up and operating a cold chain facility;*

(ii) *setting up and operating a warehousing facility for storage of agricultural produce;*

(iii) *laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network;*

46c. Words "clause (*a*), clause (*aa*), clause (*ab*) and clause (*ac*)" shall be substituted for "clause (*a*)" by the Finance Act, 2010, w.e.f. **1-4-2011**.

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The following sub-clauses (*iv*) to (*vi*) shall be inserted after sub-clause (*iii*) of clause (*c*) of sub-section (8) of section 35AD by the Finance Act, 2010, w.e.f. 1-4-2011 :

(iv) *building and operating, anywhere in India, a new hotel of two-star or above category as classified by the Central Government;*

(v) *building and operating, anywhere in India, a new hospital with at least one hundred beds for patients;*

(vi) *developing and building a housing project under a scheme for slum redevelopment or rehabilitation framed by the Central Government or a State Government, as the case may be, and notified by the Board in this behalf in accordance with the guidelines as may be prescribed;*

(d) *any machinery or plant which was used outside India by any person other than the assessee shall not be regarded as machinery or plant previously used for any purpose, if—*

(i) *such machinery or plant was not, at any time prior to the date of the installation by the assessee, used in India;*

(ii) *such machinery or plant is imported into India from any country outside India; and*

(iii) *no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of this Act in computing the total income of any person for any period prior to the date of installation of the machinery or plant by the assessee;*

(e) *where in the case of a specified business, any machinery or plant or any part thereof previously used for any purpose is transferred to the specified business and the total value of the machinery or plant or part so transferred does not exceed twenty per cent of the total value of the machinery or plant used in such business, then, for the purposes of clause (ii) of sub-section (2), the condition specified therein shall be deemed to have been complied with;*

(f) *any expenditure of capital nature shall not include any expenditure incurred on the acquisition of any land or goodwill or financial instrument.*]

Export markets development allowance.

35B. [47][*Omitted by the Direct Tax Laws (Amendment) Act, 1987, as amended by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Original section 35B was inserted by the Finance Act, 1968, w.e.f. 1-4-1968.*]

Agricultural development allowance.

35C. [48][*Omitted by the Direct Tax Laws (Amendment) Act, 1987, as amended by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Original section 35C was inserted by the Finance Act, 1968, w.e.f. 1-4-1968.*]

47. Prior to its omission, section 35B was amended by the Finance Act, 1973, w.r.e.f. 1-4-1968, Direct Taxes (Amendment) Act, 1974, w.r.e.f. 1-4-1973, Finance Act, 1978, w.e.f. 1-4-1978, Finance Act, 1979, w.e.f. 1-4-1980, Finance (No. 2) Act, 1980, w.e.f. 1-4-1981 and Finance Act, 1983, w.e.f. 1-4-1983.

48. Prior to its omission, section 35C was amended by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976, Finance Act, 1983, w.e.f. 1-4-1984 and Finance Act, 1984, w.e.f. 1-4-1984.

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Rural development allowance.

35CC. [49][*Omitted by the Direct Tax Laws (Amendment) Act, 1987, as amended by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Original section 35CC was inserted by the Finance (No. 2) Act, 1977, w.e.f. 1-9-1977.*]

[50][**Expenditure by way of payment to associations and institutions for carrying out rural development programmes.**

[51]**35CCA.** [52][(1) Where an assessee incurs any expenditure by way of payment of any sum—

(*a*) to an association or institution, which has as its object the undertaking of any programme of rural development, to be used for carrying out any programme of rural development approved by the prescribed authority[53]; or

(*b*) to an association or institution, which has as its object the training of persons for implementing programmes of rural development; [54][or]

[54][(*c*) to a rural development fund set up and notified[55] by the Central Government in this [56][behalf; or]

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49. Prior to its omission, section 35CC was amended by the Finance Act, 1983, w.e.f. 1-4-1983 and Finance Act, 1985, w.e.f. 17-3-1985.

50. Reintroduced by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Section 35CCA was earlier omitted by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date. Original section 35CCA was inserted by the Finance Act, 1978, w.e.f. 1-6-1978.

51. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

52. Substituted by the Finance Act, 1979, w.e.f. 1-6-1979.

For guidelines for approval of programmes of rural development, *see* Taxmann's Direct Taxes Circulars.

53. The "prescribed authority" under rule 6AAA to approve the programme of rural development shall be the Committee consisting of the following, namely :—

(*a*) The Chief Commissioner or Commissioner of Income-tax who exercises jurisdiction over the State or, as the case may be, the Union territory in which the programme of rural development is to be carried out - *Chairman;*

(*b*) An officer not below the rank of a Secretary to the Government of the State or, as the case may be, the Union territory in which the programme of rural development is to be carried out - *Member.*

The "prescribed authority" to approve an association or institution shall be the Committee consisting of the following, namely:—

(*a*) The Chief Commissioner or Commissioner of Income-tax, who exercises jurisdiction over the State or, as the case may be, the Union territory in which the principal office of the association or institution is situated - *Chairman;*

(*b*) An Officer not below the rank of a Secretary to the Government of the State or, as the case may be, the Union territory in which the principal office of the association or institution is situated - *Member*.

Where two or more Commissioners exercise jurisdiction over the State or, as the case may be, the Union territory, the Board may, by notification in the Official Gazette, empower the Chief Commissioner or Commissioner specified in this behalf to be the Chairman of the Committee.

See also Taxmann's Master Guide to Income-tax Act for relevant notifications.

54. Inserted by the Finance Act, 1983, w.e.f. 1-4-1983.

55. National Fund for Rural Development has since been notified. For details, *see* Taxmann's Master Guide to Income-tax Act.

56. Substituted for "behalf," by the Finance Act, 1995, w.e.f. 1-4-1996.

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[57][(*d*) to the National Urban Poverty Eradication Fund set up and notified by the Central Government in this behalf,]

the assessee shall, subject to the provisions of sub-section (2), be allowed a deduction of the amount of such expenditure incurred during the previous year.]

[58][(2) The deduction under clause (*a*) of sub-section (1) shall not be allowed in respect of expenditure by way of payment of any sum to any association or institution referred to in the said clause unless the assessee furnishes a certificate from such association or institution to the effect that—

(*a*) the programme of rural development had been approved by the prescribed authority before the 1st day of March, 1983; and

(*b*) where such payment is made after the 28th day of February, 1983, such programme involves work by way of construction of any building or other structure (whether for use as a dispensary, school, training or welfare centre, workshop or for any other purpose) or the laying of any road or the construction or boring of a well or tube-well or the installation of any plant or machinery, and such work has commenced before the 1st day of March, 1983.]

[59][(2A) The deduction under clause (*b*) of sub-section (1) shall not be allowed in respect of expenditure by way of payment of any sum to any association or institution unless the assessee furnishes a certificate from such association or institution to the effect that—

(*a*) the prescribed authority had approved the association or institution before the 1st day of March, 1983; and

(*b*) the training of persons for implementing any programme of rural development had been started by the association or institution before the 1st day of March, 1983.]

[60][*Explanation*.—The deduction, to which the assessee is entitled in respect of any sum paid to an association or institution for carrying out the programme of rural development referred to in sub-section (1), shall not be denied merely on the ground that subsequent to the payment of such sum by the assessee, the approval granted to such programme of rural development, or as the case may be, to the association or institution has been withdrawn.]

[61][(2B) No certificate of the nature referred to in sub-section (2) or sub-section (2A) shall be issued by any association or institution unless such association or institution has obtained from the prescribed authority authorisation in writing to issue certificates of such nature.]

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57. Inserted by the Finance Act, 1995, w.e.f. 1-4-1996.

58. Substituted by the Finance Act, 1983, w.e.f. 1-4-1983. Earlier, it was amended by the Finance Act, 1979, w.e.f. 1-6-1979.

59. Inserted by the Finance Act, 1983, w.e.f. 1-4-1983.

60. Inserted by the Taxation Laws (Amendment) Act, 2006, w.r.e.f. 1-4-2006.

61. Inserted by the Finance Act, 1983, w.e.f. 1-4-1983.

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Explanation.—For the purposes of this section, "programme of rural development" shall have the meaning assigned to it in the *Explanation* to sub-section (1) of section 35CC.

(3) Where a deduction under this section is claimed and allowed for any assessment year in respect of any expenditure referred to in sub-section (1), deduction shall not be allowed in respect of such expenditure under section 35C or section 35CC or section 80G or any other provision of this Act for the same or any other assessment year.]

[62][**Expenditure by way of payment to associations and institutions for carrying out programmes of conservation of natural resources.**

35CCB. [63][(1) Where an assessee incurs any expenditure [64][on or before the 31st day of March, 2002] by way of payment of any sum—

(*a*) to an association or institution, which has as its object the undertaking of any programme of conservation of natural resources or of afforestation, to be used for carrying out any programme of conservation of natural resources or afforestation approved[65] by the prescribed authority[66]; or

(*b*) to such fund for afforestation as may be notified by the Central Government,

the assessee shall, subject to the provisions of sub-section (2), be allowed a deduction of the amount of such expenditure incurred during the previous year.]

(2) The deduction under [67][clause (*a*) of] sub-section (1) shall not be allowed with respect to expenditure by way of payment of any sum to any association or institution, unless such association or institution is for the time being approved in this behalf by the prescribed authority[68] :

Provided that the prescribed authority shall not grant such approval for more than three years at a time.

(3) Where a deduction under this section is claimed and allowed for any assessment year in respect of any expenditure referred to in sub-section (1), deduction shall not be allowed in respect of such expenditure under any other provision of this Act for the same or any other assessment year.]

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62. Reintroduced by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Earlier, it was omitted by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date. Original section 35CCB was inserted by the Finance Act, 1982, w.e.f. 1-6-1982.

63. Substituted by the Finance Act, 1990, w.e.f. 1-4-1991.

64. Inserted by the Finance Act, 2002, w.e.f. 1-4-2003.

65. For list of approved associations or institutions, *see* Taxmann's Master Guide to Income-tax Act.

66. The prescribed authority under rule 6AAC is Secretary, Department of Environment, Government of India.

67. Inserted by the Finance Act, 1990, w.e.f. 1-4-1991.

68. *See* rule 6AAC. The prescribed authority is Secretary, Department of Environment, Government of India.

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[69][**Amortisation of certain preliminary expenses.**

[70]**35D.** (1) Where an assessee, being an Indian company or a person (other than a company) who is resident in India, incurs, after the 31st day of March, 1970, any expenditure specified in sub-section (2),—

(*i*) before the commencement of his business, or

(*ii*) after the commencement of his business, in connection with the extension of his [71][***] undertaking or in connection with his setting up a new [71][***] unit,

the assessee shall, in accordance with and subject to the provisions of this section, be allowed a deduction of an amount equal to one-tenth of such expenditure for each of the ten successive previous years beginning with the previous year in which the business commences or, as the case may be, the previous year in which the extension of the [71][***] undertaking is completed or the new [71][***] unit commences production or operation :

[72][**Provided** that where an assessee incurs after the 31st day of March, 1998, any expenditure specified in sub-section (2), the provisions of this sub-section shall have effect as if for the words "an amount equal to one-tenth of such expenditure for each of the ten successive previous years", the words "an amount equal to one-fifth of such expenditure for each of the five successive previous years" had been substituted.]

(2) The expenditure referred to in sub-section (1) shall be the expenditure specified in any one or more of the following clauses, namely :—

(*a*) expenditure in connection with—

(*i*) preparation of feasibility report;

(*ii*) preparation of project report;

(*iii*) conducting market survey or any other survey necessary for the business of the assessee;

(*iv*) engineering services relating to the business of the assessee :

Provided that the work in connection with the preparation of the feasibility report or the project report or the conducting of market survey or of any other survey or the engineering services referred to in this clause is carried out by the assessee himself or by a concern which is for the time being approved[73] in this behalf by the Board;

(*b*) legal charges for drafting any agreement between the assessee and any other person for any purpose relating to the setting up or conduct of the business of the assessee;

(*c*) where the assessee is a company, also expenditure—

(*i*) by way of legal charges for drafting the Memorandum and Articles of Association of the company;

(*ii*) on printing of the Memorandum and Articles of Association;

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69. Inserted by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

70. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

71. Word "industrial" omitted by the Finance Act, 2008, w.e.f. 1-4-2009.

72. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999.

73. For list of approved concerns, *see* Taxmann's Master Guide to Income-tax Act.

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(*iii*) by way of fees for registering the company under the provisions of the Companies Act, 1956 (1 of 1956);

(*iv*) in connection with the issue, for public subscription, of shares in or debentures of the company, being underwriting commission, brokerage and charges for drafting, typing, printing and advertisement of the prospectus;

(*d*) such other items of expenditure (not being expenditure eligible for any allowance or deduction under any other provision of this Act) as may be prescribed.

(3) Where the aggregate amount of the expenditure referred to in sub-section (2) exceeds an amount calculated at two and one-half per cent—

(*a*) of the cost of the project, or

(*b*) where the assessee is an Indian company, at the option of the company, of the capital employed in the business of the company,

the excess shall be ignored for the purpose of computing the deduction allowable under sub-section (1) :

[74][**Provided** that where the aggregate amount of expenditure referred to in sub-section (2) is incurred after the 31st day of March, 1998, the provisions of this sub-section shall have effect as if for the words "two and one-half per cent", the words "five per cent" had been substituted.]

Explanation.—In this sub-section—

(*a*) "cost of the project" means—

(*i*) in a case referred to in clause (*i*) of sub-section (1), the actual cost of the fixed assets, being land, buildings, leaseholds, plant, machinery, furniture, fittings and railway sidings (including expenditure on development of land and buildings), which are shown in the books of the assessee as on the last day of the previous year in which the business of the assessee commences;

(*ii*) in a case referred to in clause (*ii*) of sub-section (1), the actual cost of the fixed assets, being land, buildings, leaseholds, plant, machinery, furniture, fittings and railway sidings (including expenditure on development of land and buildings), which are shown in the books of the assessee as on the last day of the previous year in which the extension of the [75][***] undertaking is completed or, as the case may be, the new [75][***] unit commences production or operation, in so far as such fixed assets have been acquired or developed in connection with the extension of the [75][***] undertaking or the setting up of the new [75][***] unit of the assessee;

(*b*) "capital employed in the business of the company" means—

(*i*) in a case referred to in clause (*i*) of sub-section (1), the aggregate of the issued share capital, debentures and long-term borrowings as on the last day of the previous year in which the business of the company commences;

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74. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999.

75. Word "industrial" omitted by the Finance Act, 2008, w.e.f. 1-4-2009.

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(*ii*) in a case referred to in clause (*ii*) of sub-section (1), the aggregate of the issued share capital, debentures and long-term borrowings as on the last day of the previous year in which the extension of the [76][***] undertaking is completed or, as the case may be, the new [76][***] unit commences production or operation, in so far as such capital, debentures and long-term borrowings have been issued or obtained in connection with the extension of the [76][***] undertaking or the setting up of the new [76][***] unit of the company;

(*c*) "long-term borrowings" means—

(*i*) any moneys borrowed by the company from Government or the Industrial Finance Corporation of India or the Industrial Credit and Investment Corporation of India or any other financial institution [77][which is eligible for deduction under clause (*viii*) of sub-section (1) of section 36] or any banking institution (not being a financial institution referred to above), or

(*ii*) any moneys borrowed or debt incurred by it in a foreign country in respect of the purchase outside India of capital plant and machinery, where the terms under which such moneys are borrowed or the debt is incurred provide for the repayment thereof during a period of not less than seven years.

(4) Where the assessee is a person other than a company or a co-operative society, no deduction shall be admissible under sub-section (1) unless the accounts of the assessee for the year or years in which the expenditure specified in sub-section (2) is incurred 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 for the first year in which the deduction under this section is claimed, the report of such audit in the prescribed form[78] duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

(5) Where the undertaking of an Indian company which is entitled to the deduction under sub-section (1) is transferred, before the expiry of the period of ten years specified in sub-section (1), to another Indian company in a scheme of amalgamation,—

(*i*) no deduction shall be admissible under sub-section (1) in the case of the amalgamating company for the previous year in which the amalgamation takes place; 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 amalgamation had not taken place.

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76. Word "industrial" omitted by the Finance Act, 2008, w.e.f. 1-4-2009.

77. Substituted for "which is for the time being approved by the Central Government for the purposes of clause (*viii*) of sub-section (1) of section 36" by the Finance Act, 2000, w.e.f. 1-4-2000.

78. *See* rule 6AB and Form No. 3AE for audit report to be filed by assessee other than company or a co-operative society under section 35D(4). Rule 12 provides that the return of income shall not be accompanied by any document or copy of any account or form or report of audit required to be attached with return of income under any of the provisions of the Act.

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[79][(5A) Where the undertaking of an Indian company which is entitled to the deduction under sub-section (1) is transferred, before the expiry of the period specified in sub-section (1), to another company in a scheme of demerger,—

(*i*) no deduction shall be admissible under sub-section (1) in the case of the demerged company for the previous year in which the demerger takes place; and

(*ii*) the provisions of this section shall, as far as may be, apply to the resulting company, as they would have applied to the demerged company, if the demerger had not taken place.]

(6) Where a deduction under this section is claimed and allowed for any assessment year in respect of any expenditure specified in sub-section (2), the expenditure in respect of which deduction is so allowed shall not qualify for deduction under any other provision of this Act for the same or any other assessment year.]

[79][**Amortisation of expenditure in case of amalgamation or demerger.**

35DD. (1) Where an assessee, being an Indian company, incurs any expenditure, on or after the 1st day of April, 1999, wholly and exclusively for the purposes of amalgamation or demerger of an undertaking, the assessee shall be allowed a deduction of an amount equal to one-fifth of such expenditure for each of the five successive previous years beginning with the previous year in which the amalgamation or demerger takes place.

(2) No deduction shall be allowed in respect of the expenditure mentioned in sub-section (1) under any other provision of this Act.]

[80][**Amortisation of expenditure incurred under voluntary retirement scheme.**

35DDA. (1) Where an assessee incurs any expenditure in any previous year by way of payment of any sum to an employee [81][in connection with] his voluntary retirement, in accordance with any scheme or schemes of voluntary retirement, one-fifth of the amount so paid shall be deducted in computing the profits and gains of the business for that previous year, and the balance shall be deducted in equal instalments for each of the four immediately succeeding previous years.

[82][(2) Where the assessee, being an Indian company, is entitled to the deduction under sub-section (1) and the undertaking of such Indian company entitled to the deduction under sub-section (1) is transferred, before the expiry of the period specified in that sub-section, to another Indian company in a scheme of amalgamation, 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 amalgamation had not taken place.

(3) Where the undertaking of an Indian company entitled to the deduction under sub-section (1) is transferred, before the expiry of the period specified in that sub-section, to another company in a scheme of demerger, the provisions of this

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79. Inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

80. Inserted by the Finance Act, 2001, w.e.f. 1-4-2001.

81. Substituted for "at the time of" by the Finance Act, 2005, w.r.e.f. 1-4-2004.

82. Sub-sections (2) to (6) substituted for sub-section (2) by the Finance Act, 2002, w.r.e.f. 1-4-2001. Prior to its substitution, sub-section (2) read as under :

"(2) No deduction shall be allowed in respect of the expenditure mentioned in sub-section (1) under any other provision of this Act."

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section shall, as far as may be, apply to the resulting company, as they would have applied to the demerged company, if the demerger had not taken place.

(4) Where there has been reorganisation of business, whereby a firm is succeeded by a company fulfilling the conditions laid down in clause (*xiii*) of section 47 or a proprietary concern is succeeded by a company fulfilling the conditions laid down in clause (*xiv*) of section 47, the provisions of this section shall, as far as may be, apply to the successor company, as they would have applied to the firm or the proprietary concern, if reorganisation of business had not taken place.

The following sub-section (4A) shall be inserted after sub-section (4) of section 35DDA by the Finance Act, 2010, w.e.f. 1-4-2011 :

*(4A) Where there has been reorganisation of business, whereby a private company or unlisted public company is succeeded by a limited liability partnership fulfilling the conditions laid down in the proviso to clause (*xiiib*) of section 47, the provisions of this section shall, as far as may be, apply to the successor limited liability partnership, as they would have applied to the said company, if reorganisation of business had not taken place.*

(5) No deduction shall be allowed in respect of the expenditure mentioned in sub-section (1) in the case of the amalgamating company referred to in sub-section (2), in the case of demerged company referred to in [82a]**[***sub-section (3) and in the case of a firm or proprietary concern referred to in sub-section (4)***]** of this section, for the previous year in which amalgamation, demerger or succession, as the case may be, takes place.

(6) No deduction shall be allowed in respect of the expenditure mentioned in sub-section (1) under any other provision of this Act.]]

[83][**Deduction for expenditure on prospecting, etc., for certain minerals.**

35E. (1) Where an assessee, being an Indian company or a person (other than a company) who is resident in India, is engaged in any operations relating to prospecting for, or extraction or production of, any mineral and incurs, after the 31st day of March, 1970, any expenditure specified in sub-section (2), the assessee shall, in accordance with and subject to the provisions of this section, be allowed for each one of the relevant previous years a deduction of an amount equal to one-tenth of the amount of such expenditure.

(2) The expenditure referred to in sub-section (1) is that incurred by the assessee after the date specified in that sub-section at any time during the year of commercial production and any one or more of the four years immediately preceding that year, wholly and exclusively on any operations relating to prospecting for any mineral or group of associated minerals specified in Part A or Part B, respectively, of the Seventh Schedule or on the development of a mine or other natural deposit of any such mineral or group of associated minerals :

Provided that there shall be excluded from such expenditure any portion thereof which is met directly or indirectly by any other person or authority and any sale, salvage, compensation or insurance moneys realised by the assessee in respect of any property or rights brought into existence as a result of the expenditure.

82a. Words "sub-section (3), in the case of a firm or proprietary concern referred to in sub-section (4) and in the case of a company referred to in sub-section (4A)" shall be substituted for "sub-section (3) and in the case of a firm or proprietary concern referred to in sub-section (4)" by the Finance Act, 2010, w.e.f. **1-4-2011**.

83. Inserted by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

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(3) Any expenditure—

(*i*) on the acquisition of the site of the source of any mineral or group of associated minerals referred to in sub-section (2) or of any rights in or over such site;

(*ii*) on the acquisition of the deposits of such mineral or group of associated minerals or of any rights in or over such deposits; or

(*iii*) of a capital nature in respect of any building, machinery, plant or furniture for which allowance by way of depreciation is admissible under section 32,

shall not be deemed to be expenditure incurred by the assessee for any of the purposes specified in sub-section (2).

(4) The deduction to be allowed under sub-section (1) for any relevant previous year shall be—

(*a*) an amount equal to one-tenth of the expenditure specified in sub-section (2) (such one-tenth being hereafter in this sub-section referred to as the instalment); or

(*b*) such amount as is sufficient to reduce to *nil* the income (as computed before making the deduction under this section) of that previous year arising from the commercial exploitation [whether or not such commercial exploitation is as a result of the operations or development referred to in sub-section (2)] of any mine or other natural deposit of the mineral or any one or more of the minerals in a group of associated minerals as aforesaid in respect of which the expenditure was incurred,

whichever amount is less :

Provided that the amount of the instalment relating to any relevant previous year, to the extent to which it remains unallowed, shall be carried forward and added to the instalment relating to the previous year next following and deemed to be part of that instalment, and so on, for succeeding previous years, so, however, that no part of any instalment shall be carried forward beyond the tenth previous year as reckoned from the year of commercial production.

(5) For the purposes of this section,—

(*a*) "operation relating to prospecting" means any operation undertaken for the purposes of exploring, locating or proving deposits of any mineral, and includes any such operation which proves to be infructuous or abortive;

(*b*) "year of commercial production" means the previous year in which as a result of any operation relating to prospecting, commercial production of any mineral or any one or more of the minerals in a group of associated minerals specified in Part A or Part B, respectively, of the Seventh Schedule, commences;

(*c*) "relevant previous years" means the ten previous years beginning with the year of commercial production.

(6) Where the assessee is a person other than a company or a co-operative society, no deduction shall be admissible under sub-section (1) unless the accounts of the assessee for the year or years in which the expenditure specified in sub-section

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(2) is incurred 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 for the first year in which the deduction under this section is claimed, the report of such audit in the prescribed form[84] duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

(7) Where the undertaking of an Indian company which is entitled to the deduction under sub-section (1) is transferred, before the expiry of the period of ten years specified in sub-section (1), to another Indian company in a scheme of amalgamation—

(*i*) no deduction shall be admissible under sub-section (1) in the case of the amalgamating company for the previous year in which the amalgamation takes place; 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 amalgamation had not taken place.

[85][(7A) Where the undertaking of an Indian company which is entitled to the deduction under sub-section (1) is transferred, before the expiry of the period of ten years specified in sub-section (1), to another Indian company in a scheme of demerger,—

(*i*) no deduction shall be admissible under sub-section (1) in the case of the demerged company for the previous year in which the demerger takes place; and

(*ii*) the provisions of this section shall, as far as may be, apply to the resulting company as they would have applied to the demerged company, if the demerger had not taken place.]

(8) Where a deduction under this section is claimed and allowed for any assessment year in respect of any expenditure specified in sub-section (2), the expenditure in respect of which deduction is so allowed shall not qualify for deduction under any other provision of this Act for the same or any other assessment year.]

Other deductions.

[86]**36.** (1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28—

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84. *See* rule 6AB and Form No. 3AE for audit report to be filed by assessee other than company or co-operative society under section 35E(6). Rule 12 provides that the return of income shall not be accompanied by any document or copy of any account or form or report of audit required to be attached with return of income under any of the provisions of the Act.

85. Inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

86. *See* also Circular No. 4-P(LVIII-30), dated 25-11-1965, Circular No. 44(3)-IT/49, dated 12-2-1949, Circular No. 110, dated 13-4-1973, Letter [F. No. 44/13/64-ITJ], dated 6-9-1964, Letter [F. No. 216/6/77-IT(A-II)], dated 7-6-1978, Circular No. 403, dated 5-12-1984, Circular No. 30(XLVII-18), dated 30-11-1964, Circular No. 14, dated 23-4-1969, Extracts from Minutes (Item 31) of Ninth Meeting of DTAC held on 5-11-1966, Circular No. 20, dated 13-6-1969, Extracts of Instruction No. 370 [F. No. 205/15/71-IT(A-II)], dated 13-1-1972 and Letter [F. No. 10/66/61-IT(A-I)], dated 16-1-1962. For details, *see* Taxmann's Master Guide to Income-tax Act.

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[87](*i*) the amount of any premium paid in respect of insurance against risk of damage[88] or destruction[88] of stocks or stores[88] used for the purposes of the business or profession;

[89][(*ia*) the amount of any premium paid by a federal milk co-operative society to effect or to keep in force an insurance on the life of the cattle owned by a member of a co-operative society, being a primary society engaged in supplying milk raised by its members to such federal milk co-operative society;]

[90][(*ib*) the amount of any premium [91][paid by any mode of payment other than cash] by the assessee as an employer to effect or to keep in force an insurance on the health of his employees under a scheme framed in this behalf by—

(*A*) the General Insurance Corporation of India formed under section 9 of the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972) and approved by the Central Government; or

(*B*) any other insurer and approved by 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);]

[92](*ii*) any sum paid to an employee as bonus or commission[93] for services rendered, where such sum would not have been payable to him as profits or dividend if it had not been paid as bonus or commission;

[94][* * *]

[95][* * *]

(*iia*) [96][*Omitted by the Finance Act, 1999, w.e.f. 1-4-2000.*]

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87. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

88. For the meaning of the terms/expressions "damage", "destruction" and "stocks or stores", *see* Taxmann's Direct Taxes Manual, Vol. 3.

89. Inserted by the Finance Act, 1979, w.e.f. 1-4-1980.

90. Substituted by the Finance Act, 2006, w.e.f. 1-4-2007. Prior to its substitution, clause (*ib*), as inserted by the Income-tax (Amendment) Act, 1986, w.e.f. 1-4-1987, read as under :

"(*ib*) the amount of any premium paid by cheque by the assessee as an employer to effect or to keep in force an insurance on the health of his employees under a scheme framed in this behalf by the General Insurance Corporation of India formed under section 9 of the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972) and approved by the Central Government."

91. Substituted for "paid by cheque" by the Finance Act, 2007, w.e.f. 1-4-2008.

92. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

93. For the meaning of the term "commission", *see* Taxmann's Direct Taxes Manual, Vol. 3.

94. First proviso omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Prior to its omission, first proviso was inserted by the Payment of Bonus (Amendment) Act, 1976, w.r.e.f. 25-9-1975.

95. Second proviso omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Prior to its omission, second proviso was substituted by the Payment of Bonus (Amendment) Act, 1976, w.r.e.f. 25-9-1975.

96. Prior to its omission, clause (*iia*) was inserted by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1981 and later on amended by the Finance Act, 1984, w.e.f. 1-4-1984 and the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

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[97](*iii*) the amount of the interest[98] paid in respect of capital[98] borrowed for the purposes of the business[98] or profession :

[99][**Provided** that any amount of the interest paid, in respect of capital borrowed for acquisition of an asset for extension of existing business or profession (whether capitalised in the books of account or not); for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use, shall not be allowed as deduction.]

Explanation.—Recurring subscriptions paid periodically by shareholders, or subscribers in Mutual Benefit Societies which fulfil such conditions as may be prescribed, shall be deemed to be capital borrowed within the meaning of this clause;

[1][(*iiia*) the *pro rata* amount of discount on a zero coupon bond having regard to the period of life of such bond calculated in the manner as may be prescribed[2].

Explanation.—For the purposes of this clause, the expressions—

(*i*) "discount" means the difference between the amount received or receivable by the infrastructure capital company or infrastructure capital fund or public sector company [3][or scheduled bank] issuing the bond and the amount payable by such company or fund or public sector company [3][or scheduled bank] on maturity or redemption of such bond;

(*ii*) "period of life of the bond" means the period commencing from the date of issue of the bond and ending on the date of the maturity or redemption of such bond;

(*iii*) [4][***]]

[5](*iv*) [6]any sum paid[7] by the assessee as an employer by way of contribution towards a recognised provident fund or an approved superannuation fund, subject to such limits as may be prescribed for the purpose of recognising the provident fund or approving the superannuation

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97. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

98. For the meaning of the terms "interest", "capital" and "for the purpose of the business", *see* Taxmann's Direct Taxes Manual, Vol. 3.

99. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

1. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

2. *See* rules 8B and 8C and Form No. 5B.

3. Inserted by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-2009.

4. Omitted by the Finance Act, 2006, w.e.f. 1-4-2006. Prior to its omission, clause (*iii*) read as under :

'(*iii*) "infrastructure capital company" and "infrastructure capital fund" shall have the same meanings respectively assigned to them in clauses (*a*) and (*b*) of *Explanation 1* to clause (*23G*) of section 10;'

5. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

6. *See* rules 75, 87 and 88.

7. For the meaning of the expression "any sum paid", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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fund, as the case may be; and subject to such [8]conditions as the Board may think fit to specify in cases where the contributions are not in the nature of annual contributions of fixed amounts or annual contributions fixed on some definite basis by reference to the income chargeable under the head "Salaries" or to the contributions or to the number of members of the fund;

[9](*v*) [10]any sum paid by the assessee as an employer by way of contribution towards an approved gratuity fund created by him for the exclusive benefit of his employees under an irrevocable trust;

[11][(*va*) any sum received by the assessee from any of his employees to which the provisions of sub-clause (*x*) of clause (*24*) of section 2 apply, if such sum is credited by the assessee to the employee's account in the relevant fund or funds on or before the due date.

Explanation.—For the purposes of this clause, "due date" means the date by which the assessee is required as an employer to credit an employee's contribution to the employee's account in the relevant fund under any Act, rule, order or notification issued thereunder or under any standing order, award, contract of service or otherwise;]

[12](*vi*) in respect of animals which have been used for the purposes of the business or profession otherwise than as stock-in-trade and have died or become permanently useless for such purposes, the difference between the actual cost to the assessee of the animals and the amount, if any, realised in respect of the carcasses or animals;

[12](*vii*) subject to the provisions of sub-section (2), the amount of [13][any [14]bad debt or part thereof[14] which is written off as irrecoverable in the accounts of the assessee for the previous year]:

[15][**Provided** that in the case of [16][an assessee] to which clause (*viia*) applies, the amount of the deduction relating to any such debt or part thereof shall be limited to the amount by which such debt or part thereof exceeds the credit balance in the provision for bad and doubtful debts account made under that clause.]

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8. For conditions specified by the Board, *see* Taxmann's Master Guide to Income-tax Act. *See* also *CIT* v. *Sirpur Paper Mills* [1999] 103 Taxman 352 (SC).

9. *See* rules 103 and 104.

10. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

11. Inserted by the Finance Act, 1987, w.e.f. 1-4-1988.

12. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

13. Substituted for "any debt, or part thereof, which is established to have become a bad debt in the previous year" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

14. For the meaning of the terms "bad debt" and "any debt or part thereof", *see* Taxmann's Direct Taxes Manual, Vol. 3.

15. Inserted by the Finance Act, 1985, w.e.f. 1-4-1985.

16. Substituted for "a bank" by the Finance Act, 1997, w.r.e.f. 1-4-1992.

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[17][*Explanation.*—For the purposes of this clause, any bad debt or part thereof written off as irrecoverable in the accounts of the assessee shall not include any provision for bad and doubtful debts made in the accounts of the assessee;]

[18][(*viia*) [19][[20] in respect of any provision for bad and doubtful debts made by—

(*a*) a scheduled bank [not being [21][* * *] a bank incorporated by or under the laws of a country outside India] or a non-scheduled bank [22][or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank], an amount [23][not exceeding seven and one-half per cent] of the total income (computed before making any deduction under this clause and Chapter VIA) and an amount not exceeding [24][ten] per cent of the aggregate average advances made by the rural branches of such bank computed in the prescribed manner :

[25][**Provided** that a scheduled bank or a non-scheduled bank referred to in this sub-clause shall, at its option, be allowed in any of the relevant assessment years, deduction in respect of any provision made by it for any assets classified by the Reserve Bank of India as doubtful assets or loss assets in accordance with the guidelines issued by it in this behalf, for an amount not exceeding five per cent of the amount of such assets shown in the books of account of the bank on the last day of the previous year:]

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17. Inserted by the Finance Act, 2001, w.r.e.f. 1-4-1989.

18. Inserted by the Finance Act, 1979, w.e.f. 1-4-1980.

19. Substituted by the Income-tax (Amendment) Act, 1986, w.e.f. 1-4-1987. Earlier, above opening para of clause (*viia*) was substituted by the Finance Act, 1985, w.e.f. 1-4-1985. It was also amended by the Finance Act, 1982, w.e.f. 1-4-1983.

20. Rule 6ABA provides that the aggregate average advances made by the rural branches of a scheduled bank shall be computed in the following manner, namely:—

(*a*) the amounts of advances made by each rural branch as outstanding at the end of the last day of each month comprised in the previous year shall be aggregated separately;

(*b*) the sum so arrived at in the case of each such branch shall be divided by the number of months for which the outstanding advances have been taken into account for the purposes of clause (*a*);

(*c*) the aggregate of the sums so arrived at in respect of each of the rural branches shall be the aggregate average advances made by the rural branches of the scheduled bank.

21. Words "a bank approved by the Central Government for the purposes of clause (*viiia*) or" omitted by the Finance Act, 1994, w.e.f. 1-4-1995.

22. Inserted by the Finance Act, 2007, w.e.f. 1-4-2007.

23. Substituted for "not exceeding five per cent" by the Finance Act, 2002, w.e.f. 1-4-2003.

24. Substituted for "four" by the Finance Act, 1994, w.e.f. 1-4-1995. Earlier "four" was substituted for "two" by the Finance Act, 1993, w.e.f. 1-4-1994.

25. Inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

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[26][**Provided further** that for the relevant assessment years commencing on or after the 1st day of April, 2003 and ending before the 1st day of April, 2005, the provisions of the first proviso shall have effect as if for the words "five per cent", the words "ten per cent" had been substituted :]

[27][**Provided also** that a scheduled bank or a non-scheduled bank referred to in this sub-clause shall, at its option, be allowed a further deduction in excess of the limits specified in the foregoing provisions, for an amount not exceeding the income derived from redemption of securities in accordance with a scheme framed by the Central Government:

Provided also that no deduction shall be allowed under the third proviso unless such income has been disclosed in the return of income under the head "Profits and gains of business or profession."]

[28][*Explanation.*—For the purposes of this sub-clause, "relevant assessment years" means the five consecutive assessment years commencing on or after the 1st day of April, 2000 and ending before the 1st day of April, 2005;]

(*b*) a bank, being a bank incorporated by or under the laws of a country outside India, an amount not exceeding five per cent of the total income (computed before making any deduction under this clause and Chapter VIA);]

[29][(*c*) a public financial institution or a State financial corporation or a State industrial investment corporation, an amount not exceeding five per cent of the total income (computed before making any deduction under this clause and Chapter VI-A) :]

[30][**Provided** that a public financial institution or a State financial corporation or a State industrial investment corporation referred to in this sub-clause shall, at its option, be allowed in any of the two consecutive assessment years commencing on or after the 1st day of April, 2003 and ending before the 1st day of April, 2005, deduction in respect of any provision made by it for any assets classified by the Reserve Bank of India as doubtful assets or loss assets in accordance with the guidelines issued by it in this behalf, of an amount not exceeding ten per cent of the amount of such assets shown in the books of account of such institution or corporation, as the case may be, on the last day of the previous year.]

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26. Inserted by the Finance Act, 2002, w.e.f. 1-4-2003.
27. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.
28. Inserted by the Finance Act, 1999, w.e.f. 1-4-2000.
29. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992.
30. Inserted by the Finance Act, 2002, w.e.f. 1-4-2003.

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Explanation.—For the purposes of this clause,—

[31][(*i*) "non-scheduled bank" means a [32]banking company as defined in clause (*c*) of section 5 of the Banking Regulation Act, 1949 (10 of 1949), which is not a scheduled bank;]

[33][(*ia*)] "rural branch" means a branch of a scheduled bank [34][or a non-scheduled bank] situated in a place which has a population of not more than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year;

[35][(*ii*) "scheduled bank" means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955), a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), or any other bank being a bank included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934) [36][***];]

[37][(*iii*) "public financial institution" shall have the meaning assigned to it in section 4A[38] of the Companies Act, 1956 (1 of 1956);

(*iv*) "State financial corporation" means a financial corporation established under section 3 or section 3A or an institution notified under section 46 of the State Financial Corporations Act, 1951 (63 of 1951);

(*v*) "State industrial investment corporation" means a Government company[39] within the meaning of section 617 of the Companies Act, 1956 (1 of 1956), engaged in the business of providing long-

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31. Inserted by the Finance Act, 1982, w.e.f. 1-4-1983.

32. Section 5(*c*) of the Banking Regulation Act, 1949, defines "banking company" as follows:

'(*c*) "banking company" means any company which transacts the business of banking in India.

Explanation.—Any company which is engaged in the manufacture of goods or carries on any trade and which accepts deposits of money from the public merely for the purpose of financing its business as such manufacturer or trader shall not be deemed to transact the business of banking within the meaning of this clause;'

33. Relettered by the Finance Act, 1982, w.e.f. 1-4-1983.

34. Inserted, *ibid.*

35. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Earlier, it was amended by the Finance Act, 1985, w.e.f. 1-4-1985.

36. Words ", but does not include a co-operative bank" omitted by the Finance Act, 2007, w.e.f. 1-4-2007.

37. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992.

38. For text of section 4A of the Companies Act, 1956, and notified institutions thereunder, *see* **Appendix**.

39. For definition of "Government company", *see* footnote 71 on p. 1.23 *ante*.

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term finance for industrial projects and [40][eligible for deduction under clause (*viii*) of this sub-section];]

[41][(*vi*) "co-operative bank", "primary agricultural credit society" and "primary co-operative agricultural and rural development bank" shall have the meanings respectively assigned to them in the *Explanation* to sub-section (4) of section 80P;]

[42][(*viii*) in respect of any special reserve created and maintained by a specified entity, an amount not exceeding twenty per cent of the profits derived from eligible business computed under the head "Profits and gains of business or profession" (before making any deduction under this clause) carried to such reserve account:

Provided that where the aggregate of the amounts carried to such reserve account from time to time exceeds twice the amount of the paid up share capital and of the general reserves of the specified entity, no allowance under this clause shall be made in respect of such excess.

Explanation.—In this clause,—

(*a*) "specified entity" means,—

(*i*) a financial corporation specified in section 4A of the Companies Act, 1956 (1 of 1956)[43];

(*ii*) a financial corporation which is a public sector company;

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40. Substituted for "approved by the Central Government under clause (*viii*) of this sub-section" by the Finance Act, 2000, w.e.f. 1-4-2000.

41. Inserted by the Finance Act, 2007, w.e.f. 1-4-2007.

42. Substituted, *ibid*., w.e.f. 1-4-2008. Prior to its substitution, clause (*viii*), as amended by the Finance Act, 1966, w.e.f. 1-4-1966, Finance (No. 2) Act, 1967, w.e.f. 1-4-1968, Finance Act, 1970, w.r.e.f. 1-4-1966, Finance (No. 2) Act, 1971, w.e.f. 1-4-1972, Finance Act, 1974, w.e.f. 1-4-1975, Finance Act, 1979, w.e.f. 1-4-1980, Finance Act, 1981, w.e.f. 1-4-1982, Finance Act, 1985, w.e.f. 1-4-1985, Finance (No. 2) Act, 1991, w.r.e.f. 1-4-1987, Finance Act, 1992, w.r.e.f. 1-4-1987, Finance Act, 1995, w.e.f. 1-4-1996, Finance (No. 2) Act, 1996, w.r.e.f. 1-4-1996/ w.e.f. 1-4-1997, Finance Act, 1997, w.e.f. 1-4-1998, Finance Act, 1999, w.e.f. 1-4-2000 and Finance Act, 2006, w.e.f. 1-4-2007, read as under :

'(*viii*) in respect of any special reserve created and maintained by a financial corporation which is engaged in providing long-term finance for industrial or agricultural development or development of infrastructure facility in India or by a public company formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes, an amount not exceeding forty per cent of the profits derived from such business of providing long-term finance (computed under the head "Profits and gains of business or profession" before making any deduction under this clause) carried to such reserve account:

Provided that where the aggregate of the amounts carried to such reserve account from time to time exceeds twice the amount of the paid-up share capital and of the general reserves of the corporation or, as the case may be, the company, no allowance under this clause shall be made in respect of such excess.

Explanation.—In this clause,—

(*a*) "financial corporation" shall include a public company and a Government company;

(Contd. on p. 1.243)

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(*iii*) a banking company;

(*iv*) a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank;

(*v*) a housing finance company; and

(*vi*) any other financial corporation including a public company;

(*b*) "eligible business" means,—

[44][*(i) in respect of the specified entity referred to in sub-clause (*i*) or sub-clause (*ii*) or sub-clause (*iii*) or sub-clause (*iv*) of clause (a), the business of providing long-term finance for—*

(A) industrial or agricultural development;

(B) development of infrastructure facility in India; or

(C) development of housing in India;]

(*ii*) in respect of the specified entity referred to in sub-clause (*v*) of clause (*a*), the business of providing long-term finance for the construction or purchase of houses in India for residential purposes; and

(*iii*) in respect of the specified entity referred to in sub-clause (*vi*) of clause (*a*), the business of providing long-term finance for development of infrastructure facility in India;

(Contd. from p. 1.242)

(*b*) "public company" shall have the meaning assigned to it in section 3 of the Companies Act, 1956 (1 of 1956);

(*c*) "Government company" shall have the meaning assigned to it in section 617 of the Companies Act, 1956 (1 of 1956);

(*d*) "infrastructure facility" means—

(*i*) an infrastructure facility as defined in the *Explanation* to clause (*i*) of sub-section (4) of section 80-IA, or any other public facility of a similar nature as may be notified by the Board in this behalf in the Official Gazette and which fulfils the conditions as may be prescribed;

(*ii*) an undertaking referred to in clause (*ii*) or clause (*iii*) or clause (*iv*) of sub-section (4) of section 80-IA; and

(*iii*) an undertaking referred to in sub-section (10) of section 80-IB;

(*e*) "long-term finance" means any loan or advance where the terms under which moneys are loaned or advanced provide for repayment along with interest thereof during a period of not less than five years;'

43. For text of section 4A of the Companies Act, 1956, *see* **Appendix**.

44. Substituted by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2010**. Prior to its substitution, sub-clause (*i*) read as under :

"(*i*) in respect of the specified entity referred to in sub-clause (*i*) or sub-clause (*ii*) or sub-clause (*iii*) or sub-clause (*iv*) of clause (*a*), the business of providing long-term finance for industrial or agricultural development or development of infrastructure facility in India or construction or purchase of houses in India for residential purposes;"

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(*c*) "banking company" means a company to which the Banking Regulation Act, 1949 (10 of 1949) applies and includes any bank or banking institution referred to in section 51 of that Act;

(*d*) "co-operative bank", "primary agricultural credit society" and "primary co-operative agricultural and rural development bank" shall have the meanings respectively assigned to them in the *Explanation* to sub-section (4) of section 80P;

(*e*) "housing finance company" means a public company formed or registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes;

(*f*) [45]"public company" shall have the meaning assigned to it in section 3 of the Companies Act, 1956 (1 of 1956);

(*g*) "infrastructure facility" means—

(*i*) an infrastructure facility as defined in the *Explanation* to clause (*i*) of sub-section (4) of section 80-IA, or any other public facility of a similar nature as may be notified[46] by the Board in this behalf in the Official Gazette and which fulfils the conditions as may be prescribed[47];

(*ii*) an undertaking referred to in clause (*ii*) or clause (*iii*) or clause (*iv*) or clause (*vi*) of sub-section (4) of section 80-IA; and

(*iii*) an undertaking referred to in sub-section (10) of section 80-IB;

(*h*) "long-term finance" means any loan or advance where the terms under which moneys are loaned or advanced provide for repayment along with interest thereof during a period of not less than five years;]

(*viiia*) [48][* * *]

[49][(*ix*) any expenditure *bona fide* incurred by a company for the purpose of promoting family planning amongst its employees :

Provided that where such expenditure or any part thereof is of a capital nature, one-fifth of such expenditure shall be deducted for the previous year in which it was incurred; and the balance thereof shall be deducted in equal instalments for each of the four immediately succeeding previous years :

Provided further that the provisions of sub-section (2) of section 32 and of sub-section (2) of section 72 shall apply in relation to deduc-

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45. For definition of "public company", *see* **Appendix**.

46. For notified infrastructure facilities, *see* Taxmann's Master Guide to Income-tax Act.

47. *See* rule 6ABAA.

48. Omitted by the Finance Act, 1994, w.e.f. 1-4-1995. Prior to its omission, clause (*viiia*) was inserted by the Finance Act, 1982, w.e.f. 1-4-1983 and later on amended by the Finance Act, 1985, w.e.f. 1-4-1985.

49. Inserted by the Finance Act, 1965, w.e.f. 1-4-1965.

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tions allowable under this clause as they apply in relation to deductions allowable in respect of depreciation :

Provided further that the provisions of clauses (*ii*), (*iii*), (*iv*) and (*v*) of sub-section (2) [50][and sub-section (5)] of section 35, of sub-section (3) of section 41 and of *Explanation 1* to clause (*1*) of section 43 shall, so far as may be, apply in relation to an asset representing expenditure of a capital nature for the purposes of promoting family planning as they apply in relation to an asset representing expenditure of a capital nature on scientific research;]

(*x*) [51][***]

[52][(*xi*) any expenditure incurred by the assessee, on or after the 1st day of April, 1999 but before the 1st day of April, 2000, wholly and exclusively in respect of a non-Y2K compliant computer system, owned by the assessee and used for the purposes of his business or profession, so as to make such computer system Y2K compliant computer system :

Provided that no such deduction shall be allowed in respect of such expenditure under any other provisions of this Act :

Provided further that no such deduction shall be admissible unless the assessee furnishes in the prescribed form[53], along with the return of income, the report of an accountant, as defined in the *Explanation* below sub-section (2) of section 288, certifying that the deduction has been correctly claimed in accordance with the provisions of this clause.

Explanation.—For the purposes of this clause,—

(*a*) "computer system" means a device or collection of devices including input and output support devices and excluding calculators which are not programmable and capable of being used in conjunction with external files, or more of which contain computer programmes, electronic instructions, input data and output data, that performs functions including, but not limited to, logic, arithmetic, data storage and retrieval, communication and control;

(*b*) "Y2K compliant computer system" means a computer system capable of correctly processing, providing or receiving data relating to date within and between the twentieth and twenty-first century;]

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50. Inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

51. Omitted by the Finance Act, 2007, w.e.f. 1-4-2008. Prior to its omission, clause (*x*), as inserted by the Finance Act, 1989, w.e.f. 1-4-1989 and amended by the Finance Act, 2003, w.e.f. 1-4-2003, read as under :

'(*x*) any sum paid by a public financial institution by way of contribution towards any Exchange Risk Administration Fund set up by public financial institutions, either jointly or separately.

Explanation.—For the purposes of this clause, "public financial institutions" shall have the meaning assigned to it in section 4A of the Companies Act, 1956 (1 of 1956);'

52. Inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

53. See rule 6ABB and Form No. 3BA.

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[54][(*xii*) any expenditure (not being in the nature of capital expenditure) incurred by a corporation or a body corporate, by whatever name called, if,—

(*a*) it is constituted or established by a Central, State or Provincial Act;

(*b*) such corporation or body corporate, having regard to the objects and purposes of the Act referred to in sub-clause (*a*), is notified[55] by the Central Government in the Official Gazette for the purposes of this clause; and

(*c*) the expenditure is incurred for the objects and purposes authorised by the Act under which it is constituted or established;]

[56][(*xiii*) any amount of banking cash transaction tax paid by the assessee during the previous year on the taxable banking transactions entered into by him.

Explanation.—For the purposes of this clause, the expressions "banking cash transaction tax" and "taxable banking transaction" shall have the same meanings respectively assigned to them under Chapter VII of the Finance Act, 2005;]

[57][(*xiv*) any sum paid by a public financial institution by way of contribution to such credit guarantee fund trust for small industries as the Central Government may, by notification in the Official Gazette[58], specify in this behalf.

Explanation.—For the purposes of this clause, "public financial institution" shall have the meaning assigned to it in section 4A[59] of the Companies Act, 1956 (1 of 1956);]

[60][(*xv*) an amount equal to the securities transaction tax paid by the assessee in respect of the taxable securities transactions entered into in the course of his business during the previous year, if the income arising from such taxable securities transactions is included in the income computed under the head "Profits and gains of business or profession".

Explanation.—For the purposes of this clause, the expressions "securities transaction tax" and "taxable securities transaction" shall have

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54. Substituted by the Finance Act, 2007, w.e.f. 1-4-2008. Prior to its substitution, clause (*xii*), as inserted by the Finance Act, 2003, w.r.e.f. 1-4-2002, read as under :

"(*xii*) any expenditure (not being in the nature of capital expenditure) incurred by a corporation or a body corporate, by whatever name called, constituted or established by a Central, State or Provincial Act for the objects and purposes authorised by the Act under which such corporation or body corporate was constituted or established;"

55. For notified corporation or body corporate, *see* Taxmann's Master Guide to Income-tax Act.

56. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

57. Inserted by the Finance Act, 2007, w.e.f. 1-4-2008.

58. For notified credit guarantee fund trust, *see* Taxmann's Master Guide to Income-tax Act.

59. For text of section 4A of the Companies Act, 1956, *see* **Appendix.**

60. Clauses (*xv*) and (*xvi*) inserted by the Finance Act, 2008, w.e.f. 1-4-2009.

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the meanings respectively assigned to them under Chapter VII of the Finance (No. 2) Act, 2004 (23 of 2004).

(*xvi*) [61][***]]

[62](2) In making any deduction for a bad debt or part thereof, the following provisions shall apply—

[63][(*i*) no such deduction shall be allowed unless such debt or part thereof has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof is written off or of an earlier previous year, or represents money lent in the ordinary course of the business of banking or money-lending which is carried on by the assessee;]

(*ii*) if the amount ultimately recovered on any such debt or part of debt is less than the difference between the debt or part and the amount so deducted, the deficiency shall be deductible in the previous year in which the ultimate recovery is made;

(*iii*) any such debt or part of debt may be deducted if it has already been written off as irrecoverable in the accounts of an earlier previous year [64][(being a previous year relevant to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year)], but the [65][Assessing] Officer had not allowed it to be deducted on the ground that it had not been established to have become a bad debt in that year;

(*iv*) where any such debt or part of debt is written off as irrecoverable in the accounts of the previous year [65a][(being a previous year relevant to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year)] and the [65][Assessing] Officer is satisfied that such debt or part became a bad debt in any earlier previous year not falling beyond a period of four previous years immediately preceding the previous year in which such debt or part is written off, the provisions of sub-section (6) of section 155 shall apply;

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61. Clause (*xvi*) omitted by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-2009. Prior to its omission, clause (*xvi*) read as under :

'(*xvi*) an amount equal to the commodities transaction tax paid by the assessee in respect of the taxable commodities transactions entered into in the course of his business during the previous year, if the income arising from such taxable commodities transactions is included in the income computed under the head "Profits and gains of business or profession".

Explanation.—For the purposes of this clause, the expressions "commodities transaction tax" and "taxable commodities transaction" shall have the meanings respectively assigned to them under Chapter VII of the Finance Act, 2008.'

62. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

63. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

64. Inserted, *ibid.*

65. Substituted for "Income-tax", *ibid.,* w.e.f. 1-4-1988.

65a. Inserted, *ibid.*, w.e.f. 1-4-1989.

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[66][(*v*) where such debt or part of debt relates to advances made by an assessee to which clause (*viia*) of sub-section (1) applies, no such deduction shall be allowed unless the assessee has debited the amount of such debt or part of debt in that previous year to the provision for bad and doubtful debts account made under that clause.]

General.

[67]**37.** [68](1) [69]Any expenditure[70] (not being expenditure of the nature described in sections 30 to 36 [71][***] and not being in the nature of capital expenditure[72] or personal expenses of the assessee), laid out or expended wholly and exclusively[72] for the purposes of the business[72] or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".

[73][*Explanation*.—For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is an offence or

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66. Substituted by the Finance Act, 1997, w.r.e.f. 1-4-1992. Prior to its substitution, clause (*v*), as inserted by the Finance Act, 1985, w.e.f. 1-4-1985, read as under :

"(*v*) where such debt or part of debt relates to advances made by a bank to which clause (*viia*) of sub-section (1) applies, no such deduction shall be allowed unless the bank has debited the amount of such debt or part of debt in that previous year to the provision for bad and doubtful debts account made under that clause."

67. *See* rules 9A and 9B for computation of deduction in respect of expenditure on production of feature films/expenditure on acquisition of distribution rights of film.

68. *See* also Letter [F. No. 27(30)-IT/59], dated 6-7-1959, Letter [F.No. 9/54/64-IT(A-I)], dated 2-9-1964, Letter [F. No. 9/56/66-IT(A-I)], dated 17-1-1967, Letter [F.No. 9/23/67-IT (A-I)], dated 6-7-1967, Circular No. 5-P(XIV-I), dated 28-9-1963, Letter [F. No. 10/67/ 65-IT(A-I)], dated 26-8-1965, Circular No. 16, dated 18-9-1969, Circular No. 64(XI-2), dated 27-1-1951, Circular No. 117, dated 22-8-1973, Letter [F. No. 10/25/63-IT(A-I)], dated 18-6-1964, Letter [F. No. 204/42/77-IT(A-II)], dated 28-9-1977, Circular No. 1-D(IV-53), dated 20-1-1966, Circular No. 2, dated 8-3-1946, Letter [F. No. 35/5/65-IT(A-I)], dated 1-7-1965, Circular No. 69(XIX-3), dated 27-11-1951, Circular No. 4, dated 19-6-1950, Letter [F. No. 10/80/64-IT(A-I)], dated 26-2-1965, Letter [F. No. 10/92/64-IT(A-I)], dated 13-9-1965, Circular No. 3, dated 26-3-1946, Circular No. 22, dated 23-6-1943, Letter [F. No. 10/16/63-IT(A-I)], dated 14-5-1963, Letter [F. No. 10/8/63-IT(A-I)], dated 14-10-1963, Letter [F. No. 27(24)-IT/59], dated 19-5-1959, Letter [F. No. 7/33/62-IT(A-I)], dated 28-8-1963, Circular No. 2-P(XI-6), dated 23-8-1965, Letter [F. No. 13A/20/68-IT(A-II)], dated 3-10-1968, Letter [F. No. 32/6/62-IT(A-I)], dated 16-1-1963, Extracts from the minutes of the 16th meeting of CDTAC held on 2-2-1972, Instruction No. 943 [F. No. 204/ 15/76-IT(A-II)], dated 2-4-1976, Circular No. 420, dated 4-6-1985, Circular No. 2(40)/66-EAC, dated 16/17-1-1967, issued by the Ministry of Commerce, Circular No. 42 [C. No. 19(7)-IT/42], dated 22-8-1942, Circular No. 36 [R. Disc. No. 54(13)-IT/43], dated 24-11-1943, Circular No. 48 [C. No. 19(22)-IT/42], dated 16-10-1942, Circular No. 192, dated 10-3-1976, Circular No. 316, dated 30-9-1981, Board's Circular Letter No. 10/22/65 IT(A-I), dated 24-5-1965, Circular No. 651, dated 11-6-1993, Circular No. 671, dated 27-10-1993, Press Release, dated 23-1-2001, Instruction No. 12/2006, dated 14-12-2006 and Circular No. 6/2007, dated 11-10-2007. For details, *see* Taxmann's Master Guide to Income-tax Act.

69. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

70. For the meaning of the term "expenditure", *see* Taxmann's Direct Taxes Manual, Vol. 3.

71. "and section 80VV", which was inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976, omitted by the Finance Act, 1985, w.e.f. 1-4-1986.

72. For the meaning of the expressions "capital expenditure", "wholly and exclusively" and "for the purposes of the business", *see* Taxmann's Direct Taxes Manual, Vol. 3.

73. Inserted by the Finance (No. 2) Act, 1998, w.r.e.f. 1-4-1962.

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which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure.]

(2) [74][* * *]

[75][[76](2B) Notwithstanding anything contained in sub-section (1), no allowance shall be made in respect of expenditure incurred by an assessee on advertisement in any souvenir, brochure, tract, pamphlet or the like published by a political party.]

(3) [77][* * *]

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74. Omitted by the Finance Act, 1997, w.e.f. 1-4-1998. Omitted sub-section (2) was substituted for sub-sections (2) and (2A) by the Finance Act, 1992, w.e.f. 1-4-1993. Erstwhile sub-sections (2) and (2A) as amended by the Finance (No. 2) Act, 1962, w.e.f. 1-4-1962, the Finance Act, 1965, w.e.f. 1-4-1965, the Taxation Laws (Amendment) Act, 1967, w.e.f. 1-10-1967, the Finance Act, 1968, w.e.f. 1-4-1968, the Finance Act, 1970, w.e.f. 1-4-1970, the Finance Act, 1976, w.e.f. 1-4-1977 and the Finance Act, 1983, w.r.e.f. 1-4-1976/w.e.f. 1-4-1984. Prior to its omission, sub-section (2), as substituted by the Finance Act, 1992, w.e.f. 1-4-1993, and later on amended by the Finance Act, 1994, w.r.e.f. 1-4-1993, read as under :

'(2) Notwithstanding anything contained in sub-section (1), any expenditure in the nature of entertainment expenditure incurred by any assessee during any previous year commencing on or after the 1st day of April, 1992 shall be allowed as follows :

(*a*) where the amount of such expenditure does not exceed ten thousand rupees, the whole of such amount;

(*b*) in any other case, ten thousand rupees as increased by a sum equal to fifty per cent of such expenditure in excess of ten thousand rupees.

Explanation.—For the purposes of this sub-section, "entertainment expenditure" includes—

(*i*) the amount of any allowance in the nature of entertainment allowance paid by the assessee to any employee or other person;

(*ii*) the amount of any expenditure in the nature of entertainment expenditure [not being expenditure incurred out of an allowance of the nature referred to in clause (*i*)] incurred for the purposes of the business or profession of the assessee by any employee or other person;

(*iii*) expenditure on provision of hospitality of every kind by the assessee to any person, whether by way of provision of food or beverages or in any other manner whatsoever and whether or not such provision is made by reason of any express or implied contract or custom or usage of trade, but does not include expenditure on food or beverages provided by the assessee to his employees in office, factory or other place of their work.'

75. Inserted by the Taxation Laws (Amendment) Act, 1978, w.e.f. 1-4-1979. Originally, the sub-section was inserted by the Finance Act, 1970, w.e.f. 1-4-1970 which was later on omitted by the Finance Act, 1976, w.e.f. 1-4-1977.

76. *See* Circular No. 203, dated 16-7-1976, Circular No. 200, dated 28-6-1976 and Circular No. 19, dated 13-6-1969. For details, *see* Taxmann's Direct Taxes Circulars.

77. Omitted by the Finance Act, 1997, w.e.f. 1-4-1998. Prior to its omission, sub-section (3), as inserted by the Finance Act, 1964, w.e.f. 1-4-1964, read as under :

"(3) Notwithstanding anything contained in sub-section (1), any expenditure incurred by an assessee after the 31st day of March, 1964, on advertisement or on maintenance of any residential accommodation including any accommodation in the nature of a guest-house or in connection with travelling by an employee or any other person (including hotel expenses or allowances paid in connection with such travelling) shall be allowed only to the extent, and subject to such conditions, if any, as may be prescribed."

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(3A) [78][* * *]

(3B) [79][* * *]

(3C) [80][* * *]

(3D) [81][* * *]

(4) [82][* * *]

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78. Omitted by the Finance Act, 1985, w.e.f. 1-4-1986. Omitted sub-section (3A) was inserted by the Finance Act, 1983, w.e.f. 1-4-1984. Original sub-section was inserted by the Finance Act, 1978, w.e.f. 1-4-1979 and was later omitted by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1981.

79. Omitted by the Finance Act, 1985, w.e.f. 1-4-1986. Omitted sub-section (3B) was inserted by the Finance Act, 1983, w.e.f. 1-4-1984. Original sub-section was inserted by the Finance Act, 1978, w.e.f. 1-4-1979, and was later omitted by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1981.

80. Omitted by the Finance Act, 1985, w.e.f. 1-4-1986. Omitted sub-section (3C) was inserted by the Finance Act, 1983, w.e.f. 1-4-1984. Original sub-section was inserted by the Finance Act, 1978, w.e.f. 1-4-1979, and was later omitted by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1981.

81. Omitted by the Finance Act, 1985, w.e.f. 1-4-1986. Omitted sub-section (3D) was inserted by the Finance Act, 1983, w.e.f. 1-4-1984. Original sub-section was inserted by the Finance Act, 1978, w.e.f. 1-4-1979, and was later omitted by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1981.

82. Omitted by the Finance Act, 1997, w.e.f. 1-4-1998. Prior to its omission, sub-section (4), as inserted by the Finance Act, 1970, w.e.f. 1-4-1970, read as under :

'(4) Notwithstanding anything contained in sub-section (1) or sub-section (3),—

(*i*) no allowance shall be made in respect of any expenditure incurred by the assessee after the 28th day of February, 1970, on the maintenance of any residential accommodation in the nature of a guest-house (such residential accommodation being hereafter in this sub-section referred to as "guest-house");

(*ii*) in relation to the assessment year commencing on the 1st day of April, 1971, or any subsequent assessment year, no allowance shall be made in respect of depreciation of any building used as a guest-house or depreciation of any assets in a guest-house:

Provided that the aggregate of the expenditure referred to in clause (*i*) and the amount of any depreciation referred to in clause (*ii*) shall, for the purposes of this sub-section, be reduced by the amount, if any, received from persons using the guest-house :

Provided further that nothing in this sub-section shall apply in relation to any guest-house maintained as a holiday home if such guest-house—

(*a*) is maintained by an assessee who has throughout the previous year employed not less than one hundred whole-time employees in a business or profession carried on by him; and

(*b*) is intended for the exclusive use of such employees while on leave.

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

(*i*) residential accommodation in the nature of a guest-house shall include accommodation hired or reserved by the assessee in a hotel for a period exceeding one hundred and eighty-two days during the previous year; and

(*ii*) the expenditure incurred on the maintenance of a guest-house shall, in a case where the residential accommodation has been hired by the assessee, include also the rent paid in respect of such accommodation.'

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(5) [83][* * *]

Building, etc., partly used for business, etc., or not exclusively so used.

[84]**38.** (1) Where a part of any premises is used as dwelling house by the assessee,—

(*a*) the deduction under sub-clause (*i*) of clause (*a*) of section 30, in the case of rent, shall be such amount as the [85][Assessing] Officer may determine having regard to the proportionate annual value of the part used for the purpose of the business or profession, and in the case of any sum paid for repairs, such sum as is proportionate to the part of the premises used for the purpose of the business or profession;

(*b*) the deduction under clause (*b*) of section 30 shall be such sum as the [85][Assessing] Officer may determine having regard to the part so used.

(2) Where any building, machinery, plant or furniture is not exclusively used for the purposes of the business or profession, the deductions under sub-clause (*ii*) of clause (*a*) and clause (*c*) of section 30, clauses (*i*) and (*ii*) of section 31 and [86][clause (*ii*) of sub-section (1)] of section 32 shall be restricted to a fair proportionate part thereof which the [87][Assessing] Officer may determine, having regard to the user of such building, machinery, plant or furniture for the purposes of the business or profession.

Managing agency commission.

39. [*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.*]

Amounts not deductible.

40. Notwithstanding anything to the contrary in sections 30 to [88][38], the following amounts shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession",—

[89](*a*) in the case of any assessee—

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83. Omitted by the Finance Act, 1997, w.e.f. 1-4-1998. Prior to its omission, sub-section (5), as inserted by the Finance Act, 1983, w.r.e.f. 1-4-1979, read as under :

"(5) For the removal of doubts, it is hereby declared that any accommodation, by whatever name called, maintained, hired, reserved or otherwise arranged by the assessee for the purpose of providing lodging or boarding and lodging to any person (including any employee or, where the assessee is a company, also any director of, or the holder of any other office in, the company), on tour or visit to the place at which such accommodation is situated, is accommodation in the nature of a guest-house within the meaning of sub-section (4)."

84. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

85. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

86. Substituted for "clauses (*i*), (*ii*), (*iia*) and (*iii*) of sub-section (1) and sub-section (1A)" by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988.

87. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

88. Substituted for "39" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

89. *See* also Circular No. 91/58/66-ITJ(19), dated 18-5-1967 and Circular No. 786, dated 7-2-2000. For details, *see* Taxmann's Master Guide to Income-tax Act.

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[90][(*i*) any interest (not being interest on a loan issued for public subscription before the 1st day of April, 1938), royalty, fees for technical services or other sum chargeable under this Act, which is payable,—

(*A*) outside India; or

(*B*) in India to a non-resident, not being a company or to a foreign company,

on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid during the previous year, or in the subsequent year before the expiry of the time prescribed under sub-section (1) of section 200 :

Provided that where in respect of any such sum, tax has been deducted in any subsequent year or, has been deducted in the previous year but paid in any subsequent year after the expiry of the time prescribed under sub-section (1) of section 200, such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

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

(*A*) "royalty" shall have the same meaning as in *Explanation 2* to clause (*vi*) of sub-section (1) of section 9;

(*B*) "fees for technical services" shall have the same meaning as in *Explanation 2* to clause (*vii*) of sub-section (1) of section 9;

(*ia*) any interest, commission or brokerage, [91][rent, royalty,] fees for professional services or fees for technical services payable to a resident, or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work), on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, [92]**[***has not been paid on or before the due date specified in sub-section (1) of section 139 :***]**

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90. Sub-clauses (*i*), (*ia*) and (*ib*) substituted for sub-clause (*i*) by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005. Earlier, sub-clause (*i*) was substituted by the Finance Act, 1988, w.e.f. 1-4-1989 and the Finance Act, 2003, w.e.f. 1-4-2004.

91. Inserted by the Taxation Laws (Amendment) Act, 2006, w.r.e.f. 1-4-2006.

92. Substituted for "has not been paid,—

(*A*) in a case where the tax was deductible and was so deducted during the last month of the previous year, on or before the due date specified in sub-section (1) of section 139; or

(*B*) in any other case, on or before the last day of the previous year:"

by the Finance Act, 2010, w.e.f. **1-4-2010**. Prior to its substitution, the quoted words were substituted by the Finance Act, 2008, w.r.e.f. 1-4-2005.

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[93]**[Provided** *that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in sub-section (1) of section 139, such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.***]**

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

(*i*) "commission or brokerage" shall have the same meaning as in clause (*i*) of the *Explanation* to section 194H;

(*ii*) "fees for technical services" shall have the same meaning as in *Explanation 2* to clause (*vii*) of sub-section (1) of section 9;

(*iii*) "professional services" shall have the same meaning as in clause (*a*) of the *Explanation* to section 194J;

(*iv*) "work" shall have the same meaning as in *Explanation III* to section 194C;

[94][(*v*) "rent" shall have the same meaning as in clause (*i*) to the *Explanation* to section 194-I;

(*vi*) "royalty" shall have the same meaning as in *Explanation 2* to clause (*vi*) of sub-section (1) of section 9;]

(*ib*) [95][***]]

[96][(*ic*) any sum paid on account of fringe benefit tax under Chapter XIIH;]

[97](*ii*) any sum paid on account of any rate or tax levied[98] on the profits or gains of any business or profession[98] or assessed at a proportion of, or otherwise on the basis of, any such profits or gains.

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93. Substituted by the Finance Act, 2010, w.e.f. **1-4-2010**. Prior to its substitution, proviso as substituted by the Finance Act, 2008, w.r.e.f. 1-4-2005, read as under :

"**Provided** that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted—

(*A*) during the last month of the previous year but paid after the said due date; or

(*B*) during any other month of the previous year but paid after the end of the said previous year,

such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid."

94. Inserted by the Taxation Laws (Amendment) Act, 2006, w.r.e.f. 1-4-2006.

95. Omitted by the Finance Act, 2008, w.e.f. 1-4-2009. Prior to its omission, sub-clause (*ib*), as inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005, read as under :

"(*ib*) any sum paid on account of securities transaction tax under Chapter VII of the Finance (No. 2) Act, 2004;"

96. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

97. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

98. For the meaning of the expressions "any rate or tax levied" and "profits or gains of any business or profession", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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[99][*Explanation 1.*—For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, any sum paid on account of any rate or tax levied includes and shall be deemed always to have included any sum eligible for relief of tax under section 90 or, as the case may be, deduction from the Indian income-tax payable under section 91.]

[1][*Explanation 2.*—For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, any sum paid on account of any rate or tax levied includes any sum eligible for relief of tax under section 90A;]

[2][[3](*iia*) any sum paid on account of wealth-tax.

Explanation.—For the purposes of this sub-clause, "wealth-tax" means wealth-tax chargeable under the Wealth-tax Act, 1957 (27 of 1957), or any tax of a similar character chargeable under any law in force in any country outside India or any tax chargeable under such law with reference to the value of the assets of, or the capital employed in, a business or profession carried on by the assessee, whether or not the debts of the business or profession are allowed as a deduction in computing the amount with reference to which such tax is charged, but does not include any tax chargeable with reference to the value of any particular asset of the business or profession;]

[4][(*iii*) any payment which is chargeable under the head "Salaries", if it is payable—

(*A*) outside India; or

(*B*) to a non-resident,

and if the tax has not been paid thereon nor deducted therefrom under Chapter XVII-B;]

(*iv*) any payment to a provident or other fund established for the benefit of employees of the assessee, unless the assessee has made effective arrangements to secure that tax shall be deducted at source from any payments made from the fund which are chargeable to tax under the head "Salaries";

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99. Inserted by the Finance Act, 2006, w.e.f. 1-4-2006.

1. Inserted, *ibid.,* w.e.f. 1-6-2006.

2. Inserted by the Income-tax (Amendment) Act, 1972, w.r.e.f. 1-4-1962 subject to savings prescribed by sections 4 and 5 of that Act.

3. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

4. Substituted by the Finance Act, 2003, w.e.f. 1-4-2004. Prior to its substitution, sub-clause (*iii*) read as under :

'(*iii*) any payment which is chargeable under the head "Salaries", if it is payable outside India and if the tax has not been paid thereon nor deducted therefrom under Chapter XVII-B;'

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[5][(*v*) any tax actually paid by an employer referred to in clause (*10CC*) of section 10;]

[6][(*b*) in the case of any firm assessable as such,—

(*i*) any payment of salary, bonus, commission or remuneration, by whatever name called (hereinafter referred to as "remuneration") to any partner who is not a working partner; or

(*ii*) any payment of remuneration to any partner who is a working partner, or of interest to any partner, which, in either case, is not authorised by, or is not in accordance with, the terms of the partnership deed; or

(*iii*) any payment of remuneration to any partner who is a working partner, or of interest to any partner, which, in either case, is authorised by, and is in accordance with, the terms of the partnership deed, but which relates to any period (falling prior to the date of such partnership deed) for which such payment was not authorised by, or is not in accordance with, any earlier partnership deed, so, however, that the period of authorisation for such payment by any earlier partnership deed does not cover any period prior to the date of such earlier partnership deed; or

(*iv*) any payment of interest to any partner which is authorised by, and is in accordance with, the terms of the partnership deed and relates to any period falling after the date of such partnership deed in so far as such amount exceeds the amount calculated at the rate of [7][twelve] per cent simple interest per annum; or

[8](*v*) any payment of remuneration to any partner who is a working partner, which is authorised by, and is in accordance with, the terms of the partnership deed and relates to any period falling after the date of such partnership deed in so far as the amount of such payment to all the partners during the previous year exceeds the aggregate amount computed as hereunder :—

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5. Inserted by the Finance Act, 2002, w.e.f. 1-4-2003. Original clause (*v*) was inserted by the Finance Act, 1968, w.e.f. 1-4-1969, amended by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971 and later on omitted by the Finance (No. 2) Act, 1971, w.e.f. 1-4-1972.

6. Substituted by the Finance Act, 1992, w.e.f. 1-4-1993. Prior to substitution, clause (*b*) was amended by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-4-1985, the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989, and the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

7. Substituted for "eighteen" by the Finance Act, 2002, w.e.f. 1-6-2002.

8. *See* Circular No. 739, dated 25-3-1996. For details, *see* Taxmann's Master Guide to Income-tax Act.

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[9][(a)	*on the first Rs. 3,00,000 of the book-profit or in case of a loss*	*Rs. 1,50,000 or at the rate of 90 per cent of the book-profit, whichever is more;*
(b)	*on the balance of the book-profit*	*at the rate of 60 per cent* :]

Provided that in relation to any payment under this clause to the partner during the previous year relevant to the assessment year commencing on the 1st day of April, 1993, the terms of the partnership deed may, at any time during the said previous year, provide for such payment.

Explanation 1.—Where an individual is a partner in a firm on behalf, or for the benefit, of any other person (such partner and the other person being hereinafter referred to as "partner in a representative capacity" and "person so represented", respectively),—

(*i*) interest paid by the firm to such individual otherwise than as partner in a representative capacity, shall not be taken into account for the purposes of this clause;

(*ii*) interest paid by the firm to such individual as partner in a representative capacity and interest paid by the firm to the person so represented shall be taken into account for the purposes of this clause.

Explanation 2.—Where an individual is a partner in a firm otherwise than as partner in a representative capacity, interest paid by the firm to such individual shall not be taken into account for the purposes of this clause, if such interest is received by him on behalf, or for the benefit, of any other person.

Explanation 3.—For the purposes of this clause, "book-profit" means the net profit, as shown in the profit and loss account for the relevant previous year, computed in the manner laid down in Chapter IV-D as increased by the aggregate amount of the remuneration paid or

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9. Substituted by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2010**. Prior to their substitution, items (*1*) and (*2*) read as under :

"(*1*) in case of a firm carrying on a profession referred to in section 44AA or which is notified for the purpose of that section—

(*a*)	on the first Rs. 1,00,000 of the book-profit or in case of a loss	Rs. 50,000 or at the rate of 90 per cent of the book-profit, whichever is more;
(*b*)	on the next Rs. 1,00,000 of the book-profit	at the rate of 60 per cent;
(*c*)	on the balance of the book-profit	at the rate of 40 per cent;

(*2*) in the case of any other firm—

(*a*)	on the first Rs. 75,000 of the book-profit, or in case of a loss	Rs. 50,000 or at the rate of 90 per cent of the book-profit, whichever is more;
(*b*)	on the next Rs. 75,000 of the book-profit	at the rate of 60 per cent;
(*c*)	on the balance of the book-profit	at the rate of 40 per cent:"

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payable to all the partners of the firm if such amount has been deducted while computing the net profit.

Explanation 4.—For the purposes of this clause, "working partner" means an individual who is actively engaged in conducting the affairs of the business or profession of the firm of which he is a partner;]

[10][(*ba*) in the case of an association of persons or body of individuals [other than a company or a co-operative society or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any law corresponding to that Act in force in any part of India], any payment of interest, salary, bonus, commission or remuneration, by whatever name called, made by such association or body to a member of such association or body.

Explanation 1.—Where interest is paid by an association or body to any member thereof who has also paid interest to the association or body, the amount of interest to be disallowed under this clause shall be limited to the amount by which the payment of interest by the association or body to the member exceeds the payment of interest by the member to the association or body.

Explanation 2.—Where an individual is a member of an association or body on behalf, or for the benefit, of any other person (such member and the other person being hereinafter referred to as "member in a representative capacity" and "person so represented", respectively),—

(*i*) interest paid by the association or body to such individual or by such individual to the association or body otherwise than as member in a representative capacity, shall not be taken into account for the purposes of this clause;

(*ii*) interest paid by the association or body to such individual or by such individual to the association or body as member in a representative capacity and interest paid by the association or body to the person so represented or by the person so represented to the association or body, shall be taken into account for the purposes of this clause.

Explanation 3.—Where an individual is a member of an association or body otherwise than as member in a representative capacity, interest paid by the association or body to such individual shall not be taken into account for the purposes of this clause, if such interest is received by him on behalf, or for the benefit, of any other person.]

(*c*) [*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Earlier, it was amended by the Finance Act, 1963, w.e.f. 1-4-1963, Finance Act, 1964, w.e.f. 1-4-1964, Finance Act, 1965, w.e.f. 1-4-1965, Finance Act, 1968, w.e.f. 1-4-1969, Finance (No. 2) Act, 1971, w.e.f. 1-4-1972, Finance Act, 1984, w.e.f. 1-4-1985 and Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.*]

(*d*) [*Omitted by the Finance Act, 1988, w.e.f. 1-4-1989.*]

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10. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

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[11][**Expenses or payments not deductible in certain circumstances.**

[12]**40A.** (1) The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other provision of this Act relating to the computation of income under the head "Profits and gains of business or profession".

[13](2)(*a*) Where the assessee incurs any expenditure in respect of which payment has been or is to be made to any person[14] referred to in clause (*b*) of this sub-section, and the [15][Assessing] Officer is of opinion that such expenditure is excessive or unreasonable having regard to the fair market value of the goods, services or facilities for which the payment is made or the legitimate needs of the business or profession of the assessee or the benefit derived by or accruing to him therefrom, so much of the expenditure as is so considered by him to be excessive or unreasonable shall not be allowed as a deduction.

[16][* * *]

(*b*) The persons referred to in clause (*a*) are the following, namely :—

(*i*)	where the assessee is an individual	any relative of the assessee;
(*ii*)	where the assessee is a company, firm, association of persons or Hindu undivided family	any director of the company, partner of the firm, or member of the association or family, or any relative of such director, partner or member;

(*iii*) any individual who has a substantial interest in the business or profession of the assessee, or any relative of such individual;

(*iv*) a company, firm, association of persons or Hindu undivided family having a substantial interest in the business or profession of the assessee or any director, partner or member of such company, firm, association or family, or any relative of such director, partner or member;

(*v*) a company, firm, association of persons or Hindu undivided family of which a director, partner or member, as the case may be, has a substantial interest in the business or profession of the assessee; or

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11. Inserted by the Finance Act, 1968, w.e.f. 1-4-1968.

12. *See* also Press Note, dated 2-5-1969, issued by Ministry of Finance, Letter [F.No. 1(22)/69-TPL (Pt.)], dated 18-4-1969, Circular No. 34, dated 5-3-1970, Circular No. 33, dated 29-12-1969, Circular No. 250, dated 11-1-1979, Circular No. 522, dated 18-8-1988, Letter [F. No. 142(14)/70-TPL], dated 28-9-1970, Circular No. 10/2008, dated 5-12-2008, Letter [F. No. 1(22)/69-TPL(Pt.)], dated 18-4-1969, Circular No. 220, dated 31-5-1977, Circular No. 169 (para 27), dated 23-6-1975, Letter [F. No. 204/10/71-IT(A-II)], dated 17-4-1971 and Letter BC No. T-II/256-Misc. 75-76, dated 15-11-1975, from the Commissioner of Income-tax, Bombay. For details, *see* Taxmann's Master Guide to Income-tax Act.

13. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

14. For the meaning of the expression "any person", *see* Taxmann's Direct Taxes Manual, Vol. 3.

15. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

16. Omitted, *ibid.*, w.e.f. 1-4-1989. Prior to its omission, proviso was amended by the Finance (No. 2) Act, 1971, w.e.f. 1-4-1972.

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any director, partner or member of such company, firm, association or family or any relative of such director, partner or member;

(*vi*) any person who carries on a business or profession,—

(*A*) where the assessee being an individual, or any relative of such assessee, has a substantial interest in the business or profession of that person; or

(*B*) where the assessee being a company, firm, association of persons or Hindu undivided family, or any director of such company, partner of such firm or member of the association or family, or any relative of such director, partner or member, has a substantial interest in the business or profession of that person.

Explanation.—For the purposes of this sub-section, a person shall be deemed to have a substantial interest in a business or profession, if,—

(*a*) in a case where the business or profession is carried on by a company, such person is, at any time during the previous year, the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) carrying not less than twenty per cent of the voting power; and

(*b*) in any other case, such person is, at any time during the previous year, beneficially entitled to not less than twenty per cent of the profits of such business or profession.

[17][[18](3) Where the assessee incurs any expenditure in respect of which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, exceeds

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17. Sub-sections (3) and (3A) substituted for sub-section (3) by the Finance Act, 2008, w.e.f. 1-4-2009. Prior to its substitution, sub-section (3), as amended by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988/1-4-1989, Finance Act, 1995, w.e.f. 1-4-1996, Finance (No. 2) Act, 1996, w.e.f. 1-4-1997, Taxation Laws (Amendment) Act, 2006, w.e.f. 13-7-2006 and the Finance Act, 2007, w.e.f. 1-4-2008, read as under :

"(3)(*a*) Where the assessee incurs any expenditure in respect of which payment is made in a sum exceeding twenty thousand rupees otherwise than by an account payee cheque drawn on a bank or account payee bank draft, no deduction shall be allowed in respect of such expenditure;

(*b*) Where an allowance has been made in the assessment for any year in respect of any liability incurred by the assessee for any expenditure and subsequently during any previous year (hereinafter referred to as subsequent year) the assessee makes payment in respect thereof, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, the payment so made shall be deemed to be the profits and gains of business or profession and accordingly chargeable to income-tax as income of the subsequent year if the amount of payment exceeds twenty thousand rupees:

Provided that no disallowance shall be made and no payment shall be deemed to be the profits and gains of business or profession under this sub-section where any payment in a sum exceeding twenty thousand rupees is made otherwise than by an account payee cheque drawn on a bank or account payee bank draft, in such cases and under such circumstances as may be prescribed, having regard to the nature and extent of banking facilities available, considerations of business expediency and other relevant factors."

18. *See* also Circular No. 522, dated 18-8-1988, Circular No. 4/2006, dated 29-3-2006, Circular No. 8/2006, dated 6-10-2006 and Circular No. 10/2008, dated 5-12-2008. For details as well as relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

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twenty thousand rupees, no deduction shall be allowed in respect of such expenditure.[19]

(3A) Where an allowance has been made in the assessment for any year in respect of any liability incurred by the assessee for any expenditure and subsequently during any previous year (hereinafter referred to as subsequent year) the assessee makes payment in respect thereof, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, the payment so made shall be deemed to be the profits and gains of business or profession and accordingly chargeable to income-tax as income of the subsequent year if the payment or aggregate of payments made to a person in a day, exceeds twenty thousand rupees:

Provided that no disallowance shall be made and no payment shall be deemed to be the profits and gains of business or profession under sub-section (3) and this sub-section where a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, exceeds twenty thousand rupees, in such cases and under such circumstances as may be prescribed [20], having regard to the nature and extent of banking facilities available, considerations of business expediency and other relevant factors :]

[21][**Provided further** that in the case of payment made for plying, hiring or leasing goods carriages, the provisions of sub-sections (3) and (3A) shall have effect as if for the words "twenty thousand rupees", the words "thirty-five thousand rupees" had been substituted.]

[22][(4) Notwithstanding anything contained in any other law for the time being in force or in any contract, where any payment in respect of any expenditure has to be made by [23][an account payee cheque drawn on a bank or account payee bank draft] in order that such expenditure may not be disallowed as a deduction under sub-section (3), then the payment may be made by such cheque or draft; and where the payment is so made or tendered, no person shall be allowed to raise, in any suit or other proceeding, a plea based on the ground that the payment was not made or tendered in cash or in any other manner.]

(5) [24][*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Original sub-section (5) was inserted by the Finance (No. 2) Act, 1971, w.e.f. 1-4-1972.*]

(6) [25][*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Original sub-section (6) was inserted by the Finance (No. 2) Act, 1971, w.e.f. 1-4-1972.*]

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19. For the meaning of the term "expenditure", *see* Taxmann's Direct Taxes Manual, Vol. 3.

20. *See* rule 6DD for cases and circumstances in which payment in a sum exceeding Rs. 20,000 may be made otherwise than by an account payee cheque drawn on a bank or account payee draft.

21. Inserted by the Finance (No. 2) Act, 2009, w.e.f. 1-10-2009.

22. Inserted by the Finance Act, 1969, w.e.f. 1-4-1969.

23. Substituted for "a crossed cheque drawn on a bank or by a crossed bank draft" by the Taxation Laws (Amendment) Act, 2006, w.e.f. 13-7-2006.

24. Prior to its omission, sub-section (5) was amended by the Direct Taxes (Amendment) Act, 1974, w.e.f. 1-4-1974, Taxation Laws (Amendment) Act, 1984, w.e.f. 1-4-1985, Finance Act, 1984, w.e.f. 1-4-1985 and Finance Act, 1985, w.e.f. 1-4-1985.

25. Prior to its omission, sub-section (6) was amended by the Finance Act, 1984, w.e.f. 1-4-1985.

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[26][[27](7) (*a*) Subject to the provisions of clause (*b*), no deduction shall be allowed in respect of any provision[28] (whether called as such or by any other name) made by the assessee for the payment of gratuity to his employees on their retirement or on termination of their employment for any reason.

(*b*) Nothing in clause (*a*) shall apply in relation to any provision made by the assessee for the purpose of payment of a sum by way of any contribution towards an approved gratuity fund, or for the purpose of payment of any gratuity, that has become payable during the previous year[29].

Explanation.—For the removal of doubts, it is hereby declared that where any provision made by the assessee for the payment of gratuity to his employees on their retirement or termination of their employment for any reason has been allowed as a deduction in computing the income of the assessee for any assessment year, any sum paid out of such provision by way of contribution towards an approved gratuity fund or by way of gratuity to any employee shall not be allowed as a deduction in computing the income of the assessee of the previous year in which the sum is so paid.]

(8) [30][* * *]

[31][(9) No deduction shall be allowed in respect of any sum paid by the assessee as an employer towards the setting up or formation of, or as contribution to, any fund, trust, company, association of persons, body of individuals, society registered under the Societies Registration Act, 1860 (21 of 1860), or other institution for any purpose, except where such sum is so paid, for the purposes and to the extent provided by or under clause (*iv*) or clause (*v*) of sub-section (1) of section 36, or as required by or under any other law for the time being in force.

(10) Notwithstanding anything contained in sub-section (9), where the [32][Assessing] Officer is satisfied that the fund, trust, company, association of persons, body of individuals, society or other institution referred to in that sub-section has, before the 1st day of March, 1984, *bona fide* laid out or expended any expenditure (not being in the nature of capital expenditure) wholly and exclusively for the welfare of the employees of the assessee referred to in sub-section (9) out of the sum referred to in that sub-section, the amount of such expenditure shall, in case no deduction has been allowed to the assessee in respect of such sum and subject to the other provisions of this Act, be deducted in computing the income referred to in section 28 of the assessee of the previous year in which such expenditure is so laid out or expended, as if such expenditure had been laid out or expended by the assessee.]

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26. Substituted by the Finance Act, 1999, w.e.f. 1-4-2000. Earlier sub-section (7) was inserted by the Finance Act, 1975, w.r.e.f. 1-4-1973.

27. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

28. For the meaning of the term "provision", *see* Taxmann's Direct Taxes Manual, Vol. 3.

29. For the meaning of the expression "that has become payable during the previous year", *see* Taxmann's Direct Taxes Manual, Vol. 3.

30. Sub-section (8) was omitted by the Finance Act, 1985, w.e.f. 1-4-1986. Prior to its omission, sub-section (8) was inserted by the Finance Act, 1975, w.e.f. 1-4-1976.

31. Inserted by the Finance Act, 1984, w.r.e.f. 1-4-1980.

32. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

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[33][(11) Where the assessee has, before the 1st day of March, 1984, paid any sum to any fund, trust, company, association of persons, body of individuals, society or other institution referred to in sub-section (9), then, notwithstanding anything contained in any other law or in any instrument, he shall be entitled—

(*i*) to claim that so much of the amount paid by him as has not been laid out or expended by such fund, trust, company, association of persons, body of individuals, society or other institution (such amount being hereinafter referred to as the unutilised amount) be repaid to him, and where any claim is so made, the unutilised amount shall be repaid, as soon as may be, to him;

(*ii*) to claim that any asset, being land, building, machinery, plant or furniture acquired or constructed by the fund, trust, company, association of persons, body of individuals, society or other institution out of the sum paid by the assessee, be transferred to him, and where any claim is so made, such asset shall be transferred, as soon as may be, to him.]

(12) [34][*Omitted by the Finance Act, 1992, w.e.f. 1-4-1993.*]

Profits chargeable to tax.

41. [35][[36](1) Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee (hereinafter referred to as the first-mentioned person) and subsequently during any previous year,—

(*a*) the first-mentioned person has obtained[37], whether in cash or in any other manner whatsoever, any amount in respect of such[37] loss or expenditure[37] or some benefit in respect of such trading liability by way of remission or cessation thereof[37], the amount obtained by such person or the value of benefit accruing to him shall be deemed to be profits and gains of business or profession and accordingly chargeable to income-tax as the income of that previous year, whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not; or

(*b*) the successor in business has obtained[37], whether in cash or in any other manner whatsoever, any amount in respect of which loss or expenditure was incurred by the first-mentioned person or some benefit in respect of the trading liability referred to in clause (*a*) by way of remission or cessation[37] thereof, the amount obtained[37] by the successor in business or the value of benefit accruing to the successor

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33. Inserted by the Finance Act, 1984, w.r.e.f. 1-4-1980.

34. Prior to omission, sub-section (12) was inserted by the Finance Act, 1985, w.e.f. 1-4-1986.

35. Substituted by the Finance Act, 1992, w.e.f. 1-4-1993.

36. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

37. For the meaning of the terms "obtained", "such", "expenditure" and "remission or cessation thereof", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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in business shall be deemed to be profits and gains of the business or profession, and accordingly chargeable to income-tax as the income of that previous year.

[38][*Explanation 1*.—For the purposes of this sub-section, the expression "loss or expenditure or some benefit in respect of any such trading liability by way of remission or cessation thereof" shall include the remission or cessation of any liability by a unilateral act by the first mentioned person under clause (*a*) or the successor in business under clause (*b*) of that sub-section by way of writing off such liability in his accounts.]

[39][*Explanation 2*].—For the purposes of this sub-section, "successor in business" means,—

(*i*) where there has been an amalgamation of a company with another company, the amalgamated company;

(*ii*) where the first-mentioned person is succeeded by any other person in that business or profession, the other person;

(*iii*) where a firm carrying on a business or profession is succeeded by another firm, the other firm;]

[40][(*iv*) where there has been a demerger, the resulting company.]

[41][(2) Where any building, machinery, plant or furniture,—

(*a*) which is owned by the assessee;

(*b*) in respect of which depreciation is claimed under clause (*i*) of sub-section (1) of section 32; and

(*c*) which was or has been used for the purposes of business,

is sold[42], discarded, demolished or destroyed[42] and the moneys payable[42] in respect of such building, machinery, plant or furniture, as the case may be, together with the amount of scrap value, if any, exceeds the written down value, so much of the excess as does not exceed the difference between the actual cost and the written down value shall be chargeable to income-tax as income of the business of the previous year in which the moneys payable for the building, machinery, plant or furniture became due[42].

Explanation.—Where the moneys payable in respect of the building, machinery, plant or furniture referred to in this sub-section become due in a previous year in which the business for the purpose of which the building, machinery, plant or furniture was being used is no longer in existence, the provision of this sub-section shall apply as if the business is in existence in that previous year.]

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38. Inserted by the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997.

39. *Explanation* renumbered as *Explanation 2, ibid.*

40. Inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

41. Inserted by the Finance (No. 2) Act, 1998, w.r.e.f. 1-4-1998. Earlier original sub-section (2) was amended by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1981 and later on omitted by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988.

42. For the meaning of the terms/expressions "sold", "demolished or destroyed", "moneys payable" and "due", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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(2A) [43][***]

(3) Where an asset representing expenditure of a capital nature on scientific research within the meaning of clause (*iv*) of sub-section (1), [44][or clause (*c*) of sub-section (2B),] of section 35, read with clause (*4*) of section 43, is sold, without having been used for other purposes, and the proceeds of the sale together with the total amount of the deductions made under clause (*i*) [45][or, as the case may be, the amount of the deduction under clause (*ia*)] of sub-section (2), [46][or clause (*c*) of sub-section (2B),] of section 35 exceed the amount of the capital expenditure, the excess or the amount of the deductions so made, whichever is the less, shall be chargeable to income-tax as income of the business or profession of the previous year in which the sale took place.

Explanation.—Where the moneys payable in respect of any asset referred to in this sub-section become due in a previous year in which the business is no longer in existence, the provisions of this sub-section shall apply as if the business is in existence in that previous year.

[47](4) Where a deduction has been allowed in respect of a bad debt or part of debt under the provisions of clause (*vii*) of sub-section (1) of section 36, then, if the amount subsequently recovered on any such debt or part is greater than the difference between the debt or part of debt and the amount so allowed, the excess shall be deemed to be profits and gains of business or profession, and accordingly chargeable to income-tax as the income of the previous year in which it is recovered, whether the business or profession in respect of which the deduction has been allowed is in existence in that year or not.

[48][*Explanation*.—For the purposes of sub-section (3),—

(*1*) "moneys payable" in respect of any building, machinery, plant or furniture includes—

(*a*) any insurance, salvage or compensation moneys payable in respect thereof;

(*b*) where the building, machinery, plant or furniture is sold, the price for which it is sold,

so, however, that where the actual cost of a motor car is, in accordance with the proviso to clause (*1*) of section 43, taken to be twenty-five thousand rupees, the moneys payable in respect of such motor car shall be taken to be a sum which bears to the amount for which the motor car is sold or, as the case may be, the amount of any insurance, salvage or compensation moneys payable in respect

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43. Omitted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988. Original sub-section (2A) was inserted by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

44. Inserted by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1981.

45. Inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968.

46. Inserted by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1981.

47. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

48. Substituted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988.

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thereof (including the amount of scrap value, if any) the same proportion as the amount of twenty-five thousand rupees bears to the actual cost of the motor car to the assessee as it would have been computed before applying the said proviso;

(*2*) "sold" includes a transfer by way of exchange or a compulsory acquisition under any law for the time being in force but does not include a transfer, in a scheme of amalgamation, of any asset by the amalgamating company to the amalgamated company where the amalgamated company is an Indian company.]

[49][(4A) Where a deduction has been allowed in respect of any special reserve created and maintained under clause (*viii*) of sub-section (1) of section 36, any amount subsequently withdrawn from such special reserve shall be deemed to be the profits and gains of business or profession and accordingly be chargeable to income-tax as the income of the previous year in which such amount is withdrawn.

Explanation.—Where any amount is withdrawn from the special reserve in a previous year in which the business is no longer in existence, the provisions of this sub-section shall apply as if the business is in existence in that previous year.]

(5) Where the business or profession referred to in this section is no longer in existence and there is income chargeable to tax under sub-section (1), [50][***] sub-section (3) [51][, sub-section (4) or sub-section (4A)] in respect of that business or profession, any loss, not being a loss sustained in speculation business [52][***], which arose in that business or profession during the previous year in which it ceased to exist and which could not be set off against any other income of that previous year shall, so far as may be, be set off against the income chargeable to tax under the sub-sections aforesaid.

[53][(6) References in sub-section (3) to any other provision of this Act which has been amended or omitted by the Direct Tax Laws (Amendment) Act, 1987 shall, notwithstanding such amendment or omission, be construed, for the purposes of that sub-section, as if such amendment or omission had not been made.]

Special provision for deductions in the case of business for prospecting, etc., for mineral oil.

42. [54][(1)] For the purpose of computing the profits or gains of any business consisting of the prospecting for or extraction or production of mineral oils in relation to which the Central Government has entered into an agreement with

49. Inserted by the Finance Act, 1997, w.e.f. 1-4-1998.

50. Words "sub-section (2), *sub-section (2A),"* omitted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988. Earlier the italicised words were inserted by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

51. Substituted for "or sub-section (4)" by the Finance Act, 1997, w.e.f. 1-4-1998.

52. Words 'or under the head "Capital gains" ' omitted by the Finance Act, 1987, w.e.f. 1-4-1988.

53. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

54. Section 42 renumbered as sub-section (1) thereof by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999.

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any person for the association or participation [55][of the Central Government or any person authorised by it in such business] (which agreement has been laid on the Table of each House of Parliament), there shall be made in lieu of, or in addition to, the allowances admissible under this Act, such allowances as are specified in the agreement in relation—

(*a*) to expenditure by way of infructuous or abortive exploration expenses in respect of any area surrendered prior to the beginning of commercial production by the assessee ;

(*b*) after the beginning of commercial production, to expenditure incurred by the assessee, whether before or after such commercial production, in respect of drilling or exploration activities or services or in respect of physical assets used in that connection, except assets on which allowance for depreciation is admissible under section 32 : [56][***]

[57][**Provided** that in relation to any agreement entered into after the 31st day of March, 1981, this clause shall have effect subject to the modification that the words and figures "except assets on which allowance for depreciation is admissible under section 32" had been omitted; and]

(*c*) to the depletion of mineral oil in the mining area in respect of the assessment year relevant to the previous year in which commercial production is begun and for such succeeding year or years as may be specified in the agreement;

and such allowances shall be computed and made in the manner specified in the agreement, the other provisions of this Act being deemed for this purpose to have been modified to the extent necessary to give effect to the terms of the agreement.

[58][(2) Where the business of the assessee consisting of the prospecting for or extraction or production of petroleum and natural gas is transferred wholly or partly or any interest in such business is transferred in accordance with the agreement referred to in sub-section (1), subject to the provisions of the said agreement and where the proceeds of the transfer (so far as they consist of capital sums)—

(*a*) are less than the expenditure incurred remaining unallowed, a deduction equal to such expenditure remaining unallowed, as reduced by the proceeds of transfer, shall be allowed in respect of the previous year in which such business or interest, as the case may be, is transferred;

(*b*) exceed the amount of the expenditure incurred remaining unallowed, so much of the excess as does not exceed the difference between the

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55. Substituted for "in such business of the Central Government" by the Finance Act, 1981, w.e.f. 1-4-1981.

56. Word "and" omitted, *ibid.*

57. Inserted, *ibid.*

58. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999.

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expenditure incurred in connection with the business or to obtain interest therein and the amount of such expenditure remaining unallowed, shall be chargeable to income-tax as profits and gains of the business in the previous year in which the business or interest therein, whether wholly or partly, had been transferred :

Provided that in a case where the provisions of this clause do not apply, the deduction to be allowed for expenditure incurred remaining unallowed shall be arrived at by substracting the proceeds of transfer (so far as they consist of capital sums) from the expenditure remaining unallowed.

Explanation.—Where the business or interest in such business is transferred in a previous year in which such business carried on by the assessee is no longer in existence, the provisions of this clause shall apply as if the business is in existence in that previous year;

(*c*) are not less than the amount of the expenditure incurred remaining unallowed, no deduction for such expenditure shall be allowed in respect of the previous year in which the business or interest in such business is transferred or in respect of any subsequent year or years:

[59][**Provided** that where in a scheme of amalgamation or demerger, the amalgamating or the demerged company sells or otherwise transfers the business to the amalgamated or the resulting company (being an Indian company), the provisions of this sub-section—

(*i*) shall not apply in the case of the amalgamating or the demerged company; and

(*ii*) shall, as far as may be, apply to the amalgamated or the resulting company as they would have applied to the amalgamating or the demerged company if the latter had not transferred the business or interest in the business.]]

[60][*Explanation.*—For the purposes of this section, "mineral oil" includes petroleum and natural gas.]

Definitions of certain terms relevant to income from profits and gains of business or profession.

43. In sections 28 to 41 and in this section, unless the context otherwise requires[61]—

[62](*1*) "actual cost" means the actual cost[61] of the assets to the assessee, reduced by that portion of the cost thereof, if any, as has been met[61] directly or indirectly by any other person or authority:

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59. Substituted by the Finance Act, 1999, w.e.f. 1-4-2000. Prior to its substitution, proviso was inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999.

60. Inserted by the Finance Act, 1981, w.e.f. 1-4-1981.

61. For the meaning of the expressions "unless the context otherwise requires", "actual cost" and "has been met", *see* Taxmann's Direct Taxes Manual, Vol. 3.

62. *See* also Circular No. 190, dated 1-3-1976. For details, *see* Taxmann's Master Guide to Income-tax Act.

For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

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[63][**Provided** that where the actual cost of an asset, being a motor car which is acquired by the assessee after the 31st day of March, 1967, [64][but before the 1st day of March, 1975,] and is used otherwise than in a business of running it on hire for tourists, exceeds twenty-five thousand rupees, the excess of the actual cost over such amount shall be ignored, and the actual cost thereof shall be taken to be twenty-five thousand rupees.]

Explanation 1.—Where an asset is used in the business after it ceases to be used for scientific research related to that business and a deduction has to be made under [65][clause (*ii*) of sub-section (1)] of section 32 in respect of that asset, the actual cost of the asset to the assessee shall be the actual cost to the assessee as reduced by the amount of any deduction allowed under clause (*iv*) of sub-section (1) of section 35 or under any corresponding provision of the Indian Income-tax Act, 1922 (11 of 1922).

[66][*Explanation 2.*—Where an asset is acquired by the assessee by way of gift or inheritance, the actual cost of the asset to the assessee shall be the actual cost to the previous owner, as reduced by—

(*a*) the amount of depreciation actually allowed under this Act and the corresponding provisions of the Indian Income-tax Act, 1922 (11 of 1922), in respect of any previous year relevant to the assessment year commencing before the 1st day of April, 1988; and

(*b*) the amount of depreciation that would have been allowable to the assessee for any assessment year commencing on or after the 1st day of April, 1988, as if the asset was the only asset in the relevant block of assets.]

Explanation 3.—Where, before the date of acquisition by the assessee, the assets were at any time used by any other person for the purposes of his business or profession and the [67][Assessing] Officer is satisfied that the main purpose of the transfer of such assets, directly or indirectly to the assessee, was the reduction of a liability to income-tax (by claiming depreciation with reference to an enhanced cost), the actual cost to the assessee shall be such an amount as the [67][Assessing]

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63. Substituted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968. Original proviso was inserted by the Finance Act, 1966, w.e.f. 1-4-1966.

64. Inserted by the Finance Act, 1975, w.e.f. 1-4-1975.

65. Substituted for "clause (*i*), clause (*ii*) or clause (*iii*) of sub-section (1) *or sub-section (1A)"* by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988. Italicised words were inserted by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

66. Substituted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988.

67. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

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Officer may, with the previous approval of the [68][Joint Commissioner], determine having regard to all the circumstances of the case.

[69][*Explanation 4.*—Where any asset which had once belonged to the assessee and had been used by him for the purposes of his business or profession and thereafter ceased to be his property by reason of transfer or otherwise, is re-acquired by him, the actual cost to the assessee shall be—

(*i*) the actual cost to him when he first acquired the asset as reduced by—

(*a*) the amount of depreciation actually allowed to him under this Act or under the corresponding provisions of the Indian Income-tax Act, 1922 (11 of 1922), in respect of any previous year relevant to the assessment year commencing before the 1st day of April, 1988; and

(*b*) the amount of depreciation that would have been allowable to the assessee for any assessment year commencing on or after the 1st day of April, 1988, as if the asset was the only asset in the relevant block of assets; or

(*ii*) the actual price for which the asset is re-acquired by him,

whichever is less.]

[70][*Explanation 4A*.—Where before the date of acquisition by the assessee (hereinafter referred to as the first mentioned person), the assets were at any time used by any other person (hereinafter referred to as the second mentioned person) for the purposes of his business or profession and depreciation allowance has been claimed in respect of such assets in the case of the second mentioned person and such person acquires on lease, hire or otherwise assets from the first mentioned person, then, notwithstanding anything contained in *Explanation 3,* the actual cost of the transferred assets, in the case of first mentioned person, shall be the same as the written down value of the said assets at the time of transfer thereof by the second mentioned person.]

Explanation 5.—Where a building previously the property of the assessee is brought into use for the purpose of the business or profession after the 28th day of February, 1946, the actual cost to the assessee shall be the actual cost of the building to the assessee, as reduced by an amount equal to the depreciation calculated at the rate in force on that date that would have been allowable had the building

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68. Substituted for "Deputy Commissioner" by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier "Deputy Commissioner" was substituted for "Inspecting Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

69. Substituted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988. Prior to its substitution, *Explanation 4* was amended by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

70. Inserted by the Finance (No. 2) Act, 1996, w.e.f. 1-10-1996.

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been used for the aforesaid purposes since the date of its acquisition by the assessee.

[71][*Explanation 6.*—When any capital asset is transferred by a holding company to its subsidiary company or by a subsidiary company to its holding company, then, if the conditions of clause (*iv*) or, as the case may be, of clause (*v*) of section 47 are satisfied, the actual cost of the transferred capital asset to the transferee-company shall be taken to be the same as it would have been if the transferor-company had continued to hold the capital asset for the purposes of its business.]

[72][*Explanation 7.*—Where, in a scheme of amalgamation, any capital asset is transferred by the amalgamating company to the amalgamated company and the amalgamated company is an Indian company, the actual cost of the transferred capital asset to the amalgamated company shall be taken to be the same as it would have been if the amalgamating company had continued to hold the capital asset for the purposes of its own business.]

[73][*Explanation 7A.*—Where, in a demerger, any capital asset is transferred by the demerged company to the resulting company and the resulting company is an Indian company, the actual cost of the transferred capital asset to the resulting company shall be taken to be the same as it would have been if the demerged company had continued to hold the capital asset for the purpose of its own business :

Provided that such actual cost shall not exceed the written down value of such capital asset in the hands of the demerged company.]

[74][*Explanation 8.*—For the removal of doubts, it is hereby declared that where any amount is paid or is payable as interest in connection with the acquisition of an asset, so much of such amount as is relatable to any period after such asset is first put to use shall not be included, and shall be deemed never to have been included, in the actual cost of such asset.]

[75][*Explanation 9.*—For the removal of doubts, it is hereby declared that where an asset is or has been acquired on or after the 1st day of March, 1994 by an assessee, the actual cost of asset shall be reduced by the amount of duty of excise or the additional duty leviable under section 3 of the Customs Tariff Act, 1975 (51 of 1975) in respect of which a claim of credit has been made and allowed under the Central Excise Rules, 1944.]

[76][*Explanation 10.*—Where a portion of the cost of an asset acquired by the assessee has been met directly or indirectly by the Central

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71. Substituted by the Finance Act, 1965, w.e.f. 1-4-1965.
72. Inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.
73. Inserted by the Finance Act, 1999, w.e.f. 1-4-2000.
74. Inserted by the Finance Act, 1986, w.r.e.f. 1-4-1974.
75. Inserted by the Finance (No. 2) Act, 1998, w.r.e.f. 1-4-1994.
76. Inserted, *ibid.*, w.e.f. 1-4-1999.

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Government or a State Government or any authority established under any law or by any other person, in the form of a subsidy or grant or reimbursement (by whatever name called), then, so much of the cost as is relatable to such subsidy or grant or reimbursement shall not be included in the actual cost of the asset to the assessee :

Provided that where such subsidy or grant or reimbursement is of such nature that it cannot be directly relatable to the asset acquired, so much of the amount which bears to the total subsidy or reimbursement or grant the same proportion as such asset bears to all the assets in respect of or with reference to which the subsidy or grant or reimbursement is so received, shall not be included in the actual cost of the asset to the assessee.]

[77][*Explanation 11.*—Where an asset which was acquired outside India by an assessee, being a non-resident, is brought by him to India and used for the purposes of his business or profession, the actual cost of the asset to the assessee shall be the actual cost to the assessee, as reduced by an amount equal to the amount of depreciation calculated at the rate in force that would have been allowable had the asset been used in India for the said purposes since the date of its acquisition by the assessee.]

[78][*Explanation 12.*—Where any capital asset is acquired by the assessee under a scheme for corporatisation of a recognised stock exchange in India, approved by the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the actual cost of the asset shall be deemed to be the amount which would have been regarded as actual cost had there been no such corporatisation;]

[79][Explanation 13.—*The actual cost of any capital asset on which deduction has been allowed or is allowable to the assessee under section 35AD, shall be treated as* 'nil',—

*(*a*) in the case of such assessee; and*

*(*b*) in any other case if the capital asset is acquired or received,—*

*(*i*) by way of gift or will or an irrevocable trust;*

*(*ii*) on any distribution on liquidation of the company; and*

*(*iii*) by such mode of transfer as is referred to in clauses (*i*), (*iv*), (*v*), (*vi*), (*vib*),* [79a]**[***(*xiii*) and (*xiv*)***]** *of section 47;*]

(*2*) "paid" means actually paid[80] or incurred according to the method of accounting upon the basis of which the profits or gains are computed under the head "Profits and gains of business or profession";

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77. Inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

78. Inserted by the Finance Act, 2001, w.e.f. 1-4-2002.

79. Inserted by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2010**.

79a. Words "(*xiii*), (*xiiib*) and (*xiv*)" shall be substituted for "(*xiii*) and (*xiv*)" by the Finance Act, 2010, w.e.f. **1-4-2011**.

80. For the meaning of the expression "actually paid", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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[81](*3*) "plant"[82] includes ships, vehicles, books[82], scientific apparatus and surgical equipment used for the purposes of the business or profession [83][but does not include tea bushes or livestock] [84][or buildings or furniture and fittings];

(*4*) [85][(*i*) "scientific research" means any activities for the extension of knowledge in the fields of natural or applied science including agriculture, animal husbandry or fisheries;]

(*ii*) 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;

(*iii*) references to scientific research related to a business or class of business include—

(*a*) any scientific research which may lead to or facilitate an extension of that business or, as the case may be, all businesses of that class;

(*b*) 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 be, all businesses of that class;

[86](*5*) [87]"speculative transaction"[88] means a transaction in which a contract[88] for the purchase or sale of any commodity, including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery[88] or transfer of the commodity or scrips:

Provided that for the purposes of this clause—

(*a*) a contract in respect of raw materials or merchandise entered into by a person in the course of his manufacturing or merchanting business to guard against loss through future price fluctuations in respect of his contracts for actual delivery of goods manufactured by him or merchandise sold by him; or

(*b*) a contract in respect of stocks and shares entered into by a dealer or investor therein to guard against loss in his holdings of stocks and shares through price fluctuations; or

(*c*) a contract entered into by a member of a forward market or a stock exchange in the course of any transaction in the nature of

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81. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

82. For the meaning of the terms "plant" and "books", *see* Taxmann's Direct Taxes Manual, Vol. 3.

83. Inserted by the Finance Act, 1995, w.r.e.f. 1-4-1962.

84. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

85. Substituted by the Finance Act, 1968, w.e.f. 1-4-1969.

86. *See* also Circular No. 23D(XXXIX-4), dated 12-9-1960 and Instruction No. 3/2010, dated 23-3-2010. For details, *see* Taxmann's Master Guide to Income-tax Act.

87. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

88. For the meaning of the terms/expressions "speculative transaction", "contract" and "actual delivery", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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jobbing or arbitrage to guard against loss which may arise in the ordinary course of his business as such member; [89][or]

[89][(*d*) an eligible transaction in respect of trading in derivatives referred to in clause [90][(*ac*)] of section 2[91] of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) carried out in a recognised stock exchange;]

shall not be deemed to be a speculative transaction.

[92][*Explanation*.—For the purposes of this clause, the expressions—

(*i*) "eligible transaction" means any transaction,—

(*A*) carried out electronically on screen-based systems through a stock broker or sub-broker or such other intermediary registered under section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) in accordance with the provisions of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) or the Securities and Exchange Board of India Act, 1992 (15 of 1992) or the Depositories Act, 1996 (22 of 1996) and the rules, regulations or bye-laws made or directions issued under those Acts or by banks or mutual funds on a recognised stock exchange; and

(*B*) which is supported by a time stamped contract note issued by such stock broker or sub-broker or such other intermediary to every client indicating in the contract note the unique client identity number allotted under any Act referred to in sub-clause (*A*) and permanent account number allotted under this Act;

(*ii*) "recognised stock exchange" means a recognised stock exchange as referred to in clause (*f*) of section 2[93] of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and which fulfils such conditions as may be prescribed and notified[94] by the Central Government for this purpose;]

[95](*6*) "written down value" means—

(*a*) in the case of assets acquired in the previous year, the actual cost to the assessee;

(*b*) in the case of assets acquired before the previous year, the actual cost to the assessee less all depreciation actually allowed[96] to him under this Act, or under the Indian Income-tax Act, 1922 (11 of

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89. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

90. Substituted for "(*aa*)" by the Finance Act, 2006, w.e.f. 1-4-2006.

91. For text of section 2(*ac*) of the Securities Contracts (Regulation) Act, 1956, *see* **Appendix**.

92. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

93. For text of section 2(*f*) of the Securities Contracts (Regulation) Act, 1956, *see* **Appendix**.

94. *See* rules 6DDA and 6DDB. Recognised Stock Exchanges are : NSE/Bombay Stock Exchange - SO 89(E), dated 25-1-2006/MCX Stock Exchange - SO 1327(E), dated 22-5-2009.

95. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

96. For the meaning of the expression "actually allowed", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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1922), or any Act repealed by that Act, or under any executive orders issued when the Indian Income-tax Act, 1886 (2 of 1886), was in force:

[97][**Provided** that in determining the written down value in respect of buildings, machinery or plant for the purposes of clause (*ii*) of sub-section (1) of section 32, "depreciation actually allowed" shall not include depreciation allowed under sub-clauses (*a*), (*b*) and (*c*) of clause (*vi*) of sub-section (2) of section 10 of the Indian Income-tax Act, 1922 (11 of 1922), where such depreciation was not deductible in determining the written down value for the purposes of the said clause (*vi*);]

[98][(*c*) in the case of any block of assets,—

(*i*) in respect of any previous year relevant to the assessment year commencing on the 1st day of April, 1988, the aggregate of the written down values of all the assets falling within that block of assets at the beginning of the previous year and adjusted,—

(*A*) by the increase by the actual cost of any asset falling within that block, acquired during the previous year;

(*B*) by the reduction of the moneys payable in respect of any asset falling within that block, which is sold or discarded or demolished or destroyed during that previous year together with the amount of the scrap value, if any, so, however, that the amount of such reduction does not exceed the written down value as so increased; and

[99][(*C*) in the case of a slump sale, decrease by the actual cost of the asset falling within that block as reduced—

(*a*) by the amount of depreciation actually allowed to him under this Act or under the corresponding provisions of the Indian Income-tax Act, 1922 (11 of 1922) in respect of any previous year relevant to the assessment year commencing before the 1st day of April, 1988; and

(*b*) by the amount of depreciation that would have been allowable to the assessee for any assessment year commencing on or after the 1st day of April, 1988 as if the asset was the only asset in the relevant block of assets,

so, however, that the amount of such decrease does not exceed the written down value;]

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97. Inserted by the Finance (No. 2) Act, 1965, w.r.e.f. 1-4-1962.

98. Inserted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988.

99. Inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

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(*ii*) in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 1989, the written down value of that block of assets in the immediately preceding previous year as reduced by the depreciation actually allowed in respect of that block of assets in relation to the said preceding previous year and as further adjusted by the increase or the reduction referred to in item (*i*).]

Explanation 1.—When in a case of succession in business or profession, an assessment is made on the successor under sub-section (2) of section 170 the written down value of [1][any asset or any block of assets] shall be the amount which would have been taken as its written down value if the assessment had been made directly on the person succeeded to.

[2][*Explanation 2.*—Where in any previous year, any block of assets is transferred,—

(*a*) by a holding company to its subsidiary company or by a subsidiary company to its holding company and the conditions of clause (*iv*) or, as the case may be, of clause (*v*) of section 47 are satisfied; or

(*b*) by the amalgamating company to the amalgamated company in a scheme of amalgamation, and the amalgamated company is an Indian company,

then, notwithstanding anything contained in clause (*1*), the actual cost of the block of assets in the case of the transferee-company or the amalgamated company, as the case may be, shall be the written down value of the block of assets as in the case of the transferor-company or the amalgamating company for the immediately preceding previous year as reduced by the amount of depreciation actually allowed in relation to the said preceding previous year.]

[3][*Explanation 2A.*—Where in any previous year, any asset forming part of a block of assets is transferred by a demerged company to the resulting company, then, notwithstanding anything contained in clause (*1*), the written down value of the block of assets of the demerged company for the immediately preceding previous year shall be reduced by the [4][written down value of the assets] transferred to the resulting company pursuant to the demerger.

Explanation 2B.—Where in a previous year, any asset forming part of a block of assets is transferred by a demerged company to the resulting company, then, notwithstanding anything contained in

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1. Substituted for "any asset" by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988.

2. Substituted for *Explanation 2* and *Explanation 2A*, *ibid*. Prior to their substitution, *Explanation 2* was substituted by the Finance Act, 1965, w.e.f. 1-4-1965 and *Explanation 2A* was inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

3. *Explanation 2A, Explanation 2B* and proviso thereof inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

4. Substituted for "book value of the assets" by the Finance Act, 2000, w.e.f. 1-4-2000.

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clause (*1*), the written down value of the block of assets in the case of the resulting company shall be the [5][written down value of the transferred assets [6][***] of the demerged company immediately before the demerger.

The following *Explanation 2C* shall be inserted after *Explanation 2B* of clause (6) of section 43 by the Finance Act, 2010, w.e.f. 1-4-2011 :

Explanation 2C.—*Where in any previous year, any block of assets is transferred by a private company or unlisted public company to a limited liability partnership and the conditions specified in the proviso to clause (*xiiib*) of section 47 are satisfied, then, notwithstanding anything contained in clause (*1*), the actual cost of the block of assets in the case of the limited liability partnership shall be the written down value of the block of assets as in the case of the said company on the date of conversion of the company into the limited liability partnership.*

[7][***]]

Explanation 3.—Any allowance in respect of any depreciation carried forward under sub-section (2) of section 32 shall be deemed to be depreciation "actually allowed".

[8][*Explanation 4.*—For the purposes of this clause, the expressions "moneys payable" and "sold" shall have the same meanings as in the *Explanation* below sub-section (4) of section 41.]

[9][*Explanation 5.*—Where in a previous year, any asset forming part of a block of assets is transferred by a recognised stock exchange in India to a company under a scheme for corporatisation approved by the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the written down value of the block of assets in the case of such company shall be the written down value of the transferred assets immediately before such transfer.]

[10][*Explanation 6.*—Where an assessee was not required to compute his total income for the purposes of this Act for any previous year or years preceding the previous year relevant to the assessment year under consideration,—

(*a*) the actual cost of an asset shall be adjusted by the amount attributable to the revaluation of such asset, if any, in the books of account;

5. Substituted for "value of the assets as appearing in the books of account" by the Finance Act, 2000, w.e.f. 1-4-2000.

6. Words "as appearing in the books of account" omitted by the Finance Act, 2003, w.e.f. 1-4-2004.

7. Omitted by the Finance Act, 2000, w.e.f. 1-4-2000. Prior to its omission, proviso was inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

8. Inserted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988.

9. Inserted by the Finance Act, 2001, w.e.f. 1-4-2002.

10. Inserted by the Finance Act, 2008, w.r.e.f. 1-4-2003.

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(*b*) the total amount of depreciation on such asset, provided in the books of account of the assessee in respect of such previous year or years preceding the previous year relevant to the assessment year under consideration shall be deemed to be the depreciation actually allowed under this Act for the purposes of this clause; and

(*c*) the depreciation actually allowed under clause (*b*) shall be adjusted by the amount of depreciation attributable to such revaluation of the asset.]

[11][Explanation 7.—*For the purposes of this clause, where the income of an assessee is derived, in part from agriculture and in part from business chargeable to income-tax under the head "Profits and gains of business or profession", for computing the written down value of assets acquired before the previous year, the total amount of depreciation shall be computed as if the entire income is derived from the business of the assessee under the head "Profits and gains of business or profession" and the depreciation so computed shall be deemed to be the depreciation actually allowed under this Act.*]

[12][**Special provisions consequential to changes in rate of exchange of currency.**

43A. Notwithstanding anything contained in any other provision of this Act, where an assessee has acquired any asset in any previous year from a country outside India for the purposes of his business or profession and, in

11. Inserted by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2010**.

12. Substituted by the Finance Act, 2002, w.e.f. 1-4-2003. Prior to its substitution, section 43A, as inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967 and amended by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989 and Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989, read as under :

'43A. *Special provisions consequential to changes in rate of exchange of currency.*— (1) Notwithstanding anything contained in any other provision of this Act, where an assessee has acquired any asset from a country outside India for the purposes of his business or profession and, in consequence of a change in the rate of exchange at any time after the acquisition of such asset, there is an increase or reduction in the liability of the assessee as expressed in Indian currency for making payment towards the whole or a part of the cost of the asset or for repayment of the whole or a part of the moneys borrowed by him from any person, directly or indirectly, in any foreign currency specifically for the purpose of acquiring the asset (being in either case the liability existing immediately before the date on which the change in the rate of exchange takes effect), the amount by which the liability aforesaid is so increased or reduced during the previous year shall be added to, or, as the case may be, deducted from, the actual cost of the asset as defined in clause (*1*) of section 43 or the amount of expenditure of a capital nature referred to in clause (*iv*) of sub-section (1) of section 35 or in section 35A or in clause (*ix*) of sub-section (1) of section 36, or, in the case of a capital asset (not being a capital asset referred to in section 50), the cost of acquisition thereof for the purposes of section 48, and the amount arrived at after such addition or deduction shall be taken to be the actual cost of the asset or the amount of expenditure of a capital nature or, as the case may be, the cost of acquisition of the capital asset as aforesaid.

Explanation 1.—In this sub-section, unless the context otherwise requires,—

(*a*) "rate of exchange" means the rate of exchange determined or recognised by the Central Government for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;

(Contd. on p. 1.278)

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consequence of a change in the rate of exchange during any previous year after the acquisition of such asset, there is an increase or reduction in the liability of the assessee as expressed in Indian currency (as compared to the liability existing at the time of acquisition of the asset) at the time of making payment—

(*a*) towards the whole or a part of the cost of the asset; or

(*b*) towards repayment of the whole or a part of the moneys borrowed by him from any person, directly or indirectly, in any foreign currency specifically for the purpose of acquiring the asset along with interest, if any,

the amount by which the liability as aforesaid is so increased or reduced during such previous year and which is taken into account at the time of making the payment, irrespective of the method of accounting adopted by the assessee, shall be added to, or, as the case may be, deducted from—

(*i*) the actual cost of the asset as defined in clause (*1*) of section 43; or

(*ii*) the amount of expenditure of a capital nature referred to in clause (*iv*) of sub-section (1) of section 35; or

(*iii*) the amount of expenditure of a capital nature referred to in section 35A; or

(*iv*) the amount of expenditure of a capital nature referred to in clause (*ix*) of sub-section (1) of section 36; or

(*v*) the cost of acquisition of a capital asset (not being a capital asset referred to in section 50) for the purposes of section 48,

and the amount arrived at after such addition or deduction shall be taken to be the actual cost of the asset or the amount of expenditure of a capital nature or, as the case may be, the cost of acquisition of the capital asset as aforesaid:

Provided that where an addition to or deduction from the actual cost or expenditure or cost of acquisition has been made under this section, as it stood immediately before its substitution by the Finance Act, 2002, on account of an increase or reduction in the liability as aforesaid, the amount to be added to, or, as the case may be, deducted under this section from, the actual cost or expenditure or cost of acquisition at the time of making the payment shall be so adjusted

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(Contd. from p. 1.277)

(*b*) "foreign currency" and "Indian currency" have the meanings respectively assigned to them in section 2 of the Foreign Exchange Regulation Act, 1947 (7 of 1947).

Explanation 2.—Where the whole or any part of the liability aforesaid is met, not by the assessee, but, directly or indirectly, by any other person or authority, the liability so met shall not be taken into account for the purposes of this sub-section.

Explanation 3.—Where the assessee has entered into a contract with an authorised dealer as defined in section 2 of the Foreign Exchange Regulation Act, 1947 (7 of 1947), for providing him with a specified sum in a foreign currency on or after a stipulated future date at the rate of exchange specified in the contract to enable him to meet the whole or any part of the liability aforesaid, the amount, if any, to be added to, or deducted from, the actual cost of the asset or the amount of expenditure of a capital nature or, as the case may be, the cost of acquisition of the capital asset under this sub-section shall, in respect of so much of the sum specified in the contract as is available for discharging the liability aforesaid, be computed with reference to the rate of exchange specified therein.

(2) The provisions of sub-section (1) shall not be taken into account in computing the actual cost of an asset for the purpose of the deduction on account of development rebate under section 33.'

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that the total amount added to, or, as the case may be, deducted from, the actual cost or expenditure or cost of acquisition, is equal to the increase or reduction in the aforesaid liability taken into account at the time of making payment.

Explanation 1.—In this section, unless the context otherwise requires,—

(*a*) "rate of exchange" means the rate of exchange determined or recognised by the Central Government for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;

(*b*) [13]"foreign currency" and "Indian currency" have the meanings respectively assigned to them in section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999).

Explanation 2.—Where the whole or any part of the liability aforesaid is met, not by the assessee, but, directly or indirectly, by any other person or authority, the liability so met shall not be taken into account for the purposes of this section.

Explanation 3.—Where the assessee has entered into a contract with an authorised dealer[14] as defined in section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999), for providing him with a specified sum in a foreign currency on or after a stipulated future date at the rate of exchange specified in the contract to enable him to meet the whole or any part of the liability aforesaid, the amount, if any, to be added to, or deducted from, the actual cost of the asset or the amount of expenditure of a capital nature or, as the case may be, the cost of acquisition of the capital asset under this section shall, in respect of so much of the sum specified in the contract as is available for discharging the liability aforesaid, be computed with reference to the rate of exchange specified therein.]

[15][**Certain deductions to be only on actual payment.**

[16]**43B.** [17]Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of—

[18][(*a*) any sum payable by the assessee by way of tax[19], duty, cess or fee, by whatever name called, under any law for the time being in force, or]

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13. Clause (*m*) and clause (*q*) of section 2 of the Foreign Exchange Management Act, 1999, define "foreign currency" and "Indian currency" respectively as follows :

'(*m*) "foreign currency" means any currency other than Indian currency;

(*q*) "Indian currency" means currency which is expressed or drawn in Indian rupees but does not include special bank notes and special one rupee notes issued under section 28A of the Reserve Bank of India Act, 1934 (2 of 1934);'

14. Clause (*c*) of section 2 of the Foreign Exchange Management Act, 1999, defines "authorised dealer" as follows :

'(*c*) "authorised person" means an authorised dealer, money changer, off-shore banking unit or any other person for the time being authorised under sub-section (1) of section 10 to deal in foreign exchange or foreign securities;'

15. Inserted by the Finance Act, 1983, w.e.f. 1-4-1984.

16. *See* also Circular No. 496, dated 25-9-1987, Circular No. 674, dated 29-12-1993 and Circular No. 7/2006, dated 17-7-2006. For details, *see* Taxmann's Master Guide to Income-tax Act.

17. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

18. Substituted by the Finance Act, 1988, w.e.f. 1-4-1989.

19. For the meaning of the term "tax", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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(*b*) any sum payable by the assessee as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees, [20][or]

[20][(*c*) any sum referred to in clause (*ii*) of sub-section (1) of section 36,] [21][or]

[21][(*d*) any sum payable by the assessee as interest on any loan or borrowing from any public financial institution [22][or a State financial corporation or a State industrial investment corporation], in accordance with the terms and conditions of the agreement governing such loan or borrowing [23][, or]

[23][(*e*) any sum payable by the assessee as interest on any [24][loan or advances] from a scheduled bank in accordance with the terms and conditions of the agreement governing such loan [25][or advances],] [26][or]

[26][(*f*) any sum payable by the assessee as an employer in lieu of any leave at the credit of his employee,]

shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in section 28 of that previous year in which such sum is actually paid by him :

[27][**Provided** that nothing contained in this section shall apply in relation to any sum [28][***] which is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income under sub-section (1) of section 139 in respect of the previous year in which the liability to pay such sum was incurred as aforesaid and the evidence of such payment is furnished by the assessee along with such return[29].

[30][***]]

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20. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

21. Inserted by the Finance Act, 1988, w.e.f. 1-4-1989.

22. Inserted by the Finance Act, 1990, w.e.f. 1-4-1991.

23. Inserted by the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997.

24. Substituted for "term loan" by the Finance Act, 2003, w.e.f. 1-4-2004.

25. Inserted, *ibid*.

26. Inserted by the Finance Act, 2001, w.e.f. 1-4-2002.

27. Inserted by the Finance Act, 1987, w.e.f. 1-4-1988.

28. Words "referred to in clause (*a*) or clause (*c*) or clause (*d*) or clause (*e*) or clause (*f*)" omitted by the Finance Act, 2003, w.e.f. 1-4-2004. Earlier the quoted words were amended by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989, Finance Act, 1988, w.e.f. 1-4-1989, Finance (No. 2) Act, 1998, w.r.e.f. 1-4-1997 and Finance Act, 2001, w.e.f. 1-4-2002.

29. Rule 12 provides that the return of income shall not be accompanied by any document or copy of any account or form or report of audit required to be attached with return of income under any of the provisions of the Act.

30. Second proviso omitted by the Finance Act, 2003, w.e.f. 1-4-2004. Prior to its omission, the second proviso, as substituted by the Finance Act, 1989, w.e.f. 1-4-1989, read as under:

"**Provided further** that no deduction shall, in respect of any sum referred to in clause (*b*), be allowed unless such sum has actually been paid in cash or by issue of a cheque or draft or by any other mode on or before the due date as defined in the *Explanation* below clause (*va*) of sub-section (1) of section 36, and where such payment has been made otherwise than in cash, the sum has been realised within fifteen days from the due date."

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Explanation [31][*1*].—For the removal of doubts, it is hereby declared that where a deduction in respect of any sum referred to in clause (*a*) or clause (*b*) of this section is allowed in computing the income referred to in section 28 of the previous year (being a previous year relevant to the assessment year commencing on the 1st day of April, 1983, or any earlier assessment year) in which the liability to pay such sum was incurred by the assessee, the assessee shall not be entitled to any deduction under this section in respect of such sum in computing the income of the previous year in which the sum is actually paid by him.]

[32][*Explanation 2.*—For the purposes of clause (*a*), as in force at all material times, "any sum payable" means a sum for which the assessee incurred liability in the previous year even though such sum might not have been payable within that year under the relevant law.]

[33][[34][*Explanation 3*].—For the removal of doubts it is hereby declared that where a deduction in respect of any sum referred to in clause (*c*) [35][or clause (*d*)] of this section is allowed in computing the income referred to in section 28 of the previous year (being a previous year relevant to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year) in which the liability to pay such sum was incurred by the assessee, the assessee shall not be entitled to any deduction under this section in respect of such sum in computing the income of the previous year in which the sum is actually paid by him.]

[36][*Explanation 3A.*—For the removal of doubts, it is hereby declared that where a deduction in respect of any sum referred to in clause (*e*) of this section is allowed in computing the income referred to in section 28 of the previous year (being a previous year relevant to the assessment year commencing on the 1st day of April, 1996, or any earlier assessment year) in which the liability to pay such sum was incurred by the assessee, the assessee shall not be entitled to any deduction under this section in respect of such sum in computing the income of the previous year in which the sum is actually paid by him.]

[37][*Explanation 3B.*—For the removal of doubts, it is hereby declared that where a deduction in respect of any sum referred to in clause (*f*) of this section is allowed in computing the income, referred to in section 28, of the previous year (being a previous year relevant to the assessment year commencing on the 1st day of April, 2001, or any earlier assessment year) in which the liability to pay such sum was incurred by the assessee, the assessee shall not be entitled to any deduction under this section in respect of such sum in computing the income of the previous year in which the sum is actually paid by him.]

[38][*Explanation 3C.*—For the removal of doubts, it is hereby declared that a deduction of any sum, being interest payable under clause (*d*) of this section, shall

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31. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.
32. Inserted by the Finance Act, 1989, w.r.e.f. 1-4-1984.
33. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.
34. Renumbered by the Finance Act, 1989, w.r.e.f. 1-4-1984.
35. Inserted by the Finance Act, 1988, w.e.f. 1-4-1989.
36. Inserted by the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997.
37. Inserted by the Finance Act, 2001, w.e.f. 1-4-2002.
38. Inserted by the Finance Act, 2006, w.r.e.f. 1-4-1989.

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be allowed if such interest has been actually paid and any interest referred to in that clause which has been converted into a loan or borrowing shall not be deemed to have been actually paid.]

[39][*Explanation 3D.*—For the removal of doubts, it is hereby declared that a deduction of any sum, being interest payable under clause (*e*) of this section, shall be allowed if such interest has been actually paid and any interest referred to in that clause which has been converted into a loan or advance shall not be deemed to have been actually paid.]

[40][*Explanation 4.*—For the purposes of this section,—

(*a*) "public financial institutions" shall have the meaning assigned to it in section 4A[41] of the Companies Act, 1956 (1 of 1956);

[42][(*aa*) "scheduled bank" shall have the meaning assigned to it in the *Explanation* to clause (*iii*) of sub-section (5) of section 11;]

(*b*) "State financial corporation" means a financial corporation established under section 3 or section 3A or an institution notified under section 46 of the State Financial Corporations Act, 1951 (63 of 1951);

(*c*) "State industrial investment corporation" means a Government company[43] within the meaning of section 617 of the Companies Act, 1956 (1 of 1956), engaged in the business of providing long-term finance for industrial projects and [44][eligible for deduction under clause (*viii*) of sub-section (1) of section 36].]

[45][**Special provision for computation of cost of acquisition of certain assets.**

43C. (1) Where an asset [not being an asset referred to in sub-section (2) of section 45] which becomes the property of an amalgamated company under a scheme of amalgamation, is sold after the 29th day of February, 1988, by the amalgamated company as stock-in-trade of the business carried on by it, the cost of acquisition of the said asset to the amalgamated company in computing the profits and gains from the sale of such asset shall be the cost of acquisition of the said asset to the amalgamating company, as increased by the cost, if any, of any improvement made thereto, and the expenditure, if any, incurred, wholly and exclusively in connection with such transfer by the amalgamating company.

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39. Inserted by the Finance Act, 2006, w.r.e.f. 1-4-1997.

40. Substituted by the Finance Act, 1990, w.e.f. 1-4-1991. Prior to substitution, *Explanation 4* was inserted by the Finance Act, 1988, w.e.f. 1-4-1989 and amended by the Finance Act, 1989, w.r.e.f. 1-4-1984.

41. For text of section 4A of the Companies Act, 1956, and notified institutions thereunder, *see* **Appendix**.

42. Substituted by the Finance Act, 1999, w.e.f. 1-4-2000. Prior to its substitution, clause (*aa*), as inserted by the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997, read as under :

'(*aa*) "scheduled bank" shall have the meaning assigned to it in clause (*ii*) of the *Explanation* to clause (*viia*) of sub-section (1) of section 36;'

43. For definition of "Government company", *see* footnote 71 on p. 1.23 *ante*.

44. Substituted for "approved by the Central Government under clause (*viii*) of sub-section (1) of section 36" by the Finance Act, 2000, w.e.f. 1-4-2000.

45. Inserted by the Finance Act, 1988, w.e.f. 1-4-1988.

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(2) Where an asset [not being an asset referred to in sub-section (2) of section 45] which becomes the property of the assessee on the total or partial partition of a Hindu undivided family or under a gift or will or an irrevocable trust, is sold after the 29th day of February, 1988, by the assessee as stock-in-trade of the business carried on by him, the cost of acquisition of the said asset to the assessee in computing the profits and gains from the sale of such asset shall be the cost of acquisition of the said asset to the transferor or the donor, as the case may be, as increased by the cost, if any, of any improvement made thereto, and the expenditure, if any, incurred, wholly and exclusively in connection with such transfer (by way of effecting the partition, acceptance of the gift, obtaining probate in respect of the will or the creation of the trust), including the payment of gift-tax, if any, incurred by the transferor or the donor, as the case may be.]

[46][**Special provision in case of income of public financial institutions, public companies, etc.**

43D. Notwithstanding anything to the contrary contained in any other provision of this Act,—

(*a*) in the case of a public financial institution or a scheduled bank or a State financial corporation or a State industrial investment corporation, the income by way of interest in relation to such categories of bad or doubtful debts as may be prescribed[47] having regard to the guidelines issued by the Reserve Bank of India in relation to such debts;

(*b*) in the case of a public company, the income by way of interest in relation to such categories of bad or doubtful debts as may be prescribed[48] having regard to the guidelines issued by the National Housing Bank in relation to such debts,

shall be chargeable to tax in the previous year in which it is credited by the public financial institution or the scheduled bank or the State financial corporation or the State industrial investment corporation or the public company to its profit and loss account for that year or, as the case may be, in which it is actually received by that institution or bank or corporation or company, whichever is earlier.

Explanation.—For the purposes of this section,—

(*a*) "National Housing Bank" means the National Housing Bank established under section 3 of the National Housing Bank Act, 1987 (53 of 1987);

(*b*) "public company" means a company,—

(*i*) which is a public company within the meaning of section 3[49] of the Companies Act, 1956 (1 of 1956);

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46. Substituted by the Finance Act, 1999, w.e.f. 1-4-2000. Prior to its substitution, section 43D was inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1991.

47. *See* rule 6EA, framed under section 43D, as it stood prior to 1-4-2000.

48. *See* rule 6EB.

49. Clause (*iv*) of section 3(1) of the Companies Act, 1956, defines "public company". For text of section 3, *see* **Appendix**.

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(*ii*) whose main object is carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes; and

(*iii*) which is registered in accordance with the Housing Finance Companies (NHB) Directions, 1989 given under section 30 and section 31 of the National Housing Bank Act, 1987 (53 of 1987);

(*c*) "public financial institution" shall have the meaning assigned to it in section 4A[50] of the Companies Act, 1956 (1 of 1956);

(*d*) "scheduled bank" shall have the meaning assigned to it in clause (*ii*) of the *Explanation* to clause (*viia*) of sub-section (1) of section 36;

(*e*) "State financial corporation" means a financial corporation established under section 3 or section 3A or an institution notified under section 46 of the State Financial Corporations Act, 1951 (63 of 1951);

(*f*) "State industrial investment corporation" means a Government company within the meaning of section 617[51] of the Companies Act, 1956 (1 of 1956), engaged in the business of providing long-term finance for industrial projects.]

Insurance business.

[52]**44.** Notwithstanding anything to the contrary contained in the provisions of this Act relating to the computation of income chargeable under the head "Interest on securities", "Income from house property", "Capital gains" or "Income from other sources", or in section 199 or in sections 28 to [53][43B], the profits and gains of any business of insurance, including any such business carried on by a mutual insurance company or by a co-operative society, shall be computed in accordance with the rules contained in the First Schedule.

[54][**Special provision for deduction in the case of trade, professional or similar association.**

[55]**44A.** (1) Notwithstanding anything to the contrary contained in this Act, where the amount received during a previous year by any trade, professional or [56]similar association [57][(other than an association or institution referred to in clause (*23A*) of section 10)] from its members, whether by way of subscription or otherwise (not being remuneration received for rendering any specific services to such members) falls short of the expenditure incurred by such association during that previous year (not being expenditure deductible in

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50. For text of section 4A of the Companies Act, 1956, and notified institutions thereunder, *see* **Appendix**.

51. For definition of "Government company", *see* footnote 71 on p. 1.23 *ante*.

52. *See* also Letter [F. No. 14/3/7-IT(A-I)], dated 7-8-1967 and Circular No. 38, dated 3-10-1956. For details, *see* Taxmann's Master Guide to Income-tax Act.

53. Substituted for "43A" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Earlier, "43A" was substituted for "43" by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

54. Inserted by the Finance Act, 1964, w.e.f. 1-4-1964.

55. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

56. For the meaning of the expression "similar association", *see* Taxmann's Direct Taxes Manual, Vol. 3.

57. Inserted by the Finance (No. 2) Act, 1965, w.r.e.f. 1-4-1964.

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computing the income under any other provision of this Act and not being in the nature of capital expenditure) solely for the purposes of protection or advancement of the common interests of its members, the amount so fallen short (hereinafter referred to as deficiency) shall, subject to the provisions of this section, be allowed as a deduction in computing the income of the association assessable for the relevant assessment year under the head "Profits and gains of business or profession" and if there is no income assessable under that head or the deficiency allowable exceeds such income, the whole or the balance of the deficiency, as the case may be, shall be allowed as a deduction in computing the income of the association assessable for the relevant assessment year under any other head.

(2) In computing the income of the association for the relevant assessment year under sub-section (1), effect shall first be given to any other provision of this Act under which any allowance or loss in respect of any earlier assessment year is carried forward and set off against the income for the relevant assessment year.

(3) The amount of deficiency to be allowed as a deduction under this section shall in no case exceed one-half of the total income of the association as computed before making any allowance under this section.

(4) This section applies only to that trade, professional or similar association the income of which or any part thereof is not distributed to its members except as grants to any association or institution affiliated to it.]

[58][**Maintenance of accounts by certain persons carrying on profession or business.**

[59]**44AA.** (1) Every person carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other profession as is notified[60] by the Board in the Official Gazette shall keep and maintain such books of account and other documents as may enable the [61][Assessing] Officer to compute his total income in accordance with the provisions of this Act.

(2) Every person carrying on business or profession [not being a profession referred to in sub-section (1)] shall,—

(*i*) if his income from business or profession exceeds [62][one lakh twenty] thousand rupees or his total sales, turnover or gross receipts, as the case may be, in business or profession exceed or exceeds [63][ten lakh] rupees in any one of the three years immediately preceding the previous year; or

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58. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

59. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

60. For specified professions, *see* Taxmann's Master Guide to Income-tax Act.

61. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

62. Substituted for "forty" by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999. Earlier "forty" was substituted for "twenty-five" by the Finance Act, 1992, w.e.f. 1-4-1993.

63. Substituted for "five hundred thousand" by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999. Earlier "five hundred thousand" was substituted for "two hundred and fifty thousand" by the Finance Act, 1992, w.e.f. 1-4-1993.

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(*ii*) where the business or profession is newly set up in any previous year, if his income from business or profession is likely to exceed [64][one lakh twenty] thousand rupees or his total sales, turnover or gross receipts, as the case may be, in business or profession are or is likely to exceed [65][ten lakh] rupees, [66][during such previous year; or

(*iii*) where the profits and gains from the business are deemed to be the profits and gains of the assessee under [67]**[***section 44AD or section 44AE or section 44AF***]** [68][or section 44BB or section 44BBB], as the case may be, and the assessee has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, during such [69]**[***previous year,***]**]

The following clause (iv) shall be inserted after clause (iii) of sub-section (2) of section 44AA by the Finance (No. 2) Act, 2009, w.e.f. 1-4-2011 :

(iv) *where the profits and gains from the business are deemed to be the profits and gains of the assessee under section 44AD and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his business and his income exceeds the maximum amount which is not chargeable to income-tax during such previous year,*

keep and maintain such books of account and other documents as may enable the [70][Assessing] Officer to compute his total income in accordance with the provisions of this Act.

(3) The Board may, having regard to the nature of the business or profession carried on by any class of persons, prescribe[71], by rules, the books of account and other documents (including inventories, wherever necessary) to be kept and maintained under sub-section (1) or sub-section (2), the particulars to be contained therein and the form and the manner in which and the place at which they shall be kept and maintained.

(4) Without prejudice to the provisions of sub-section (3), the Board may prescribe, by rules, the period for which the books of account and other documents to be kept and maintained under sub-section (1) or sub-section (2) shall be retained.]

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64. Substituted for "forty" by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999. Earlier "forty" was substituted for "twenty-five" by the Finance Act, 1992, w.e.f. 1-4-1993.

65. Substituted for "five hundred thousand" by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999. Earlier "five hundred thousand" was substituted for "two hundred and fifty thousand" by the Finance Act, 1992, w.e.f. 1-4-1993.

66. Substituted for "during such previous year," by the Finance Act, 1997, w.e.f. 1-4-1998.

67. Words "section 44AE" shall be substituted for the words "section 44AD or section 44AE or section 44AF" by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2011**.

68. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

69. Words "previous year; or" shall be substituted for the words "previous year," by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2011**.

70. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

71. *See* rule 6F for prescribed books of account to be maintained by professionals. Form 3C has been prescribed as a Daily Case Register to be maintained by Medical Professionals.

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[72][**Audit of accounts of certain persons carrying on business or profession.**

[73]**44AB.** [74]Every person,—

(*a*) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds [74a]**[***forty lakh rupees***]** in any previous year [75][***]; or

(*b*) carrying on profession shall, if his gross receipts in profession exceed [75a]**[***ten lakh rupees***]** in any [76][previous year; or

(*c*) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under [77]**[***section 44AD or section 44AE or section 44AF***]** [78][or section 44BB or section 44BBB], as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any [79]**[***previous year,***]**] [80][***]

The following clause (d) shall be inserted after clause (c) of section 44AB by the Finance (No. 2) Act, 2009, w.e.f. 1-4-2011 :

(d) *carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AD and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his business and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year,*

get his accounts of such previous year [81][***] audited by an accountant before the specified date and [82][furnish by] that date the report of such audit in the

72. Inserted by the Finance Act, 1984, w.e.f. 1-4-1985.

73. *See* also Circular No. 452, dated 17-3-1986 and Circular No. 561, dated 22-5-1990. For details, *see* Taxmann's Master Guide to Income-tax Act.

For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

74. *See* rule 6G. Prescribed audit reports are as under:—

(*i*) Audit report in case of person who carries on business or profession and who is required to get his accounts audited under any other law: Form 3CA

(*ii*) Audit report in case of person who carries on business or profession and who is not required to get his accounts audited under any other law: Form 3CB

(*iii*) Prescribed particulars in case of (*i*) and (*ii*) above: Form 3CD.

74a. Words "sixty lakh rupees" shall be substituted for "forty lakh rupees" by the Finance Act, 2010, w.e.f. **1-4-2011**.

75. Words "or years relevant to the assessment year commencing on the first day of April, 1985, or any subsequent assessment year" omitted by the Finance Act, 1988, w.e.f. 1-4-1989.

75a. Words "fifteen lakh rupees" shall be substituted for "ten lakh rupees" by the Finance Act, 2010, w.e.f. **1-4-2011**.

76. Substituted for "previous year," by the Finance Act, 1997, w.e.f. 1-4-1998.

77. Words "section 44AE" shall be substituted for "section 44AD or section 44AE or section 44AF" by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2011**.

78. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

79. Words "previous year; or" shall be substituted for "previous year," by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2011**.

80. Words "or years relevant to the assessment year commencing on the first day of April, 1985, or any subsequent assessment year," omitted by the Finance Act, 1988, w.e.f. 1-4-1989.

81. Words "or years" omitted, *ibid.*

82. Substituted for "obtain before" by the Finance Act, 1995, w.e.f. 1-7-1995.

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prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed :

[83][**Provided** that this section shall not apply to the person, who derives income of the nature referred to in [84][***] section 44B or [85][section 44BBA], on and from the 1st day of April, 1985 or, as the case may be, the date on which the relevant section came into force, whichever is later :

Provided further that] in a case where such person is required by or under any other law to get his accounts audited [86][***], it shall be sufficient compliance with the provisions of this section if such person gets the accounts of such business or profession audited under such law before the specified date and [87][furnishes by] that date the report of the audit as required under such other law and a further report [88][by an accountant] in the form prescribed under this section.

Explanation.—For the purposes of this section,—

(*i*) "accountant" shall have the same meaning as in the *Explanation* below sub-section (2) of section 288;

[89][(*ii*) "specified date", in relation to the accounts of the assessee of the previous year relevant to an assessment year, means the [90][30th day of September] of the assessment year.]]

Special provision for computing profits and gains from the business of trading in certain goods.

44AC. [91][*Omitted by the Finance Act, 1992, w.e.f. 1-4-1993.*]

[92][[93]**Special provision for computing profits and gains of business of civil construction, etc.**

44AD. (1) Notwithstanding anything to the contrary contained in sections 28 to 43C, in the case of an assessee engaged in the business of civil

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83. Substituted for "Provided that" by the Finance Act, 1992, w.r.e.f. 1-4-1985.

84. Words "section 44AC or" omitted by the Finance Act, 1995, w.e.f. 1-7-1995.

85. Substituted for "section 44BB or section 44BBA or section 44BBB" by the Finance Act, 2003, w.e.f. 1-4-2004.

86. Words "by an accountant" omitted by the Finance Act, 1985, w.e.f. 1-4-1985.

87. Substituted for "obtains before" by the Finance Act, 1995, w.e.f. 1-7-1995.

88. Inserted by the Finance Act, 2001, w.e.f. 1-4-2001.

89. Substituted, *ibid.* Prior to its substitution, clause (*ii*), as substituted by the Finance Act, 1988, w.e.f. 1-4-1989 and later on amended by the Finance Act, 1994, w.e.f. 1-4-1994, read as under :

'(*ii*) "specified date", in relation to the accounts of the previous year relevant to an assessment year means,—

(*a*) where the assessee is a company, the 30th day of November of the assessment year;

(*b*) in any other case, the 31st day of October of the assessment year.'

90. Substituted for "31st day of October" by the Finance Act, 2008, w.e.f. 1-4-2008.

91. Prior to omission section 44AC was inserted by the Finance Act, 1988, w.e.f. 1-4-1989 and later amended by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989 and the Finance Act, 1990, w.e.f. 1-4-1991.

92. Inserted by the Finance Act, 1994, w.e.f. 1-4-1994.

93. *See* also Circular No. 737, dated 23-2-1996. For details, *see* Taxmann's Master Guide to Income-tax Act.

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construction or supply of labour for civil construction, a sum equal to eight per cent of the gross receipts paid or payable to the assessee in the previous year on account of such business or, as the case may be, a sum higher than the aforesaid sum as declared by the assessee in his return of income, shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession":

Provided that nothing contained in this sub-section shall apply in case the aforesaid gross receipts paid or payable exceed an amount of forty lakh rupees.

(2) Any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of sub-section (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed :

[94][**Provided** that where the assessee is a firm, the salary and interest paid to its partners shall be deducted from the income computed under sub-section (1) subject to the conditions and limits specified in clause (*b*) of section 40.]

(3) The written down value of any asset used for the purpose of the business referred to in sub-section (1) shall be deemed to have been calculated as if the assessee had claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant assessment years.

(4) The provisions of sections 44AA and 44AB shall not apply in so far as they relate to the business referred to in sub-section (1) and in computing the monetary limits under those sections, the gross receipts or, as the case may be, the income from the said business shall be excluded.

[95][(5) Nothing contained in the foregoing provisions of this section shall apply, where the assessee claims and produces evidence to prove that the profits and gains from the aforesaid business during the previous year relevant to the assessment year commencing on the 1st day of April, 1997 or any earlier assessment year, are lower than the profits and gains specified in sub-section (1), and thereupon the Assessing Officer shall proceed to make an assessment of the total income or loss of the assessee and determine the sum payable by the assessee on the basis of assessment made under sub-section (3) of section 143.]

[96][(6) Notwithstanding anything contained in the foregoing provisions of this section, an assessee may claim lower profits and gains than the profits and gains specified in sub-section (1), if he keeps and maintains such books of account and other documents as required under sub-section (2) of section 44AA and gets his accounts audited and furnishes a report of such audit as required under section 44AB.]

Explanation.—For the purposes of this section, the expression "civil construction" includes—

(*a*) the construction or repair of any building, bridge, dam or other structure or of any canal or road;

(*b*) the execution of any works contract.]

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94. Inserted by the Finance Act, 1997, w.r.e.f. 1-4-1994.

95. Inserted by the Income-tax (Second Amendment) Act, 1998, w.r.e.f. 1-4-1997. Earlier sub-section (5) was inserted by the Finance Act, 1994, w.e.f. 1-4-1994 and later on omitted by the Finance Act, 1997, w.e.f. 1-4-1997.

96. Inserted by the Finance Act, 1999, w.r.e.f. 1-4-1998.

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The following section 44AD shall be substituted for the existing section 44AD by the Finance (No. 2) Act, 2009, w.e.f. 1-4-2011 :

Special provision for computing profits and gains of business on presumptive basis.

44AD. *(1) Notwithstanding anything to the contrary contained in sections 28 to 43C, in the case of an eligible assessee engaged in an eligible business, a sum equal to eight per cent of the total turnover or gross receipts of the assessee in the previous year on account of such business or, as the case may be, a sum higher than the aforesaid sum claimed to have been earned by the eligible assessee, shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession".*

(2) Any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of sub-section (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed :

Provided *that where the eligible assessee is a firm, the salary and interest paid to its partners shall be deducted from the income computed under sub-section (1) subject to the conditions and limits specified in clause (*b*) of section 40.*

(3) The written down value of any asset of an eligible business shall be deemed to have been calculated as if the eligible assessee had claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant assessment years.

(4) The provisions of Chapter XVII-C shall not apply to an eligible assessee in so far as they relate to the eligible business.

(5) Notwithstanding anything contained in the foregoing provisions of this section, an eligible assessee who claims that his profits and gains from the eligible business are lower than the profits and gains specified in sub-section (1) and whose total income exceeds the maximum amount which is not chargeable to income-tax, shall be required to keep and maintain such books of account and other documents as required under sub-section (2) of section 44AA and get them audited and furnish a report of such audit as required under section 44AB.

Explanation.—*For the purposes of this section,—*

*(*a*) "eligible assessee" means,—*

*(*i*) an individual, Hindu undivided family or a partnership firm, who is a resident, but not a limited liability partnership firm as defined under clause (*n*) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009); and*

*(*ii*) who has not claimed deduction under any of the sections 10A, 10AA, 10B, 10BA or deduction under any provisions of Chapter VIA under the heading* "C. - Deductions in respect of certain incomes" *in the relevant assessment year;*

*(*b*) "eligible business" means,—*

*(*i*) any business except the business of plying, hiring or leasing goods carriages referred to in section 44AE; and*

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(ii) *whose total turnover or gross receipts in the previous year does not exceed an amount of* [96a]**[***sixty lakh rupees***]**.

[97]**[Special provision for computing profits and gains of business of plying, hiring or leasing goods carriages.**

44AE. (1) Notwithstanding anything to the contrary contained in sections 28 to 43C, in the case of an assessee, who owns not more than ten goods carriages [98][at any time during the previous year] and who is engaged in the business of plying, hiring or leasing such goods carriages, the income of such business chargeable to tax under the head "Profits and gains of business or profession" shall be deemed to be the aggregate of the profits and gains, from all the goods carriages owned by him in the previous year, computed in accordance with the provisions of sub-section (2).

(2) For the purposes of sub-section (1), the profits and gains from each goods carriage,—

(*i*) being a heavy goods vehicle, shall be an amount equal to [99][three thousand five hundred] rupees for every month or part of a month during which the heavy goods vehicle is owned by the assessee in the previous year or, as the case may be, an amount higher than the aforesaid amount as declared by him in his return of income;

(*ii*) other than a heavy goods vehicle, shall be an amount equal to [1][three thousand one hundred and fifty] rupees for every month or part of a month during which the goods carriage is owned by the assessee in the previous year or, as the case may be, an amount higher than the aforesaid amount as declared by him in his return of income.

The following sub-section (2) shall be substituted for the existing sub-section (2) of section 44AE by the Finance (No. 2) Act, 2009, w.e.f. 1-4-2011 :

(2) For the purposes of sub-section (1), the profits and gains from each goods carriage,—

(i) *being a heavy goods vehicle, shall be an amount equal to five thousand rupees for every month or part of a month during which the heavy goods vehicle is owned by the assessee in the previous year or an amount claimed to have been actually earned from such vehicle, whichever is higher;*

(ii) *other than a heavy goods vehicle, shall be an amount equal to four thousand five hundred rupees for every month or part of a month during which the goods carriage is owned by the assessee in the previous year or an amount claimed to have been actually earned from such vehicle, whichever is higher.*

96a. Shall be substituted for words "forty lakh rupees" by the Finance Act, 2010, w.e.f. **1-4-2011**.

97. Inserted by the Finance Act, 1994, w.e.f. 1-4-1994. *See* also Circular No. 737, dated 23-2-1996. For details, *see* Taxmann's Master Guide to Income-tax Act.

98. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

99. Substituted for "two thousand" by the Finance Act, 2002, w.e.f. 1-4-2003.

1. Substituted for "one thousand eight hundred", *ibid.*

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(3) Any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of sub-section (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed :

[2][**Provided** that where the assessee is a firm, the salary and interest paid to its partners shall be deducted from the income computed under sub-section (1) subject to the conditions and limits specified in clause (*b*) of section 40.]

(4) The written down value of any asset used for the purpose of the business referred to in sub-section (1) shall be deemed to have been calculated as if the assessee had claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant assessment years.

(5) The provisions of sections 44AA and 44AB shall not apply in so far as they relate to the business referred to in sub-section (1) and in computing the monetary limits under those sections, the gross receipts or, as the case may be, the income from the said business shall be excluded.

[3][(6) Nothing contained in the foregoing provisions of this section shall apply, where the assessee claims and produces evidence to prove that the profits and gains from the aforesaid business during the previous year relevant to the assessment year commencing on the 1st day of April, 1997 or any earlier assessment year, are lower than the profits and gains specified in sub-sections (1) and (2), and thereupon the Assessing Officer shall proceed to make an assessment of the total income or loss of the assessee and determine the sum payable by the assessee on the basis of assessment made under sub-section (3) of section 143.]

[4][(7) Notwithstanding anything contained in the foregoing provisions of this section, an assessee may claim lower profits and gains than the profits and gains specified in sub-sections (1) and (2), if he keeps and maintains such books of account and other documents as required under sub-section (2) of section 44AA and gets his accounts audited and furnishes a report of such audit as required under section 44AB.]

Explanation.—For the purposes of this section,—

(*a*) the expressions "goods carriage"[5] and "heavy goods vehicle"[5] shall have the meanings respectively assigned to them in section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

(*b*) an assessee, who is in possession of a goods carriage, whether taken on hire purchase or on instalments and for which the whole or part

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2. Inserted by the Finance Act, 1997, w.r.e.f. 1-4-1994.

3. Inserted by the Income-tax (Second Amendment) Act, 1998, w.r.e.f. 1-4-1997. Earlier sub-section (6) was inserted by the Finance Act, 1994, w.e.f. 1-4-1994 and later on omitted by the Finance Act, 1997, w.e.f. 1-4-1997.

4. Inserted by the Finance Act, 1999, w.r.e.f. 1-4-1998.

5. Clause (*14*) and clause (*16*) of section 2 of the Motor Vehicles Act, 1988, define "goods carriage" and "heavy goods vehicle", respectively, as follows :

'(*14*) "goods carriage" means any motor vehicle constructed or adopted for use solely for the carriage of goods, or any motor vehicle not so constructed or adopted when used for the carriage of goods;'

'(*16*) "heavy goods vehicle" means any goods carriage the gross vehicle weight of which, or a tractor or a road-roller the unladen weight of either of which, exceeds 12,000 kilograms;'

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of the amount payable is still due, shall be deemed to be the owner of such goods carriage.]

[6][**Special provisions for computing profits and gains of retail business.**

44AF. (1) Notwithstanding anything to the contrary contained in sections 28 to 43C, in the case of an assessee engaged in retail trade in any goods or merchandise, a sum equal to five per cent of the total turnover in the previous year on account of such business or, as the case may be, a sum higher than the aforesaid sum as declared by the assessee in his return of income shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession" :

Provided that nothing contained in this sub-section shall apply in respect of an assessee whose total turnover exceeds an amount of forty lakh rupees in the previous year.

(2) Any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of sub-section (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed :

Provided that where the assessee is a firm, the salary and interest paid to its partners shall be deducted from the income computed under sub-section (1) subject to the conditions and limits specified in clause (*b*) of section 40.

(3) The written down value of any asset used for the purpose of the business referred to in sub-section (1) shall be deemed to have been calculated as if the assessee had claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant assessment years.

(4) The provisions of sections 44AA and 44AB shall not apply in so far as they relate to the business referred to in sub-section (1) and in computing the monetary limits under those sections, the total turnover or, as the case may be, the income from the said business shall be excluded.]

[7][(5) Notwithstanding anything contained in the foregoing provisions of this section, an assessee may claim lower profits and gains than the profits and gains specified in sub-section (1), if he keeps and maintains such books of account and other documents as required under sub-section (2) of section 44AA and gets his accounts audited and furnishes a report of such audit as required under section 44AB.]

[8][(6) Nothing contained in this section shall apply to any assessment year beginning on or after the 1st day of April, 2011.]

[9][**Special provision for computing profits and gains of shipping business in the case of non-residents.**

[10]**44B.** (1) Notwithstanding anything to the contrary contained in sections 28 to 43A, in the case of an assessee, being a non-resident, engaged in the business of operation of ships, a sum equal to seven and a half per cent of the

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6. Inserted by the Finance Act, 1997, w.e.f. 1-4-1998.

7. Inserted by the Finance Act, 1999, w.r.e.f. 1-4-1998.

8. Inserted by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-2009.

9. Inserted by the Finance Act, 1975, w.e.f. 1-4-1976.

10. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

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aggregate of the amounts specified in sub-section (2) shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession".

(2) The amounts referred to in sub-section (1) shall be the following, namely :—

(*i*) the amount paid or payable (whether in or out of India) to the assessee or to any person on his behalf on account of the carriage of passengers, livestock, mail or goods shipped at any port in India; and

(*ii*) the amount received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mail or goods shipped at any port outside India.]

[11][*Explanation*.—For the purposes of this sub-section, the amount referred to in clause (*i*) or clause (*ii*) shall include the amount paid or payable or received or deemed to be received, as the case may be, by way of demurrage charges or handling charges or any other amount of similar nature.]

[12][**Special provision for computing profits and gains in connection with the business of exploration, etc., of mineral oils.**

44BB. (1) Notwithstanding anything to the contrary contained in sections 28 to 41 and sections 43 and 43A, in the case of an assessee [13][, being a non-resident,] engaged in the business of providing services or facilities in connection with, or supplying plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils, a sum equal to ten per cent of the aggregate of the amounts specified in sub-section (2) shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession" :

Provided that this sub-section shall not apply in a case where the provisions of section 42 or section 44D or [13a]**[***section 44DA or***]** section 115A or section 293A apply for the purposes of computing profits or gains or any other income referred to in those sections.

(2) The amounts referred to in sub-section (1) shall be the following, namely :—

(*a*) the amount paid or payable (whether in or out of India) to the assessee or to any person on his behalf on account of the provision of services and facilities in connection with, or supply of plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils in India; and

(*b*) the amount received or deemed to be received in India by or on behalf of the assessee on account of the provision of services and facilities in connection with, or supply of plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils outside India.

[14][(3) Notwithstanding anything contained in sub-section (1), an assessee may claim lower profits and gains than the profits and gains specified in that sub-section, if he keeps and maintains such books of account and other documents as required under sub-section (2) of section 44AA and gets his accounts audited

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11. Inserted by the Finance Act, 1997, w.r.e.f. 1-4-1976.

12. Inserted by the Finance Act, 1987, w.r.e.f. 1-4-1983.

13. Inserted by the Finance Act, 1988, w.r.e.f. 1-4-1983.

13a. Shall be inserted by the Finance Act, 2010, w.e.f. **1-4-2011**.

14. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

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and furnishes a report of such audit as required under section 44AB, and thereupon the Assessing Officer shall proceed to make an assessment of the total income or loss of the assessee under sub-section (3) of section 143 and determine the sum payable by, or refundable to, the assessee.]

Explanation.—For the purposes of this section,—

(*i*) "plant" includes ships, aircraft, vehicles, drilling units, scientific apparatus and equipment, used for the purposes of the said business;

(*ii*) "mineral oil" includes petroleum and natural gas.]

[15][**Special provision for computing profits and gains of the business of operation of aircraft in the case of non-residents.**

44BBA. (1) Notwithstanding anything to the contrary contained in sections 28 to 43A, in the case of an assessee, being a non-resident, engaged in the business of operation of aircraft, a sum equal to five per cent of the aggregate of the amounts specified in sub-section (2) shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession".

(2) The amounts referred to in sub-section (1) shall be the following, namely :—

(*a*) the amount paid or payable (whether in or out of India) to the assessee or to any person on his behalf on account of the carriage of passengers, livestock, mail or goods from any place in India; and

(*b*) the amount received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mail or goods from any place outside India.]

[16][**Special provision for computing profits and gains of foreign companies engaged in the business of civil construction, etc., in certain turnkey power projects.**

[17]**44BBB.** [18][(1)] Notwithstanding anything to the contrary contained in sections 28 to 44AA, in the case of an assessee, being a foreign company, engaged in the business of civil construction or the business of erection of plant or machinery or testing or commissioning thereof, in connection with a turnkey power project approved by the Central Government in this behalf [19][***], a sum equal to ten per cent of the amount paid or payable (whether in or out of India) to the said assessee or to any person on his behalf on account of such civil construction, erection, testing or commissioning shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession".]

[20][(2) Notwithstanding anything contained in sub-section (1), an assessee may claim lower profits and gains than the profits and gains specified in that sub-section, if he keeps and maintains such books of account and other documents

15. Inserted by the Finance Act, 1987, w.e.f. 1-4-1988.

16. Inserted by the Finance Act, 1989, w.e.f. 1-4-1990.

17. *See* also Circular No. 552, dated 9-2-1990 and Instruction No. 5/2009, dated 20-7-2009 (withdrawing Instruction No. 1829, dated 21-9-1989). For details, *see* Taxmann's Master Guide to Income-tax Act.

18. Renumbered as sub-section (1) by the Finance Act, 2003, w.e.f. 1-4-2004.

19. Words "and financed under any international aid programme" omitted, *ibid.*

20. Inserted, *ibid.*

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as required under sub-section (2) of section 44AA and gets his accounts audited and furnishes a report of such audit as required under section 44AB, and thereupon the Assessing Officer shall proceed to make an assessment of the total income or loss of the assessee under sub-section (3) of section 143 and determine the sum payable by, or refundable to, the assessee.]

[21][**Deduction of head office expenditure in the case of non-residents.**[22]

[23]**44C.** Notwithstanding anything to the contrary contained in sections 28 to 43A, in the case of an assessee, being a non-resident, no allowance shall be made, in computing the income chargeable under the head "Profits and gains of business or profession", in respect of so much of the expenditure in the nature of head office expenditure as is in excess of the amount computed as hereunder, namely:—

(*a*) an amount equal to five per cent of the adjusted total income; or

(*b*) [24][***]

(*c*) the amount of so much of the expenditure in the nature of head office expenditure incurred by the assessee as is attributable to the business or profession of the assessee in India[25],

whichever is the least :

Provided that in a case where the adjusted total income of the assessee is a loss, the amount under clause (*a*) shall be computed at the rate of five per cent of the average adjusted total income of the assessee.

Explanation.—For the purposes of this section,—

(*i*) "adjusted total income" means the total income computed in accordance with the provisions of this Act, without giving effect to the allowance referred to in this section or in sub-section (2) of section 32 or the deduction referred to in section 32A or section 33 or section 33A or the first proviso to clause (*ix*) of sub-section (1) of section 36 or any loss carried forward under sub-section (1) of section 72 or sub-section (2) of section 73 or sub-section (1) [26][or sub-section (3)] of section 74 or sub-section (3) of section 74A or the deductions under Chapter VI-A;

(*ii*) "average adjusted total income" means,—

(*a*) in a case where the total income of the assessee is assessable for each of the three assessment years immediately preceding the relevant assessment year, one-third of the aggregate amount of the adjusted total income in respect of the previous years relevant to the aforesaid three assessment years;

(*b*) in a case where the total income of the assessee is assessable only for two of the aforesaid three assessment years, one-half of the aggregate amount of the adjusted total income in respect of the previous years relevant to the aforesaid two assessment years;

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21. Inserted by the Finance Act, 1976, w.e.f. 1-6-1976.

22. *See* also Circular No. 649, dated 31-3-1993. For details, *see* Taxmann's Master Guide to Income-tax Act.

23. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

24. Omitted by the Finance Act, 1993, w.e.f. 1-4-1993.

25. For the meaning of the expression "so much of the expenditure ... in India", *see* Taxmann's Direct Taxes Manual, Vol. 3.

26. Inserted by the Finance Act, 1987, w.e.f. 1-4-1988.

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(*c*) in a case where the total income of the assessee is assessable only for one of the aforesaid three assessment years, the amount of the adjusted total income in respect of the previous year relevant to that assessment year;

(*iii*) [27][***]

(*iv*) "head office expenditure" means executive and general administration expenditure incurred by the assessee outside India, including expenditure incurred in respect of—

(*a*) rent, rates, taxes, repairs or insurance of any premises outside India used for the purposes of the business or profession;

(*b*) salary, wages, annuity, pension, fees, bonus, commission, gratuity, perquisites or profits in lieu of or in addition to salary, whether paid or allowed to any employee or other person employed in, or managing the affairs of, any office outside India;

(*c*) travelling by any employee or other person employed in, or managing the affairs of, any office outside India; and

(*d*) such other matters connected with executive and general administration as may be prescribed.]

[28][**Special provisions for computing income by way of royalties, etc., in the case of foreign companies.**

44D. Notwithstanding anything to the contrary contained in sections 28 to 44C, in the case of an assessee, being a foreign company,—

(*a*) the deductions admissible under the said sections in computing the income by way of royalty or fees for technical services received [29][from Government or an Indian concern in pursuance of an agreement made by the foreign company with Government or with the Indian concern] before the 1st day of April, 1976, shall not exceed in the aggregate twenty per cent of the gross amount of such royalty or fees as reduced by so much of the gross amount of such royalty as consists of lump sum consideration for the transfer outside India of, or the imparting of information outside India in respect of, any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process or trade mark or similar property;

(*b*) no deduction in respect of any expenditure or allowance shall be allowed under any of the said sections in computing the income by way of royalty or fees for technical services received [29][from Government or an Indian concern in pursuance of an agreement made by the foreign company with Government or with the Indian concern] after the 31st day of March, 1976 [30][but before the 1st day of April, 2003];

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27. Omitted by the Finance Act, 1993, w.e.f. 1-4-1993.

28. Inserted by the Finance Act, 1976, w.e.f. 1-6-1976.

29. Substituted for the portion beginning with "from an Indian concern" and ending with "with the Indian concern" by the Finance Act, 1983, w.e.f. 1-6-1983.

30. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

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(*c*) [31][***]

(*d*) [32][***]

Explanation.—For the purposes of this section,—

(*a*) "fees for technical services" shall have the same meaning as in [33][*Explanation 2*] to clause (*vii*) of sub-section (1) of section 9;

(*b*) "foreign company" shall have the same meaning as in section 80B;

(*c*) "royalty" shall have the same meaning as in [34][*Explanation 2*] to clause (*vi*) of sub-section (1) of section 9;

(*d*) royalty received [35][from Government or an Indian concern in pursuance of an agreement made by a foreign company with Government or with the Indian concern] after the 31st day of March, 1976, shall be deemed to have been received in pursuance of an agreement made before the 1st day of April, 1976, if such agreement is deemed, for the purposes of the proviso to clause (*vi*) of sub-section (1) of section 9, to have been made before the 1st day of April, 1976.]

[36][**Special provision for computing income by way of royalties, etc., in case of non-residents.**

44DA. (1) The income by way of royalty or fees for technical services received from Government or an Indian concern in pursuance of an agreement made by a non-resident (not being a company) or a foreign company with Government or the Indian concern after the 31st day of March, 2003, where such non-resident (not being a company) or a foreign company carries on business in India through a permanent establishment situated therein, or performs professional services from a fixed place of profession situated therein, and the right, property or contract in respect of which the royalties or fees for technical services are paid is effectively connected with such permanent establishment or fixed place of profession, as the case may be, shall be computed under the head "Profits and gains of business or profession" in accordance with the provisions of this Act :

Provided that no deduction shall be allowed,—

(*i*) in respect of any expenditure or allowance which is not wholly and exclusively incurred for the business of such permanent establishment or fixed place of profession in India; or

(*ii*) in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to its head office or to any of its other offices.

The following proviso shall be inserted after the existing proviso of sub-section (1) of section 44DA by the Finance Act, 2010, w.e.f. 1-4-2011 :

Provided further *that the provisions of section 44BB shall not apply in respect of the income referred to in this section.*

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31. Omitted by the Finance Act, 1994, w.e.f. 1-4-1995. Prior to its omission, clause (*c*) was inserted by the Finance Act, 1983, w.e.f. 1-6-1983.

32. Omitted by the Finance Act, 1994, w.e.f. 1-4-1995. Prior to its omission, clause (*d*) was inserted by the Finance (No. 2) Act, 1991, w.r.e.f. 1-4-1989.

33. Substituted for "the *Explanation*" by the Finance (No. 2) Act, 1977, w.e.f. 1-4-1977.

34. Substituted, *ibid.*

35. Substituted for the portion beginning with "from an Indian concern" and ending with "with the Indian concern" by the Finance Act, 1983, w.e.f. 1-6-1983.

36. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

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(2) Every non-resident (not being a company) or a foreign company shall keep and maintain books of account and other documents in accordance with the provisions contained in section 44AA and get his accounts audited by an accountant as defined in the *Explanation* below sub-section (2) of section 288 and furnish along with the return of income, the report of such audit in the prescribed form[37] duly signed and verified by such accountant.

Explanation.—For the purposes of this section,—

(*a*) "fees for technical services" shall have the same meaning as in *Explanation 2* to clause (*vii*) of sub-section (1) of section 9;

(*b*) "royalty" shall have the same meaning as in *Explanation 2* to clause (*vi*) of sub-section (1) of section 9;

(*c*) "permanent establishment" shall have the same meaning as in clause (*iiia*) of section 92F.]

[38][**Special provision for computing deductions in the case of business reorganization of co-operative banks.**

44DB. (1) The deduction under section 32, section 35D, section 35DD or section 35DDA shall, in a case where business reorganisation of a co-operative bank has taken place during the financial year, be allowed in accordance with the provisions of this section.

(2) The amount of deduction allowable to the predecessor co-operative bank under section 32, section 35D, section 35DD or section 35DDA shall be determined in accordance with the formula—

$$\frac{B}{C}$$

where A = the amount of deduction allowable to the predecessor co-operative bank if the business reorganisation had not taken place;

B = the number of days comprised in the period beginning with the 1st day of the financial year and ending on the day immediately preceding the date of business reorganisation; and

C = the total number of days in the financial year in which the business reorganisation has taken place.

(3) The amount of deduction allowable to the successor co-operative bank under section 32, section 35D, section 35DD or section 35DDA shall be determined in accordance with the formula—

$$\frac{B}{C}$$

where A = the amount of deduction allowable to the predecessor co-operative bank if the business reorganisation had not taken place;

B = the number of days comprised in the period beginning with the date of business reorganisation and ending on the last day of the financial year; and

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37. *See* rule 6GA and Form No. 3CE. Rule 12 provides that the return of income shall not be accompanied by any document or copy of any account or form or report of audit required to be attached with return of income under any of the provisions of the Act.

38. Inserted by the Finance Act, 2007, w.e.f. 1-4-2008.

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C = the total number of days in the financial year in which the business reorganisation has taken place.

(4) The provisions of section 35D, section 35DD or section 35DDA shall, in a case where an undertaking of the predecessor co-operative bank entitled to the deduction under the said section is transferred before the expiry of the period specified therein to a successor co-operative bank on account of business reorganisation, apply to the successor co-operative bank in the financial years subsequent to the year of business reorganisation as they would have applied to the predecessor co-operative bank, as if the business reorganisation had not taken place.

(5) For the purposes of this section,—

(*a*) "amalgamated co-operative bank" means—

(*i*) a co-operative bank with which one or more amalgamating co-operative banks merge; or

(*ii*) a co-operative bank formed as a result of merger of two or more amalgamating co-operative banks;

(*b*) "amalgamating co-operative bank" means—

(*i*) a co-operative bank which merges with another co-operative bank; or

(*ii*) every co-operative bank merging to form a new co-operative bank;

(*c*) "amalgamation" means the merger of an amalgamating co-operative bank or banks with an amalgamated co-operative bank, in such manner that—

(*i*) all the assets and liabilities of the amalgamating co-operative bank or banks immediately before the merger (other than the assets transferred, by sale or distribution on winding up, to the amalgamated co-operative bank) become the assets and liabilities of the amalgamated co-operative bank;

(*ii*) the members holding seventy-five per cent or more voting rights in the amalgamating co-operative bank become members of the amalgamated co-operative bank; and

(*iii*) the shareholders holding seventy-five per cent or more in value of the shares in the amalgamating co-operative bank (other than the shares held by the amalgamated co-operative bank or its nominee or its subsidiary, immediately before the merger) become shareholders of the amalgamated co-operative bank;

(*d*) "business reorganisation" means the reorganisation of business involving the amalgamation or demerger of a co-operative bank;

(*e*) "co-operative bank" shall have the meaning assigned to it in clause (*cci*) of section 5 of the Banking Regulation Act, 1949 (10 of 1949)[39];

(*f*) "demerger" means the transfer by a demerged co-operative bank of one or more of its undertakings to any resulting co-operative bank, in such manner that—

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39. For text of section 5(*cci*) of the Banking Regulation Act, 1949, *see* **Appendix**.

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(*i*) all the assets and liabilities of the undertaking or undertakings immediately before the transfer become the assets and liabilities of the resulting co-operative bank;

(*ii*) the assets and the liabilities are transferred to the resulting co-operative bank at values (other than change in the value of assets consequent to their revaluation) appearing in its books of account immediately before the transfer;

(*iii*) the resulting co-operative bank issues, in consideration of the transfer, its membership to the members of the demerged co-operative bank on a proportionate basis;

(*iv*) the shareholders holding seventy-five per cent or more in value of the shares in the demerged co-operative bank (other than shares already held by the resulting bank or its nominee or its subsidiary immediately before the transfer), become shareholders of the resulting co-operative bank, otherwise than as a result of the acquisition of the assets of the demerged co-operative bank or any undertaking thereof by the resulting co-operative bank;

(*v*) the transfer of the undertaking is on a going concern basis; and

(*vi*) the transfer is in accordance with the conditions specified by the Central Government, by notification in the Official Gazette, having regard to the necessity to ensure that the transfer is for genuine business purposes;

(*g*) "demerged co-operative bank" means the co-operative bank whose undertaking is transferred, pursuant to a demerger, to a resulting bank;

(*h*) "predecessor co-operative bank" means the amalgamating co-operative bank or the demerged co-operative bank, as the case may be;

(*i*) "successor co-operative bank" means the amalgamated co-operative bank or the resulting bank, as the case may be;

(*j*) "resulting co-operative bank" means—

(*i*) one or more co-operative banks to which the undertaking of the demerged co-operative bank is transferred in a demerger; or

(*ii*) any co-operative bank formed as a result of demerger.]

E.—Capital gains

Capital gains.

[40]**45.** [41][(1)] Any profits or gains arising from the transfer of a capital asset[42] effected[42] in the previous year shall, save as otherwise provided in sections

40. *See* also Circular No. 23D(XXIII-6) of 1965 and Circular No. 768, dated 24-6-1998. For details, *see* Taxmann's Master Guide to Income-tax Act.

For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

41. Inserted by the Finance Act, 1964, w.e.f. 1-4-1964. "(1)" deemed to have been omitted with the omission of sub-sections (2) to (4) by the Finance Act, 1966, w.e.f. 1-4-1966 and deemed to have been inserted with the insertion of sub-section (2) by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-4-1985.

42. For the meaning of the terms/expressions "transfer", "transfer of a capital asset", and "effected", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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[43][***] [44][54, 54B, [45][***] [46][[47][54D, [48][54E, [49][54EA, 54EB,] 54F [50][, 54G and 54H]]]]], be chargeable to income-tax under the head "Capital gains", and shall be deemed to be the income of the previous year in which the transfer took place.

[51][(1A) Notwithstanding anything contained in sub-section (1), where any person receives at any time during any previous year any money or other assets under an insurance from an insurer on account of damage to, or destruction of, any capital asset, as a result of—

(*i*) flood, typhoon, hurricane, cyclone, earthquake or other convulsion of nature; or

(*ii*) riot or civil disturbance; or

(*iii*) accidental fire or explosion; or

(*iv*) action by an enemy or action taken in combating an enemy (whether with or without a declaration of war),

then, any profits or gains arising from receipt of such money or other assets shall be chargeable to income-tax under the head "Capital gains" and shall be deemed to be the income of such person of the previous year in which such money or other asset was received and for the purposes of section 48, value of any money or the fair market value of other assets on the date of such receipt shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of such capital asset.

Explanation.—For the purposes of this sub-section, the expression "insurer" shall have the meaning assigned to it in clause (*9*) of section 2[52] of the Insurance Act, 1938 (4 of 1938).]

[53][(2) Notwithstanding anything contained in sub-section (1), the profits or gains arising from the transfer by way of conversion by the owner of a capital asset into, or its treatment by him as stock-in-trade of a business carried on by him shall be chargeable to income-tax as his income of the previous year in which such stock-in-trade is sold or otherwise transferred by him and, for the purposes of section 48, the fair market value of the asset on the date of such conversion or treatment shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset.]

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43. Figure "53," omitted by the Finance Act, 1992, w.e.f. 1-4-1993.

44. "53, 54 and 54B" substituted for "53 and 54" by the Finance Act, 1970, w.e.f. 1-4-1970; "53, 54, 54B and 54C" substituted for "53, 54 and 54B" by the Finance Act, 1972, w.e.f. 1-4-1973 and "53, 54, 54B, 54C and 54D" substituted for "53, 54, 54B and 54C" by the Finance Act, 1973, w.e.f. 1-4-1974.

45. "54C" omitted by the Finance Act, 1976, w.e.f. 1-4-1976.

46. Substituted for "and 54D" by the Finance (No. 2) Act, 1977, w.e.f. 1-4-1978.

47. Substituted for "54D and 54E" by the Finance Act, 1982, w.e.f. 1-4-1983.

48. Substituted for "54E and 54F" by the Finance Act, 1987, w.e.f. 1-4-1988.

49. Inserted by the Finance (No. 2) Act, 1996, w.e.f. 1-10-1996.

50. Substituted for "and 54G" by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1991.

51. Inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

52. For definition of "insurer" under section 2(*9*) of the Insurance Act, 1938, *see* **Appendix**.

53. Inserted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-4-1985. Original sub-section (2) was inserted by the Finance Act, 1964, w.e.f. 1-4-1964 and later on omitted by the Finance Act, 1966, w.e.f. 1-4-1966.

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[54][(2A) [55]Where any person has had at any time during previous year any beneficial interest in any securities, then, any profits or gains arising from transfer made by the depository or participant of such beneficial interest in respect of securities shall be chargeable to income-tax as the income of the beneficial owner of the previous year in which such transfer took place and shall not be regarded as income of the depository who is deemed to be the registered owner of securities by virtue of sub-section (1) of section 10 of the Depositories Act, 1996, and for the purposes of—

(*i*) section 48; and

(*ii*) proviso to clause (*42A*) of section 2,

the cost of acquisition and the period of holding of any securities shall be determined on the basis of the first-in-first-out method.

Explanation.—For the purposes of this sub-section, the expressions "beneficial owner"[56], "depository"[56] and "security"[56] shall have the meanings respectively assigned to them in clauses (*a*), (*e*) and (*l*) of sub-section (1) of section 2 of the Depositories Act, 1996.]

[57][(3) The profits or gains arising from the transfer of a capital asset by a person to a firm or other association of persons or body of individuals (not being a company or a co-operative society) in which he is or becomes a partner or member, by way of capital contribution or otherwise, shall be chargeable to tax as his income of the previous year in which such transfer takes place and, for the purposes of section 48, the amount recorded in the books of account of the firm, association or body as the value of the capital asset shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset.

(4) The profits or gains arising from the transfer of a capital asset by way of distribution of capital assets on the dissolution of a firm or other association of persons or body of individuals (not being a company or a co-operative society) or otherwise[58], shall be chargeable to tax as the income of the firm, association or body, of the previous year in which the said transfer takes place and, for the purposes of section 48, the fair market value of the asset on the date of such transfer shall be deemed to be the full value of the consideration received or accruing as a result of the transfer.]

[59][(5) Notwithstanding anything contained in sub-section (1), where the capital gain arises from the transfer of a capital asset, being a transfer by way of compulsory acquisition under any law, or a transfer the consideration for which

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54. Inserted by the Depositories Act, 1996, w.r.e.f. 20-9-1995.

55. *See* Circular No. 768, dated 24-6-1998 for 'determination of date of transfer and period of holding securities held in dematerialized form'.

56. For definitions of "beneficial owner", "depository" and "security" under clauses (*a*), (*e*) and (*l*), respectively, of section 2(1) of the Depositories Act, 1996, *see* **Appendix**.

57. Inserted by the Finance Act, 1987, w.e.f. 1-4-1988. Original sub-sections (3) and (4) were inserted by the Finance Act, 1964, w.e.f. 1-4-1964 and later on omitted by the Finance Act, 1966, w.e.f. 1-4-1966.

58. For the meaning of the term "otherwise", *see* Taxmann's Direct Taxes Manual, Vol. 3.

59. Inserted by the Finance Act, 1987, w.e.f. 1-4-1988.

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was determined or approved by the Central Government or the Reserve Bank of India, and the compensation or the consideration for such transfer is enhanced or further enhanced by any court, Tribunal or other authority, the capital gain shall be dealt with in the following manner, namely :—

(*a*) the capital gain computed with reference to the compensation awarded in the first instance[60] or, as the case may be, the consideration determined or approved in the first instance by the Central Government or the Reserve Bank of India shall be chargeable as [61][income under the head "Capital gains" of the previous year in which such compensation or part thereof, or such consideration or part thereof, was first received]; and

(*b*) the amount by which the compensation or consideration is enhanced or further enhanced by the court, Tribunal or other authority shall be deemed to be income chargeable under the head "Capital gains" of the previous year in which such amount is received by the assessee;

[62][(*c*) where in the assessment for any year, the capital gain arising from the transfer of a capital asset is computed by taking the compensation or consideration referred to in clause (*a*) or, as the case may be, enhanced compensation or consideration referred to in clause (*b*), and subsequently such compensation or consideration is reduced by any court, Tribunal or other authority, such assessed capital gain of that year shall be recomputed by taking the compensation or consideration as so reduced by such court, Tribunal or other authority to be the full value of the consideration.]

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

(*i*) in relation to the amount referred to in clause (*b*), the cost of acquisition and the cost of improvement shall be taken to be *nil*;

(*ii*) the provisions of this sub-section shall apply also in a case where the transfer took place prior to the 1st day of April, 1988;

(*iii*) where by reason of the death of the person who made the transfer, or for any other reason, the enhanced compensation or consideration is received by any other person, the amount referred to in clause (*b*) shall be deemed to be the income, chargeable to tax under the head "Capital gains", of such other person.]

[63][(6) Notwithstanding anything contained in sub-section (1), the difference between the repurchase price of the units referred to in sub-section (2) of section 80CCB and the capital value of such units shall be deemed to be the capital gains arising to the assessee in the previous year in which such repurchase takes place or the plan referred to in that section is terminated and shall be taxed accordingly.

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60. For the meaning of expression "compensation awarded in the first instance", *see* Taxmann's Direct Taxes Manual, Vol. 3.

61. Substituted for 'income under the head "Capital gains" of the previous year in which the transfer took place' by the Finance (No. 2) Act, 1991, w.r.e.f. 1-4-1988.

62. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

63. Inserted by the Finance Act, 1990, w.e.f. 1-4-1991.

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Explanation.—For the purposes of this sub-section, "capital value of such units" means any amount invested by the assessee in the units referred to in sub-section (2) of section 80CCB.]

Capital gains on distribution of assets by companies in liquidation.

[64]**46.** (1) Notwithstanding anything contained in section 45, where the assets of a company are distributed to its shareholders on its liquidation[65], such distribution shall not be regarded as a transfer by the company for the purposes of section 45.

(2) Where a shareholder on the liquidation of a company receives any money or other assets[65] from the company, he shall be chargeable to income-tax under the head "Capital gains", in respect of the money so received or the market value of the other assets on the date of distribution, as reduced by the amount assessed as dividend within the meaning of sub-clause (*c*) of clause (*22*) of section 2 and the sum so arrived at shall be deemed to be the full value of the consideration for the purposes of section 48.

[66][**Capital gains on purchase by company of its own shares or other specified securities.**

46A. Where a shareholder or a holder of other specified securities receives any consideration from any company for purchase of its own shares or other specified securities held by such shareholder or holder of other specified securities, then, subject to the provisions of section 48, the difference between the cost of acquisition and the value of consideration received by the shareholder or the holder of other specified securities, as the case may be, shall be deemed to be the capital gains arising to such shareholder or the holder of other specified securities, as the case may be, in the year in which such shares or other specified securities were purchased by the company.

Explanation.—For the purposes of this section, "specified securities" shall have the meaning assigned to it in *Explanation* to section 77A[67] of the Companies Act, 1956 (1 of 1956).]

Transactions not regarded as transfer[68].

[69]**47.** Nothing contained in section 45 shall apply to the following transfers :—

(*i*) any distribution of capital assets[70] on the total or partial partition of a Hindu undivided family;

(*ii*) [71][***]

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64. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

65. For the meaning of the expressions "on its liquidation" and "assets", *see* Taxmann's Direct Taxes Manual, Vol. 3.

66. Inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

67. For text of section 77A of the Companies Act, 1956, *see* **Appendix**.

68. *See* also Circular No. 2/2008, dated 22-2-2008. For details, *see* Taxmann's Master Guide to Income-tax Act.

69. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

70. For the meaning of the expression "distribution of capital assets", *see* Taxmann's Direct Taxes Manual, Vol. 3.

71. Omitted by the Finance Act, 1987, w.e.f. 1-4-1988.

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(*iii*) any transfer of a capital asset under a gift[72] or will or an irrevocable trust :

[73][**Provided** that this clause shall not apply to transfer under a gift or an irrevocable trust of a capital asset being shares, debentures or warrants allotted by a company directly or indirectly to its employees under [74][any Employees' Stock Option Plan or Scheme of the company offered to such employees in accordance with the guidelines issued by the Central Government in this behalf];]

(*iv*) any transfer of a capital asset by a company to its subsidiary company, if—

(*a*) the parent company or its nominees hold the whole of the share capital of the subsidiary company, and

(*b*) the subsidiary company is an Indian company;

[75][(*v*) any transfer of a capital asset by a subsidiary company to the holding company, if—

(*a*) the whole of the share capital of the subsidiary company is held by the holding company, and

(*b*) the holding company is an Indian company :]

[76][**Provided** that nothing contained in clause (*iv*) or clause (*v*) shall apply to the transfer of a capital asset made after the 29th day of February, 1988, as stock-in-trade;]

[77][(*vi*) any transfer, in a scheme of amalgamation[78], of a capital asset by the amalgamating company to the amalgamated company if the amalgamated company is an Indian company;]

[79][(*via*) any transfer, in a scheme of amalgamation[78], of a capital asset being a share or shares held in an Indian company, by the amalgamating foreign company to the amalgamated foreign company, if—

(*a*) at least twenty-five per cent of the shareholders of the amalgamating foreign company continue to remain shareholders of the amalgamated foreign company, and

(*b*) such transfer does not attract tax on capital gains in the country, in which the amalgamating company is incorporated;]

[80][(*viaa*) any transfer, in a scheme of amalgamation of a banking company with a banking institution sanctioned and brought into force by the

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72. For the meaning of the expression "under a gift", *see* Taxmann's Direct Taxes Manual, Vol. 3.

73. Inserted by the Finance Act, 2000, w.e.f. 1-4-2001.

74. Substituted for "the Employees' Stock Option Plan or Scheme" by the Finance Act, 2001, w.e.f. 1-4-2001.

75. Inserted by the Finance Act, 1965, w.e.f. 1-4-1965.

76. Inserted by the Finance Act, 1988, w.e.f. 1-4-1988.

77. Inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

78. For the meaning of the term "amalgamation", *see* Taxmann's Direct Taxes Manual, Vol. 3.

79. Inserted by the Finance Act, 1992, w.e.f. 1-4-1993.

80. Inserted by the Finance Act, 2005, w.e.f. 1-4-2005.

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Central Government under sub-section (7) of section 45 of the Banking Regulation Act, 1949 (10 of 1949), of a capital asset by the banking company to the banking institution.

Explanation.—For the purposes of this clause,—

(*i*) "banking company" shall have the same meaning assigned to it in clause (*c*) of section 5[81] of the Banking Regulation Act, 1949 (10 of 1949);

(*ii*) "banking institution" shall have the same meaning assigned to it in sub-section (15) of section 45[81] of the Banking Regulation Act, 1949 (10 of 1949);]

[82][(*vib*) any transfer, in a demerger, of a capital asset by the demerged company to the resulting company, if the resulting company is an Indian company;

(*vic*) any transfer in a demerger, of a capital asset, being a share or shares held in an Indian company, by the demerged foreign company to the resulting foreign company, if—

(*a*) [83][the shareholders holding not less than three-fourths in value of the shares] of the demerged foreign company continue to remain shareholders of the resulting foreign company; and

(*b*) such transfer does not attract tax on capital gains in the country, in which the demerged foreign company is incorporated :

Provided that the provisions of sections 391 to 394[84] of the Companies Act, 1956 (1 of 1956) shall not apply in case of demergers referred to in this clause;

[85][(*vica*) any transfer in a business reorganisation, of a capital asset by the predecessor co-operative bank to the successor co-operative bank;

(*vicb*) any transfer by a shareholder, in a business reorganisation, of a capital asset being a share or shares held by him in the predecessor co-operative bank if the transfer is made in consideration of the allotment to him of any share or shares in the successor co-operative bank.

Explanation.—For the purposes of clauses (*vica*) and (*vicb*), the expressions "business reorganisation", "predecessor co-operative bank" and "successor co-operative bank" shall have the meanings respectively assigned to them in section 44DB;]

(*vid*) any transfer or issue of shares by the resulting company, in a scheme of demerger to the shareholders of the demerged company if the

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81. For text of sections 5(*c*) and 45 of the Banking Regulation Act, 1949, *see* **Appendix**.

82. Clauses (*vib*), (*vic*) and (*vid*) inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

83. Substituted for "at least seventy-five per cent of the shareholders" by the Finance Act, 2000, w.e.f. 1-4-2000.

84. For text of sections 391 to 394 of the Companies Act, 1956, *see* **Appendix**.

85. Inserted by the Finance Act, 2007, w.e.f. 1-4-2008.

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transfer or issue is made in consideration of demerger of the undertaking;]

(*vii*) any transfer by a shareholder, in a scheme of amalgamation, of a capital asset being a share or shares held by him in the amalgamating company, if—

(*a*) the transfer is made in consideration of the allotment to him of any share or shares in the amalgamated company, and

(*b*) the amalgamated company is an Indian company;

[86][(*viia*) any transfer of a capital asset, being bonds or [87][Global Depository Receipts] referred to in sub-section (1) of section 115AC, made outside India by a non-resident to another non-resident;]

[88][(*viii*) any transfer of agricultural land in India effected before the 1st day of March, 1970;]

[89][(*ix*) any transfer of a capital asset, being any work of art, archaeological, scientific or art collection, book, manuscript, drawing, painting, photograph or print, to the Government or a University or the National Museum, National Art Gallery, National Archives or any such other public museum or institution as may be notified[90] by the Central Government in the Official Gazette to be of national importance or to be of renown throughout any State or States.

Explanation.—For the purposes of this clause, "University" means a University established or incorporated by or under a Central, State or Provincial Act and includes an institution declared under section 3 of the University Grants Commission Act, 1956 (3 of 1956), to be a University for the purposes of that Act;]

[91][(*x*) any transfer by way of conversion of [92][bonds or] debentures, debenture-stock or deposit certificates in any form, of a company into shares or debentures of that company;]

[93][(*xa*) any transfer by way of conversion of bonds referred to in clause (*a*) of sub-section (1) of section 115AC into shares or debentures of any company;]

[94][(*xi*) any transfer made on or before the 31st day of December, [95][1998] by a person (not being a company) of a capital asset being membership of a recognised stock exchange to a company in exchange of shares allotted by that company to the transferor.

Explanation.—For the purposes of this clause, the expression "membership of a recognised stock exchange" means the membership of a

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86. Inserted by the Finance Act, 1992, w.e.f. 1-6-1992.

87. Substituted for "shares" by the Finance Act, 2001, w.e.f. 1-4-2002.

88. Inserted by the Finance Act, 1970, w.e.f. 1-4-1970.

89. Inserted by the Finance Act, 1976, w.e.f. 1-4-1977.

90. For notified public institutions, *see* Taxmann's Master Guide to Income-tax Act.

91. Inserted by the Finance (No. 2) Act, 1991, w.r.e.f. 1-4-1962.

92. Inserted by the Finance Act, 1992, w.r.e.f. 1-4-1962.

93. Inserted by the Finance Act, 2008, w.e.f. 1-4-2008.

94. Inserted by the Finance Act, 1997, w.e.f. 1-4-1998.

95. Substituted for "1997" by the Finance (No. 2) Act, 1998, w.r.e.f. 1-4-1998.

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stock exchange in India which is recognised under the provisions of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(*xii*) any transfer of a capital asset, being land of a sick industrial company, made under a scheme prepared and sanctioned under section 18[96] of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) where such sick industrial company is being managed by its workers' co-operative :

Provided that such transfer is made during the period commencing from the previous year in which the said company has become a sick industrial company under sub-section (1) of section 17[97] of that Act and ending with the previous year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses.

Explanation.—For the purposes of this clause, "net worth" shall have the meaning assigned to it in clause (*ga*) of sub-section (1) of section 3[97] of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986);]

[98][(*xiii*) [99][any transfer of a capital asset or intangible asset by a firm to a company as a result of succession of the firm by a company in the business carried on by the firm, or any transfer of a capital asset to a company in the course of [1][demutualisation or] corporatisation of a recognised stock exchange in India as a result of which an association of persons or body of individuals is succeeded by such company :]

Provided that—

(*a*) all the assets and liabilities of the firm [2][or of the association of persons or body of individuals] relating to the business immediately before the succession become the assets and liabilities of the company;

(*b*) all the partners of the firm immediately before the succession become the shareholders of the company in the same proportion in which their capital accounts stood in the books of the firm on the date of the succession;

(*c*) the partners of the firm do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in the company; and

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96. For text of section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985, *see* **Appendix**.

97. For text of sections 3(1)(*ga*) and 17 of the Sick Industrial Companies (Special Provisions) Act, 1985, *see* **Appendix**.

98. Clauses (*xiii*) to (*xv*) inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999.

99. Substituted for the portion beginning with the words "where a firm is succeeded" and ending with the words "intangible asset to the company" by the Finance Act, 2001, w.e.f. 1-4-2002. Prior to its substitution, the quoted portion read as under :

"where a firm is succeeded by a company in the business carried on by it as a result of which the firm sells or otherwise transfers any capital asset or intangible asset to the company:"

1. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

2. Inserted by the Finance Act, 2001, w.e.f. 1-4-2002.

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(*d*) the aggregate of the shareholding in the company of the partners of the firm is not less than fifty per cent of the total voting power in the company and their shareholding continues to be as such for a period of five years from the date of the succession;

[3][(*e*) the [4][demutualisation or] corporatisation of a recognised stock exchange in India is carried out in accordance with a scheme for [4][demutualisation or] corporatisation which is approved by the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);]

[4][(*xiiia*) any transfer of a capital asset being a membership right held by a member of a recognised stock exchange in India for acquisition of shares and trading or clearing rights acquired by such member in that recognised stock exchange in accordance with a scheme for demutualisation or corporatisation which is approved by the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);]

The following clause (*xiiib*) shall be inserted after clause (*xiiia*) of section 47 by the Finance Act, 2010, w.e.f. 1-4-2011 :

*(*xiiib*) any transfer of a capital asset or intangible asset by a private company or unlisted public company (hereafter in this clause referred to as the company) to a limited liability partnership or any transfer of a share or shares held in the company by a shareholder as a result of conversion of the company into a limited liability partnership in accordance with the provisions of section 56 or section 57 of the Limited Liability Partnership Act, 2008 (6 of 2009):*

Provided *that—*

*(*a*) all the assets and liabilities of the company immediately before the conversion become the assets and liabilities of the limited liability partnership;*

*(*b*) all the shareholders of the company immediately before the conversion become the partners of the limited liability partnership and their capital contribution and profit sharing ratio in the limited liability partnership are in the same proportion as their shareholding in the company on the date of conversion;*

*(*c*) the shareholders of the company do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of share in profit and capital contribution in the limited liability partnership;*

3. Inserted by the Finance Act, 2001, w.e.f. 1-4-2002.

4. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

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(d) *the aggregate of the profit sharing ratio of the shareholders of the company in the limited liability partnership shall not be less than fifty per cent at any time during the period of five years from the date of conversion;*

(e) *the total sales, turnover or gross receipts in business of the company in any of the three previous years preceding the previous year in which the conversion takes place does not exceed sixty lakh rupees; and*

(f) *no amount is paid, either directly or indirectly, to any partner out of balance of accumulated profit standing in the accounts of the company on the date of conversion for a period of three years from the date of conversion.*

Explanation.—*For the purposes of this clause, the expressions "private company" and "unlisted public company" shall have the meanings respectively assigned to them in the Limited Liability Partnership Act, 2008 (6 of 2009);*

(*xiv*) where a sole proprietary concern is succeeded by a company in the business carried on by it as a result of which the sole proprietary concern sells or otherwise transfers any capital asset or intangible asset to the company :

Provided that—

(*a*) all the assets and liabilities of the sole proprietary concern relating to the business immediately before the succession become the assets and liabilities of the company;

(*b*) the shareholding of the sole proprietor in the company is not less than fifty per cent of the total voting power in the company and his shareholding continues to remain as such for a period of five years from the date of the succession; and

(*c*) the sole proprietor does not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in the company;

(*xv*) any transfer in a scheme for lending of any securities under an agreement or arrangement, which the assessee has entered into with the borrower of such securities and which is subject to the guidelines issued by the Securities and Exchange Board of India, established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) [5][or the Reserve Bank of India constituted under sub-section (1) of section 3 of the Reserve Bank of India Act, 1934 (2 of 1934)], in this regard;]

[6][(*xvi*) any transfer of a capital asset in a transaction of reverse mortgage under a scheme made and notified by the Central Government.]

5. Inserted by the Finance Act, 2002, w.e.f. 1-4-2003.

6. Inserted by the Finance Act, 2008, w.e.f. 1-4-2008.

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[7][**Withdrawal of exemption in certain cases.**

47A. [8][(1)] Where at any time before the expiry of a period of eight years from the date of the transfer of a capital asset referred to in clause (*iv*) or, as the case may be, clause (*v*) of section 47,—

(*i*) such capital asset is converted by the transferee company into, or is treated by it as, stock-in-trade of its business; or

(*ii*) the parent company or its nominees or, as the case may be, the holding company ceases or cease to hold the whole of the share capital of the subsidiary company,

the amount of profits or gains arising from the transfer of such capital asset not charged under section 45 by virtue of the provisions contained in clause (*iv*) or, as the case may be, clause (*v*) of section 47 shall, notwithstanding anything contained in the said clauses, be deemed to be income chargeable under the head "Capital gains" of the previous year in which such transfer took place.]

[9][(2) Where at any time, before the expiry of a period of three years from the date of the transfer of a capital asset referred to in clause (*xi*) of section 47, any of the shares allotted to the transferor in exchange of a membership in a recognised stock exchange are transferred, the amount of profits and gains not charged under section 45 by virtue of the provisions contained in clause (*xi*) of section 47 shall, notwithstanding anything contained in the said clause, be deemed to be the income chargeable under the head "Capital gains" of the previous year in which such shares are transferred.]

[10][(3) Where any of the conditions laid down in the proviso to clause (*xiii*) or the proviso to clause (*xiv*) of section 47 are not complied with, the amount of profits or gains arising from the transfer of such capital asset or intangible asset not charged under section 45 by virtue of conditions laid down in the proviso to clause (*xiii*) or the proviso to clause (*xiv*) of section 47 shall be deemed to be the profits and gains chargeable to tax of the successor company for the previous year in which the requirements of the proviso to clause (*xiii*) or the proviso to clause (*xiv*), as the case may be, are not complied with.]

The following sub-section (4) shall be inserted after sub-section (3) of section 47A by the Finance Act, 2010, w.e.f. 1-4-2011 :

*(4) Where any of the conditions laid down in the proviso to clause (*xiiib*) of section 47 are not complied with, the amount of profits or gains arising from the transfer of such capital asset or intangible asset or share or shares not charged under section 45 by virtue of conditions laid down in the said proviso shall be deemed to be the profits and gains chargeable to tax of the successor limited liability partnership or the shareholder of the predecessor company, as the case may be, for the previous year in which the requirements of the said proviso are not complied with.*

7. Inserted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-4-1985.
8. Inserted by the Finance Act, 1997, w.e.f. 1-4-1998.
9. Inserted, *ibid.*
10. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999.

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[11][**Mode of computation.**

[12]**48.** The income chargeable under the head "Capital gains" shall be computed, by deducting from the full value of the consideration[13] received or accruing as a result of the transfer of the capital asset the following amounts, namely :—

(*i*) expenditure incurred wholly and exclusively in connection with such transfer[14];

(*ii*) the cost of acquisition of the asset and the cost of any improvement[14] thereto:

[15]**Provided** that in the case of an assessee, who is a non-resident, capital gains arising from the transfer of a capital asset being shares in, or debentures of, an Indian company shall be computed by converting the cost of acquisition, expenditure incurred wholly and exclusively in connection with such transfer and the full value of the consideration received or accruing as a result of the transfer of the capital asset into the same foreign currency as was initially utilised in the purchase of the shares or debentures, and the capital gains so computed in such foreign currency shall be reconverted into Indian currency, so, however, that the aforesaid manner of computation of capital gains shall be applicable in respect of capital gains accruing or arising from every reinvestment thereafter in, and sale of, shares in, or debentures of, an Indian company :

Provided further that where long-term capital gain arises from the transfer of a long-term capital asset, other than capital gain arising to a non-resident from the transfer of shares in, or debentures of, an Indian company referred to in the first proviso, the provisions of clause (*ii*) shall have effect as if for the words "cost of acquisition" and "cost of any improvement", the words "indexed cost of acquisition" and "indexed cost of any improvement" had respectively been substituted :

[16][**Provided also** that nothing contained in the second proviso shall apply to the long-term capital gain arising from the transfer of a long-term capital asset being bond or debenture other than capital indexed bonds issued by the Government :]

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11. Substituted by the Finance Act, 1992, w.e.f. 1-4-1993. Prior to substitution, section 48 was amended by the Finance Act, 1987, w.e.f. 1-4-1988, the Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-4-1990, the Finance Act, 1989, w.e.f. 1-4-1990 and the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992.

12. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

13. For the meaning of the terms/expressions "consideration", "full value of the consideration", *see* Taxmann's Direct Taxes Manual, Vol. 3.

14. For the meaning of the terms/expressions "in connection with such transfer", "expenditure incurred wholly and exclusively . . . transfer" and "improvement", *see* Taxmann's Direct Taxes Manual, Vol. 3.

15. *See* rule 115A.

16. Inserted by the Finance Act, 1997, w.e.f. 1-4-1998.

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[17][**Provided also** that where shares, debentures or warrants referred to in the proviso to clause (*iii*) of section 47 are transferred under a gift or an irrevocable trust, the market value on the date of such transfer shall be deemed to be the full value of consideration received or accruing as a result of transfer for the purposes of this section :]

[18][**Provided also** that no deduction shall be allowed in computing the income chargeable under the head "Capital gains" in respect of any sum paid on account of securities transaction tax under Chapter VII of the Finance (No. 2) Act, 2004.]

Explanation.—For the purposes of this section,—

(*i*) "foreign currency"[19] and "Indian currency"[19] shall have the meanings respectively assigned to them in section 2 of the Foreign Exchange Regulation Act, 1973 (46 of 1973);

(*ii*) the conversion of Indian currency into foreign currency and the reconversion of foreign currency into Indian currency shall be at the rate of exchange prescribed in this behalf;

(*iii*) "indexed cost of acquisition" means an amount which bears to the cost of acquisition the same proportion as Cost Inflation Index for the year in which the asset is transferred bears to the Cost Inflation Index for the first year in which the asset was held by the assessee or for the year beginning on the 1st day of April, 1981, whichever is later;

(*iv*) "indexed cost of any improvement" means an amount which bears to the cost of improvement the same proportion as Cost Inflation Index for the year in which the asset is transferred bears to the Cost Inflation Index for the year in which the improvement to the asset took place;

[20][(*v*) "Cost Inflation Index", in relation to a previous year, means such Index as the Central Government may, having regard to seventy-five per cent of average rise in the Consumer Price Index for urban non-manual employees for the immediately preceding previous year to such previous year, by notification[21] in the Official Gazette, specify, in this behalf.]]

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17. Inserted by the Finance Act, 2000, w.e.f. 1-4-2001.

18. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005.

19. For definition of "foreign currency" and "Indian currency", *see* footnote Nos. 51 & 32 on pages 1.64 and 1.437, respectively.

20. Substituted by the Finance Act, 2000, w.r.e.f. 1-4-1993.

21. Notified Cost Inflation Index for relevant financial year is as under :
1981-82 : 100/1982-83 : 109/1983-84 : 116/1984-85 : 125/1985-86 : 133/1986-87 : 140/1987-88 : 150/1988-89 : 161/1989-90 : 172/1990-91 : 182/1991-92 : 199/1992-93 : 223/1993-94 : 244/1994-95 : 259/1995-96 : 281/1996-97 : 305/1997-98 : 331/1998-99 : 351/1999-2000 : 389/2000-01 : 406/2001-02 : 426/2002-03 : 447/2003-04 : 463/2004-05 : 480/2005-06 : 497/2006-07 : 519/2007-08 : 551/2008-09 : 582/2009-2010 : 632. For details, *see* Taxmann's Master Guide to Income-tax Act.

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Cost with reference to certain modes of acquisition.

[22]**49.** [23][(1)] Where the capital asset became the property of the assessee—

(*i*) on any distribution of assets on the total or partial partition of a Hindu undivided family;

(*ii*) under a gift or will;

(*iii*) (*a*) by succession, inheritance or devolution[24], or

[25][(*b*) on any distribution of assets on the dissolution of a firm, body of individuals, or other association of persons, where such dissolution had taken place at any time before the 1st day of April, 1987, or]

(*c*) on any distribution of assets on the liquidation of a company, or

(*d*) under a transfer to a revocable or an irrevocable trust, or

(*e*) under any such transfer as is referred to in clause (*iv*) [26][or clause (*v*)] [27][or clause (*vi*)] [28][or clause (*via*)] [29][or clause (*viaa*)] [30][or clause (*vica*) or [30a]**[***clause (*vicb*)*] of section 47***]**;

[31][(*iv*) such assessee being a Hindu undivided family, by the mode referred to in sub-section (2) of section 64 at any time after the 31st day of December, 1969,]

the cost of acquisition of the asset shall be deemed to be the cost for which the previous owner of the property acquired it, as increased by the cost of any improvement of the assets incurred or borne by the previous owner or the assessee, as the case may be.

[32][*Explanation*.—In this [33][sub-section] the expression "previous owner of the property" in relation to any capital asset owned by an assessee means the last previous owner of the capital asset who acquired it by a mode of acquisition

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22. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

23. Inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

24. For the meaning of the term "devolution", *see* Taxmann's Direct Taxes Manual, Vol. 3.

25. Substituted by the Finance Act, 1987, w.e.f. 1-4-1988.

26. Inserted by the Finance Act, 1965, w.e.f. 1-4-1965.

27. Inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

28. Inserted by the Finance Act, 1992, w.e.f. 1-4-1993.

29. Inserted by the Finance Act, 2005, w.e.f. 1-4-2005.

30. Inserted by the Finance Act, 2007, w.e.f. 1-4-2008.

30a. Words "clause (*vicb*) or clause (*xiiib*) of section 47" shall be substituted for the words "clause (*vicb*) of section 47" by the Finance Act, 2010, w.e.f. **1-4-2011**.

31. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

32. Inserted by the Finance Act, 1965, w.e.f. 1-4-1965.

33. Substituted for "section" by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

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other than that referred to in clause (*i*) or clause (*ii*) or clause (*iii*) [34][or clause (*iv*)] of this [35][sub-section].]

[36][(2) Where the capital asset being a share or shares in an amalgamated company which is an Indian company became the property of the assessee in consideration of a transfer referred to in clause (*vii*) of section 47, the cost of acquisition of the asset shall be deemed to be the cost of acquisition to him of the share or shares in the amalgamating company.]

[37][(2A) Where the capital asset, being a share or debenture of a company, became the property of the assessee in consideration of a transfer referred to in clause (*x*) or clause (*xa*) of section 47, the cost of acquisition of the asset to the assessee shall be deemed to be that part of the cost of debenture, debenture-stock, bond or deposit certificate in relation to which such asset is acquired by the assessee.]

[38][*(2AA) Where the capital gain arises from the transfer of specified security or sweat equity shares referred to in sub-clause (*vi*) of clause (2) of section 17, the cost of acquisition of such security or shares shall be the fair market value which has been taken into account for the purposes of the said sub-clause*.]

The following sub-section (2AAA) shall be inserted after sub-section (2AA) of section 49 by the Finance Act, 2010, w.e.f. 1-4-2011 :

*(2AAA) Where the capital asset being rights of a partner referred to in section 42 of the Limited Liability Partnership Act, 2008 (6 of 2009) became the property of the assessee on conversion as referred to in clause (*xiiib*) of section 47, the cost of acquisition of the asset shall be deemed to be the cost of acquisition to him of the share or shares in the company immediately before its conversion.*

[39][(2AB) Where the capital gain arises from the transfer of specified security or sweat equity shares, the cost of acquisition of such security or shares shall be the fair market value which has been taken into account while computing the value of fringe benefits under clause (*ba*) of sub-section (1) of section 115WC.]

[40][(2B) [41][***]

34. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

35. Substituted for "section" by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

36. Inserted, *ibid.*

37. Substituted by the Finance Act, 2008, w.e.f. 1-4-2008. Prior to its substitution, sub-section (2A), as inserted by the Finance (No. 2) Act, 1991, w.r.e.f. 1-4-1962, read as under :

"(2A) Where the capital asset, being a share or debenture in a company, became the property of the assessee in consideration of a transfer referred to in clause (*x*) of section 47, the cost of acquisition of the asset to the assessee shall be deemed to be that part of the cost of debenture, debenture-stock or deposit certificates in relation to which such asset is acquired by the assessee."

38. Substituted by the Finance (No.2) Act, 2009, w.e.f. **1-4-2010**. Prior to its substitution, sub-section (2AA), as inserted by the Finance Act, 2001, w.e.f. 1-4-2001, read as under :

"(2AA) Where the capital gain arises from the transfer of the shares, debentures or warrants, the value of which has been taken into account while computing the value of perquisite under clause (2) of section 17, the cost of acquisition of such shares, debentures or warrants shall be the value under that clause."

39. Inserted by the Finance Act, 2007, w.e.f. 1-4-2008.

40. Sub-sections (2B), (2C) and (2D) inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

41. Omitted by the Finance Act, 2000, w.e.f. 1-4-2001. Prior to its omission, sub-section (2B) was inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

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(2C) The cost of acquisition of the shares in the resulting company shall be the amount which bears to the cost of acquisition of shares held by the assessee in the demerged company the same proportion as the net book value of the assets transferred in a demerger bears to the net worth of the demerged company immediately before such demerger.

(2D) The cost of acquisition of the original shares held by the shareholder in the demerged company shall be deemed to have been reduced by the amount as so arrived at under sub-section (2C).]

[42][(2E) The provisions of sub-section (2), sub-section (2C) and sub-section (2D) shall, as far as may be, also apply in relation to business reorganisation of a co-operative bank as referred to in section 44DB.]

Explanation.—For the purposes of this section, "net worth" shall mean the aggregate of the paid up share capital and general reserves as appearing in the books of account of the demerged company immediately before the demerger.]

[43][(3) Notwithstanding anything contained in sub-section (1), where the capital gain arising from the transfer of a capital asset referred to in clause (*iv*) or, as the case may be, clause (*v*) of section 47 is deemed to be income chargeable under the head "Capital gains" by virtue of the provisions contained in section 47A, the cost of acquisition of such asset to the transferee-company shall be the cost for which such asset was acquired by it.]

[44][(4) Where the capital gain arises from the transfer of a property, the value of which has been subject to income-tax under clause (*vii*) [44a]**[***or clause (*viia*)***]** of sub-section (2) of section 56, the cost of acquisition of such property shall be deemed to be the value which has been taken into account for the purposes of the said clause (*vii*) [44a]**[***or clause (*viia*)***]**.]

[45][**Special provision for computation of capital gains in case of depreciable assets.**

[46]**50.** Notwithstanding anything contained in clause (*42A*) of section 2, where the capital asset is an asset forming part of a block of assets in respect of which depreciation has been allowed under this Act or under the Indian Income-

42. Inserted by the Finance Act, 2007, w.e.f. 1-4-2008.

43. Inserted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-4-1985.

44. Inserted by the Finance (No. 2) Act, 2009, w.e.f. 1-10-2009.

44a. Inserted by the Finance Act, 2010, w.e.f. **1-6-2010**.

45. Substituted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988. Earlier section 50 was amended by the Finance Act, 1986, w.e.f. 1-4-1987 and the Finance (No. 2) Act, 1977, w.e.f. 1-4-1978.

46. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

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tax Act, 1922 (11 of 1922), the provisions of sections 48 and 49 shall be subject to the following modifications :—

(*1*) where the full value of the consideration received or accruing as a result of the transfer of the asset together with the full value of such consideration received or accruing as a result of the transfer of any other capital asset falling within the block of the assets during the previous year, exceeds the aggregate of the following amounts, namely :—

(*i*) expenditure incurred wholly and exclusively in connection with such transfer or transfers;

(*ii*) the written down value of the block of assets at the beginning of the previous year; and

(*iii*) the actual cost of any asset falling within the block of assets acquired during the previous year,

such excess shall be deemed to be the capital gains arising from the transfer of short-term capital assets;

(*2*) where any block of assets ceases to exist as such, for the reason that all the assets in that block are transferred during the previous year, the cost of acquisition of the block of assets shall be the written down value of the block of assets at the beginning of the previous year, as increased by the actual cost of any asset falling within that block of assets, acquired by the assessee during the previous year and the income received or accruing as a result of such transfer or transfers shall be deemed to be the capital gains arising from the transfer of short-term capital assets.]

[47][**Special provision for cost of acquisition in case of depreciable asset.**

50A. Where the capital asset is an asset in respect of which a deduction on account of depreciation under clause (*i*) of sub-section (1) of section 32 has been obtained by the assessee in any previous year, the provisions of sections 48 and 49 shall apply subject to the modification that the written down value, as defined in clause (*6*) of section 43, of the asset, as adjusted, shall be taken as the cost of acquisition of the asset.]

[48][**Special provision for computation of capital gains in case of slump sale.**

50B. (1) Any profits or gains arising from the slump sale effected in the previous year shall be chargeable to income-tax as capital gains arising from the transfer of long-term capital assets and shall be deemed to be the income of the previous year in which the transfer took place :

Provided that any profits or gains arising from the transfer under the slump sale of any capital asset being one or more undertakings owned and held by an assessee for not more than thirty-six months immediately preceding the date of

47. Inserted by the Finance (No. 2) Act, 1998, w.r.e.f. 1-4-1998.

48. Inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

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its transfer shall be deemed to be the capital gains arising from the transfer of short-term capital assets.

(2) In relation to capital assets being an undertaking or division transferred by way of such sale, the "net worth" of the undertaking or the division, as the case may be, shall be deemed to be the cost of acquisition and the cost of improvement for the purposes of sections 48 and 49 and no regard shall be given to the provisions contained in the second proviso to section 48.

(3) Every assessee, in the case of slump sale, shall furnish in the prescribed form[49] along with the return of income, a report of an accountant as defined in the *Explanation* below sub-section (2) of section 288, indicating the computation of the net worth of the undertaking or division, as the case may be, and certifying that the net worth of the undertaking or division, as the case may be, has been correctly arrived at in accordance with the provisions of this section.

[50][*Explanation 1.*—For the purposes of this section, "net worth" shall be the aggregate value of total assets of the undertaking or division as reduced by the value of liabilities of such undertaking or division as appearing in its books of account :

Provided that any change in the value of assets on account of revaluation of assets shall be ignored for the purposes of computing the net worth.

Explanation 2.—For computing the net worth, the aggregate value of total assets shall be,—

(*a*) in the case of depreciable assets, the written down value of the block of assets determined in accordance with the provisions contained in sub-item (*C*) of item (*i*) of sub-clause (*c*) of clause (*6*) of section 43; [51][***]

[52][(b) *in the case of capital assets in respect of which the whole of the expenditure has been allowed or is allowable as a deduction under section 35AD,* nil; *and*

(c) *in the case of other assets, the book value of such assets.*]]]

[53][**Special provision for full value of consideration in certain cases.**

50C. (1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than

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49. *See* rule 6H and Form No. 3CEA. Rule 12 provides that the return of income shall not be accompanied by any document or copy of any account or form or report of audit required to be attached with return of income under any of the provisions of the Act.

50. *Explanation 1* and *Explanation 2* substituted for *Explanation* by the Finance Act, 2000, w.e.f. 1-4-2000. Prior to its substitution, *Explanation* was inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

51. Word "and" omitted by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2010**.

52. Substituted, *ibid.* Prior to its substitution, clause (*b*) read as under :

"(*b*) in the case of other assets, the book value of such assets."

53. Inserted by the Finance Act, 2002, w.e.f. 1-4-2003.

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the value adopted or assessed [54][or assessable] by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed [54][or assessable] shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

(2) Without prejudice to the provisions of sub-section (1), where—

(*a*) the assessee claims before any Assessing Officer that the value adopted or assessed [54][or assessable] by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer;

(*b*) the value so adopted or assessed [54][or assessable] by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court,

the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clause (*i*) of sub-section (1) and sub-sections (6) and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.

[55][*Explanation 1*].—For the purposes of this section, "Valuation Officer" shall have the same meaning as in clause (*r*) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).

[56][*Explanation 2*.—For the purposes of this section, the expression "assessable" means the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.]

(3) Subject to the provisions contained in sub-section (2), where the value ascertained under sub-section (2) exceeds the value adopted or assessed [56][or assessable] by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed [56][or assessable] by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer.]

Advance money received.

51. Where any capital asset was on any previous occasion the subject of negotiations for its transfer, any advance or other money[57] received and retained by the assessee in respect of such negotiations shall be deducted from the cost for which the asset was acquired or the written down value or the fair market value, as the case may be, in computing the cost of acquisition.

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54. Inserted by the Finance (No. 2) Act, 2009, w.e.f. 1-10-2009.

55. *Explanation* renumbered as *Explanation 1*, *ibid.*

56. Inserted, *ibid.*

57. For the meaning of expression "other money", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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Consideration for transfer in cases of understatement.

52. [58][*Omitted by the Finance Act, 1987, w.e.f. 1-4-1988.*]

Exemption of capital gains from a residential house.

53. [59][*Omitted by the Finance Act, 1992, w.e.f. 1-4-1993.*]

Profit on sale of property used for residence.

[60]**54.** [61][(1)] [62][[63][Subject to the provisions of sub-section (2), where, in the case of an assessee[64] being an individual or a Hindu undivided family], the capital gain arises from the transfer of a long-term capital asset [65][***], being buildings or [66]lands appurtenant thereto, and being a residential house, the income of which is chargeable under the head "Income from house property" (hereafter in this section referred to as the original asset), and the assessee has within a period of [67][one year before or two years after the date on which the transfer took place purchased[68]], or has within a period of three years after that date constructed, a residential house, then], instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—

(*i*) if the amount of the capital gain [69][is greater than the cost of [70][the residential house] so purchased or constructed (hereafter in this section referred to as the new asset)], the difference between the amount of the capital gain and the cost of the new asset shall be

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58. Prior to omission, sub-section (2) of section 52 and its proviso were inserted by the Finance Act, 1964, w.e.f. 1-4-1964 and the Finance Act, 1975, w.r.e.f. 1-4-1974, respectively. The proviso was later amended by the Finance Act, 1978, w.r.e.f. 1-4-1974.

59. Prior to its omission, section 53 was amended by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-4-1985 and the Finance Act, 1987, w.e.f. 1-4-1988.

60. *See* also Circular No. 471, dated 15-10-1986, Circular No. 520, dated 11-8-1988, Circular No. 538, dated 13-7-1989, Circular No. 672, dated 16-12-1993, Circular No. 667, dated 18-10-1993 and Circular No. 743, dated 6-5-1996. For details, *see* Taxmann's Master Guide to Income-tax Act.

For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

61. Inserted by the Finance Act, 1978, w.r.e.f. 1-4-1974.

62. Substituted by the Finance Act, 1982, w.e.f. 1-4-1983.

63. Substituted for "Where, in the case of an assessee being an individual" by the Finance Act, 1987, w.e.f. 1-4-1988.

64. For the meaning of the terms "assessee" and "lands appurtenant to building", *see* Taxmann's Direct Taxes Manual, Vol. 3.

65. "to which the provisions of section 53 are not applicable" omitted by the Finance Act, 1985, w.e.f. 1-4-1985.

66. For the meaning of the terms "assessee" and "lands appurtenant to building", *see* Taxmann's Direct Taxes Manual, Vol. 3.

67. Substituted for "one year before or after the date on which the transfer took place purchased" by the Finance Act, 1986, w.e.f. 1-4-1987.

68. For the meaning of the term "purchased", *see* Taxmann's Direct Taxes Manual, Vol. 3.

69. Substituted for "is greater than the cost of the new asset" by the Finance Act, 1978, w.r.e.f. 1-4-1974.

70. Substituted for "the house property" by the Finance Act, 1982, w.e.f. 1-4-1983.

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charged under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be *nil*; or

(*ii*) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be reduced by the amount of the capital gain.

[71][***]

[72][(2) The amount of the capital gain which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme[73] which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset :

Provided that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase or construction of the new asset within the period specified in sub-section (1), then,—

(*i*) the amount not so utilised shall be charged under section 45 as the income of the previous year in which the period of three years from the date of the transfer of the original asset expires; and

(*ii*) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid.

Explanation.—[74][*Omitted by the Finance Act, 1992, w.e.f. 1-4-1993*.]

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71. Omitted by the Finance Act, 1987, w.e.f. 1-4-1988. Original *Explanation* was inserted by the Finance Act, 1982, w.e.f. 1-4-1983.

72. Substituted by the Finance Act, 1987, w.e.f. 1-4-1988. Earlier, it was inserted by the Finance Act, 1978, w.r.e.f. 1-4-1974 and amended by the Finance Act, 1982, w.e.f. 1-4-1983 and the Finance Act, 1986, w.e.f. 1-4-1987.

73. For text of Capital Gains Accounts Scheme, 1988—GSR 724(E), dated 22-6-1988 and for list of authorised branches (except rural branches) of the banks specified to receive deposits and maintain account—GSR 725(E), dated 22-6-1988, *see* Taxmann's Direct Taxes Circulars.

74. Prior to its omission, *Explanation* was amended by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992.

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Relief of tax on capital gains in certain cases.

54A. [*Omitted by the Finance (No. 2) Act, 1971, w.e.f. 1-4-1972. Original section was inserted by the Finance Act, 1965, w.e.f. 1-4-1965. The Direct Tax Laws (Amendment) Act, 1989 has deleted section 54A, dealing with relief of tax on capital gains on transfer of property held under trust for charitable or religious purposes or by certain institution, earlier inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.*]

[75][**Capital gain on transfer of land used for agricultural purposes not to be charged in certain cases.**

[76]**54B.** [77][(1)] [78][Subject to the provisions of sub-section (2), where the capital gain arises] from the transfer of a capital asset being land which, in the two years immediately preceding the date on which the transfer took place, was being used by the assessee or a parent of his for agricultural purposes [79][(hereinafter referred to as the original asset)], and the assessee has, within a period of two years after that date, purchased any other land for being used for agricultural purposes, then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—

(*i*) if the amount of the capital gain is greater than the cost of the land so purchased (hereinafter referred to as the new asset), the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase, the cost shall be *nil*; or

(*ii*) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase, the cost shall be reduced, by the amount of the capital gain.]

[80][(2) The amount of the capital gain which is not utilised by the assessee for the purchase of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case

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75. Inserted by the Finance Act, 1970, w.e.f. 1-4-1970.

76. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

77. Inserted by the Finance Act, 1978, w.r.e.f. 1-4-1974.

78. Substituted for "Where the capital gain arises" by the Finance Act, 1987, w.e.f. 1-4-1988.

79. Inserted by the Finance Act, 1978, w.r.e.f. 1-4-1974.

80. Substituted by the Finance Act, 1987, w.e.f. 1-4-1988. Earlier, it was inserted by the Finance Act, 1978, w.r.e.f. 1-4-1974.

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of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme[81] which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset :

Provided that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase of the new asset within the period specified in sub-section (1), then,—

(*i*) the amount not so utilised shall be charged under section 45 as the income of the previous year in which the period of two years from the date of the transfer of the original asset expires; and

(*ii*) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid.

Explanation.—[82][*Omitted by the Finance Act, 1992, w.e.f. 1-4-1993.*]]

Capital gain on transfer of jewellery held for personal use not to be charged in certain cases.

54C. [*Omitted by the Finance Act, 1976, w.e.f. 1-4-1976. Original section was inserted by the Finance Act, 1972, w.e.f. 1-4-1973.*]

[83][**Capital gain on compulsory acquisition of lands and buildings not to be charged in certain cases.**

[84]**54D.** [85][(1)] [86][Subject to the provisions of sub-section (2), where the capital gain arises] from the transfer by way of compulsory acquisition under any law of a capital asset, being land or building or any right in land or building, forming part of an industrial undertaking[87] belonging to the assessee which, in the two years immediately preceding the date on which the transfer took place, was being used by the assessee for the purposes of the business of the said undertaking [88][(hereafter in this section referred to as the original asset)], and

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81. For text of the Capital Gains Accounts Scheme, 1988—GSR 724(E), dated 22-6-1988 and for list of authorised branches (except rural branches) of the banks specified to receive deposits and maintain accounts—GSR 725(E), dated 22-6-1988, *see* Taxmann's Direct Taxes Circulars.

82. Prior to omission, *Explanation* was amended by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992.

83. Inserted by the Finance Act, 1973, w.e.f. 1-4-1974.

84. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

85. Inserted by the Finance Act, 1978, w.r.e.f. 1-4-1974.

86. Substituted for "Where the capital gain arises" by the Finance Act, 1987, w.e.f. 1-4-1988.

87. For the meaning of the expression "industrial undertaking", *see* Taxmann's Direct Taxes Manual, Vol. 3.

88. Inserted by the Finance Act, 1978, w.r.e.f. 1-4-1974.

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the assessee has within a period of three years after that date purchased any other land or building or any right in any other land or building or constructed any other building for the purposes of shifting or re-establishing the said undertaking or setting up another industrial undertaking, then, instead of the capital gain being charged to income-tax as the income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—

(*i*) if the amount of the capital gain is greater than the cost of the land, building or right so purchased or the building so constructed (such land, building or right being hereafter in this section referred to as the new asset), the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be *nil*; or

(*ii*) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be reduced by the amount of the capital gain.]

[89][(2) The amount of the capital gain which is not utilised by the assessee for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme[90] which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset:

Provided that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase or construction of the new asset within the period specified in sub-section (1), then,—

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89. Substituted by the Finance Act, 1987, w.e.f. 1-4-1988. Prior to substitution, sub-section (2) was inserted by the Finance Act, 1978, w.r.e.f. 1-4-1974.

90. For text of the Capital Gains Accounts Scheme, 1988—GSR 724(E), dated 22-6-1988 and for list of authorised branches (except rural branches) of the banks specified to receive deposits and maintain accounts—GSR 725(E), dated 22-6-1988, *see* Taxmann's Direct Taxes Circulars.

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(*i*) the amount not so utilised shall be charged under section 45 as the income of the previous year in which the period of three years from the date of the transfer of the original asset expires; and

(*ii*) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid.

Explanation.—[91][*Omitted by the Finance Act, 1992, w.e.f. 1-4-1993.*]

[92][**Capital gain on transfer of capital assets not to be charged in certain cases.**

[93]**54E.** (1) Where the capital gain arises from the transfer of a [94][long-term capital asset] [95][before the 1st day of April, 1992], (the capital asset so transferred being hereafter in this section referred to as the original asset) and the assessee has, within a period of six months after the date of such transfer, invested or deposited the [96][whole or any part of the net consideration] in any specified asset (such specified asset being hereafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,—

(*a*) if the cost of the new asset is not less than the [97-98][net consideration] in respect of the original asset, the whole of such capital gain shall not be charged under section 45;

(*b*) if the cost of the new asset is less than the [97-98][net consideration] in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of acquisition of the new asset bears to the [99][net consideration] shall not be charged under section 45:

[1][**Provided** that in a case where the original asset is transferred after the 28th day of February, 1983, the provisions of this sub-section shall not apply unless the assessee has invested or deposited the whole or, as the case may be, any part

91. Prior to its omission, *Explanation* was amended by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992.

92. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 1-4-1978.

93. *See* also Circular No. 359, dated 10-5-1983 and Circular No. 560, dated 18-5-1990. For details, *see* Taxmann's Master Guide to Income-tax Act.

94. Substituted for "capital asset, not being a short-term capital asset" by the Finance Act, 1987, w.e.f. 1-4-1988.

95. Inserted by the Finance Act, 1992, w.e.f. 1-4-1992.

96. Substituted for "full value of the consideration or any part thereof received or accruing as a result of such transfer" by the Finance Act, 1979, w.e.f. 1-4-1979.

97-98. Substituted for "full value of consideration received or accruing", *ibid*.

99. Substituted for "full value of such consideration", *ibid*.

1. Inserted by the Finance Act, 1983, w.e.f. 1-4-1983.

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of the net consideration in the new asset by initially subscribing to such new asset:]

[2][**Provided further** that in a case where the transfer of the original asset is by way of compulsory acquisition under any law and the full amount of compensation awarded for such acquisition is not received by the assessee on the date of such transfer, the period of six months referred to in this sub-section shall, in relation to so much of such compensation as is not received on the date of the transfer, be reckoned from the date immediately following the date on which such compensation is received by the assessee [3][or the 31st day of March, 1992, whichever is earlier].]

Explanation 1.—[4][For the purposes of this sub-section, "specified asset" means,—

(*a*) in a case where the original asset is transferred before the 1st day of March, 1979, any of the following assets, namely:—]

(*i*) securities of the Central Government or a State Government;

(*ii*) [5]savings certificates as defined in clause (*c*) of section 2 of the Government Savings Certificates Act, 1959 (46 of 1959);

(*iii*) units in the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963);

(*iv*) debentures specified by the Central Government for the purposes of clause (*ii*) of sub-section (1) of section 80L;

(*v*) shares in any Indian company which are issued to the public or are listed in a recognised stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 (42 of 1956), and any rules made thereunder, [6][where the investment in such shares is made before the 1st day of March, 1978];

[6][(*va*) equity shares forming part of any eligible issue of capital, where the investment in such shares is made after the 28th day of February, 1978;]

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2. Inserted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-4-1984.

3. Inserted by the Finance Act, 1992, w.e.f. 1-4-1992.

4. Substituted for 'For the purposes of this sub-section *and sub-section (3)*, "specified asset" means any of the following assets, namely:—' by the Finance Act, 1979, w.e.f. 1-4-1979. Earlier the italicised words were inserted by the Finance Act, 1978, w.e.f. 1-4-1978.

5. For definition of "savings certificates", *see* footnote 85 on p. 1.130 *ante*.

6. Inserted by the Finance Act, 1978, w.e.f. 1-4-1978.

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(*vi*) deposits for a period of not less than three years with the State Bank of India established under the State Bank of India Act, 1955 (23 of 1955), or any subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959) or any nationalised bank, that is to say, any corresponding new bank, constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or any co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank);

[7][(*b*) in a case where the original asset is transferred after the 28th day of February, 1979 [8][but before the 1st day of March, 1983], such National Rural Development Bonds as the Central Government may notify[9] in this behalf in the Official Gazette;]

[10][(*c*) in a case where the original asset is transferred after the 28th day of February, 1983 [11][but before the 1st day of April, 1986], any of the following assets, namely :—

(*i*) securities of the Central Government which that Government may, by notification in the Official Gazette, specify in this behalf;

(*ii*) special series of units of the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963), which the Central Government may, by notification[12] in the Official Gazette, specify in this behalf;

(*iii*) such National Rural Development Bonds as have been notified[12] under clause (*b*) of *Explanation 1* or as may be notified in this behalf under this clause by the Central Government;

(*iv*) such debentures issued by the Housing and Urban Development Corporation Limited [a [13]Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956)], as the Central Government may, by notification in the Official Gazette, specify in this behalf;]

[14][(*d*) in a case where the original asset is transferred after the 31st day of March, 1986, any of the assets specified in clause (*c*) and such bonds issued by any public sector company, as the Central Government may, by notification[15] in the Official Gazette, specify in this behalf;

[16][***]]

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7. Inserted by the Finance Act, 1979, w.e.f. 1-4-1979.
8. Inserted by the Finance Act, 1983, w.e.f. 1-4-1983.
9. For notification, *see* Taxmann's Master Guide to Income-tax Act.
10. Inserted by the Finance Act, 1983, w.e.f. 1-4-1983.
11. Inserted by the Finance Act, 1986, w.e.f. 1-4-1987.
12. For notification, *see* Taxmann's Master Guide to Income-tax Act.
13. For definition of "Government company", *see* footnote 71 on p. 1.23 *ante.*
14. Inserted by the Finance Act, 1986, w.e.f. 1-4-1987.
15. For notification, *see* Taxmann's Master Guide to Income-tax Act.
16. Omitted by the Finance Act, 1987, w.e.f. 1-4-1987.

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[17][(*e*) in a case where the original asset is transferred after the 31st day of March, 1989, any of the assets specified in clauses (*c*) and (*d*) and such debentures or bonds issued by the National Housing Bank established under section 3 of the National Housing Bank Act, 1987 (53 of 1987), as the Central Government may, by notification[18] in the Official Gazette, specify in this behalf.]

[19][*Explanation 2*.—"Eligible issue of capital" shall have the meaning assigned to it in sub-section (3) of section 80CC.]

[19][*Explanation 3*.—An assessee shall not be deemed to have invested the [20][whole or any part of the net consideration in any equity shares referred to in sub-clause (*va*) of clause (*a*)] of *Explanation 1*, unless the assessee has subscribed to or purchased the shares in the manner specified in sub-section (4) of section 80CC.]

Explanation [21][*4*].—"Cost", in relation to any new asset, being a deposit referred to in [22][sub-clause (*vi*) of clause (*a*)] of *Explanation 1*, means the amount of such deposit.

[23][*Explanation 5*.—"Net consideration", in relation to the transfer of a capital asset, means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.

[24][(1A) Where the assessee deposits after the 27th day of April, 1978, the [25][whole or any part of the net consideration in respect] of the original asset in any new asset, being a deposit referred to in [26][sub-clause (*vi*) of clause (*a*)] of *Explanation 1* below sub-section (1), the cost of such new asset shall not be taken into account for the purposes of that sub-section unless the following conditions are fulfilled, namely :—

(*a*) the assessee furnishes, along with the deposit, a declaration in writing, to the bank or the co-operative society referred to in the said [26][sub-clause (*vi*)] with which such deposit is made, to the effect that the assessee will not take any loan or advance on the security of such deposit during a period of three years from the date on which the deposit is made;

(*b*) the assessee furnishes, along with the return of income for the assessment year relevant to the previous year in which the transfer of

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17. Inserted by the Finance Act, 1989, w.e.f. 1-4-1990.

18. For notification, *see* Taxmann's Master Guide to Income-tax Act.

19. Inserted by the Finance Act, 1978, w.e.f. 1-4-1978.

20. Substituted for "full value of the consideration or any part thereof in any equity shares referred to in clause (*va*)" by the Finance Act, 1979, w.e.f. 1-4-1979.

21. Substituted for "2" by the Finance Act, 1978, w.e.f. 1-4-1978.

22. Substituted for "clause (*vi*)" by the Finance Act, 1979, w.e.f. 1-4-1979.

23. Inserted, *ibid.*

24. Inserted by the Finance Act, 1978, w.e.f. 1-4-1978.

25. Substituted for "full value of the consideration or any part thereof received or accruing as a result of the transfer" by the Finance Act, 1979, w.e.f. 1-4-1979.

26. Substituted for "clause (*vi*)", *ibid.*

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the original asset was effected or within such further time as may be allowed by the [27][Assessing] Officer, a copy of the declaration referred to in clause (*a*) duly attested by an officer not below the rank of sub-agent, agent or manager of such bank or an officer of corresponding rank of such co-operative society.]

[28][(1B) Where on the fulfilment of the conditions specified in sub-section (1A), the cost of the new asset referred to in that sub-section is taken into account for the purposes of sub-section (1), the assessee shall, within a period of ninety days from the expiry of the period of three years reckoned from the date of such deposit, furnish to the [29][Assessing] Officer a certificate from the officer referred to in clause (*b*) of sub-section (1A) to the effect that the assessee has not taken any loan or advance on the security of such deposit during the said period of three years.]

[30][(1C) Notwithstanding anything contained in sub-section (1), where the capital gain arises from the transfer of the original asset, made after the 31st day of March, 1992, in respect of which the assessee had received any amount by way of advance on or before the 29th day of February, 1992 and had invested or deposited the whole or any part of such amount in the new asset on or before the later date, then, the provisions of clauses (*a*) and (*b*) of sub-section (1) shall apply in the case of such investment or deposit as they apply in the case of investment or deposit under that sub-section.]

(2) Where the new asset is transferred, or converted (otherwise than by transfer) into money, within a period of three years from the date of its acquisition, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such new asset as provided in clause (*a*) or, as the case may be, clause (*b*), of sub-section (1) shall be deemed to be income chargeable under the head "Capital gains" relating to [31][long-term capital assets] of the previous year in which the new asset is transferred or converted (otherwise than by transfer) into money.]

[32][[33][*Explanation 1*].—Where the assessee deposits after the 27th day of April, 1978, the [34][whole or any part of the net consideration in respect] of the original asset in any new asset, being a deposit referred to in [35][sub-clause (*vi*) of clause (*a*)] of *Explanation 1* below sub-section (1), and such assessee takes any loan or advance on the security of such deposit, he shall be deemed to have converted

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27. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

28. Inserted by the Finance Act, 1978, w.e.f. 1-4-1978.

29. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

30. Inserted by the Finance Act, 1992, w.e.f. 1-4-1992.

31. Substituted for "capital assets other than short-term capital assets" by the Finance Act, 1987, w.e.f. 1-4-1988.

32. Inserted by the Finance Act, 1978, w.e.f. 1-4-1978.

33. Numbered as *Explanation 1* by the Finance Act, 1983, w.e.f. 1-4-1983.

34. Substituted for "full value of the consideration or any part thereof received or accruing as a result of the transfer" by the Finance Act, 1979, w.e.f. 1-4-1979.

35. Substituted for "clause (*vi*)", *ibid*.

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(otherwise than by transfer) such deposit into money on the date on which such loan or advance is taken.]

[36][*Explanation 2.*—In a case where the original asset is transferred after the 28th day of February, 1983 and the assessee invests the whole or any part of the net consideration in respect of the original asset in any new asset and such assessee takes any loan or advance on the security of such new asset, he shall be deemed to have converted (otherwise than by transfer) such new asset on the date on which such loan or advance is taken.]

[37][***]

[38][***]

[39][***]

[40][(3) Where the cost of the equity shares referred to in [41][sub-clause (*va*) of clause (*a*)] of *Explanation 1* below sub-section (1) is taken into account for the purposes of clause (*a*) or clause (*b*) of sub-section (1) [42][***], a deduction with reference to such cost shall not be allowed under section 80CC.]

[43][**Capital gain on transfer of long-term capital assets not to be charged in the case of investment in [44][specified securities].**

[45]**54EA.** (1) Where the capital gain arises from the transfer of a long-term capital asset [46][before the 1st day of April, 2000] (the capital asset so transferred being hereafter in this section referred to as the original asset) and the assessee has, at any time within a period of six months after the date of such transfer, invested the whole or any part of the net consideration in any of the [47][bonds, debentures, shares of a public company or units of any mutual fund referred to in clause (*23D*) of section 10,] specified[48] by the Board in this behalf

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36. Inserted by the Finance Act, 1983, w.e.f. 1-4-1983.

37. Omitted by the Finance Act, 1987, w.e.f. 1-4-1988. Original sub-section (3) was inserted by the Finance Act, 1978, w.e.f. 1-4-1978. Prior to its omission, sub-section (3) was amended by the Finance Act, 1983, w.e.f. 1-4-1983 and the Finance Act, 1979, w.e.f. 1-4-1979.

38. Omitted by the Finance Act, 1987, w.e.f. 1-4-1988. Original sub-section (4) was inserted by the Finance Act, 1978, w.e.f. 1-4-1978. Prior to its omission, sub-section (4) was amended by the Finance Act, 1979, w.e.f. 1-4-1979.

39. Omitted by the Finance Act, 1987, w.e.f. 1-4-1988. Original sub-section (5) was inserted by the Finance Act, 1978, w.e.f. 1-4-1978. Prior to its omission, sub-section (5) was amended by the Finance Act, 1979, w.e.f. 1-4-1979.

40. Sub-section (6), which was originally inserted by the Finance Act, 1978, w.e.f. 1-4-1978, was renumbered as sub-section (3) by the Finance Act, 1987, w.e.f. 1-4-1988.

41. Substituted for "clause (*va*)" by the Finance Act, 1979, w.e.f. 1-4-1979.

42. "or clause (*a*) or clause (*b*) of sub-section (3)" omitted by the Finance Act, 1987, w.e.f. 1-4-1988.

43. Sections 54EA and 54EB inserted by the Finance (No. 2) Act, 1996, w.e.f. 1-10-1996.

44. Substituted for "specified bonds or debentures" by the Income-tax (Amendment) Act, 1997, w.r.e.f. 1-10-1996.

45. *See* also Circular No. 748, dated 19-12-1996, Circular No. 750, dated 13-1-1997, Circular No. 791, dated 2-6-2000 and PIB Press Release, dated 13-4-2000. *See* Taxmann's Direct Taxes Circulars.

46. Inserted by the Finance Act, 2000, w.e.f. 1-4-2001.

47. Substituted for "bonds, debentures or units of any mutual fund referred to in clause (*23D*) of section 10," by the Income-tax (Amendment) Act, 1997, w.r.e.f. 1-10-1996.

48. For notified bonds/securities, *see* Taxmann's Direct Taxes Circulars.

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by notification in the Official Gazette (such assets hereafter in this section referred to as the [49][specified securities]), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,—

(*a*) if the cost of the [49][specified securities] is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45;

(*b*) if the cost of the [49][specified securities] is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of acquisition of the [49][specified securities] bears to the net consideration shall not be charged under section 45.

(2) Where the [49][specified securities] are transferred or converted (otherwise than by transfer) into money at any time within a period of three years from the date of their acquisition, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such [49][specified securities] as provided in clause (*a*) or clause (*b*) of sub-section (1) shall be deemed to be the income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which the [49][specified securities] are transferred or converted (otherwise than by transfer) into money.

Explanation.—In a case where the original asset is transferred and the assessee invests the whole or any part of the net consideration in respect of the original asset in any [49][specified securities] and such assessee takes any loan or advance on the security of such [49][specified securities], he shall be deemed to have converted (otherwise than by transfer) such [49][specified securities] into money on the date on which such loan or advance is taken.

(3) Where the cost of the [49][specified securities] has been taken into account for the purposes of clause (*a*) or clause (*b*) of sub-section (1), a rebate with reference to such cost shall not be allowed under section 88.

Explanation.—For the purposes of this section,—

(*a*) "cost", in relation to any [49][specified securities], means the amount invested in such [49][specified securities] out of the net consideration received or accruing as a result of the transfer of the original asset ;

(*b*) "net consideration", in relation to the transfer of a capital asset, means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by the expenditure incurred wholly and exclusively in connection with such transfer.

Capital gain on transfer of long-term capital assets not to be charged in certain cases.

[50]**54EB.** (1) Where the capital gain arises from the transfer of a long-term capital asset [51][before the 1st day of April, 2000] (the capital asset so

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49. Substituted for "specified bonds or debentures" by the Income-tax (Amendment) Act, 1997, w.r.e.f. 1-10-1996.

50. *See* also Circular No. 748, dated 19-12-1996, Circular No. 750, dated 13-1-1997, Circular No. 791, dated 2-6-2000 and PIB Press Release, dated 13-4-2000. *See* Taxmann's Direct Taxes Circulars.

51. Inserted by the Finance Act, 2000, w.e.f. 1-4-2001.

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transferred being hereafter in this section referred to as the original asset), and the assessee has, at any time within a period of six months after the date of such transfer invested the whole or any part of capital gains, in any of the assets specified[52] by the Board in this behalf by notification in the Official Gazette (such assets hereafter in this section referred to as the long-term specified assets), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,—

(*a*) if the cost of the long-term specified asset is not less than the capital gain arising from the transfer of the original asset, the whole of such capital gain shall not be charged under section 45 ;

(*b*) if the cost of the long-term specified asset is less than the capital gain arising from the transfer of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of acquisition of the long-term specified asset bears to the whole of the capital gain, shall not be charged under section 45.

Explanation.—"Cost", in relation to any long-term specified asset, means the amount invested in such specified asset out of capital gains received or accruing as a result of the transfer of the original asset.

(2) Where the long-term specified asset is transferred or converted (otherwise than by transfer) into money at any time within a period of seven years from the date of its acquisition, the amount of capital gains arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such long-term specified asset as provided in clause (*a*), or as the case may be, clause (*b*) of sub-section (1) shall be deemed to be the income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which the long-term specified asset is transferred or converted (otherwise than by transfer) into money.

Explanation.—In a case where the original asset is transferred and the assessee invests the whole or any part of the capital gain received or accrued as a result of transfer of the original asset in any long-term specified asset and such assessee takes any loan or advance on the security of such specified asset, he shall be deemed to have converted (otherwise than by transfer) such specified asset into money on the date on which such loan or advance is taken.

(3) Where the cost of the long-term specified asset has been taken into account for the purposes of clause (*a*) or clause (*b*) of sub-section (1), a deduction from the amount of income-tax with reference to such cost shall not be allowed under section 88.]

[53][**Capital gain not to be charged on investment in certain bonds.**

54EC. (1) Where the capital gain arises from the transfer of a long-term capital asset (the capital asset so transferred being hereafter in this section referred to as the original asset) and the assessee has, at any time within a period of six months after the date of such transfer, invested the whole or any part of

52. For notified long-term capital assets, *see* Taxmann's Direct Taxes Circulars.

53. Inserted by the Finance Act, 2000, w.e.f. 1-4-2001. *See* also Circular No. 791, dated 2-6-2000.

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capital gains in the long-term specified asset, the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,—

(*a*) if the cost of the long-term specified asset is not less than the capital gain arising from the transfer of the original asset, the whole of such capital gain shall not be charged under section 45;

(*b*) if the cost of the long-term specified asset is less than the capital gain arising from the transfer of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of acquisition of the long-term specified asset bears to the whole of the capital gain, shall not be charged under section 45 :

[54][**Provided** that the investment made on or after the 1st day of April, 2007 in the long-term specified asset by an assessee during any financial year does not exceed fifty lakh rupees.]

(2) Where the long-term specified asset is transferred or converted (otherwise than by transfer) into money at any time within a period of three years from the date of its acquisition, the amount of capital gains arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such long-term specified asset as provided in clause (*a*) or, as the case may be, clause (*b*) of sub-section (1) shall be deemed to be the income chargeable under the head "Capital gains" relating to long-term capital asset of the previous year in which the long-term specified asset is transferred or converted (otherwise than by transfer) into money.

Explanation.—In a case where the original asset is transferred and the assessee invests the whole or any part of the capital gain received or accrued as a result of transfer of the original asset in any long-term specified asset and such assessee takes any loan or advance on the security of such specified asset, he shall be deemed to have converted (otherwise than by transfer) such specified asset into money on the date on which such loan or advance is taken.

[55][(3) Where the cost of the long-term specified asset has been taken into account for the purposes of clause (*a*) or clause (*b*) of sub-section (1),—

(*a*) a deduction from the amount of income-tax with reference to such cost shall not be allowed under section 88 for any assessment year ending before the 1st day of April, 2006;

(*b*) a deduction from the income with reference to such cost shall not be allowed under section 80C for any assessment year beginning on or after the 1st day of April, 2006.]

Explanation.—For the purposes of this section,—

(*a*) "cost", in relation to any long-term specified asset, means the amount invested in such specified asset out of capital gains received or accruing as a result of the transfer of the original asset;

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54. Inserted by the Finance Act, 2007, w.e.f. 1-4-2007.

55. Substituted by the Finance Act, 2005, w.e.f. 1-4-2006. Prior to its substitution, sub-section (3) read as under:

"(3) Where the cost of the long-term specified asset has been taken into account for the purposes of clause (*a*) or clause (*b*) of sub-section (1), a deduction from the amount of income-tax with reference to such cost shall not be allowed under section 88."

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[56][(*b*) "long-term specified asset" for making any investment under this section during the period commencing from the 1st day of April, 2006 and ending with the 31st day of March, 2007, means any bond, redeemable after three years and issued on or after the 1st day of April, 2006, but on or before the 31st day of March, 2007,—

(*i*) by the National Highways Authority of India constituted under section 3 of the National Highways Authority of India Act, 1988 (68 of 1988); or

(*ii*) by the Rural Electrification Corporation Limited, a company formed and registered under the Companies Act, 1956 (1 of 1956),

and notified[57] by the Central Government in the Official Gazette for the purposes of this section with such conditions (including the condition for providing a limit on the amount of investment by an assessee in such bond) as it thinks fit:]

[58][**Provided** that where any bond has been notified before the 1st day of April, 2007, subject to the conditions specified in the notification, by the Central Government in the Official Gazette under the provisions of clause (*b*) as they stood immediately before their amendment by the Finance Act, 2007, such bond shall be deemed to be a bond notified under this clause;]

[59][(*ba*) "long-term specified asset" for making any investment under this section on or after the 1st day of April, 2007 means any bond, redeemable after three years and issued on or after the 1st day of April, 2007 by the National Highways Authority of India constituted under section 3 of the National Highways Authority of India Act, 1988 (68 of 1988) or by the Rural Electrification Corporation Limited, a company formed and registered under the Companies Act, 1956 (1 of 1956).]

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56. Substituted by the Finance Act, 2007, w.r.e.f. 1-4-2006. Prior to its substitution, clause (*b*) of *Explanation,* as substituted by the Finance Act, 2001, w.e.f. 1-4-2002 and amended by the Finance Act, 2002, w.e.f. 1-4-2003 and later on substituted by the Finance Act, 2006, w.e.f. 1-4-2006, read as under :

'(*b*) "long-term specified asset" means any bond, redeemable after three years and issued on or after the 1st day of April, 2006,—

(*i*) by the National Highways Authority of India constituted under section 3 of the National Highways Authority of India Act, 1988 (68 of 1988), and notified by the Central Government in the Official Gazette for the purposes of this section; or

(*ii*) by the Rural Electrification Corporation Limited, a company formed and registered under the Companies Act, 1956 (1 of 1956), and notified by the Central Government in the Official Gazette for the purposes of this section.'

57. For notified bonds, *see* Taxmann's Master Guide to Income-tax Act.

58. Inserted by the Finance Act, 2007, w.r.e.f. 1-4-2006. *See* also Order F. No. 142/09/2006-TPL, dated 30-6-2006.

59. Inserted, *ibid.*, w.e.f. 1-4-2007.

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[60][**Capital gain on transfer of certain listed securities or unit not to be charged in certain cases.**

54ED. (1) Where the capital gain arises from the transfer [61][before the 1st day of April, 2006,] of a long-term capital asset, being listed securities or unit (the capital asset so transferred being hereafter in this section referred to as the original asset), and the assessee has, within a period of six months after the date of such transfer, invested the whole or any part of the capital gain in acquiring equity shares forming part of an eligible issue of capital (such equity shares being hereafter in this section referred to as the specified equity shares), the said capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,—

(*a*) if the cost of the specified equity shares is not less than the capital gain arising from the transfer of the original asset, the whole of such capital gain shall not be charged under section 45;

(*b*) if the cost of the specified equity shares is less than the capital gain arising from the transfer of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the specified equity shares acquired bears to the whole of the capital gain shall not be charged under section 45.

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

(*i*) "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;

(*b*) the shares forming part of the issue are offered for subscription to the public;

(*ii*) "listed securities" shall have the same meaning as in clause (*a*) of the *Explanation* to sub-section (1) of section 112;

(*iii*) "unit" shall have the meaning assigned to it in clause (*b*) of the *Explanation* to section 115AB.

(2) Where the specified equity shares are sold or otherwise transferred within a period of one year from the date of their acquisition, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such specified equity shares as provided in clause (*a*) or, as the case may be, clause (*b*), of sub-section (1) shall be deemed to be the income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such equity shares are sold or otherwise transferred.

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60. Inserted by the Finance Act, 2001, w.e.f. 1-4-2002.

61. Inserted by the Finance Act, 2006, w.e.f. 1-4-2007.

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[62][(3) Where the cost of the specified equity shares has been taken into account for the purposes of clause (*a*) or clause (*b*) of sub-section (1),—

(*a*) a deduction from the amount of income-tax with reference to such cost shall not be allowed under section 88 for any assessment year ending before the 1st day of April, 2006;

(*b*) a deduction from the income with reference to such cost shall not be allowed under section 80C for any assessment year beginning on or after the 1st day of April, 2006.]]

[63][**Capital gain on transfer of certain capital assets not to be charged in case of investment in residential house.**[64]

54F. (1) [65][Subject to the provisions of sub-section (4), where, in the case of an assessee being an individual or a Hindu undivided family], the capital gain arises from the transfer of any long-term capital asset, not being a residential house (hereafter in this section referred to as the original asset), and the assessee has, within a period of one year before or [66][two years] after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, a residential house (hereafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,—

(*a*) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45 ;

(*b*) if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under section 45 :

[67][**Provided** that nothing contained in this sub-section shall apply where—

(*a*) the assessee,—

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62. Substituted by the Finance Act, 2005, w.e.f. 1-4-2006. Prior to its substitution, sub-section (3) read as under:

"(3) Where the cost of the specified equity shares has been taken into account for the purposes of clause (*a*) or clause (*b*) of sub-section (1), a deduction from the amount of income-tax with reference to such cost shall not be allowed under section 88."

63. Inserted by the Finance Act, 1982, w.e.f. 1-4-1983.

64. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

65. Substituted for "Where, in the case of an assessee being an individual" by the Finance Act, 1987, w.e.f. 1-4-1988.

66. Inserted, *ibid.*

67. Substituted by the Finance Act, 2000, w.e.f. 1-4-2001. Prior to its substitution, proviso, as inserted by the Finance Act, 1982, w.e.f. 1-4-1983, read as under :

'**Provided** that nothing contained in this sub-section shall apply where the assessee owns on the date of the transfer of the original asset, or purchases, within the period of one year after such date, or constructs, within the period of three years after such date, any residential house, the income from which is chargeable under the head "Income from house property", other than the new asset.'

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(*i*) owns more than one residential house, other than the new asset, on the date of transfer of the original asset; or

(*ii*) purchases any residential house, other than the new asset, within a period of one year after the date of transfer of the original asset; or

(*iii*) constructs any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset; and

(*b*) the income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable under the head "Income from house property".]

Explanation.—For the purposes of this section,—

[68][***]

[69][***] "net consideration", in relation to the transfer of a capital asset, means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.

(2) Where the assessee purchases, within the period of [70][two years] after the date of the transfer of the original asset, or constructs, within the period of three years after such date, any residential house, the income from which is chargeable under the head "Income from house property", other than the new asset, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such new asset as provided in clause (*a*), or, as the case may be, clause (*b*), of sub-section (1), shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such residential house is purchased or constructed.

(3) Where the new asset is transferred within a period of three years from the date of its purchase or, as the case may be, its construction, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such new asset as provided in clause (*a*) or, as the case may be, clause (*b*), of sub-section (1) shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such new asset is transferred.]

[71][(4) The amount of the net consideration which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than

68. Omitted by the Finance Act, 1987, w.e.f. 1-4-1988.

69. "(*ii*)" omitted, *ibid.*

70. Substituted for "one year", *ibid.*

71. Inserted, *ibid.*

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the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme[72] which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit ; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset :

Provided that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase or construction of the new asset within the period specified in sub-section (1), then,—

(*i*) the amount by which—

(*a*) the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of the new asset as provided in clause (*a*) or, as the case may be, clause (*b*) of sub-section (1),

exceeds

(*b*) the amount that would not have been so charged had the amount actually utilised by the assessee for the purchase or construction of the new asset within the period specified in sub-section (1) been the cost of the new asset,

shall be charged under section 45 as income of the previous year in which the period of three years from the date of the transfer of the original asset expires ; and

(*ii*) the assessee shall be entitled to withdraw the unutilised amount in accordance with the scheme aforesaid.

Explanation.—[73][*Omitted by the Finance Act, 1992, w.e.f. 1-4-1993.*]]

[74][**Exemption of capital gains on transfer of assets in cases of shifting of industrial undertaking from urban area.**

54G. (1) Subject to the provisions of sub-section (2), where the capital gain arises from the transfer of a capital asset, being machinery or plant or building or land or any rights in building or land used for the purposes of the business of an industrial undertaking situate in an urban area, effected in the course of, or in consequence of, the shifting of such industrial undertaking (hereafter in this section referred to as the original asset) to any area (other than an urban area) and the assessee has within a period of one year before or three years after the date on which the transfer took place,—

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72. For text of the Capital Gains Accounts Scheme, 1988—GSR 724(E), dated 22-6-1988 and for list of authorised branches (except rural branches) of the banks specified to receive deposits and maintain accounts—GSR 725(E), dated 22-6-1988, *see* Taxmann's Direct Taxes Circulars.

73. Prior to omission, *Explanation* was amended by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992.

74. Inserted by the Finance Act, 1987, w.e.f. 1-4-1988.

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(*a*) purchased new machinery or plant for the purposes of business of the industrial undertaking in the area to which the said undertaking is shifted ;

(*b*) acquired building or land or constructed building for the purposes of his business in the said area ;

(*c*) shifted the original asset and transferred the establishment of such undertaking to such area; and

(*d*) incurred expenses on such other purpose as may be specified in a scheme framed by the Central Government for the purposes of this section,

then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—

(*i*) if the amount of the capital gain is greater than the cost and expenses incurred in relation to all or any of the purposes mentioned in clauses (*a*) to (*d*) (such cost and expenses being hereafter in this section referred to as the new asset), the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year ; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its being purchased, acquired, constructed or transferred, as the case may be, the cost shall be *nil* ; or

(*ii*) if the amount of the capital gain is equal to, or less than, the cost of the new asset, the capital gain shall not be charged under section 45 ; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its being purchased, acquired, constructed or transferred, as the case may be, the cost shall be reduced by the amount of the capital gain.

Explanation.—In this sub-section, "urban area" means any such area within the limits of a municipal corporation or municipality as the Central Government may, having regard to the population, concentration of industries, need for proper planning of the area and other relevant factors, by general or special order[75], declare to be an urban area for the purposes of this sub-section.

(2) The amount of capital gain which is not appropriated by the assessee towards the cost and expenses incurred in relation to all or any of the purposes mentioned in clauses (*a*) to (*d*) of sub-section (1) within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for all or any of the purposes aforesaid before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be

75. For notified urban area, *see* Taxmann's Master Guide to Income-tax Act.

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specified in, and utilised in accordance with, any scheme[76] which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit ; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for all or any of the purposes aforesaid together with the amount, so deposited shall be deemed to be the cost of the new asset :

Provided that if the amount deposited under this sub-section is not utilised wholly or partly for all or any of the purposes mentioned in clauses (*a*) to (*d*) of sub-section (1) within the period specified in that sub-section, then,—

(*i*) the amount not so utilised shall be charged under section 45 as the income of the previous year in which the period of three years from the date of the transfer of the original asset expires ; and

(*ii*) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid.

Explanation.—[77][*Omitted by the Finance Act, 1992, w.e.f. 1-4-1993.*]

[78][**Exemption of capital gains on transfer of assets in cases of shifting of industrial undertaking from urban area to any Special Economic Zone.**

54GA. (1) Notwithstanding anything contained in section 54G, where the capital gain arises from the transfer of a capital asset, being machinery or plant or building or land or any rights in building or land used for the purposes of the business of an industrial undertaking situate in an urban area, effected in the course of, or in consequence of the shifting of such industrial undertaking to any Special Economic Zone, whether developed in any urban area or any other area and the assessee has within a period of one year before or three years after the date on which the transfer took place,—

(*a*) purchased machinery or plant for the purposes of business of the industrial undertaking in the Special Economic Zone to which the said undertaking is shifted;

(*b*) acquired building or land or constructed building for the purposes of his business in the Special Economic Zone;

(*c*) shifted the original asset and transferred the establishment of such undertaking to the Special Economic Zone; and

(*d*) incurred expenses on such other purposes as may be specified in a scheme framed by the Central Government for the purposes of this section,

then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall, subject to the provisions

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76. For text of the Capital Gains Accounts Scheme, 1988—GSR 724(E), dated 22-6-1988 and for list of authorised branches (except rural branches) of the banks specified to receive deposits and maintain accounts—GSR 725(E), dated 22-6-1988; *see* Taxmann's Direct Taxes Circulars.

77. Prior to omission, *Explanation* was amended by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992.

78. Inserted by the Special Economic Zones Act, 2005, w.e.f. 10-2-2006.

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of sub-section (2), be dealt with in accordance with the following provisions of this section, that is to say,—

(*i*) if the amount of the capital gain is greater than the cost and expenses incurred in relation to all or any of the purposes mentioned in clauses (*a*) to (*d*) (such cost and expenses being hereafter in this section referred to as the new asset), the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its being purchased, acquired, constructed or transferred, as the case may be, the cost shall be *Nil*; or

(*ii*) if the amount of the capital gain is equal to, or less than, the cost of the new asset, the capital gain shall not be charged under section 45, and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its being purchased, acquired, constructed or transferred, as the case may be, the cost shall be reduced by the amount of the capital gain.

Explanation.—In this sub-section,—

(*a*) "Special Economic Zone" shall have the meaning assigned to it in clause (*za*) of *[section 2 of] the Special Economic Zones Act, 2005[79];

(*b*) "urban area" means any such area within the limits of a municipal corporation or municipality as the Central Government may, having regard to the population, concentration of industries, need for proper planning of the area and other relevant factors, by general or special order, declare to be an urban area for the purposes of this sub-section.

(2) The amount of capital gain which is not appropriated by the assessee towards the cost and expenses incurred in relation to all or any of the purposes mentioned in clauses (*a*) to (*d*) of sub-section (1) within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for all or any of the purposes aforesaid before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme[80] which the Central Government may, by notification, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for all or any of the aforesaid purposes together with the amount so deposited shall be deemed to be the cost of the new asset :

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79. For the text of clause (*za*) of section 2 of Special Economic Zones Act, 2005, *see* **Appendix**.

80. *See* Capital Gains Accounts Scheme, 1988.

*Added by Editors.

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Provided that if the amount deposited under this sub-section is not utilised wholly or partly for all or any of the purposes mentioned in clauses (*a*) to (*d*) of sub-section (1) within the period specified in that sub-section, then,—

(*i*) the amount not so utilised shall be charged under section 45 as the income of the previous year in which the period of three years from the date of the transfer of the original asset expires; and

(*ii*) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid.]

[81][**Extension of time for acquiring new asset or depositing or investing amount of capital gain.**

54H. Notwithstanding anything contained in sections 54, 54B, 54D [82][***] [83][, 54EC] and 54F, where the transfer of the original asset is by way of compulsory acquisition under any law and the amount of compensation awarded for such acquisition is not received by the assessee on the date of such transfer, the period for acquiring the new asset by the assessee referred to in those sections or, as the case may be, the period available to the assessee under those sections for depositing or investing the amount of capital gain in relation to such compensation as is not received on the date of the transfer, shall be reckoned from the date of receipt of such compensation :

Provided that where the compensation in respect of transfer of the original asset by way of compulsory acquisition under any law is received before the 1st day of April, 1991, the aforesaid period or periods, if expired, shall extend up to the 31st day of December, 1991.]

Meaning of "adjusted", "cost of improvement" and "cost of acquisition".

[84]**55.** (1) For the purposes of [85][sections 48 and 49],—

(*a*) [86][***]

[87][(*b*) "cost of any improvement",—

(*1*) in relation to a capital asset being goodwill of a business [88][or a right to manufacture, produce or process any article or thing] [89][or right to carry on any business] shall be taken to be *nil* ; and

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81. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

82. ", 54E" omitted by the Finance Act, 1992, w.e.f. 1-4-1992.

83. Substituted for ", 54EA, 54EB" by the Finance Act, 2001, w.e.f. 1-4-2001. Earlier the quoted figures and letters were inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999.

84. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

85. Substituted for "sections 48, 49 and 50" by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988.

86. Omitted, *ibid.* Prior to its omission, clause (*a*) was amended by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971, the Finance (No. 2) Act, 1977, w.e.f. 1-4-1978 and the Finance Act, 1986, w.e.f. 1-4-1987.

87. Substituted for ' "cost of any improvement", in relation to a capital asset,—' by the Finance Act, 1987, w.e.f. 1-4-1988.

88. Inserted by the Finance Act, 1997, w.e.f. 1-4-1998.

89. Inserted by the Finance Act, 2002, w.e.f. 1-4-2003.

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(*2*) in relation to any other capital asset,—]

(*i*) where the capital asset became the property of the previous owner or the assessee before the [90][1st day of April, [91][1981]], [92][***] means all expenditure of a capital nature incurred in making any additions or alterations to the capital asset on or after the said date by the previous owner or the assessee, and

(*ii*) in any other case, means all expenditure of a capital nature incurred in making any additions or alterations to the capital asset by the assessee after it became his property, and, where the capital asset became the property of the assessee by any of the modes specified in [93][sub-section (1) of] section 49, by the previous owner,

but does not include any expenditure which is deductible in computing the income chargeable under the head "Interest on securities", "Income from house property", "Profits and gains of business or profession", or "Income from other sources", and the expression "improvement" shall be construed accordingly.

[94](2) [95][For the purposes of sections 48 and 49, "cost of acquisition"[96],—

[97][(*a*) in relation to a capital asset, being goodwill of a business [98][or a trade mark or brand name associated with a business] [99][or a right to manufacture, produce or process any article or thing] [1][or right to carry on any business], tenancy rights, stage carriage permits or loom hours,—

(*i*) in the case of acquisition of such asset by the assessee by purchase from a previous owner, means the amount of the purchase price ; and

(*ii*) in any other case [not being a case falling under sub-clauses (*i*) to (*iv*) of sub-section (1) of section 49], shall be taken to be *nil* ;

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90. Substituted for "1st day of January, *1964" by the Finance Act, 1986, w.e.f. 1-4-1987. *"1964" was substituted for "1954" by the Finance (No. 2) Act, 1977, w.e.f. 1-4-1978.

91. Substituted for "1974" by the Finance Act, 1992, w.e.f. 1-4-1993.

92. Words "and the fair market value of the asset on that day is taken as the cost of acquisition at the option of the assessee," omitted, *ibid*.

93. Inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

94. *See* also Circular No. 31 (LXXVII-5)-D, dated 21-9-1962. For details, *see* Taxmann's Master Guide to Income-tax Act.

95. Substituted for 'For the purposes of sections 48 and 49, "cost of acquisition", in relation to a capital asset,—' by the Finance Act, 1987, w.e.f. 1-4-1988.

96. For the meaning of the expression "cost of acquisition", *see* Taxmann's Direct Taxes Manual, Vol. 3.

97. Substituted for clause (*a*) by the Finance Act, 1994, w.e.f. 1-4-1995.

98. Inserted by the Finance Act, 2001, w.e.f. 1-4-2002.

99. Inserted by the Finance Act, 1997, w.e.f. 1-4-1998.

1. Inserted by the Finance Act, 2002, w.e.f. 1-4-2003.

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(*aa*) [2][in a case where, by virtue of holding a capital asset, being a share or any other security[3], within the meaning of clause (*h*) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) (hereafter in this clause referred to as the financial asset), the assessee—

(*A*) becomes entitled to subscribe to any additional financial asset ; or

(*B*) is allotted any additional financial asset without any payment,

then, subject to the provisions of sub-clauses (*i*) and (*ii*) of clause (*b*)],—

(*i*) in relation to the original financial asset, on the basis of which the assessee becomes entitled to any additional financial asset, means the amount actually paid for acquiring the original financial asset ;

(*ii*) in relation to any right to renounce the said entitlement to subscribe to the financial asset, when such right is renounced by the assessee in favour of any person, shall be taken to be *nil* in the case of such assessee ;

(*iii*) in relation to the financial asset, to which the assessee has subscribed on the basis of the said entitlement, means the amount actually paid by him for acquiring such asset ;

[4][(*iiia*) in relation to the financial asset allotted to the assessee without any payment and on the basis of holding of any other financial asset, shall be taken to be *nil* in the case of such assessee ;] and

(*iv*) in relation to any financial asset purchased by any person in whose favour the right to subscribe to such asset has been renounced, means the aggregate of the amount of the purchase price paid by him to the person renouncing such right and the amount paid by him to the company or institution, as the case may be, for acquiring such financial asset ;]

[5][(*ab*) in relation to a capital asset, being equity share or shares allotted to a shareholder of a recognised stock exchange in India under a scheme for [6][demutualisation or] corporatisation approved by the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), shall be the cost of acquisition of his original membership of the exchange:]

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2. Substituted for the portion beginning with the words "in a case where," and ending with the words "sub-clauses (*i*) and (*ii*) of clause (*b*)" by the Finance Act, 1995, w.e.f. 1-4-1996. Prior to its substitution, the quoted portion read as under :

"in a case where, by virtue of holding a capital asset, being a share or any other security within the meaning of clause (*h*) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) (hereafter in this clause referred to as the financial asset), the assessee becomes entitled to subscribe to any additional financial asset, then, subject to the provisions of sub-clauses (*i*) and (*ii*) of clause (*b*)".

3. For definition of "security", *see* footnote 15 on p. 1.27 *ante*.

4. Inserted by the Finance Act, 1995, w.e.f. 1-4-1996.

5. Inserted by the Finance Act, 2001, w.e.f. 1-4-2002.

6. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

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[7][**Provided** that the cost of a capital asset, being trading or clearing rights of the recognised stock exchange acquired by a shareholder who has been allotted equity share or shares under such scheme of demutualisation or corporatisation, shall be deemed to be *nil*;]

(*b*) in relation to any other capital asset,—]

(*i*) where the capital asset became the property of the assessee[8] before the [9][1st day of April, [10][1981]], means the cost of acquisition of the asset to the assessee or the fair[11] market value of the asset on the [12][1st day of April, [13][1981]], at the option of the assessee ;

(*ii*) where the capital asset became the property of the assessee[14] by any of the modes specified in [15][sub-section (1) of] section 49, and the capital asset became the property of the previous owner before the [16][1st day of April, [17][1981]], means the cost of the capital asset to the previous owner or the fair[18] market value of the asset on the [16][1st day of April, [17][1981]], at the option of the assessee ;

(*iii*) where the capital asset became the property of the assessee[18] on the distribution of the capital assets of a company on its liquidation and the assessee has been assessed to income-tax under the head "Capital gains" in respect of that asset under section 46, means the fair[18] market value of the asset on the date of distribution ;

(*iv*) [19][***]

[20][(*v*) where the capital asset, being a share or a stock of a company, became the property of the assessee on—

(*a*) the consolidation and division of all or any of the share capital of the company into shares of larger amount than its existing shares,

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7. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

8. For the meaning of the expression "became the property of the assessee", *see* Taxmann's Direct Taxes Manual, Vol. 3.

9. Substituted for "1st day of January, *1964" by the Finance Act, 1986, w.e.f. 1-4-1987. *"1964" was substituted for "1954" by the Finance (No. 2) Act, 1977, w.e.f. 1-4-1978.

10. Substituted for "1974" by the Finance Act, 1992, w.e.f. 1-4-1993.

11. For the meaning of term "fair", *see* Taxmann's Direct Taxes Manual, Vol. 3.

12. Substituted for "1st day of January, *1964" by the Finance Act, 1986, w.e.f. 1-4-1987. *"1964" was substituted for "1954" by the Finance (No. 2) Act, 1977, w.e.f. 1-4-1978.

13. Substituted for "1974" by the Finance Act, 1992, w.e.f. 1-4-1993.

14. For the meaning of the expression "became the property of the assessee", *see* Taxmann's Direct Taxes Manual, Vol. 3.

15. Inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

16. Substituted for "1st day of January, *1964" by the Finance Act, 1986, w.e.f. 1-4-1987. *"1964" was substituted for "1954" by the Finance (No. 2) Act, 1977, w.e.f. 1-4-1978.

17. Substituted for "1974" by the Finance Act, 1992, w.e.f. 1-4-1993.

18. For the meaning of the terms "became the property of the assessee" and "fair", *see* Taxmann's Direct Taxes Manual, Vol. 3.

19. Omitted by the Finance Act, 1966, w.e.f. 1-4-1966. Original clause (*iv*) was inserted by the Finance Act, 1964, w.e.f. 1-4-1964.

20. Inserted by the Finance Act, 1964, w.e.f. 1-4-1964.

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(*b*) the conversion of any shares of the company into stock,

(*c*) the re-conversion of any stock of the company into shares,

(*d*) the sub-division of any of the shares of the company into shares of smaller amount, or

(*e*) the conversion of one kind of shares of the company into another kind,

means the cost of acquisition of the asset calculated with reference to the cost of acquisition of the shares or stock from which such asset is derived.]

(3) Where the cost for which the previous owner acquired the property cannot be ascertained, the cost of acquisition to the previous owner means the fair market value on the date on which the capital asset became the property of the previous owner.

[21][**Reference to Valuation Officer.**

[22]**55A.** With a view to ascertaining the fair market value of a capital asset for the purposes of this Chapter[23], the [24][Assessing] Officer may refer the valuation of capital asset to a Valuation Officer—

(*a*) in a case where the value of the asset as claimed by the assessee is in accordance with the estimate made by a registered valuer, if the [24][Assessing] Officer is of opinion that the value so claimed is less than its fair market value ;

(*b*) in any other case, if the [24][Assessing] Officer is of opinion—

(*i*) that the fair market value of the asset exceeds the value of the asset as claimed by the assessee by more than such percentage[25] of the value of the asset as so claimed or by more than such amount[25] as may be prescribed in this behalf ; or

(*ii*) that having regard to the nature of the asset and other relevant circumstances, it is necessary so to do,

[26]and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clauses (*ha*) and (*i*) of sub-section (1) and sub-sections

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21. Inserted by the Taxation Laws (Amendment) Act, 1972, w.e.f. 1-1-1973.

22. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

23. For the meaning of the expression "with a view to . . . a capital asset for the purposes of this Chapter", *see* Taxmann's Direct Taxes Manual, Vol. 3.

24. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

25. Percentage of value of asset referred to in section 55A(*b*)(*i*) : 15%/Amount referred to in section 55A(*b*)(*i*) : Rs. 25,000. [Rule 111AA]

26. *See* rule 111AB. Prescribed form of report of valuation by registered valuer (*vide* Wealth-tax Rules) are as follows :

(*i*)	Immovable property (other than agricultural lands, plantations, forests, mines and quarries)	Form O-1
(*ii*)	Agricultural lands (other than coffee, tea, rubber and cardamom plantations)	Form O-2
(*iii*)	Coffee, tea, rubber or cardamom plantations	Form O-3
(*iv*)	Forests	Form O-4
(*v*)	Mines and quarries	Form O-5

(Contd. on p. 1.348)

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(3A) and (4) of section 23, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall with the necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the [27][Assessing] Officer under sub-section (1) of section 16A of that Act.

Explanation.—In this section, "Valuation Officer" has the same meaning, as in clause (*r*) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).]

F.—Income from other sources

Income from other sources.

[28]**56.** (1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head "Income from other sources", if it is not chargeable to income-tax under any of the heads specified in section 14, items A to E.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely :—

(*i*) dividends ;

[29][(*ia*) income referred to in sub-clause (*viii*) of clause (*24*) of section 2 ;]

[30][(*ib*) income referred to in sub-clause (*ix*) of clause (*24*) of section 2 ;]

[31][(*ic*) income referred to in sub-clause (*x*) of clause (*24*) of section 2, if such income is not chargeable to income-tax under the head "Profits and gains of business or profession" ;]

[32][(*id*) income by way of interest on securities, if the income is not chargeable to income-tax under the head "Profits and gains of business or profession" ;]

(*ii*) income from machinery, plant or furniture belonging to the assessee and let on hire, if the income is not chargeable to income-tax under the head "Profits and gains of business or profession";

(Contd. from p. 1.347)

(*vi*)	Stocks, shares, debentures, securities, shares in partnership firms and business assets including goodwill but excluding those referred to in any other item in this Table	Form O-6
(*vii*)	Machinery and plant	Form O-7
(*viii*)	Jewellery	Form O-8
(*ix*)	Work of art	Form O-9
(*x*)	Life interest, reversions and interest in expectancy	Form O-10.

27. Substituted for "Wealth-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

28. *See* also Letter [F.No. 40/29/67-IT(A-I)], dated 22-5-1967, Circular No. 371, dated 30-11-1983, Circular No. 409, dated 12-2-1985 and Circular No. 3-D(XXXI-20), dated 30-3-1967. For details, *see* Taxmann's Master Guide to Income-tax Act.

For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

29. Inserted by the Finance Act, 1965, w.e.f. 1-4-1965.

30. Inserted by the Finance Act, 1972, w.e.f. 1-4-1972.

31. Inserted by the Finance Act, 1987, w.e.f. 1-4-1988.

32. Inserted by the Finance Act, 1988, w.e.f. 1-4-1989.

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(*iii*) where an assessee lets on hire machinery, plant or furniture belonging to him and also buildings, and the letting of the buildings is inseparable from the letting of the said machinery, plant or furniture, the income from such letting, if it is not chargeable to income-tax under the head "Profits and gains of business or profession";

[33][(*iv*) income referred to in sub-clause (*xi*) of clause (*24*) of section 2, if such income is not chargeable to income-tax under the head "Profits and gains of business or profession" or under the head "Salaries";]

[34][(*v*) where any sum of money exceeding twenty-five thousand rupees is received without consideration by an individual or a Hindu undivided family from any person on or after the 1st day of September, 2004 [35][but before the 1st day of April, 2006], the whole of such sum :

Provided that this clause shall not apply to any sum of money received—

(*a*) from any relative; or

(*b*) on the occasion of the marriage of the individual; or

(*c*) under a will or by way of inheritance; or

(*d*) in contemplation of death of the payer; or

[36][(*e*) from any local authority as defined in the *Explanation* to clause (*20*) of section 10; or

(*f*) from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (*23C*) of section 10; or

(*g*) from any trust or institution registered under section 12AA.]

Explanation.—For the purposes of this clause, "relative" means—

(*i*) spouse of the individual;

(*ii*) brother or sister of the individual;

(*iii*) brother or sister of the spouse of the individual;

(*iv*) brother or sister of either of the parents of the individual;

(*v*) any lineal ascendant or descendant of the individual;

(*vi*) any lineal ascendant or descendant of the spouse of the individual;

(*vii*) spouse of the person referred to in clauses (*ii*) to (*vi*);]

[37][(*vi*) where any sum of money, the aggregate value of which exceeds fifty thousand rupees, is received without consideration, by an individual or a Hindu undivided family, in any previous year from any person or persons on or after the 1st day of April, 2006 [38][but before the 1st day of October, 2009], the whole of the aggregate value of such sum:

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33. Inserted by the Finance (No. 2) Act, 1996, w.e.f. 1-10-1996.

34. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005.

35. Inserted by the Taxation Laws (Amendment) Act, 2006, w.r.e.f. 1-4-2006.

36. Inserted by the Finance Act, 2007, w.r.e.f. 1-4-2005. Earlier clauses (*e*) to (*g*) were inserted by the Taxation Laws (Amendment) Act, 2006, w.e.f. 13-7-2006.

37. Inserted by the Taxation Laws (Amendment) Act, 2006, w.e.f. 1-4-2007.

38. Inserted by the Finance (No. 2) Act, 2009, w.e.f. 1-10-2009.

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Provided that this clause shall not apply to any sum of money received—

(*a*) from any relative; or

(*b*) on the occasion of the marriage of the individual; or

(*c*) under a will or by way of inheritance; or

(*d*) in contemplation of death of the payer; or

(*e*) from any local authority as defined in the *Explanation* to clause (*20*) of section 10; or

(*f*) from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (*23C*) of section 10; or

(*g*) from any trust or institution registered under section 12AA.

Explanation.—For the purposes of this clause, "relative" means—

(*i*) spouse of the individual;

(*ii*) brother or sister of the individual;

(*iii*) brother or sister of the spouse of the individual;

(*iv*) brother or sister of either of the parents of the individual;

(*v*) any lineal ascendant or descendant of the individual;

(*vi*) any lineal ascendant or descendant of the spouse of the individual;

(*vii*) spouse of the person referred to in clauses (*ii*) to (*vi*);]

[38a][(*vii*) where an individual or a Hindu undivided family receives, in any previous year, from any person or persons on or after the 1st day of October, 2009,—

(*a*) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;

[38b]**[**(b) *any immovable property, without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;***]**

(*c*) any property, other than immovable property,—

(*i*) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;

(*ii*) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration :

38a. Inserted by the Finance (No. 2) Act, 2009, w.e.f. 1-10-2009.

38b. Substituted by the Finance Act, 2010, w.r.e.f. **1-10-2009**. Prior to its substitution, sub-clause (*b*) read as under :

"(*b*) any immovable property,—

(*i*) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;

(*ii*) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration;"

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Provided that where the stamp duty value of immovable property as referred to in sub-clause (*b*) is disputed by the assessee on grounds mentioned in sub-section (2) of section 50C, the Assessing Officer may refer the valuation of such property to a Valuation Officer, and the provisions of section 50C and sub-section (15) of section 155 shall, as far as may be, apply in relation to the stamp duty value of such property for the purpose of sub-clause (*b*) as they apply for valuation of capital asset under those sections :

Provided further that this clause shall not apply to any sum of money or any property received—

(*a*) from any relative; or

(*b*) on the occasion of the marriage of the individual; or

(*c*) under a will or by way of inheritance; or

(*d*) in contemplation of death of the payer or donor, as the case may be; or

(*e*) from any local authority as defined in the *Explanation* to clause (*20*) of section 10; or

(*f*) from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (*23C*) of section 10; or

(*g*) from any trust or institution registered under section 12AA.

Explanation.—For the purposes of this clause,—

(*a*) "assessable" shall have the meaning assigned to it in the *Explanation 2* to sub-section (2) of section 50C;

(*b*) "fair market value" of a property, other than an immovable property, means the value determined in accordance with the method as may be prescribed[38c];

(*c*) "jewellery" shall have the meaning assigned to it in the *Explanation* to sub-clause (*ii*) of clause (*14*) of section 2;

(*d*) "property" [38d]**[***means the following capital asset of the assessee, namely:*—**]**

(*i*) immovable property being land or building or both;

(*ii*) shares and securities;

(*iii*) jewellery;

(*iv*) archaeological collections;

(*v*) drawings;

(*vi*) paintings;

(*vii*) sculptures; [38e]**[*****]**

(*viii*) any work of art; [38f]**[***or***]**

[38f]**[**(ix) *bullion;***]**

(*e*) "relative" shall have the meaning assigned to it in the *Explanation* to clause (*vi*) of sub-section (2) of this section;

38c. See rules 11U & 11UA.

38d. Substituted for "means—" by the Finance Act, 2010, w.r.e.f. **1-10-2009**.

38e. Word "or" omitted by the Finance Act, 2010, w.e.f. **1-6-2010**.

38f. Inserted, *ibid.*

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(*f*) "stamp duty value" means the value adopted or assessed or assessable by any authority of the Central Government or a State Government for the purpose of payment of stamp duty in respect of an immovable property;]

[38g]**[***(viia) where a firm or a company not being a company in which the public are substantially interested, receives, in any previous year, from any person or persons, on or after the 1st day of June, 2010, any property, being shares of a company not being a company in which the public are substantially interested,—*

(i) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;

(ii) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration :

Provided *that this clause shall not apply to any such property received by way of a transaction not regarded as transfer under clause (*via*) or clause (*vic*) or clause (*vicb*) or clause (*vid*) or clause (*vii*) of section 47.*

Explanation.—*For the purposes of this clause, "fair market value" of a property, being shares of a company not being a company in which the public are substantially interested, shall have the meaning assigned to it in the* Explanation *to clause (*vii*);***]**

[39][*(viii) income by way of interest received on compensation or on enhanced compensation referred to in clause (*b*) of section 145A.*]

Deductions.

[40]**57.** The income chargeable under the head "Income from other sources" shall be computed after making the following deductions, namely :—

(*i*) in the case of dividends, [41][other than dividends referred to in section 115-O,] [42][or interest on securities], any reasonable sum paid by way of commission or remuneration to a banker or any other person for the purpose of realising such dividend [43][or interest] on behalf of the assessee ;

[44][(*ia*) in the case of income of the nature referred to in sub-clause (*x*) of clause (*24*) of section 2 which is chargeable to income-tax under the head "Income from other sources", deductions, so far as may be, in

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38g. Inserted by the Finance Act, 2010, w.e.f. **1-6-2010**.

39. Inserted by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2010**.

40. *See* also Circular No. 156, dated 23-12-1974, Circular No. 594, dated 27-2-1991, Circular No. 648, dated 30-3-1993 and Circular No. 677, dated 28-1-1994. For details, *see* Taxmann's Master Guide to Income-tax Act.

For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

41. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

42. Inserted by the Finance Act, 1988, w.e.f. 1-4-1989.

43. Inserted, *ibid.*

44. Inserted by the Finance Act, 1987, w.e.f. 1-4-1988.

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accordance with the provisions of clause (*va*) of sub-section (1) of section 36 ;]

(*ii*) in the case of income of the nature referred to in clauses (*ii*) and (*iii*) of sub-section (2) of section 56, deductions, so far as may be, in accordance with the provisions of sub-clause (*ii*) of clause (*a*) and clause (*c*) of section 30, section 31 and [45][sub-sections (1) [46][***] and (2)] of section 32 and subject to the provisions of [47][section 38] ;

[48][(*iia*) in the case of income in the nature of family pension, a deduction of a sum equal to thirty-three and one-third per cent of such income or [49][fifteen] thousand rupees, whichever is less.

Explanation.—For the purposes of this clause, "family pension" means a regular monthly amount payable by the employer to a person belonging to the family of an employee in the event of his death ;]

(*iii*) any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose[50] of making or earning such income;

[51][(iv) *in the case of income of the nature referred to in clause (*viii*) of sub-section (2) of section 56, a deduction of a sum equal to fifty per cent of such income and no deduction shall be allowed under any other clause of this section*.]

[52][***]

Explanation.—[*Omitted by the Finance Act, 1988, w.e.f. 1-4-1989.*]

Amounts not deductible.

[53]**58.** [54][(1)] Notwithstanding anything to the contrary contained in section 57, the following amounts shall not be deductible in computing the income chargeable under the head "Income from other sources", namely :—

(*a*) in the case of any assessee,—

(*i*) any personal expenses of the assessee ;

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45. Substituted for "sub-sections (1) and (2)" by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

46. ", (1A)" omitted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988.

47. Substituted for "sections 34 and 38", *ibid.*

48. Inserted by the Finance Act, 1989, w.e.f. 1-4-1990.

49. Substituted for "twelve" by the Finance Act, 1997, w.e.f. 1-4-1998.

50. For the meaning of the term "purpose", *see* Taxmann's Direct Taxes Manual, Vol. 3.

51. Inserted by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2010**.

52. Proviso omitted by the Finance Act, 1994, w.e.f. 1-4-1995. Prior to its omission, proviso was inserted by the Finance Act, 1976, w.e.f. 1-6-1976 and later on substituted by the Finance (No. 2) Act, 1991, w.r.e.f. 1-4-1989.

53. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

54. Inserted by the Finance Act, 1968, w.e.f. 1-4-1968 and is deemed always to have been there *vide* section 3 of the Income-tax (Amendment) Act, 1972.

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[55][(*ia*) any expenditure of the nature referred to in sub-section (12)[56] of section 40A ;]

(*ii*) any interest chargeable under this Act which is payable outside India (not being interest on a loan issued for public subscription before the 1st day of April, 1938) on which tax has not been paid or deducted under Chapter XVII-B [57][***] ;

(*iii*) any payment which is chargeable under the head "Salaries", if it is payable outside India, unless tax has been paid thereon or deducted therefrom under Chapter XVII-B ;

(*iv*) [58][***]

(*b*) [59][***]

[60][(1A) The provisions of sub-clause (*iia*) of clause (*a*) of section 40 shall, so far as may be, apply in computing the income chargeable under the head "Income from other sources" as they apply in computing the income chargeable under the head "Profits and gains of business or profession".]

[61][(2) The provisions of section 40A shall, so far as may be, apply in computing the income chargeable under the head "Income from other sources" as they apply in computing the income chargeable under the head "Profits and gains of business or profession".]

[62][(3) In the case of an assessee, being a foreign company, the provisions of section 44D shall, so far as may be, apply in computing the income chargeable under the head "Income from other sources" as they apply in computing the income chargeable under the head "Profits and gains of business or profession".]

[63][(4) In the case of an assessee having income chargeable under the head "Income from other sources", no deduction in respect of any expenditure or allowance in connection with such income shall be allowed under any provision of this Act in computing the income by way of any winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature, whatsoever :

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55. Inserted by the Finance Act, 1985, w.e.f. 1-4-1986.

56. Sub-section (12) of section 40A was omitted by the Finance Act, 1992, w.e.f. 1-4-1993.

57. "and in respect of which there is no person in India who may be treated as an agent under section 163" omitted by the Finance Act, 1988, w.e.f. 1-4-1989.

58. Omitted by the Finance (No. 2) Act, 1971, w.e.f. 1-4-1972. Original sub-clause was inserted by the Finance Act, 1968, w.e.f. 1-4-1969.

59. Omitted by the Finance Act, 1988, w.e.f. 1-4-1989. Prior to its omission, clause (*b*) was amended by the Finance Act, 1963, w.e.f. 1-4-1963 and Finance Act, 1968, w.e.f. 1-4-1969.

60. Inserted by the Income-tax (Amendment) Act, 1972, w.r.e.f. 1-4-1962 subject to savings prescribed by section 5 of the Amendment Act regarding certain cases decided by the Supreme Court.

61. Inserted by the Finance Act, 1968, w.e.f. 1-4-1968.

62. Inserted by the Finance Act, 1976, w.e.f. 1-6-1976.

63. Inserted by the Finance Act, 1986, w.e.f. 1-4-1987.

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Provided that nothing contained in this sub-section shall apply in computing the income of an assessee, being the owner of horses maintained by him for running in horse races, from the activity of owning and maintaining such horses.

Explanation.—For the purposes of this sub-section, "horse race" means a horse race upon which wagering or betting may be lawfully made.]

Profits chargeable to tax.

59. (1) The provisions of sub-section (1) of section 41 shall apply, so far as may be, in computing the income of an assessee under section 56, as they apply in computing the income of an assessee under the head "Profits and gains of business or profession".

(2) [64][***]

(3) [65][***]

[66][***]

CHAPTER V

INCOME OF OTHER PERSONS, INCLUDED IN ASSESSEE'S TOTAL INCOME

Transfer of income where there is no transfer of assets.

[67]**60.** All income arising to any person by virtue of a transfer[68] whether revocable or not and whether effected before or after the commencement of this Act shall, where there is no transfer of the assets from which the income arises, be chargeable to income-tax as the income of the transferor and shall be included in his total income.

Revocable transfer of assets.

61. All income arising to any person by virtue of a revocable transfer[68] of assets shall be chargeable to income-tax as the income of the transferor and shall be included in his total income.

Transfer irrevocable for a specified period.

[69]**62.** (1) The provisions of section 61 shall not apply to any income arising to any person by virtue of a transfer—

(*i*) by way of trust which is not revocable during the lifetime of the beneficiary, and, in the case of any other transfer, which is not revocable during the lifetime of the transferee ; or

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64. Omitted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988.

65. Omitted, *ibid*. Prior to its omission, sub-section (3) was inserted by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

66. Omitted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988.

67. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

68. For the meaning of term/expression "transfer", *see* Taxmann's Direct Taxes Manual, Vol. 3.

69. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

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(*ii*) made before the 1st day of April, 1961, which is not revocable for a period exceeding six years :

Provided that the transferor derives no direct or indirect benefit from such income in either case.

(2) Notwithstanding anything contained in sub-section (1), all income arising to any person by virtue of any such transfer shall be chargeable to income-tax as the income of the transferor as and when the power to revoke the transfer arises, and shall then be included in his total income.

"Transfer" and "revocable transfer" defined.

[70]**63.** For the purposes of sections 60, 61 and 62 and of this section,—

(*a*) a transfer[71] shall be deemed to be revocable if—

(*i*) it contains any provision for the re-transfer directly or indirectly[72] of the whole or any part of the income or assets to the transferor, or

(*ii*) it, in any way, gives the transferor a right to re-assume power directly or indirectly over the whole or any part of the income or assets ;

(*b*) "transfer"[71] includes any settlement, trust, covenant, agreement or arrangement[71].

Income of individual to include income of spouse, minor child, etc.

[73]**64.** [74][[75][(1)] In computing the total income of any individual, there shall be included all such income as arises directly or indirectly—

(*i*) [76][*Omitted by the Finance Act, 1992, w.e.f. 1-4-1993*.]

(*ii*) to the spouse[77] of such individual by way of salary, commission, fees or any other form of remuneration whether in cash or in kind from a concern in which such individual has a substantial interest :

[78][**Provided** that nothing in this clause shall apply in relation to any income arising to the spouse where the spouse[77] possesses [77]technical

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70. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

71. For the meaning of the terms "transfer" and "arrangement", *see* Taxmann's Direct Taxes Manual, Vol. 3.

72. For the meaning of term "transfer" and "indirectly", *see* Taxmann's Direct Taxes Manual, Vol. 3.

73. *See* also Letter [F. No. 12/2/63-IT (A-I)], dated 20-11-1963. For details, *see* Taxmann's Master Guide to Income-tax Act.

For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

74. Substituted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

75. Inserted by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

76. Prior to omission, clause (*i*) as reintroduced by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989, which was earlier omitted by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date.

77. For the meaning of the term/expression "spouse" and "technical or professional qualifications", *see* Taxmann's Direct Taxes Manual, Vol. 3.

78. Restored to its original version by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

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or professional qualifications and the income is solely attributable to the application of his or her technical or professional knowledge and experience ;]

(*iii*) [79][*Omitted by the Finance Act, 1992, w.e.f. 1-4-1993.*]

(*iv*) subject to the provisions of clause (*i*) of section 27, [80][* * *] to the spouse[81] of such individual from assets transferred[81] directly or indirectly to the spouse by such individual otherwise than for adequate consideration[81] or in connection with an agreement to live apart ;

(*v*) [82][*Omitted by the Finance Act, 1992, w.e.f. 1-4-1993.*]

(*vi*) to the son's wife, [83][* * *] of such individual, from assets transferred[81] directly or indirectly on or after the 1st day of June, 1973, to the son's wife [84][* * *] by such individual otherwise than for adequate consideration; [85][* * *]

(*vii*) to any person[86] or association of persons from assets transferred[86] directly or indirectly otherwise than for adequate consideration[86] to the person or association of persons by such individual, to the extent to which the income from such assets is for the immediate or deferred benefit[86] of his or her spouse [87][* * *]; and]

[88][(*viii*) to any person[86] or association of persons from assets transferred[86] directly or indirectly on or after the 1st day of June, 1973, otherwise than for adequate consideration[89], to the person or association of persons by such individual, to the extent to which the income from such assets is for the immediate or deferred benefit[89] of his son's wife [90][* * *].]

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79. Prior to its omission, clause (*iii*) was reintroduced by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

80. Words "in a case not falling under clause (*i*) of this sub-section," omitted by the Finance Act, 1992, w.e.f. 1-4-1993. Earlier these words were reintroduced by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

81. For the meaning of the terms/expressions "spouse", "transferred" and "adequate consideration", *see* Taxmann's Direct Taxes Manual, Vol. 3.

82. Prior to its omission, clause (*v*) was amended by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

83. Words "or son's minor child," omitted by the Finance Act, 1992, w.e.f. 1-4-1993.

84. Words "or son's minor child," omitted, *ibid.*

85. "and" omitted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-4-1985.

86. For the meaning of the terms/expressions "any person", "transferred", "adequate consideration" and "deferred benefit", *see* Taxmann's Direct Taxes Manual, Vol. 3.

87. Words "or minor child or both" omitted by the Finance Act, 1992, w.e.f. 1-4-1993. Earlier these words were amended by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-4-1985 and Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

88. Inserted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-4-1985.

89. For the meaning of the expression "adequate consideration" and "deferred benefit", *see* Taxmann's Direct Taxes Manual, Vol. 3.

90. Words "or son's minor child or both" omitted by the Finance Act, 1992, w.e.f. 1-4-1993.

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[91][*Explanation 1*.—For the purposes of clause (*ii*), the individual in computing whose total income the income referred to in that clause is to be included, shall be the husband or wife whose total income (excluding the income referred to in that clause) is greater ; and where any such income is once included in the total income of either spouse, any such income arising in any succeeding year shall not be included in the total income of the other spouse unless the Assessing Officer is satisfied, after giving that spouse an opportunity of being heard, that it is necessary[92] so to do.]

Explanation 2.—For the purposes of clause (*ii*), an individual shall be deemed to have a substantial interest in a concern—

(*i*) in a case where the concern is a company, if its shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than twenty per cent of the voting power are, at any time during the previous year, owned beneficially by such person or partly by such person and partly by one or more of his relatives ;

(*ii*) in any other case, if such person is entitled, or such person and one or more of his relatives are entitled in the aggregate, at any time during the previous year, to not less than twenty per cent of the profits of such concern.

Explanation 2A.—[93][*Omitted by the Finance Act, 1992, w.e.f. 1-4-1993*.]

[94][*Explanation 3*.—For the purposes of clauses (*iv*) and (*vi*), where the assets transferred directly or indirectly by an individual to his spouse or son's wife (hereafter in this *Explanation* referred to as "the transferee") are invested by the transferee,—

(*i*) in any business, such investment being not in the nature of contribution of capital as a partner in a firm or, as the case may be, for being admitted to the benefits of partnership in a firm, that part of the income arising out of the business to the transferee in any previous year, which bears the same proportion to the income of the transferee from the business as the value of the assets aforesaid as on the first day of the previous year bears to the total investment in the business by the transferee as on the said day ;

(*ii*) in the nature of contribution of capital as a partner in a firm, that part of the interest receivable by the transferee from the firm in any

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91. Substituted for existing *Explanations 1* and *1A* by the Finance Act, 1992, w.e.f. 1-4-1993. Prior to substitution, *Explanations 1* and *1A* were amended by the Finance Act, 1979, w.e.f. 1-4-1980, the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989 and the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

92. For the meaning of the term "necessary", *see* Taxmann's Direct Taxes Manual, Vol. 3.

93. Prior to its omission, *Explanation 2A* was inserted by the Finance Act, 1979, w.e.f. 1-4-1980 and later amended by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989 and the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

94. Substituted by the Finance Act, 1992, w.e.f. 1-4-1993. Prior to substitution, *Explanation 3* was amended by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989 and the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

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previous year, which bears the same proportion to the interest receivable by the transferee from the firm as the value of investment aforesaid as on the first day of the previous year bears to the total investment by way of capital contribution as a partner in the firm as on the said day,

shall be included in the total income of the individual in that previous year.]

[95][(1A) In computing the total income of any individual, there shall be included all such income as arises or accrues to his minor child [96][, not being a minor child suffering from any disability of the nature specified in section 80U] :

Provided that nothing contained in this sub-section shall apply in respect of such income as arises or accrues to the minor child on account of any—

(*a*) manual work done by him ; or

(*b*) activity involving application of his skill, talent or specialised knowledge and experience.

Explanation.—For the purposes of this sub-section, the income of the minor child shall be included,—

(*a*) where the marriage of his parents subsists, in the income of that parent whose total income (excluding the income includible under this sub-section) is greater ; or

(*b*) where the marriage of his parents does not subsist, in the income of that parent who maintains the minor child in the previous year,

and where any such income is once included in the total income of either parent, any such income arising in any succeeding year shall not be included in the total income of the other parent, unless the Assessing Officer is satisfied, after giving that parent an opportunity of being heard, that it is necessary so to do.]

[97][(2) Where, in the case of an individual being a member of a Hindu undivided family, any property having been the separate property of the individual has, at any time after the 31st day of December, 1969, been converted by the individual into property belonging to the family through the act of impressing such separate property with the character of property belonging to the family or throwing it [98][into the common stock of the family or been transferred by the individual, directly or indirectly, to the family otherwise than for adequate consideration (the property so converted or transferred being hereinafter referred to as the converted property)], then, notwithstanding anything contained in any other provision of this Act or in any other law for the time being in force, for the purpose of computation of the total income of the individual under this Act for any assessment year commencing on or after the 1st day of April, 1971,—

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95. Inserted by the Finance Act, 1992, w.e.f. 1-4-1993.

96. Inserted by the Finance Act, 1994, w.e.f. 1-4-1995.

97. Inserted by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

98. Substituted for "into the common stock of the family (such property being hereinafter referred to as the converted property)" by the Finance Act, 1979, w.e.f. 1-4-1980.

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(*a*) the individual shall be deemed to have transferred the converted property, through the family, to the members of the family for being held by them jointly ;

(*b*) the income derived from the converted property or any part thereof[99] [1][* * *] shall be deemed to arise to the individual and not to the family ;

[2][(*c*) where the converted property has been the subject-matter of a partition (whether partial or total) amongst the members of the family, the income derived from such converted property as is received by the spouse [3][* * *] on partition shall be deemed to arise to the spouse [3][* * *] from assets transferred indirectly by the individual to the spouse [3][* * *] and the provisions of sub-section (1) shall, so far as may be, apply accordingly :]

Provided that the income referred to in clause (*b*) or clause (*c*) shall, on being included in the total income of the individual, be excluded from the total income of the family or, as the case may be, the spouse [4][* * *] of the individual.

Explanation [5][*1*].—For the purposes of sub-section (2),—

[6][* * *] "property" includes any interest in property, movable or immovable, the proceeds of sale thereof and any money or investment for the time being representing the proceeds of sale thereof and where the property is converted into any other property by any method, such other property.

[7][* * *]]

[8][*Explanation 2.*—For the purposes of this section, "income" includes loss.]

Liability of person in respect of income included in the income of another person.

65. Where, by reason of the provisions contained in this Chapter or in clause (*i*) of section 27, the income from any asset or from membership in a firm of a person other than the assessee is included in the total income of the assessee, the person in whose name such asset stands or who is a member of the firm shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be liable, on the service of a notice of demand by the [9][Assessing] Officer in this behalf, to pay that portion of the tax levied on the

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99. For the meaning of the expression "or any part thereof", *see* Taxmann's Direct Taxes Manual, Vol. 3.

1. "in so far as it is attributable to the interest of the individual in the property of the family" omitted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

2. Substituted, *ibid.*

3. Words "or minor child" omitted by the Finance Act, 1992, w.e.f. 1-4-1993.

4. Words "or minor child" omitted, *ibid.* Earlier word "child" was substituted for "son" by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

5. Inserted by the Finance Act, 1979, w.e.f. 1-4-1980.

6. "(1)" omitted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

7. Clause (*2*) omitted, *ibid.*

8. Inserted by the Finance Act, 1979, w.e.f. 1-4-1980.

9. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

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assessee which is attributable to the income so included, and the provisions of Chapter XVII-D shall, so far as may be, apply accordingly :

Provided that where any such asset is held jointly by more than one person, they shall be jointly and severally liable to pay the tax which is attributable to the income from the assets so included.

CHAPTER VI

AGGREGATION OF INCOME AND SET OFF OR CARRY FORWARD OF LOSS

Aggregation of income

Total income.

66. In computing the total income of an assessee, there shall be included all income on which no income-tax is payable under Chapter VII [10][* * *].

Method of computing a partner's share in the income of the firm.

67. [11][*Omitted by the Finance Act, 1992, w.e.f. 1-4-1993.*]

[12][**Method of computing a member's share in income of association of persons or body of individuals.**

67A. (1) In computing the total income of an assessee who is a member of an association of persons or a body of individuals wherein the shares of the members are determinate and known [other than a company or a cooperative society or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any law corresponding to that Act in force in any part of India], whether the net result of the computation of the total income of such association or body is a profit or a loss, his share (whether a net profit or net loss) shall be computed as follows, namely :—

(*a*) any interest, salary, bonus, commission or remuneration by whatever name called, paid to any member in respect of the previous year shall be deducted from the total income of the association or body and the balance ascertained and apportioned among the members in the proportions in which they are entitled to share in the income of the association or body ;

(*b*) where the amount apportioned to a member under clause (*a*) is a profit, any interest, salary, bonus, commission or remuneration aforesaid paid to the member by the association or body in respect of the

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10. "and any amount in respect of which the assessee is entitled to a deduction from the amount of income-tax on his total income with which he is chargeable for any assessment year in accordance with, and to the extent provided in, sections 87, 87A and 88" omitted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968. Earlier "87A" was inserted in the omitted portion by the Finance Act, 1964, w.e.f. 1-4-1964.

11. Prior to its omission, section 67 was amended by the Finance Act, 1968, w.e.f. 1-4-1969, the Finance (No. 2) Act, 1971, w.e.f. 1-4-1971, the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989 and the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

12. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

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previous year shall be added to that amount, and the result shall be treated as the member's share in the income of the association or body ;

(*c*) where the amount apportioned to a member under clause (*a*) is a loss, any interest, salary, bonus, commission or remuneration aforesaid paid to the member by the association or body in respect of the previous year shall be adjusted against that amount, and the result shall be treated as the member's share in the income of the association or body.

(2) The share of a member in the income or loss of the association or body, as computed under sub-section (1), shall, for the purposes of assessment, be apportioned under the various heads of income in the same manner in which the income or loss of the association or body has been determined under each head of income.

(3) Any interest paid by a member on capital borrowed by him for the purposes of investment in the association or body shall, in computing his share chargeable under the head "Profits and gains of business or profession" in respect of his share in the income of the association or body, be deducted from his share.

Explanation.—In this section, "paid" has the same meaning as is assigned to it in clause (*2*) of section 43.]

Cash credits.

[13]**68.** [14]Where any sum is found credited in the books[15] of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the [16][Assessing] Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.

Unexplained investments.

[17]**69.** Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the [16][Assessing] Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year.

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13. *See* also Circular No. 5, dated 20-2-1969 and Letter [F.No. 222/7/70-IT(A-I)], dated 5-8-1971. For details, *see* Taxmann's Master Guide to Income-tax Act.

14. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

15. For the meaning of the term/expression "any sum is found credited in the books" and "books", *see* Taxmann's Direct Taxes Manual, Vol. 3.

16. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

17. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

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[18][**Unexplained money, etc.**

[19]**69A.** Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income[20], and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the [21][Assessing] Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income[20] of the assessee for such financial year.]

[22][**Amount of investments, etc., not fully disclosed in books of account.**

[19]**69B.** Where in any financial year the assessee has made investments or is found to be the owner of any bullion, jewellery or other valuable article, and the [23][Assessing] Officer finds that the amount expended on making such investments or in acquiring such bullion, jewellery or other valuable article exceeds the amount recorded in this behalf in the books of account maintained by the assessee for any source of income, and the assessee offers no explanation about such excess amount or the explanation offered by him is not, in the opinion of the [24][Assessing] Officer, satisfactory, the excess amount may be deemed to be the income of the assessee for such financial year.]

[25][**Unexplained expenditure, etc.**

[26]**69C.** Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not, in the opinion of the [24][Assessing] Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year :]

[27][**Provided** that, notwithstanding anything contained in any other provision of this Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income.]

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18. Inserted by the Finance Act, 1964, w.e.f. 1-4-1964.

19. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

20. For the meaning of the term "income", *see* Taxmann's Direct Taxes Manual, Vol. 3.

21. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

22. Inserted by the Finance Act, 1965, w.e.f. 1-4-1965.

23. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

24. Substituted for "Income-tax", *ibid.*

25. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

26. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

27. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999.

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[28][**Amount borrowed or repaid on hundi.**

[29]**69D.** Where any amount is borrowed on a *hundi* from, or any amount due thereon is repaid to, any person otherwise than through an account payee cheque drawn on a bank, the amount so borrowed or repaid shall be deemed to be the income of the person borrowing or repaying the amount aforesaid for the previous year in which the amount was borrowed or repaid, as the case may be :

Provided that, if in any case any amount borrowed on a *hundi* has been deemed under the provisions of this section to be the income of any person, such person shall not be liable to be assessed again in respect of such amount under the provisions of this section on repayment of such amount.

Explanation.—For the purposes of this section, the amount repaid shall include the amount of interest paid on the amount borrowed.]

Set off, or carry forward and set off

[30][**Set off of loss from one source against income from another source under the same head of income.**

70. (1) Save as otherwise provided in this Act, where the net result for any assessment year in respect of any source falling under any head of income, other than "Capital gains", is a loss, the assessee shall be entitled to have the amount of such loss set off against his income from any other source under the same head.

(2) Where the result of the computation made for any assessment year under sections 48 to 55 in respect of any short-term capital asset is a loss, the assessee shall be entitled to have the amount of such loss set off against the income, if any, as arrived at under a similar computation made for the assessment year in respect of any other capital asset.

(3) Where the result of the computation made for any assessment year under sections 48 to 55 in respect of any capital asset (other than a short-term capital asset) is a loss, the assessee shall be entitled to have the amount of such loss set off against the income, if any, as arrived at under a similar computation made for the assessment year in respect of any other capital asset not being a short-term capital asset.]

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28. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1977.

29. *See* also Circular No. 221, dated 6-6-1977 and Circular No. 208, dated 15-11-1976. For details, *see* Taxmann's Master Guide to Income-tax Act.

30. Substituted by the Finance Act, 2002, w.e.f. 1-4-2003. Prior to its substitution, section 70, as substituted by the Finance (No. 2) Act, 1962, w.e.f. 1-4-1962 and amended by the Finance Act, 1987, w.e.f. 1-4-1988, read as under :

"70. *Set off of loss from one source against income from another source under the same head of income*.—Save as otherwise provided in this Act, where the net result for any assessment year in respect of any source falling under any head of income is a loss, the assessee shall be entitled to have the amount of such loss set off against his income from any other source under the same head."

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[31][**Set off of loss from one head against income from another.**

[32]**71.** (1) Where in respect of any assessment year the net result of the computation under any head of income, other than "Capital gains", is a loss and the assessee has no income under the head "Capital gains", he shall, subject to the provisions of this Chapter, be entitled to[33] have the amount of such loss set off against his income, if any, assessable for that assessment year under any other head.

(2) Where in respect of any assessment year, the net result of the computation under any head of income, other than "Capital gains", is a loss and the assessee has income assessable under the head "Capital gains", such loss may, subject to the provisions of this Chapter, be set off against his income, if any, assessable for that assessment year under any head of income including the head "Capital gains" (whether relating to short-term capital assets or any other capital assets).

[34][(2A) Notwithstanding anything contained in sub-section (1) or sub-section (2), where in respect of any assessment year, the net result of the computation under the head "Profits and gains of business or profession" is a loss and the assessee has income assessable under the head "Salaries", the assessee shall not be entitled to have such loss set off against such income.]

(3) Where in respect of any assessment year, the net result of the computation under the head "Capital gains" is a loss and the assessee has income assessable under any other head of income, the assessee shall not be entitled to have such loss set off against income under the other head.]

[35][(4) Where the net result of the computation under the head "Income from house property" is a loss, in respect of the assessment years commencing on the 1st day of April, 1995 and the 1st day of April, 1996, such loss shall be first set off under sub-sections (1) and (2) and thereafter the loss referred to in section 71A shall be set off in the relevant assessment year in accordance with the provisions of that section.]

[36][**Transitional provisions for set off of loss under the head "Income from house property".**

71A. Where in respect of the assessment year commencing on the 1st day of April, 1993 or the 1st day of April, 1994, the net result of the computation

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31. Substituted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992. Prior to substitution, section 71 was amended by the Finance (No. 2) Act, 1962, w.e.f. 1-4-1962, Finance Act, 1987, w.e.f. 1-4-1988 and the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968.

32. *See* also Circular No. 26 (LXXVI-3), dated 7-7-1955, Circular No. 104, dated 19-2-1973 and Circular No. 587, dated 11-12-1990. For details, *see* Taxmann's Master Guide to Income-tax Act.

For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

33. For the meaning of the expression "be entitled to", *see* Taxmann's Direct Taxes Manual, Vol. 3.

34. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005.

35. Substituted by the Finance Act, 1994, w.e.f. 1-4-1995. Prior to substitution, sub-section (4) was inserted by the Finance Act, 1992, w.e.f. 1-4-1993.

36. Substituted by the Finance Act, 1994, w.e.f. 1-4-1995. Prior to substitution, section 71A was inserted by the Finance Act, 1992, w.e.f. 1-4-1993.

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under the head "Income from house property" is a loss, such loss in so far as it relates to interest on borrowed capital referred to in clause (*vi*) of sub-section (1) of section 24 and to the extent it has not been set off shall be carried forward and set off in the assessment year commencing on the 1st day of April, 1995, and the balance, if any, in the assessment year commencing on the 1st day of April, 1996, against the income under any head.]

[37][**Carry forward and set off of loss from house property.**

71B. Where for any assessment year the net result of computation under the head "Income from house property" is a loss to the assessee and such loss cannot be or is not wholly set off against income from any other head of income in accordance with the provisions of section 71, so much of the loss as has not been so set-off or where he has no income under any other head, the whole loss shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year and—

(*i*) be set off against the income from house property assessable for that assessment year; and

(*ii*) the loss, if any, which has not been set off wholly, the amount of loss not so set off,

shall be carried forward to the following assessment year, not being more than eight assessment years immediately succeeding the assessment year for which the loss was first computed.]

Carry forward and set off of business losses.

[38]**72.** [39][(1) Where for any assessment year, the net result of the computation under the head "Profits and gains of business or profession" is a loss to the assessee, not being a loss sustained in a speculation business, and such loss cannot be or is not wholly set off against income under any head of income in accordance with the provisions of section 71, so much of the loss as has not been so set off or,[40][* * *] where he has no income under any other head, the whole loss shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year, and—

(*i*) it shall be set off against the profits and gains, if any, of any business or profession carried on by him and assessable for that assessment year ;

[41][* * *]

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37. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999.

38. *See* also Circular No. 26 (LXXVI-3), dated 7-7-1955, Circular No. 104, dated 19-2-1973, Circular No. 587, dated 11-12-1990 and Circular No. 5/2009, dated 2-7-2009. For details, *see* Taxmann's Master Guide to Income-tax Act.

For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

39. Substituted by the Finance (No. 2) Act, 1962, w.e.f. 1-4-1962.

40. Words 'where the assessee has income only under the head "Capital gains" *relating to capital assets other than short-term capital assets* and has exercised the option under sub-section (2) of that section or' omitted by the Finance Act, 1987, w.e.f. 1-4-1988. In the omitted portion, expression in italics was inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968.

41. Proviso to clause (*i*) omitted by the Finance Act, 1999, w.e.f. 1-4-2000.

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(*ii*) if the loss cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on :]

[42][**Provided** that where the whole or any part of such loss is sustained in any such business as is referred to in section 33B which is discontinued in the circumstances specified in that section, and, thereafter, at any time before the expiry of the period of three years referred to in that section, such business is re-established, reconstructed or revived by the assessee, so much of the loss as is attributable to such business shall be carried forward to the assessment year relevant to the previous year in which the business is so re-established, reconstructed or revived, and—

(*a*) it shall be set off against the profits and gains, if any, of that business or any other business carried on by him and assessable for that assessment year ; and

(*b*) if the loss cannot be wholly so set off, the amount of loss not so set off shall, in case the business so re-established, reconstructed or revived continues to be carried on by the assessee, be carried forward to the following assessment year and so on for seven assessment years immediately succeeding.]

(2) Where any allowance or part thereof is, under sub-section (2) of section 32 or sub-section (4) of section 35, to be carried forward, effect shall first be given to the provisions of this section.

(3) No loss [42][(other than the loss referred to in the proviso to sub-section (1) of this section)] shall be carried forward under this section for more than eight assessment years immediately succeeding the assessment year for which the loss was first computed.

[43][**Provisions relating to carry forward and set off of accumulated loss and unabsorbed depreciation allowance in amalgamation or demerger, etc.**[43a]

72A. [44][(1) Where there has been an amalgamation of—

(*a*) a company owning an industrial undertaking or a ship or a hotel with another company; or

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42. Inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

43. Substituted by the Finance Act, 1999, w.e.f. 1-4-2000. Prior to its substitution, section 72A, was inserted by the Finance (No. 2) Act, 1977, w.e.f. 1-4-1978 and later on amended by the Finance Act, 1978, w.e.f. 1-4-1978 and Finance (No. 2) Act, 1998, w.e.f. 1-4-1999.

43a. See also Circular No. 5/2009, dated 2-7-2009. For details, *see* Taxmann's Master Guide to Income-tax Act.

44. Substituted by the Finance Act, 2007, w.e.f. 1-4-2008. Prior to its substitution, sub-section (1), as amended by the Finance Act, 2003, w.e.f. 1-4-2004 and Finance Act, 2000, w.e.f. 1-4-2000, read as under :

"(1) Where there has been an amalgamation of a company owning an industrial undertaking or a ship or a hotel with another company or an amalgamation of a banking company referred to in clause (*c*) of section 5 of the Banking Regulation Act, 1949 (10 of 1949) with a specified bank, then, notwithstanding anything contained in any other provision of this Act, the accumulated loss and the unabsorbed depreciation of the amalgamating company shall be deemed to be the loss or, as the case may be, allowance for depreciation of the amalgamated company for the previous year in which the amalgamation was effected, and other provisions of this Act relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly."

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(*b*) a banking company referred to in clause (*c*) of section 5 of the Banking Regulation Act, 1949 (10 of 1949)[45] with a specified bank; or

(*c*) one or more public sector company or companies engaged in the business of operation of aircraft with one or more public sector company or companies engaged in similar business,

then, notwithstanding anything contained in any other provision of this Act, the accumulated loss and the unabsorbed depreciation of the amalgamating company shall be deemed to be the loss or, as the case may be, allowance for unabsorbed depreciation of the amalgamated company for the previous year in which the amalgamation was effected, and other provisions of this Act relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly.]

[46][(2) Notwithstanding anything contained in sub-section (1), the accumulated loss shall not be set off or carried forward and the unabsorbed depreciation shall not be allowed in the assessment of the amalgamated company unless—

(*a*) the amalgamating company—

(*i*) has been engaged in the business, in which the accumulated loss occurred or depreciation remains unabsorbed, for three or more years;

(*ii*) has held continuously as on the date of the amalgamation at least three-fourths of the book value of fixed assets held by it two years prior to the date of amalgamation;

(*b*) the amalgamated company—

(*i*) holds continuously for a minimum period of five years from the date of amalgamation at least three-fourths of the book value of fixed assets of the amalgamating company acquired in a scheme of amalgamation;

(*ii*) continues the business of the amalgamating company for a minimum period of five years from the date of amalgamation;

(*iii*) fulfils such other conditions as may be prescribed[47] to ensure the revival of the business of the amalgamating company or to ensure that the amalgamation is for genuine business purpose.]

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45. For text of section 5(*c*) of the Banking Regulation Act, 1949, *see* **Appendix**.

46. Substituted by the Finance Act, 2003, w.e.f. 1-4-2004. Prior to its substitution, sub-section (2), as amended by the Finance Act, 2000, w.e.f. 1-4-2000, read as under :

"(2) Notwithstanding anything contained in sub-section (1), the accumulated loss shall not be set off or carried forward and the unabsorbed depreciation shall not be allowed in the assessment of the amalgamated company unless the amalgamated company—

(*i*) holds continuously for a minimum period of five years from the date of amalgamation at least three-fourths in the book value of fixed assets of the amalgamating company acquired in a scheme of amalgamation;

(*ii*) continues the business of the amalgamating company for a minimum period of five years from the date of amalgamation;

(*iii*) fulfils such other conditions as may be prescribed to ensure the revival of the business of the amalgamating company or to ensure that the amalgamation is for genuine business purpose."

47. *See* rule 9C and Form No. 62.

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(3) In a case where any of the conditions laid down in sub-section (2) are not complied with, the set off of loss or allowance of depreciation made in any previous year in the hands of the amalgamated company shall be deemed to be the income of the amalgamated company chargeable to tax for the year in which such conditions are not complied with.

(4) Notwithstanding anything contained in any other provisions of this Act, in the case of a demerger, the accumulated loss and the allowance for unabsorbed depreciation of the demerged company shall—

(*a*) where such loss or unabsorbed depreciation is directly relatable to the undertakings transferred to the resulting company, be allowed to be carried forward and set off in the hands of the resulting company;

(*b*) where such loss or unabsorbed depreciation is not directly relatable to the undertakings transferred to the resulting company, be apportioned between the demerged company and the resulting company in the same proportion in which the assets of the undertakings have been retained by the demerged company and transferred to the resulting company, and be allowed to be carried forward and set off in the hands of the demerged company or the resulting company, as the case may be.

(5) The Central Government may, for the purposes of this Act, by notification in the Official Gazette, specify such conditions as it considers necessary to ensure that the demerger is for genuine business purposes.

(6) Where there has been reorganisation of business, whereby, a firm is succeeded by a company fulfilling the conditions laid down in clause (*xiii*) of section 47 or a proprietary concern is succeeded by a company fulfilling the conditions laid down in clause (*xiv*) of section 47, then, notwithstanding anything contained in any other provision of this Act, the accumulated loss and the unabsorbed depreciation of the predecessor firm or the proprietary concern, as the case may be, shall be deemed to be the loss or allowance for depreciation of the successor company for the purpose of previous year in which business reorganisation was effected and other provisions of this Act relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly :

Provided that if any of the conditions laid down in the proviso to clause (*xiii*) or the proviso to clause (*xiv*) to section 47 are not complied with, the set off of loss or allowance of depreciation made in any previous year in the hands of the successor company, shall be deemed to be the income of the company chargeable to tax in the year in which such conditions are not complied with.

The following sub-section (6A) shall be inserted after sub-section (6) of section 72A by the Finance Act, 2010, w.e.f. 1-4-2011 :

*(6A) Where there has been reorganisation of business whereby a private company or unlisted public company is succeeded by a limited liability partnership fulfilling the conditions laid down in the proviso to clause (*xiiib*) of section 47, then, notwithstanding anything contained in any other provision of this Act, the accumulated loss and the unabsorbed depreciation of the predecessor company, shall be deemed to be the loss or allowance for depreciation of the successor limited liability partnership for the purpose of the previous year in which*

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business reorganisation was effected and other provisions of this Act relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly :

Provided *that if any of the conditions laid down in the proviso to clause (*xiiib*) of section 47 are not complied with, the set off of loss or allowance of depreciation made in any previous year in the hands of the successor limited liability partnership, shall be deemed to be the income of the limited liability partnership chargeable to tax in the year in which such conditions are not complied with.*

(7) For the purposes of this section,—

(*a*) "accumulated loss" means so much of the loss of the predecessor firm or the proprietary concern or the amalgamating company or the demerged company, as the case may be, under the head "Profits and gains of business or profession" (not being a loss sustained in a speculation business) which such predecessor firm or the proprietary concern or amalgamating company or demerged company, would have been entitled to carry forward and set off under the provisions of section 72 if the reorganisation of business or amalgamation or demerger had not taken place;

The following clause (*a*) shall be substituted for the existing clause (*a*) of sub-section (7) of section 72A by the Finance Act, 2010, w.e.f. 1-4-2011 :

(a) "accumulated loss" means so much of the loss of the predecessor firm or the proprietary concern or the private company or unlisted public company before conversion into limited liability partnership or the amalgamating company or the demerged company, as the case may be, under the head "Profits and gains of business or profession" (not being a loss sustained in a speculation business) which such predecessor firm or the proprietary concern or the company or amalgamating company or demerged company, would have been entitled to carry forward and set off under the provisions of section 72 if the reorganisation of business or conversion or amalgamation or demerger had not taken place;

[48][(*aa*) "industrial undertaking" means any undertaking which is engaged in—

(*i*) the manufacture or processing of goods; or

(*ii*) the manufacture of computer software; or

(*iii*) the business of generation or distribution of electricity or any other form of power; or

[49][(*iiia*) the business of providing telecommunication services, whether basic or cellular, including radio paging, domestic satellite service, network of trunking, broadband network and internet services; or]

48. Inserted by the Finance Act, 2001, w.r.e.f. 1-4-2000.

49. Inserted by the Finance Act, 2002, w.e.f. 1-4-2003.

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(*iv*) mining; or

(*v*) the construction of ships, aircrafts or rail systems;]

(*b*) "unabsorbed depreciation" means so much of the allowance for depreciation of the predecessor firm or the proprietary concern or the amalgamating company or the demerged company, as the case may be, which remains to be allowed and which would have been allowed to the predecessor firm or the proprietary concern or amalgamating company or demerged company, as the case may be, under the provisions of this Act, if the reorganisation of business or amalgamation or demerger had not taken place;]

The following clause (*b*) shall be substituted for the existing clause (*b*) of sub-section (7) of section 72A by the Finance Act, 2010, w.e.f. 1-4-2011 :

(b) *"unabsorbed depreciation" means so much of the allowance for depreciation of the predecessor firm or the proprietary concern or the private company or unlisted public company before conversion into limited liability partnership or the amalgamating company or the demerged company, as the case may be, which remains to be allowed and which would have been allowed to the predecessor firm or the proprietary concern or the company or amalgamating company or demerged company, as the case may be, under the provisions of this Act, if the reorganisation of business or conversion or amalgamation or demerger had not taken place;*

[50][(*c*) "specified bank" means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955) or a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959) or a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980).]

[51][**Provisions relating to carry forward and set-off of accumulated loss and unabsorbed depreciation allowance in scheme of amalgamation of banking company in certain cases.**

72AA. Notwithstanding anything contained in sub-clauses (*i*) to (*iii*) of clause (*1B*) of section 2 or section 72A, where there has been an amalgamation of a banking company with any other banking institution under a scheme sanctioned and brought into force by the Central Government under sub-section (7) of section 45 of the Banking Regulation Act, 1949 (10 of 1949)[52], the accumulated loss and the unabsorbed depreciation of such banking company shall be deemed to be the loss or, as the case may be, allowance for depreciation of such banking institution for the previous year in which the scheme of

50. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

51. Inserted by the Finance Act, 2005, w.e.f. 1-4-2005.

52. For text of sections 5(*c*) and 45 of the Banking Regulation Act, 1949, *see* **Appendix**.

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amalgamation was brought into force and other provisions of this Act relating to set-off and carry forward of loss and allowance for depreciation shall apply accordingly.

Explanation.—For the purposes of this section,—

(*i*) "accumulated loss" means so much of the loss of the amalgamating banking company under the head "Profits and gains of business or profession" (not being a loss sustained in a speculation business) which such amalgamating banking company, would have been entitled to carry forward and set-off under the provisions of section 72 if the amalgamation had not taken place;

(*ii*) "banking company" shall have the same meaning assigned to it in clause (*c*) of section 5 of the Banking Regulation Act, 1949 (10 of 1949)[53];

(*iii*) "banking institution" shall have the same meaning assigned to it in sub-section (15) of section 45 of the Banking Regulation Act, 1949 (10 of 1949)[53];

(*iv*) "unabsorbed depreciation" means so much of the allowance for depreciation of the amalgamating banking company which remains to be allowed and which would have been allowed to such banking company if amalgamation had not taken place.]

[54][**Provisions relating to carry forward and set off of accumulated loss and unabsorbed depreciation allowance in business reorganisation of co-operative banks.**

72AB. (1) The assessee, being a successor co-operative bank, shall, in a case where the amalgamation has taken place during the previous year, be allowed to set off the accumulated loss and the unabsorbed depreciation, if any, of the predecessor co-operative bank as if the amalgamation had not taken place, and all the other provisions of this Act relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly.

(2) The provisions of this section shall apply if—

(*a*) the predecessor co-operative bank—

(*i*) has been engaged in the business of banking for three or more years; and

(*ii*) has held at least three-fourths of the book value of fixed assets as on the date of the business reorganisation, continuously for two years prior to the date of business reorganisation;

(*b*) the successor co-operative bank—

(*i*) holds at least three-fourths of the book value of fixed assets of the predecessor co-operative bank acquired through business reorganisation, continuously for a minimum period of five years immediately succeeding the date of business reorganisation;

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53. For text of sections 5(*c*) and 45 of the Banking Regulation Act, 1949, *see* **Appendix**.

54. Inserted by the Finance Act, 2007, w.e.f. 1-4-2008.

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(*ii*) continues the business of the predecessor co-operative bank for a minimum period of five years from the date of business reorganisation; and

(*iii*) fulfils such other conditions as may be prescribed to ensure the revival of the business of the predecessor co-operative bank or to ensure that the business reorganisation is for genuine business purpose.

(3) The amount of set-off of the accumulated loss and unabsorbed depreciation, if any, allowable to the assessee being a resulting co-operative bank shall be,—

(*i*) the accumulated loss or unabsorbed depreciation of the demerged co-operative bank if the whole of the amount of such loss or unabsorbed depreciation is directly relatable to the undertakings transferred to the resulting co-operative bank; or

(*ii*) the amount which bears the same proportion to the accumulated loss or unabsorbed depreciation of the demerged co-operative bank as the assets of the undertaking transferred to the resulting co-operative bank bears to the assets of the demerged co-operative bank if such accumulated loss or unabsorbed depreciation is not directly relatable to the undertakings transferred to the resulting co-operative bank.

(4) The Central Government may, for the purposes of this section, by notification in the Official Gazette, specify such other conditions as it considers necessary, other than those prescribed under sub-clause (*iii*) of clause (*b*) of sub-section (2), to ensure that the business reorganisation is for genuine business purposes.

(5) The period commencing from the beginning of the previous year and ending on the date immediately preceding the date of business reorganisation, and the period commencing from the date of such business reorganisation and ending with the previous year shall be deemed to be two different previous years for the purposes of set off and carry forward of loss and allowance for depreciation.

(6) In a case where the conditions specified in sub-section (2) or notified under sub-section (4) are not complied with, the set off of accumulated loss or unabsorbed depreciation allowed in any previous year to the successor co-operative bank shall be deemed to be the income of the successor co-operative bank chargeable to tax for the year in which the conditions are not complied with.

(7) For the purposes of this section,—

(*a*) "accumulated loss" means so much of loss of the amalgamating co-operative bank or the demerged co-operative bank, as the case may be, under the head "Profits and gains of business or profession" (not being a loss sustained in a speculation business) which such amalgamating co-operative bank or the demerged co-operative bank, would have been entitled to carry forward and set-off under the provisions of section 72 as if the business reorganisation had not taken place;

(*b*) "unabsorbed depreciation" means so much of the allowance for depreciation of the amalgamating co-operative bank or the demerged co-operative bank, as the case may be, which remains to be allowed

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and which would have been allowed to such bank as if the business reorganisation had not taken place;

(*c*) the expressions "amalgamated co-operative bank", "amalgamating co-operative bank", "amalgamation", "business reorganisation", "co-operative bank", "demerged co-operative bank", "demerger", "predecessor co-operative bank", "successor co-operative bank" and "resulting co-operative bank" shall have the meanings respectively assigned to them in section 44DB.]

Losses in speculation business.

[55]**73.** (1) Any loss, computed in respect of a speculation business carried on by the assessee, shall not be set off except against profits and gains, if any, of another speculation business.

(2) Where for any assessment year any loss computed in respect of a speculation business has not been wholly set off under sub-section (1), so much of the loss as is not so set off or the whole loss where the assessee had no income from any[56] other speculation business, shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year, and—

(*i*) it shall be set off against the profits and gains, if any, of any speculation business carried on by him assessable for that assessment year ; and

(*ii*) if the loss cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on.

(3) In respect of allowance on account of depreciation or capital expenditure on scientific research, the provisions of sub-section (2) of section 72 shall apply in relation to speculation business as they apply in relation to any other business.

(4) No loss shall be carried forward under this section for more than [57][four] assessment years immediately succeeding the assessment year for which the loss was first computed.

[58][*Explanation.*—Where any part of the business of a company ([59][other than a company whose gross total income consists mainly of income which is chargeable under the heads "Interest on securities", "Income from house property", "Capital gains" and "Income from other sources"], or a company the principal business of which is the business of banking or the granting of loans and advances) consists in the purchase and sale of shares of other companies, such company shall, for the purposes of this section, be deemed to be carrying

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55. *See* also Circular No. 13(102)-IT/53, dated 8-9-1954. For details, *see* Taxmann's Master Guide to Income-tax Act.

For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

56. For the meaning of the term "any", *see* Taxmann's Direct Taxes Manual, Vol. 3.

57. Substituted for "eight" by the Finance Act, 2005, w.e.f. 1-4-2006.

58. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1977.

59. Substituted for "other than an investment company, as defined in clause (*ii*) of section 109" by the Finance Act, 1987, w.e.f. 1-4-1988.

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on a speculation business to the extent to which the business consists of the purchase and sale of such shares.]

[60][**Carry forward and set off of losses by specified business.**

73A. *(1) Any loss, computed in respect of any specified business referred to in section 35AD shall not be set off except against profits and gains, if any, of any other specified business.*

(2) Where for any assessment year any loss computed in respect of the specified business referred to in sub-section (1) has not been wholly set off under sub-section (1), so much of the loss as is not so set off or the whole loss where the assessee has no income from any other specified business, shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year, and—

(i) it shall be set off against the profits and gains, if any, of any specified business carried on by him assessable for that assessment year; and

(ii) if the loss cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on.]

[61][**Losses under the head "Capital gains".**

74. [62][(1) Where in respect of any assessment year, the net result of the computation under the head "Capital gains" is a loss to the assessee, the whole loss shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year, and—

(*a*) in so far as such loss relates to a short-term capital asset, it shall be set off against income, if any, under the head "Capital gains" assessable for that assessment year in respect of any other capital asset;

(*b*) in so far as such loss relates to a long-term capital asset, it shall be set off against income, if any, under the head "Capital gains" assessable for that assessment year in respect of any other capital asset not being a short-term capital asset;

(*c*) if the loss cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on.]

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60. Inserted by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2010**.

61. Substituted by the Finance Act, 1987, w.e.f. 1-4-1988. Earlier, section 74 was substituted by the Finance (No. 2) Act, 1962, w.e.f. 1-4-1962 and amended by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968 and the Finance Act, 1986, w.e.f. 1-4-1987.

62. Substituted by the Finance Act, 2002, w.e.f. 1-4-2003. Prior to its substitution, sub-section (1), as amended by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992, read as under :

'(1) Where in respect of any assessment year, the net result of the computation under the head "Capital gains" is a loss to the assessee, the whole loss shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year, and—

(*a*) it shall be set off against income, if any, under the head "Capital gains" assessable for that assessment year ; and

(*b*) if the loss cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following assessment year, and so on.'

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(2) No loss shall be carried forward under this section for more than eight assessment years immediately succeeding the assessment year for which the loss was first computed.

(3) [63][*Omitted by the Finance Act, 2002, w.e.f. 1-4-2003.*]]

[64][**Losses from certain specified sources falling under the head "Income from other sources".**

74A. (1) [65][* * *]

(2) [66][* * *]

[67][(3) [68][* * *] In the case of an assessee, being the owner of horses maintained by him for running in horse races (such horses being hereafter in this sub-section referred to as race horses), [69][the amount of loss incurred by the assessee in the activity of owning and maintaining race horses in any assessment year shall not be set off against income, if any, from any source other than the activity of owning and maintaining race horses in that year and] shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year and—

(*a*) it shall be set off against the income, if any, [70][from the activity of owning and maintaining race horses] assessable for that assessment year :

Provided that the activity of owning and maintaining race horses is carried on by him in the previous year relevant for that assessment year ; and

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63. Prior to its omission, sub-section (3) read as under :

'(3) Any loss computed under the head "Capital gains" in respect of the assessment year commencing on the 1st day of April, 1987, or any earlier assessment year which is carried forward in accordance with the provisions of this section as it stood before the 1st day of April, 1988, shall be dealt with in the assessment year commencing on the 1st day of April, 1988, or any subsequent assessment year as follows :—

(*a*) in so far as such loss relates to short-term capital assets, it shall be carried forward and set off in accordance with the provisions of sub-sections (1) and (2) ;

(*b*) in so far as such loss relates to long-term capital assets, it shall be reduced by the deductions specified in sub-section (2) of section 48 and the reduced amount shall be carried forward and set off in accordance with the provisions of sub-section (1) but such carry forward shall not be allowed beyond the fourth assessment year immediately succeeding the assessment year for which the loss was first computed.'

64. Inserted by the Finance Act, 1972, w.e.f. 1-4-1972. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

65. Omitted by the Finance Act, 1986, w.e.f. 1-4-1987. Earlier, it was amended by the Finance Act, 1974, w.e.f. 1-4-1975.

66. Omitted by the Finance Act, 1986, w.e.f. 1-4-1987.

67. Inserted by the Finance Act, 1974, w.e.f. 1-4-1975.

68. Words "Where for any assessment year" omitted by the Finance Act, 1986, w.e.f. 1-4-1987.

69. Substituted for "the net result of the computation in respect of the source, specified in clause (*c*) of sub-section (2) is a loss, then, so much of the amount of such loss as does not exceed the amount of loss incurred by the assessee in the activity of owning and maintaining race horses", *ibid.*

70. Substituted for "from the source specified in clause (*c*) of sub-section (2)" by the Finance Act, 1986, w.e.f. 1-4-1987.

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(*b*) if the loss cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on; so, however, that no portion of the loss shall be carried forward for more than four assessment years immediately succeeding the assessment year for which the loss was first computed.

Explanation.—For the purposes of this sub-section—

(*a*) "amount of loss incurred by the assessee in the activity of owning and maintaining race horses" means—

(*i*) in a case where the assessee has no income by way of stake money, the amount of expenditure (not being in the nature of capital expenditure) laid out or expended by him wholly and exclusively for the purposes of maintaining race horses ;

(*ii*) in a case where the assessee has income by way of stake money, the amount by which such income falls short of the amount of expenditure (not being in the nature of capital expenditure) laid out or expended by the assessee wholly and exclusively for the purposes of maintaining race horses ;

(*b*) "horse race" means a horse race upon which wagering or betting may be lawfully made ;

(*c*) "income by way of stake money" means the gross amount of prize money received on a race horse or race horses by the owner thereof on account of the horse or horses or any one or more of the horses winning or being placed second or in any lower position in horse races.]

[71][**Losses of firms.**

75. Where the assessee is a firm, any loss in relation to the assessment year commencing on or before the 1st day of April, 1992, which could not be set off against any other income of the firm and which had been apportioned to a partner of the firm but could not be set off by such partner prior to the assessment year commencing on the 1st day of April, 1993, then, such loss shall be allowed to be set off against the income of the firm subject to the condition that the partner continues in the said firm and to be carried forward for set off under sections 70, 71, 72, 73, 74 and 74A.]

Carry forward and set off of losses in case of change in constitution of firm or on succession.

[72]**78.** [73][(1) Where a change has occurred in the constitution of a firm, nothing in this Chapter shall entitle the firm to have carried forward and set off so much of the loss proportionate to the share of a retired or deceased partner as exceeds his share of profits, if any, in the firm in respect of the previous year.]

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71. Substituted for sections 75, 76 and 77 by the Finance Act, 1992, w.e.f. 1-4-1993. Prior to their substitution, sections 75, 76 and 77 were amended by the Finance Act, 1972, w.e.f. 1-4-1972, the Finance Act, 1974, w.e.f. 1-4-1975, the Finance Act, 1987, w.e.f. 1-4-1988, the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989 and the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

72. In view of amendments stated in footnote No. 71, there are no sections with numbers of '76' and '77'.

73. Substituted by the Finance Act, 1992, w.e.f. 1-4-1993. Prior to substitution, sub-section (1) was amended by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989 and the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

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(2) Where any person carrying on any business or profession has been succeeded in such capacity by another person otherwise than by inheritance, nothing in this Chapter shall entitle any person other than the person incurring the loss to have it carried forward and set off against his income.

Carry forward and set off of losses in the case of certain companies.

79. Notwithstanding anything contained in this Chapter, where a change in shareholding has taken place in a previous year in the case of a company, not being a company in which the public are substantially interested, no loss[74] incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year unless—

(*a*) on the last day of the previous year the shares of the company carrying not less than fifty-one per cent of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than fifty-one per cent of the voting power on the last day of the year or years in which the loss was incurred [75][* * *] :

[76][**Provided** that nothing contained in this section shall apply to a case where a change in the said voting power takes place in a previous year consequent upon the death of a shareholder or on account of transfer of shares by way of gift to any relative of the shareholder making such gift :]

[77][**Provided further** that nothing contained in this section shall apply to any change in the shareholding of an Indian company which is a subsidiary of a foreign company as a result of amalgamation or demerger of a foreign company subject to the condition that fifty-one per cent shareholders of the amalgamating or demerged foreign company continue to be the shareholders of the amalgamated or the resulting foreign company.]

(*b*) [78][*Omitted by the Finance Act, 1988, w.e.f. 1-4-1989.*]

Submission of return for losses.

80. Notwithstanding anything contained in this Chapter, no loss which has not been determined in pursuance of a return filed [79][in accordance with the provisions of sub-section (3) of section 139], shall be carried forward and set off under sub-section (1) of section 72 or sub-section (2) of section 73 or sub-section (1) [80][or sub-section (3)] of section 74 [81][or sub-section (3) of section 74A].

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74. For the meaning of the term "loss", *see* Taxmann's Direct Taxes Manual, Vol. 3.

75. "or" omitted by the Finance Act, 1988, w.e.f. 1-4-1989.

76. Inserted, *ibid.*

77. Inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

78. Prior to omission, clause (*b*) was amended by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

79. Substituted for "within the time allowed under sub-section (1) of section 139 or within such further time as may be allowed by the Income-tax Officer" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Earlier, the said expression was substituted for "under section 139" by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-4-1985.

80. Inserted by the Finance Act, 1987, w.e.f. 1-4-1988.

81. Inserted by the Finance Act, 1974, w.e.f. 1-4-1975.

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[82][*CHAPTER VI-A*

DEDUCTIONS TO BE MADE IN COMPUTING TOTAL INCOME

A.—General

Deductions to be made in computing total income.

80A. (1) In computing the total income of an assessee, there shall be allowed from his gross total income, in accordance with and subject to the provisions of this Chapter, the deductions specified in sections 80C to [83][80U].

(2) The aggregate amount of the deductions[84] under this Chapter shall not, in any case, exceed the gross total income of the assessee.

[85][(3) Where, in computing the total income of an association of persons or a body of individuals, any deduction is admissible under section 80G or section 80GGA [86][or section 80GGC] or section 80HH or section 80HHA or section 80HHB or section 80HHC or section 80HHD or section 80-I or section 80-IA [87][or section 80-IB] [88][or section 80-IC] [89][or section 80-ID or section 80-IE] or section 80J[90] or section 80JJ, no deduction under the same section shall be made in computing the total income of a member of the association of persons or body of individuals in relation to the share of such member in the income of the association of persons or body of individuals.]

[91][(4) Notwithstanding anything to the contrary contained in section 10A or section 10AA or section 10B or section 10BA or in any provisions of this Chapter

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82. Chapter VI-A, consisting of sections 80A, 80B, 80C, 80D, 80E, 80F, 80G, 80H, 80-I, 80J, 80K, 80L, 80M, 80N, 80-O, 80P, 80Q, 80R, 80S and 80T, was substituted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968. The original Chapter, consisting of only sections 80A to 80D, was inserted by the Finance Act, 1965, w.e.f. 1-4-1965. In the original Chapter, section 80A was amended by the Finance Act, 1966, w.e.f. 1-4-1966 and new section 80E was inserted by the Finance (No. 2) Act, 1966, w.e.f. 1-4-1966.

83. Substituted for "80VV" by the Finance Act, 1985, w.e.f. 1-4-1986. Earlier, "80VV" was substituted for "80U" by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976 and "80U" was substituted for "80T" by the Finance Act, 1968, w.e.f. 1-4-1969.

84. For the meaning of the term "deductions", *see* Taxmann's Direct Taxes Manual, Vol. 3.

85. Substituted for sub-section (3) by the Finance Act, 1992, w.e.f. 1-4-1993. Prior to substitution, sub-section (3) was amended by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971, the Finance (No. 2) Act, 1971, w.e.f. 1-4-1972, the Finance Act, 1972, w.e.f. 1-4-1972, the Direct Taxes (Amendment) Act, 1974, w.e.f. 1-4-1974, the Finance Act, 1974, w.e.f. 1-4-1975, the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976, the Finance Act, 1975, w.e.f. 1-4-1976, the Finance (No. 2) Act, 1977, w.e.f. 1-4-1978, the Finance Act, 1979, w.e.f. 1-4-1980, the Finance (No. 2) Act, 1980, w.e.f. 1-4-1981, the Finance Act, 1982, w.e.f. 1-4-1983, the Finance Act, 1983, w.e.f. 1-4-1983/1-4-1984, the Finance Act, 1985, w.e.f. 1-4-1986, the Finance Act, 1986, w.e.f. 1-4-1987, the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989, the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989 and the Finance Act, 1989, w.e.f. 1-4-1989.

86. Inserted by the Election and Other Related Laws (Amendment) Act, 2003, w.e.f. 11-9-2003.

87. Inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

88. Inserted by the Finance Act, 2007, w.r.e.f. 1-4-2004.

89. Inserted, *ibid.*, w.e.f. 1-4-2008.

90. Section 80J was omitted by the Finance (No. 2) Act, 1996, w.r.e.f. 1-4-1989.

91. Inserted by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-2003. Earlier sub-section (4), as inserted by the Finance Act, 1976, w.e.f. 1-4-1977, was omitted by the Finance Act, 1978, w.e.f. 1-4-1979.

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under the heading *"C—Deductions in respect of certain incomes*", where, in the case of an assessee, any amount of profits and gains of an undertaking or unit or enterprise or eligible business is claimed and allowed as a deduction under any of those provisions for any assessment year, deduction in respect of, and to the extent of, such profits and gains shall not be allowed under any other provisions of this Act for such assessment year and shall in no case exceed the profits and gains of such undertaking or unit or enterprise or eligible business, as the case may be.

(5) Where the assessee fails to make a claim in his return of income for any deduction under section 10A or section 10AA or section 10B or section 10BA or under any provision of this Chapter under the heading *"C.—Deductions in respect of certain incomes",* no deduction shall be allowed to him thereunder.]

[92][(6) Notwithstanding anything to the contrary contained in section 10A or section 10AA or section 10B or section 10BA or in any provisions of this Chapter under the heading *"C—Deductions in respect of certain incomes",* where any goods or services held for the purposes of the undertaking or unit or enterprise or eligible business are transferred to any other business carried on by the assessee or where any goods or services held for the purposes of any other business carried on by the assessee are transferred to the undertaking or unit or enterprise or eligible business and, the consideration, if any, for such transfer as recorded in the accounts of the undertaking or unit or enterprise or eligible business does not correspond to the market value of such goods or services as on the date of the transfer, then, for the purposes of any deduction under this Chapter, the profits and gains of such undertaking or unit or enterprise or eligible business shall be computed as if the transfer, in either case, had been made at the market value of such goods or services as on that date.

Explanation.—For the purposes of this sub-section, the expression "market value",—

(*i*) in relation to any goods or services sold or supplied, means the price that such goods or services would fetch if these were sold by the undertaking or unit or enterprise or eligible business in the open market, subject to statutory or regulatory restrictions, if any;

(*ii*) in relation to any goods or services acquired, means the price that such goods or services would cost if these were acquired by the undertaking or unit or enterprise or eligible business from the open market, subject to statutory or regulatory restrictions, if any.]

The following sub-section (7) shall be inserted after sub-section (6) of section 80A by the Finance Act, 2010, w.e.f. 1-4-2011 :

(7) Where a deduction under any provision of this Chapter under the heading "C.—Deductions in respect of certain incomes" *is claimed and allowed in respect of profits of any of the specified business referred to in clause* (c) *of sub-section (8) of section 35AD for any assessment year, no deduction shall be allowed under the provisions of section 35AD in relation to such specified business for the same or any other assessment year.*

92. Inserted by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-2009.

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Computation of deduction under section 80M.

80AA. [93][*Omitted by the Finance Act, 1997, w.e.f. 1-4-1998.*]

[94][**Deductions to be made with reference to the income included in the gross total income.**

[95]**80AB.** Where any deduction is required to be made or allowed under any section [96][* * *] included in this Chapter under the heading *"C.—Deductions in respect of certain incomes"* in respect of any income of the nature specified in that section which is included in the gross total income of the assessee, then, notwithstanding anything contained in that section, for the purpose of computing the deduction under that section, the amount of income of that nature as computed in accordance with the provisions of this Act (before making any deduction under this Chapter) shall alone be deemed to be the amount of income of that nature which is derived or received by the assessee and which is included in his gross total income.]

[97][**Deduction not to be allowed unless return furnished.**

80AC. Where in computing the total income of an assessee of the previous year relevant to the assessment year commencing on the 1st day of April, 2006 or any subsequent assessment year, any deduction is admissible under section 80-IA or section 80-IAB or section 80-IB or section 80-IC [98][or section 80-ID or section 80-IE], no such deduction shall be allowed to him unless he furnishes a return of his income for such assessment year on or before the due date specified under sub-section (1) of section 139.]

[99][**Definitions.**

80B. In this Chapter—

(*1*) [1][* * *]

(*2*) [2][* * *]

(*3*) [3][* * *]

(*4*) [4][* * *]

(*5*) "gross total income" means the total income computed in accordance with the provisions of this Act, before making any deduction under this Chapter [5][* * *] [6][* * *];

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93. Prior to its omission, section 80AA was inserted by the Finance (No. 2) Act, 1980, w.r.e.f. 1-4-1968, subject to the savings prescribed in section 44 of the said Act.

94. Inserted by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1981.

95. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

96. Words "(except section 80M)" omitted by the Finance Act, 1997, w.e.f. 1-4-1998.

97. Inserted by the Finance Act, 2006, w.e.f. 1-4-2006.

98. Inserted by the Finance Act, 2007, w.e.f. 1-4-2008.

99. Inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968 in place of original section 80D.

1. Omitted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

2. Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

3. Omitted by the Finance Act, 1968, w.e.f. 1-4-1969.

4. Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

5. Words "or under section 280-O" omitted by the Finance Act, 1988, w.e.f. 1-4-1988.

6. Words "and without applying the provisions of section 64" omitted by the Taxation Laws (Amendment) Act, 1970, w.r.e.f. 1-4-1968.

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(*6*) [7][* * *]

(*7*) [8][* * *]

(*8*) [9][* * *]

(*9*) [10][* * *].]

B.—Deductions in respect of certain payments

[11][**Deduction in respect of life insurance premia, deferred annuity, contributions to provident fund, subscription to certain equity shares or debentures, etc.**

[12]**80C.** [13](1) In computing the total income of an assessee, being an individual or a Hindu undivided family, there shall be deducted, in accordance with and subject to the provisions of this section, the whole of the amount paid or deposited in the previous year, being the aggregate of the sums referred to in sub-section (2), as does not exceed one lakh rupees.

(2) The sums referred to in sub-section (1) shall be any sums paid or deposited in the previous year by the assessee—

(*i*) to effect or to keep in force an insurance on the life of persons specified in sub-section (4);

(*ii*) to effect or to keep in force a contract for a deferred annuity, not being an annuity plan referred to in clause (*xii*), on the life of persons specified in sub-section (4):

Provided that such contract does not contain a provision for the exercise by the insured of an option to receive a cash payment in lieu of the payment of the annuity;

(*iii*) by way of deduction from the salary payable by or on behalf of the Government to any individual being a sum deducted in accordance with the conditions of his service, for the purpose of securing to him

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7. Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

8. Omitted by the Finance Act, 1972, w.e.f. 1-4-1973.

9. Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

10. Omitted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

11. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006. Earlier section 80C was omitted by the Finance Act, 1990, w.e.f. 1-4-1991.

12. Subject-matter of section 80C has been dealt with by different sections at different times, *viz.,* (*i*) section 87 as originally enacted; and (*ii*) original section 80A as introduced by the Finance Act, 1965, w.e.f. 1-4-1965. Section 80C was introduced by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968 and the same was replaced by section 88 w.e.f. 1-4-1991. Section 80C was again reintroduced in place of section 88 w.e.f. 1-4-2006.

13. Section 80C on earlier occasions was amended by the Finance Act, 1968, w.e.f. 1-4-1969, Finance Act, 1969, w.e.f. 1-4-1970, Finance Act, 1970, w.e.f. 1-4-1971, Finance (No. 2) Act, 1971, w.e.f. 1-4-1972, Finance Act, 1972, w.e.f. 1-4-1973, Finance Act, 1973, w.e.f. 1-4-1974, Finance Act, 1975, w.e.f. 1-4-1976, Finance Act, 1976, w.e.f. 1-4-1977, Finance Act, 1978, w.e.f. 1-4-1979, Finance Act, 1979, w.e.f. 1-4-1980, Finance (No. 2) Act, 1980, w.e.f. 1-4-1981, Finance Act, 1982, w.e.f. 1-4-1983, Finance Act, 1983, w.e.f. 1-4-1984, Taxation Laws (Amendment) Act, 1984, w.r.e.f. 1-4-1971, Taxation Laws (Amendment) Act, 1984, w.r.e.f. 1-4-1983, Finance Act, 1987, w.e.f. 1-4-1988, Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989, Direct Tax Laws (Second Amendment) Act, 1989, w.r.e.f. 1-4-1984, Direct Tax Laws (Second Amdt.) Act, 1989, w.e.f. 1-4-1990 and Finance Act, 1989, w.e.f. 1-4-1990.

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a deferred annuity or making provision for his spouse or children, in so far as the sum so deducted does not exceed one-fifth of the salary;

(*iv*) as a contribution by an individual to any provident fund to which the Provident Funds Act, 1925 (19 of 1925) applies;

(*v*) as a contribution to any provident fund set up by the Central Government and notified[14] by it in this behalf in the Official Gazette, where such contribution is to an account standing in the name of any person specified in sub-section (4);

(*vi*) as a contribution by an employee to a recognised provident fund;

(*vii*) as a contribution by an employee to an approved superannuation fund;

(*viii*) as subscription to any such security of the Central Government or any such deposit scheme as that Government may, by notification in the Official Gazette, specify in this behalf;

(*ix*) as subscription to any such savings certificate as defined in clause (*c*) of section 2[15] of the Government Savings Certificates Act, 1959 (46 of 1959), as the Central Government may, by notification[16] in the Official Gazette, specify in this behalf;

(*x*) as a contribution, in the name of any person specified in sub-section (4), for participation in the Unit-linked Insurance Plan, 1971 (hereafter in this section referred to as the Unit-linked Insurance Plan) specified in Schedule II of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 (58 of 2002);

(*xi*) as a contribution in the name of any person specified in sub-section (4) for participation in any such unit-linked insurance plan of the LIC Mutual Fund [17][referred to in] clause (*23D*) of section 10, as the Central Government may, by notification[18] in the Official Gazette, specify in this behalf;

(*xii*) to effect or to keep in force a contract for such annuity plan of the Life Insurance Corporation or any other insurer as the Central Government may, by notification[19] in the Official Gazette, specify;

(*xiii*) as subscription to any units of any Mutual Fund [20][referred to in] clause (*23D*) of section 10 or from the Administrator or the specified company under any plan formulated in accordance with such scheme as the Central Government may, by notification[21] in the Official Gazette, specify in this behalf;

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14. For notified Public Provident Fund, *see* Taxmann's Master Guide to Income-tax Act.

15. For definition of "savings certificate" as defined in section 2(*c*) of the Government Savings Certificates Act, 1959, *see* **Appendix**.

16. For notified Savings Certificates, *see* Taxmann's Master Guide to Income-tax Act.

17. Substituted for "notified under" by the Finance Act, 2006, w.e.f. 1-4-2007.

18. For notified Unit Linked Insurance Plan of LIC Mutual Fund, *see* Taxmann's Master Guide to Income-tax Act.

19. For notified annuity plans of LIC, *see* Taxmann's Master Guide to Income-tax Act.

20. Substituted for "notified under" by the Finance Act, 2006, w.e.f. 1-4-2007.

21. For Equity Linked Savings Scheme, 2005, *see* Taxmann's Income-tax Rules.

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(*xiv*) as a contribution by an individual to any pension fund set up by any Mutual Fund [22][referred to in] clause (*23D*) of section 10 or by the Administrator or the specified company, as the Central Government may, by notification[23] in the Official Gazette, specify in this behalf;

(*xv*) as subscription to any such deposit scheme of, or as a contribution to any such pension fund set up by, the National Housing Bank established under section 3 of the National Housing Bank Act, 1987 (53 of 1987) (hereafter in this section referred to as the National Housing Bank), as the Central Government may, by notification in the Official Gazette, specify[24] in this behalf;

(*xvi*) as subscription to any such deposit scheme of—

(*a*) a public sector company which is engaged in providing long-term finance for construction or purchase of houses in India for residential purposes; or

(*b*) any authority constituted in India by or under any law enacted either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both,

as the Central Government may, by notification[24] in the Official Gazette, specify in this behalf;

(*xvii*) as tuition fees (excluding any payment towards any development fees or donation or payment of similar nature), whether at the time of admission or thereafter,—

(*a*) to any university, college, school or other educational institution situated within India;

(*b*) for the purpose of full-time education of any of the persons specified in sub-section (4);

(*xviii*) for the purposes of purchase or construction of a residential house property the income from which is chargeable to tax under the head "Income from house property" (or which would, if it had not been used for the assessee's own residence, have been chargeable to tax under that head), where such payments are made towards or by way of—

(*a*) any instalment or part payment of the amount due under any self-financing or other scheme of any development authority, housing board or other authority engaged in the construction and sale of house property on ownership basis; or

(*b*) any instalment or part payment of the amount due to any company or co-operative society of which the assessee is a shareholder or member towards the cost of the house property allotted to him; or

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22. Substituted for "notified under" by the Finance Act, 2006, w.e.f. 1-4-2007.

23. For notified Pension Fund, *see* Taxmann's Master Guide to Income-tax Act.

24. For notified Deposit Scheme, *see* Taxmann's Master Guide to Income-tax Act.

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(*c*) repayment of the amount borrowed by the assessee from—

(*1*) the Central Government or any State Government, or

(*2*) any bank, including a co-operative bank, or

(*3*) the Life Insurance Corporation, or

(*4*) the National Housing Bank, or

(*5*) any public company formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes which is eligible for deduction under clause (*viii*) of sub-section (1) of section 36, or

(*6*) any company in which the public are substantially interested or any co-operative society, where such company or co-operative society is engaged in the business of financing the construction of houses, or

(*7*) the assessee's employer where such employer is an authority or a board or a corporation or any other body established or constituted under a Central or State Act, or

(*8*) the assessee's employer where such employer is a public company or a public sector company or a university established by law or a college affiliated to such university or a local authority or a co-operative society; or

(*d*) stamp duty, registration fee and other expenses for the purpose of transfer of such house property to the assessee,

but shall not include any payment towards or by way of—

(*A*) the admission fee, cost of share and initial deposit which a shareholder of a company or a member of a co-operative society has to pay for becoming such shareholder or member; or

(*B*) the cost of any addition or alteration to, or renovation or repair of, the house property which is carried out after the issue of the completion certificate in respect of the house property by the authority competent to issue such certificate or after the house property or any part thereof has either been occupied by the assessee or any other person on his behalf or been let out; or

(*C*) any expenditure in respect of which deduction is allowable under the provisions of section 24;

(*xix*) as subscription to equity shares or debentures forming part of any eligible issue of capital approved by the Board on an application made by a public company or as subscription to any eligible issue of capital by any public financial institution in the prescribed form[25].

Explanation.—For the purposes of this clause,—

(*i*) "eligible issue of capital" means an issue made by a public company formed and registered in India or a public financial

25. See rule 20 and Form No. 59.

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institution and the entire proceeds of the issue are utilised wholly and exclusively for the purposes of any business referred to in sub-section (4) of section 80-IA;

(*ii*) "public company" shall have the meaning assigned to it in section 3[26] of the Companies Act, 1956 (1 of 1956);

(*iii*) "public financial institution" shall have the meaning assigned to it in section 4A[27] of the Companies Act, 1956 (1 of 1956);

(*xx*) as subscription to any units of any mutual fund referred to in clause (*23D*) of section 10 and approved by the Board on an application made by such mutual fund in the prescribed form[28]:

Provided that this clause shall apply if the amount of subscription to such units is subscribed only in the eligible issue of capital of any company.

Explanation.—For the purposes of this clause "eligible issue of capital" means an issue referred to in clause (*i*) of the *Explanation* to clause (*xix*) of sub-section (2);

[29][(*xxi*) as term deposit—

(*a*) for a fixed period of not less than five years with a scheduled bank; and

(*b*) which is in accordance with a scheme[30] framed and notified, by the Central Government, in the Official Gazette for the purposes of this clause.

Explanation.—For the purposes of this clause, "scheduled bank" means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955), or a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), or a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), or any other bank, being a bank included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934);]

[31][(*xxii*) as subscription to such bonds issued by the National Bank for Agriculture and Rural Development, as the Central Government may, by notification in the Official Gazette[32], specify in this behalf;]

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26. Clause (*iv*) of section 3(1) of the Companies Act, 1956, defines "public company". For text of section 3, *see* **Appendix**.

27. For text of section 4A of the Companies Act, 1956, and notified institutions thereunder, *see* **Appendix**.

28. *See* rule 20A and Form No. 59A.

29. Inserted by the Finance Act, 2006, w.e.f. 1-4-2007.

30. *See* Bank Term Deposit Scheme, 2006. For details, *see* Taxmann's Income-tax Rules.

31. Inserted by the Finance Act, 2007, w.e.f. 1-4-2008.

32. For notified bonds, *see* Taxmann's Master Guide to Income-tax Act.

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[33][(*xxiii*) in an account under the Senior Citizens Savings Scheme Rules, 2004[34];

(*xxiv*) as five year time deposit in an account under the Post Office Time Deposit Rules, 1981.]

(3) The provisions of sub-section (2) shall apply only to so much of any premium or other payment made on an insurance policy other than a contract for a deferred annuity as is not in excess of twenty per cent of the actual capital sum assured.

Explanation.—In calculating any such actual capital sum assured, no account shall be taken—

(*i*) of the value of any premiums agreed to be returned, or

(*ii*) of any benefit by way of bonus or otherwise over and above the sum actually assured, which is to be or may be received under the policy by any person.

(4) The persons referred to in sub-section (2) shall be the following, namely:—

(*a*) for the purposes of clauses (*i*), (*v*), (*x*) and (*xi*) of that sub-section,—

(*i*) in the case of an individual, the individual, the wife or husband and any child of such individual, and

(*ii*) in the case of a Hindu undivided family, any member thereof;

(*b*) for the purposes of clause (*ii*) of that sub-section, in the case of an individual, the individual, the wife or husband and any child of such individual;

(*c*) for the purposes of clause (*xvii*) of that sub-section, in the case of an individual, any two children of such individual.

(5) Where, in any previous year, an assessee—

(*i*) terminates his contract of insurance referred to in clause (*i*) of sub-section (2), by notice to that effect or where the contract ceases to be in force by reason of failure to pay any premium, by not reviving contract of insurance,—

(*a*) in case of any single premium policy, within two years after the date of commencement of insurance; or

(*b*) in any other case, before premiums have been paid for two years; or

(*ii*) terminates his participation in any unit-linked insurance plan referred to in clause (*x*) or clause (*xi*) of sub-section (2), by notice to that effect or where he ceases to participate by reason of failure to pay any contribution, by not reviving his participation, before contributions in respect of such participation have been paid for five years; or

(*iii*) transfers the house property referred to in clause (*xviii*) of sub-section (2) before the expiry of five years from the end of the financial year in which possession of such property is obtained by him, or receives

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33. Inserted by the Finance Act, 2008, w.e.f. 1-4-2008.

34. For Senior Citizens Savings Scheme Rules, 2004, *see* Taxmann's Income-tax Rules.

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back, whether by way of refund or otherwise, any sum specified in that clause,

then,—

(*a*) no deduction shall be allowed to the assessee under sub-section (1) with reference to any of the sums, referred to in clauses (*i*), (*x*), (*xi*) and (*xviii*) of sub-section (2), paid in such previous year; and

(*b*) the aggregate amount of the deductions of income so allowed in respect of the previous year or years preceding such previous year, shall be deemed to be the income of the assessee of such previous year and shall be liable to tax in the assessment year relevant to such previous year.

(6) If any equity shares or debentures, 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 three years from the date of their acquisition, the aggregate amount of the deductions of income so allowed in respect of such equity shares or debentures in the previous year or years preceding the previous year in which such sale or transfer has taken place shall be deemed to be the income of the assessee of such previous year and shall be liable to tax in the assessment year relevant to such previous year.

Explanation.—A person shall be treated as having acquired any shares or debentures on the date on which his name is entered in relation to those shares or debentures in the register of members or of debenture-holders, as the case may be, of the public company.

[35][(6A) If any amount, including interest accrued thereon, is withdrawn by the assessee from his account referred to in clause (*xxiii*) or clause (*xxiv*) of sub-section (2), before the expiry of the period of five years from the date of its deposit, the amount so withdrawn shall be deemed to be the income of the assessee of the previous year in which the amount is withdrawn and shall be liable to tax in the assessment year relevant to such previous year:

Provided that the amount liable to tax shall not include the following amounts, namely:—

(*i*) any amount of interest, relating to deposits referred to in clause (*xxiii*) or clause (*xxiv*) of sub-section (2), which has been included in the total income of the assessee of the previous year or years preceding such previous year; and

(*ii*) any amount received by the nominee or legal heir of the assessee, on the death of such assessee, other than interest, if any, accrued thereon, which was not included in the total income of the assessee for the previous year or years preceding such previous year.]

(7) For the purposes of this section,—

(*a*) the insurance, deferred annuity, provident fund and superannuation fund referred to in clauses (*i*) to (*vii*);

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35. Inserted by the Finance Act, 2008, w.e.f. 1-4-2008.

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(*b*) unit-linked insurance plan and annuity plan referred to in clauses (*xii*) to (*xiiia*);

(*c*) pension fund and subscription to deposit scheme referred to in clauses (*xiiic*) to (*xiva*);

(*d*) amount borrowed for purchase or construction of a residential house referred to in clause (*xv*),

of sub-section (2) of section 88 shall be eligible for deduction under the corresponding provisions of this section and the deduction shall be allowed in accordance with the provisions of this section.

(8) In this section,—

(*i*) "Administrator" means the Administrator as referred to in clause (*a*) of section 2 of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 (58 of 2002);

(*ii*) "contribution" to any fund shall not include any sums in repayment of loan;

(*iii*) "insurance" shall include—

(*a*) a policy of insurance on the life of an individual or the spouse or the child of such individual or a member of a Hindu undivided family securing the payment of specified sum on the stipulated date of maturity, if such person is alive on such date notwithstanding that the policy of insurance provides only for the return of premiums paid (with or without any interest thereon) in the event of such person dying before the said stipulated date;

(*b*) a policy of insurance effected by an individual or a member of a Hindu undivided family for the benefit of a minor with the object of enabling the minor, after he has attained majority to secure insurance on his own life by adopting the policy and on his being alive on a date (after such adoption) specified in the policy in this behalf;

(*iv*) "Life Insurance Corporation" means the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (31 of 1956);

(*v*) "public company" shall have the same meaning as in section 3[36] of the Companies Act, 1956 (1 of 1956);

(*vi*) "security" means a Government security as defined in clause (*2*) of section 2[37] of the Public Debt Act, 1944 (18 of 1944);

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36. Clause (*iv*) of section 3(1) of the Companies Act, 1956, defines "public company". For text of section 3, *see* **Appendix**.

37. Clause (*2*) of section 2 of the Public Debt Act, 1944, defines "security". For text of section 2(*2*), *see* **Appendix**.

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(*vii*) "specified company" means a company as referred to in clause (*h*) of section 2 of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 (58 of 2002);

(*viii*) "transfer" shall be deemed to include also the transactions referred to in clause (*f*) of section 269UA.]

Deduction in respect of investment in certain new shares.

80CC. [38][*Omitted by the Finance (No. 2) Act, 1996, w.r.e.f. 1-4-1993.*]

[39][**Deduction in respect of deposits under National Savings Scheme or payment to a deferred annuity plan.**

[40]**80CCA.** (1) Where an assessee, being—

(*a*) an individual, or

(*b*) a Hindu undivided family, [41][* * *]

(*c*) [42][* * *]

has in the previous year—

(*i*) deposited any amount in accordance with such scheme as the Central Government may, by notification[43] in the Official Gazette, specify in this behalf [44][* * *]; or

(*ii*) paid any amount to effect or to keep in force a contract for such annuity plan of the Life Insurance Corporation as the Central Government may, by notification[45] in the Official Gazette, specify,

out of his income chargeable to tax, he shall, in accordance with, and subject to, the provisions of this section, be allowed a deduction in the computation of his total income of the whole of the amount deposited or paid (excluding interest or bonus accrued or credited to the assessee's account, if any) as does not exceed the amount of twenty thousand rupees in the previous year :

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38. Prior to its omission, section 80CC was inserted by the Finance Act, 1978, w.e.f. 1-4-1978 and later on amended by the Finance Act, 1982, w.e.f. 1-4-1983; Finance Act, 1984, w.e.f. 1-4-1984/1-4-1985; Taxation Laws (Amendment) Act, 1984, w.r.e.f. 1-4-1978; Finance Act, 1985, w.e.f. 1-4-1985; Finance Act, 1987, w.e.f. 1-4-1987; Finance Act, 1988, w.e.f. 1-4-1989/1-4-1990; Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989; Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-4-1990; Finance Act, 1989, w.e.f. 1-4-1990 and Finance Act, 1994, w.r.e.f. 1-4-1978.

39. Substituted by the Finance Act, 1988, w.e.f. 1-4-1988. Original section 80CCA was inserted by the Finance Act, 1987, w.e.f. 1-4-1988.

40. *See* also Circular No. 527, dated 9-12-1988, Notification No. GSR 903(E), dated 6-9-1988, Circular No. 531, dated 17-3-1989, Circular No. 532, dated 17-3-1989 and Circular No. 534, dated 7-4-1989. For details, *see* Taxmann's Direct Taxes Circulars.

41. Word "or" omitted by the Finance Act, 1994, w.r.e.f. 1-4-1988.

42. Omitted, *ibid.* Earlier, clause (*c*) was substituted by the Finance Act, 1988, w.e.f. 1-4-1988.

43. For notified scheme, *see* Taxmann's Direct Taxes Circulars.

44. "(hereafter in this section referred to as the National Savings Scheme)" omitted by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

45. For notified annuity plans, *see* Taxmann's Direct Taxes Circulars.

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[46][**Provided** that in relation to—

(*a*) the assessment years commencing on the 1st day of April, 1989 and the 1st day of April, 1990, this sub-section shall have effect as if for the words "twenty thousand rupees", the words "thirty thousand rupees" had been substituted;

(*b*) the assessment year commencing on the 1st day of April, 1991 and subsequent assessment years, this sub-section shall have effect as if for the words "twenty thousand rupees", the words "forty thousand rupees" had been substituted:]

[47][**Provided further** that no deduction under this sub-section shall be allowed in relation to any amount deposited or paid under clauses (*i*) and (*ii*) on or after the 1st day of April, 1992.]

(2) Where any amount—

(*a*) standing to the credit of the assessee [48][under the scheme referred to in clause (*i*) of sub-section (1)] in respect of which a deduction has been allowed under sub-section (1) together with the interest accrued on such amount is withdrawn in whole or in part in any previous year, or

(*b*) is received on account of the surrender of the policy or as annuity or bonus in accordance with the annuity plan of the Life Insurance Corporation in any previous year,

an amount equal to the whole of the amount referred to in clause (*a*) or clause (*b*) shall be deemed to be the income of the assessee of that previous year in which such withdrawal is made or, as the case may be, amount is received, and shall, accordingly, be chargeable to tax as the income of that previous year :

[49][**Provided** that nothing contained in this sub-section shall apply to any amount received by the assessee on account of the surrender of the policy in accordance with the terms of the annuity plan of the Life Insurance Corporation where the assessee elects to surrender before the 1st day of October, 1992, the said annuity plan in respect of which he had paid any amount under clause (*ii*) of sub-section (1) before the 1st day of April, 1992.]

[50][(3) Notwithstanding anything contained in any other provision of this Act, where a partition has taken place among the members of a Hindu undivided family or where an association of persons has been dissolved after a deduction has been allowed under sub-section (1), the provisions of sub-section (2) shall apply as if the person in receipt of income referred to therein is the assessee.]

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46. Substituted by the Finance Act, 1990, w.e.f. 1-4-1991.

47. Inserted by the Finance Act, 1992, w.e.f. 1-4-1993.

48. Substituted for "under the National Savings Scheme" by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

49. Inserted by the Finance Act, 1992, w.e.f. 1-4-1993.

50. Inserted by the Finance Act, 1990, w.e.f. 1-4-1991.

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Explanation I.—For the removal of doubts, it is hereby declared that interest on the deposits made [51][under the scheme referred to in clause (*i*) of sub-section (1)] shall not be chargeable to tax except in the manner and to the extent specified in sub-section (2).

Explanation II.—For the purposes of this section, "Life Insurance Corporation" shall have the same meaning as in clause (*a*) of sub-section (8) of section 80C.]

[52][**Deduction in respect of investment made under Equity Linked Savings Scheme.**

80CCB. (1) Where an assessee, being—

(*a*) an individual, or

(*b*) a Hindu undivided family, [53][* * *]

(*c*) [54][* * *]

has acquired in the previous year, out of his income chargeable to tax, units of any Mutual Fund specified under clause (*23D*) of section 10 or of the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963), under any plan formulated in accordance with such scheme as the Central Government may, by notification in the Official Gazette, specify in this behalf (hereafter in this section referred to as the Equity Linked Savings Scheme), he shall, in accordance with, and subject to, the provisions of this section, be allowed a deduction in the computation of his total income of so much of the amount invested as does not exceed the amount of ten thousand rupees in the previous year :

[55][**Provided** that no deduction shall be allowed in relation to any amount invested under this sub-section on or after the 1st day of April, 1992.]

(2) Where any amount invested by the assessee in the units issued under a plan formulated under the Equity Linked Savings Scheme in respect of which a deduction has been allowed under sub-section (1) is returned to him in whole or in part either by way of repurchase of such units or on the termination of the plan, by the Fund or the Trust, as the case may be, in any previous year, it shall be deemed to be the income of the assessee of that previous year and chargeable to tax accordingly.

(3) Notwithstanding anything contained in any other provision of this Act, where a partition has taken place among the members of a Hindu undivided family or where an association of persons has been dissolved after a deduction has been allowed under sub-section (1), the provisions of sub-section (2) shall apply as if the person in receipt of income referred to therein is the assessee.]

[56][**Deduction in respect of contribution to certain pension funds.**

80CCC. (1) Where an assessee being an individual has in the previous year paid or deposited any amount out of his income chargeable to tax to effect

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51. Substituted for "under the National Savings Scheme" by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

52. Inserted by the Finance Act, 1990, w.e.f. 1-4-1991.

53. Word "or" omitted by the Finance Act, 1994, w.r.e.f. 1-4-1991.

54. Omitted, *ibid.* Prior to its omission, clause (*c*) was inserted by the Finance Act, 1990, w.e.f. 1-4-1991.

55. Inserted by the Finance Act, 1992, w.e.f. 1-4-1993.

56. Inserted by the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997.

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or keep in force a contract for any annuity plan of Life Insurance Corporation of India [57][or any other insurer] for receiving pension from the fund referred to in clause (*23AAB*) of section 10, he shall, in accordance with, and subject to, the provisions of this section, be allowed a deduction in the computation of his total income, of the whole of the amount paid or deposited (excluding interest or bonus accrued or credited to the assessee's account, if any) as does not exceed the amount of [58][one lakh] rupees in the previous year.

(2) Where any amount standing to the credit of the assessee in a fund, referred to in sub-section (1) in respect of which a deduction has been allowed under sub-section (1), together with the interest or bonus accrued or credited to the assessee's account, if any, is received by the assessee or his nominee—

(*a*) on account of the surrender of the annuity plan whether in whole or in part, in any previous year, or

(*b*) as pension received from the annuity plan,

an amount equal to the whole of the amount referred to in clause (*a*) or clause (*b*) shall be deemed to be the income of the assessee or his nominee, as the case may be, in that previous year in which such withdrawal is made or, as the case may be, pension is received, and shall accordingly be chargeable to tax as income of that previous year.

[59][(3) Where any amount paid or deposited by the assessee has been taken into account for the purposes of this section,—

(*a*) a rebate with reference to such amount shall not be allowed under section 88 for any assessment year ending before the 1st day of April, 2006;

(*b*) a deduction with reference to such amount shall not be allowed under section 80C for any assessment year beginning on or after the 1st day of April, 2006.]]

[60][**Deduction in respect of contribution to pension scheme of Central Government.**[60a]

80CCD. (1) Where an assessee, being an individual employed by the Central Government [61][or any other employer] on or after the 1st day of January, 2004, [62][or any other assessee, being an individual] has in the previous year paid or deposited any amount in his account under a pension scheme notified or as may be notified by the Central Government, he shall, in accordance with, and subject to, the provisions of this section, be allowed a deduction in the

57. Inserted by the Finance Act, 2001, w.e.f. 1-4-2002.

58. Substituted for "ten thousand" by the Finance Act, 2006, w.e.f. 1-4-2007.

59. Substituted by the Finance Act, 2005, w.e.f. 1-4-2006. Prior to its substitution, sub-section (3) read as under :

"(3) Where any amount paid or deposited by the assessee has been taken into account for the purposes of this section, a rebate with reference to such amount shall not be allowed under section 88."

60. Inserted by the Finance (No. 2) Act, 2004, w.r.e.f. 1-4-2004.

60a. *See* Circular No. 1/2010, dated 11-1-2010 as well as Circular F. No. 275/192/2009-IT(B), dated 9-2-2010. For details *see* Taxmann's Master Guide to Income-tax Act.

61. Inserted by the Finance Act, 2007, w.r.e.f. 1-4-2004.

62. Inserted by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-2009.

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computation of his total income, of the whole of the amount so paid or deposited [63][as does not exceed,—

(*a*) in the case of an employee, ten per cent of his salary in the previous year; and

(*b*) in any other case, ten per cent of his gross total income in the previous year.]

(2) Where, in the case of an assessee referred to in sub-section (1), the Central Government [64][or any other employer] makes any contribution to his account referred to in that sub-section, the assessee shall be allowed a deduction in the computation of his total income, of the whole of the amount contributed by the Central Government [64][or any other employer] as does not exceed ten per cent of his salary in the previous year.

(3) Where any amount standing to the credit of the assessee in his account referred to in sub-section (1), in respect of which a deduction has been allowed under that sub-section or sub-section (2), together with the amount accrued thereon, if any, is received by the assessee or his nominee, in whole or in part, in any previous year,—

(*a*) on account of closure or his opting out of the pension scheme referred to in sub-section (1); or

(*b*) as pension received from the annuity plan purchased or taken on such closure or opting out,

the whole of the amount referred to in clause (*a*) or clause (*b*) shall be deemed to be the income of the assessee or his nominee, as the case may be, in the previous year in which such amount is received, and shall accordingly be charged to tax as income of that previous year.

[65][(4) Where any amount paid or deposited by the assessee has been allowed as a deduction under sub-section (1),—

(*a*) no rebate with reference to such amount shall be allowed under section 88 for any assessment year ending before the 1st day of April, 2006;

(*b*) no deduction with reference to such amount shall be allowed under section 80C for any assessment year beginning on or after the 1st day of April, 2006.]

[66][(5) For the purposes of this section, the assessee shall be deemed not to have received any amount in the previous year if such amount is used for purchasing an annuity plan in the same previous year.]

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63. Substituted for "as does not exceed ten per cent of his salary in the previous year" by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-2009.

64. Inserted by the Finance Act, 2007, w.r.e.f. 1-4-2004.

65. Substituted by the Finance Act, 2005, w.e.f. 1-4-2006. Prior to its substitution, sub-section (4) read as under :

"(4) Where any amount paid or deposited by the assessee has been allowed as a deduction under sub-section (1), no rebate with reference to such amount shall be allowed under section 88."

66. Inserted by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-2009.

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Explanation.—For the purposes of this section, "salary" includes dearness allowance, if the terms of employment so provide, but excludes all other allowances and perquisites.]

[67][**Limit on deductions under sections 80C, 80CCC and 80CCD.**

80CCE. The aggregate amount of deductions under section 80C, section 80CCC and section 80CCD shall not, in any case, exceed one lakh rupees.]

The following section 80CCF shall be inserted after section 80CCE by the Finance Act, 2010, w.e.f. 1-4-2011 :

Deduction in respect of subscription to long-term infrastructure bonds.

80CCF. *In computing the total income of an assessee, being an individual or a Hindu undivided family, there shall be deducted, the whole of the amount, to the extent such amount does not exceed twenty thousand rupees, paid or deposited, during the previous year relevant to the assessment year beginning on the 1st day of April, 2011, as subscription to long-term infrastructure bonds as may, for the purposes of this section, be notified by the Central Government.*

[68][**Deduction in respect of health insurance premia.**

80D. (1) In computing the total income of an assessee, being an individual or a Hindu undivided family, there shall be deducted such sum, as specified in sub-section (2) or sub-section (3), payment of which is made by any mode, other than cash, in the previous year out of his income chargeable to tax.

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67. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

68. Substituted by the Finance Act, 2008, w.e.f. 1-4-2009. Prior to its substitution, section 80D, as inserted by the Income-tax (Amendment) Act, 1986, w.e.f. 1-4-1987 and amended by the Finance Act, 1992, w.e.f. 1-4-1993, Finance Act, 1994, w.r.e.f. 1-4-1987, Finance (No. 2) Act, 1996, w.e.f. 1-4-1997, Finance Act, 1999, w.e.f. 1-4-2000, Finance Act, 2001, w.e.f. 1-4-2002 and Finance Act, 2007, w.e.f. 1-4-2008, read as under :

'80D. *Deduction in respect of medical insurance premia*.—(1) In computing the total income of an assessee, there shall be deducted at the following rates, such sum as is specified in sub-section (2) and paid by him by any mode of payment other than cash in the previous year out of his income chargeable to tax, namely :—

(*i*) in a case where such sum does not exceed in the aggregate fifteen thousand rupees, the whole of such sum; and

(*ii*) in any other case, fifteen thousand rupees :

Provided that where the sum specified in sub-section (2) is paid to effect or to keep in force an insurance on the health of the assessee, or his wife or her husband or dependant parents or any member of the family in case the assessee is a Hindu undivided family, and who is a senior citizen, the provisions of this section shall have effect as if for the words "fifteen thousand rupees", the words "twenty thousand rupees" had been substituted.

(2) The sum referred to in sub-section (1) shall be the following, namely :—

(*a*) where the assessee is an individual, any sum paid to effect or to keep in force an insurance on the health of the assessee or on the health of the wife or husband, dependent parents or dependent children of the assessee;

(*b*) where the assessee is a Hindu undivided family, any sum paid to effect or to keep in force an insurance on the health of any member of the family :

(*c*) [* * *]

(Contd. on p. 1.396)

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(2) Where the assessee is an individual, the sum referred to in sub-section (1) shall be the aggregate of the following, namely:—

(*a*) the whole of the amount paid to effect or to keep in force an insurance on the health of the assessee or his family [68a]**[***or any contribution made to the Central Government Health Scheme***]** as does not exceed in the aggregate fifteen thousand rupees; and

(*b*) the whole of the amount paid to effect or to keep in force an insurance on the health of the parent or parents of the assessee as does not exceed in the aggregate fifteen thousand rupees.

Explanation.—For the purposes of clause (*a*), "family" means the spouse and dependant children of the assessee.

(3) Where the assessee is a Hindu undivided family, the sum referred to in sub-section (1) shall be the whole of the amount paid to effect or to keep in force an insurance on the health of any member of that Hindu undivided family as does not exceed in the aggregate fifteen thousand rupees.

(4) Where the sum specified in clause (*a*) or clause (*b*) of sub-section (2) or in sub-section (3) is paid to effect or keep in force an insurance on the health of any person specified therein, and who is a senior citizen, the provisions of this section shall have effect as if for the words "fifteen thousand rupees", the words "twenty thousand rupees" had been substituted.

Explanation.—For the purposes of this sub-section, "senior citizen" means an individual resident in India who is of the age of sixty-five years or more at any time during the relevant previous year.

(5) The insurance referred to in this section shall be in accordance with a scheme[69] made in this behalf by—

(*a*) the General Insurance Corporation of India formed under section 9 of the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972) and approved by the Central Government in this behalf; or

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(Contd. from p. 1.395)

Provided that such insurance shall be in accordance with a scheme framed in this behalf by—

(*a*) the General Insurance Corporation of India formed under section 9 of the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972) and approved by the Central Government in this behalf; or

(*b*) any other insurer and approved by 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).

Explanation.—For the purpose of this section, "senior citizen" shall have the meaning assigned to it in the *Explanation* to section 80DDB.'

Original section 80D dealing with deduction in respect of medical treatment, etc., of handicapped dependants was introduced by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968 replacing old section 80B which was inserted by the Finance Act, 1965, w.e.f. 1-4-1965. Original section 80D, prior to its omission by the Finance Act, 1984, w.e.f. 1-4-1985, was amended by the Finance Act, 1981, w.e.f. 1-4-1982 and the Finance Act, 1968, w.e.f. 1-4-1969.

68a. Shall be inserted by the Finance Act, 2010, w.e.f. **1-4-2011**.

69. For a scheme providing for Hospitalisation and Domiciliary Hospitalisation Benefit, *see* Taxmann's Direct Taxes Circulars.

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(*b*) any other insurer and approved by 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).]

[70][**Deduction in respect of maintenance including medical treatment of a dependant who is a person with disability.**

80DD. (1) Where an assessee, being an individual or a Hindu undivided family, who is a resident in India, has, during the previous year,—

(*a*) incurred any expenditure for the medical treatment (including nursing), training and rehabilitation of a dependant, being a person with disability; or

(*b*) paid or deposited any amount under a scheme framed in this behalf by the Life Insurance Corporation or any other insurer or the Administrator or the specified company subject to the conditions specified in sub-section (2) and approved by the Board in this behalf for the maintenance of a dependant, being a person with disability,

the assessee shall, in accordance with and subject to the provisions of this section, be allowed a deduction of a sum of fifty thousand rupees from his gross total income in respect of the previous year:

Provided that where such dependant is a person with severe disability, the provisions of this sub-section shall have effect as if for the words "fifty thousand rupees", the words [71]["*one hundred thousand rupees*"] had been substituted.

(2) The deduction under clause (*b*) of sub-section (1) shall be allowed only if the following conditions are fulfilled, namely:—

(*a*) the scheme referred to in clause (*b*) of sub-section (1) provides for payment of annuity or lump sum amount for the benefit of a dependant, being a person with disability, in the event of the death of the individual or the member of the Hindu undivided family in whose name subscription to the scheme has been made;

(*b*) the assessee nominates either the dependant, being a person with disability, or any other person or a trust to receive the payment on his behalf, for the benefit of the dependant, being a person with disability.

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70. Substituted by the Finance Act, 2003, w.e.f. 1-4-2004. Prior to its substitution, section 80DD was substituted for sections 80DD and 80DDA by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999. Earlier section 80DD was inserted by the Finance Act, 1990, w.e.f. 1-4-1991 and thereafter amended by the Finance Act, 1992, w.e.f. 1-4-1993 and Finance Act, 1993, w.e.f. 1-4-1994. Section 80DDA was inserted by the Finance Act, 1995, w.e.f. 1-4-1996. Prior to its substitution by the Finance Act, 2003, section 80DD was amended by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999, Finance Act, 1999, w.e.f. 1-4-2000 and Finance Act, 2001, w.e.f. 1-4-2002.

71. Substituted for '"seventy-five thousand rupees"' by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2010**.

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(3) If the dependant, being a person with disability, predeceases the individual or the member of the Hindu undivided family referred to in sub-section (2), an amount equal to the amount paid or deposited under clause (*b*) of sub-section (1) shall be deemed to be the income of the assessee of the previous year in which such amount is received by the assessee and shall accordingly be chargeable to tax as the income of that previous year.

(4) The assessee, claiming a deduction under this section, shall furnish a copy of the certificate issued by the medical authority in the prescribed form and manner[72], along with the return of income under section 139, in respect of the assessment year for which the deduction is claimed:

Provided that where the condition of disability requires reassessment of its extent after a period stipulated in the aforesaid certificate, no deduction under this section shall be allowed for any assessment year relating to any previous year beginning after the expiry of the previous year during which the aforesaid certificate of disability had expired, unless a new certificate is obtained from the medical authority in the form and manner, as may be prescribed, and a copy thereof is furnished along with the return of income.

Explanation.—For the purposes of this section,—

(*a*) "Administrator" means the Administrator as referred to in clause (*a*) of section 2 of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 (58 of 2002)[73];

(*b*) "dependant" means—

(*i*) in the case of an individual, the spouse, children, parents, brothers and sisters of the individual or any of them;

(*ii*) in the case of a Hindu undivided family, a member of the Hindu undivided family,

dependant wholly or mainly on such individual or Hindu undivided family for his support and maintenance, and who has not claimed any deduction under section 80U in computing his total income for the assessment year relating to the previous year;

(*c*) "disability" shall have the meaning assigned to it in clause (*i*) of section 2[74] of the Persons with Disabilities (Equal Opportunities, Protection of

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72. *See* rule 11A. For prescribed form of certificate, refer Form No. 10-IA as well as Forms prescribed under Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (*see* Taxmann's Income-tax Rules). Rule 12 provides that the return of income shall not be accompanied by any document or copy of any account or form or report of audit required to be attached with return of income under any of the provisions of the Act.

73. For text of the UTI (Transfer of Undertaking and Repeal) Act, 2002, *see* Taxmann's Direct Taxes Manual, Vol. 3.

74. *See* **Appendix** for definition of relevant terms under Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation & Multiple Disabilities Act, 1999.

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Rights and Full Participation) Act, 1995 (1 of 1996) [75][and includes "autism", "cerebral palsy" and "multiple disability" referred to in clauses (*a*), (*c*) and (*h*) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999)];

(*d*) "Life Insurance Corporation" shall have the same meaning as in clause (*iii*) of sub-section (8) of section 88;

(*e*) "medical authority" means the medical authority as referred to in clause (*p*) of section 2[76] of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996) [77][or such other medical authority as may, by notification, be specified by the Central Government for certifying "autism", "cerebral palsy", "multiple disabilities", "person with disability" and "severe disability" referred to in clauses (*a*), (*c*), (*h*), (*j*) and (*o*) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999)];

(*f*) "person with disability" means a person as referred to in clause (*t*) of section 2[76] of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996) [77][or clause (*j*) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999)];

[78][(*g*) "person with severe disability" means—

(*i*) a person with eighty per cent or more of one or more disabilities, as referred to in sub-section (4) of section 56 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996)[79]; or

(*ii*) a person with severe disability referred to in clause (*o*) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999)[80];]

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75. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005.

76. *See* **Appendix** for definition of relevant terms under Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation & Multiple Disabilities Act, 1999.

77. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005.

78. Substituted, *ibid.* Prior to its substitution, clause (*g*) read as under :

'(*g*) "person with severe disability" means a person with eighty per cent or more of one or more disabilities, as referred to in sub-section (4) of section 56 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996);'

79. *See* **Appendix** for definition of relevant terms under Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation & Multiple Disabilities Act, 1999.

80. *See* footnote 74 on page 1.398.

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(*h*) "specified company" means a company as referred to in clause (*h*) of section 2[81] of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 (58 of 2002).]

[82-83][**Deduction in respect of medical treatment, etc.**

80DDB. Where an assessee who is resident in India has, during the previous year, actually paid any amount for the medical treatment of such disease or ailment as may be specified in the rules[84] made in this behalf by the Board—

(*a*) for himself or a dependant, in case the assessee is an individual; or

(*b*) for any member of a Hindu undivided family, in case the assessee is a Hindu undivided family,

the assessee shall be allowed a deduction of the amount actually paid or a sum of forty thousand rupees, whichever is less, in respect of that previous year in which such amount was actually paid :

Provided that no such deduction shall be allowed unless the assessee furnishes with the return of income, a certificate in such form, as may be prescribed[84], from a neurologist, an oncologist, a urologist, a haematologist, an immunologist or such other specialist, as may be prescribed[84], working in a Government hospital :

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81. For text of the UTI (Transfer of Undertaking and Repeal) Act, 2002, *see* Taxmann's Direct Taxes Manual, Vol. 3.

82-83. Substituted by the Finance Act, 2003, w.e.f. 1-4-2004. Prior to its substitution, section 80DDB, as inserted by the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997 and later on amended by the Finance Act, 1999, w.e.f. 1-4-2000, read as under :

'80DDB. *Deduction in respect of medical treatment, etc.*—Where an assessee who is resident in India has, during the previous year, actually incurred any expenditure for the medical treatment of such disease or ailment as may be specified in the rules made in this behalf by the Board—

(*a*) for himself or a dependant relative, in case the assessee is an individual; or

(*b*) for any member of a Hindu undivided family, in case the assessee is a Hindu undivided family,

the assessee shall be allowed a deduction of a sum of forty thousand rupees in respect of that previous year in which such expenditure was incurred :

Provided that no such deduction shall be allowed unless the assessee furnishes a certificate in such form and from such authority as may be prescribed :

Provided further that the deduction under this section shall be reduced by the amount received, if any, under an insurance from an insurer for the medical treatment of the person referred to in clause (*a*) or clause (*b*) :

Provided also that where the expenditure incurred is in respect of the assessee or his dependant relative or any member of a Hindu undivided family of the assessee and who is a senior citizen, the provisions of this section shall have effect as if for the words "forty thousand rupees", the words "sixty thousand rupees" had been substituted.

Explanation.—For the purposes of this section,—

(*i*) "dependant" means a person who is not dependant for his support or maintenance on any person other than the assessee;

(*ii*) "insurer" shall have the meaning assigned to it in clause (*9*) of section 2 of the Insurance Act, 1938 (4 of 1938);

(*iii*) "senior citizen" means an individual resident in India who is of the age of sixty-five years or more at any time during the relevant previous year.'

84. *See* rule 11D and Form No. 10-I. Rule 12 provides that the return of income shall not be accompanied by any document or copy of any account or form or report of audit required to be attached with return of income under any of the provisions of the Act.

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Provided further that the deduction under this section shall be reduced by the amount received, if any, under an insurance from an insurer, or reimbursed by an employer, for the medical treatment of the person referred to in clause (*a*) or clause (*b*) :

Provided also that where the amount actually paid is in respect of the assessee or his dependant or any member of a Hindu undivided family of the assessee and who is a senior citizen, the provisions of this section shall have effect as if for the words "forty thousand rupees", the words "sixty thousand rupees" had been substituted.

Explanation.—For the purposes of this section,—

(*i*) "dependant" means—

(*a*) in the case of an individual, the spouse, children, parents, brothers and sisters of the individual or any of them,

(*b*) in the case of a Hindu undivided family, a member of the Hindu undivided family,

dependant wholly or mainly on such individual or Hindu undivided family for his support and maintenance;

(*ii*) "Government hospital" includes a departmental dispensary whether full-time or part-time established and run by a Department of the Government for the medical attendance and treatment of a class or classes of Government servants and members of their families, a hospital maintained by a local authority and any other hospital with which arrangements have been made by the Government for the treatment of Government servants;

(*iii*) "insurer"[85] shall have the meaning assigned to it in clause (*9*) of section 2 of the Insurance Act, 1938 (4 of 1938);

(*iv*) "senior citizen" means an individual resident in India who is of the age of sixty-five years or more at any time during the relevant previous year.]

[86][**Deduction in respect of interest on loan taken for higher education.**

80E. (1) In computing the total income of an assessee, being an individual, there shall be deducted, in accordance with and subject to the provisions of this section, any amount paid by him in the previous year, out of his income chargeable to tax, by way of interest on loan taken by him from any financial

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85. For definition of "insurer" under section 2(*9*) of the Insurance Act, 1938, *see* **Appendix**.

86. Substituted by the Finance Act, 2005, w.e.f. 1-4-2006. Prior to its substitution, section 80E, as inserted by the Finance Act, 1994, w.e.f. 1-4-1995 and amended by the Finance Act, 2000, w.e.f. 1-4-2001, read as under :

'80E. *Deduction in respect of repayment of loan taken for higher education*.—(1) In computing the total income of an assessee, being an individual, there shall be deducted, in accordance with and subject to the provisions of this section, any amount paid by him in the previous year, out of his income chargeable to tax, by way of repayment of loan, taken by him from any financial institution or any approved charitable institution for the purpose of pursuing his higher education, or interest on such loan :

Provided that the amount which may be so deducted shall not exceed forty thousand rupees.

(Contd. on p. 1.402)

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institution or any approved charitable institution for the purpose of pursuing his higher education [87][or for the purpose of higher education of his relative].

(2) The deduction specified in sub-section (1) shall be allowed in computing the total income in respect of the initial assessment year and seven assessment years immediately succeeding the initial assessment year or until the interest referred to in sub-section (1) is paid by the assessee in full, whichever is earlier.

(3) For the purposes of this section,—

(*a*) "approved charitable institution" means an institution specified in, or, as the case may be, an institution established for charitable purposes and [88][approved by the prescribed authority] under clause (*23C*) of section 10 or an institution referred to in clause (*a*) of sub-section (2) of section 80G;

(*b*) "financial institution" means a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act); or any other financial institution which the Central Government may, by notification in the Official Gazette[89], specify in this behalf;

[90][(c) *"higher education" means any course of study pursued after passing the Senior Secondary Examination or its equivalent from any school,*

(Contd. from p. 1.401)

(2) The deduction specified in sub-section (1) shall be allowed in computing the total income in respect of the initial assessment year and seven assessment years immediately succeeding the initial assessment year or until the loan referred to in sub-section (1) together with interest thereon is paid by the assessee in full, whichever is earlier.

(3) For the purposes of this section,—

(*a*) "approved charitable institution" means an institution specified in, or, as the case may be, an institution established for charitable purposes and notified by the Central Government under clause (*23C*) of section 10 or an institution referred to in clause (*a*) of sub-section (2) of section 80G;

(*b*) "financial institution" means a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act); or any other financial institution which the Central Government may, by notification in the Official Gazette, specify in this behalf;

(*c*) "higher education" means full-time studies for any graduate or post-graduate course in engineering, medicine, management or for post-graduate course in applied sciences or pure sciences including mathematics and statistics;

(*d*) "initial assessment year" means the assessment year relevant to the previous year, in which the assessee starts repaying the loan or interest thereon.'

Earlier section 80E with heading "Deduction in respect of payment for securing retirement annuities" was inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968. Section 80E, thereafter, was amended by the Finance Act, 1968, w.e.f. 1-4-1969 and the Finance Act, 1984, w.e.f. 1-4-1984 and later on by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. This topic was dealt with by original section 80C which was inserted by the Finance Act, 1965, w.e.f. 1-4-1965.

87. Inserted by the Finance Act, 2007, w.e.f. 1-4-2008.

88. Substituted for "notified by the Central Government", *ibid.*

89. For notified institutions and Circular No. 688, dated 23-8-1994, *see* Taxmann's Master Guide to Income-tax Act.

90. Substituted by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2010**. Prior to its substitution, clause (*c*) read as under:

(Contd. on p. 1.403)

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board or university recognised by the Central Government or State Government or local authority or by any other authority authorised by the Central Government or State Government or local authority to do so;]

(*d*) "initial assessment year" means the assessment year relevant to the previous year, in which the assessee starts paying the interest on the loan;]

[91][(e) *"relative", in relation to an individual, means the spouse and children of that individual or the student for whom the individual is the legal guardian.*]

Deduction in respect of educational expenses in certain cases.

80F. [*Omitted by the Finance Act, 1985, w.e.f. 1-4-1986. Original section was inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968 in place of section 87A which was inserted by the Finance Act, 1964, w.e.f. 1-4-1964. It was later amended by the Finance Act, 1968, w.e.f. 1-4-1969. New section 80F, dealing with deduction in respect of amounts applied for charitable or religious purposes, etc., was inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. This section was omitted by the Direct Tax Laws (Amendment) Act, 1989, with effect from the same date.*]

Deduction in respect of expenses on higher education in certain cases.

80FF. [*Omitted by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1981. Original section was inserted by the Finance Act, 1975, w.e.f. 1-4-1976.*]

[92]**Deduction in respect of donations to certain funds, charitable institutions, etc.**

[93]**80G.** [94][(1) In computing the total income of an assessee[95], there shall be deducted, in accordance with and subject to the provisions of this section,—

(Contd. from p. 1.402)

'(*c*) "higher education" means full-time studies for any graduate or post-graduate course in engineering, medicine, management or for post-graduate course in applied sciences or pure sciences including mathematics and statistics;'

91. Substituted by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2010**. Prior to its substitution, clause (*e*), as inserted by the Finance Act, 2007, w.e.f. 1-4-2008, read as under :

'(*e*) "relative", in relation to an individual, means the spouse and children of that individual.'

92. This section was inserted in place of section 88 which was deleted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968. Later section 88 took place of section 80C, which is now reintroduced.

93. See also Letter [F. No. 45/313/66-ITJ(61)], dated 2-12-1966, Circular No. 416, dated 11-4-1985, Letter [F. No. 81/60/62-IT], dated 11-12-1962, Letter [F. No. 69/94/62-IT], dated 14-1-1963, Letter [F. No. 16/5/67-IT (A-I)], dated 5-4-1967, Circular No. 178, dated 23-9-1975, Letter [F. No. 69/22/63-IT], dated 28-9-1963, Letter [F. No. 69/13/62-IT], dated 20-7-1962, Letter [F. No. 69/34/62-IT], dated 11-7-1962, Letter No. W 110421/1/77-C & G (FP), dated 11-1-1977, Circular No. 678, dated 10-2-1994, Circular No. 752, dated 26-3-1997; Circular No. 777, dated 1-7-1999, Circular No. 782, dated 13-11-1999, Circular No. 4/2001, dated 12-2-2001, Circular No. 7/2001, dated 21-3-2001 and Circular No. 2/2005, dated 12-1-2005. For details, *see* Taxmann's Master Guide to Income-tax Act.

For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

94. Substituted by the Finance Act, 1976, w.e.f. 1-4-1977. Earlier, it was substituted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

95. For the meaning of the expression "in computing the total income of an assessee", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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[96][(*i*) in a case where the aggregate of the sums specified in sub-section (2) includes any sum or sums of the nature specified in [97][sub-clause (*i*) or in] [98][sub-clause (*iiia*) [99][or in sub-clause (*iiiaa*) [1][or in sub-clause (*iiiab*)] [2][or in sub-clause (*iiie*)] [3][or in sub-clause (*iiif*)] [4][or in sub-clause (*iiig*)] [5][or in sub-clause (*iiiga*)] or [6][sub-clause (*iiih*) or] [7][sub-clause (*iiiha*) or sub-clause (*iiihb*) or sub-clause (*iiihc*) [8][or sub-clause (*iiihd*)] [9][or sub-clause (*iiihe*)] [10][or sub-clause (*iiihf*)] [11][or sub-clause *(iiihg)* or sub-clause (*iiihh*)] [12][or sub-clause (*iiihi*)] [13][or sub-clause (*iiihj*)] or] in] sub-clause (*vii*) of clause (*a*) [14][or in clause (*c*)] [15][or in clause (*d*)] thereof, an amount equal to the whole of the sum or, as the case may be, sums of such nature *plus* fifty per cent of the balance of such aggregate; and]

(*ii*) in any other case, an amount equal to fifty per cent of the aggregate of the sums specified in sub-section (2).]

(2) The sums referred to in sub-section (1) shall be the following, namely :—

(*a*) any sums paid[16] by the assessee in the previous year as donations to—

(*i*) the National Defence Fund set up by the Central Government; or

(*ii*) the Jawaharlal Nehru Memorial Fund referred to in the Deed of Declaration of Trust adopted by the National Committee at its meeting held on the 17th day of August, 1964; or

(*iii*) the Prime Minister's Drought Relief Fund; or

[17][(*iiia*) the Prime Minister's National Relief Fund; or]

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96. Substituted by the Finance Act, 1985, w.e.f. 1-4-1986.

97. Inserted by the Income-tax (Amendment) Act, 1999, w.e.f. 1-4-2000.

98. Restored to its original expression by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Earlier, this was substituted by the Direct Tax Laws (Amendment) Act, 1987 with effect from the same date.

99. Inserted by the Income-tax (Amendment) Act, 1989, w.e.f. 24-1-1989.

1. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1991.

2. Inserted by the Finance Act, 1993, w.e.f. 1-4-1993.

3. Inserted, *ibid.,* w.e.f. 1-4-1994.

4. Inserted by the Finance Act, 1994, w.e.f. 1-4-1994.

5. Inserted by the Taxation Laws (Amendment) Act, 2001, w.r.e.f. 3-2-2001.

6. Inserted by the Finance Act, 1995, w.e.f. 1-4-1996.

7. Inserted by the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997.

8. Inserted by the Income-tax (Amendment) Act, 1996, w.e.f. 14-11-1996.

9. Inserted by the Income-tax (Amendment) Act, 1997, w.e.f. 1-4-1997.

10. Inserted by the Finance Act, 1997, w.e.f. 1-4-1998.

11. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999.

12. Inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

13. Inserted by the Finance Act, 2001, w.e.f. 1-4-2002.

14. Inserted by the Finance Act, 2000, w.e.f. 1-4-2001.

15. Inserted by the Taxation Laws (Amendment) Act, 2001, w.r.e.f. 3-2-2001.

16. For the meaning of the expression "any sums paid", *see* Taxmann's Direct Taxes Manual, Vol. 3.

17. Inserted by the Income-tax (Amendment) Act, 1976, w.r.e.f. 9-9-1975.

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[18][(*iiiaa*) the Prime Minister's Armenia Earthquake Relief Fund; or]

[19][(*iiiab*) the Africa (Public Contributions - India) Fund; or]

[20][(*iiib*) the National Children's Fund; or]

[21][(*iiic*) the Indira Gandhi Memorial Trust, the deed of declaration in respect whereof was registered at New Delhi on the 21st day of February, 1985; or]

[22][(*iiid*) the Rajiv Gandhi Foundation, the deed of declaration in respect whereof was registered at New Delhi on the 21st day of June, 1991; or]

[23][(*iiie*) the National Foundation for Communal Harmony; or]

[24][(*iiif*) a University or any educational institution of national eminence as may be approved[25] by the prescribed authority[26] in this behalf; or]

[27][(*iiig*) the Maharashtra Chief Minister's Relief Fund during the period beginning on the 1st day of October, 1993 and ending on the 6th day of October, 1993 or to the Chief Minister's Earthquake Relief Fund, Maharashtra; or]

[28][(*iiiga*) any fund set up by the State Government of Gujarat exclusively for providing relief to the victims of earthquake in Gujarat; or]

[29][(*iiih*) any Zila Saksharta Samiti constituted in any district under the chairmanship of the Collector of that district for the purposes of improvement of primary education in villages and towns in such district and for literacy and post-literacy activities.

Explanation.—For the purposes of this sub-clause, "town" means a town which has a population not exceeding one lakh according to the last preceding census of which the relevant figures have been published before the first day of the previous year ; or]

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18. Inserted by the Income-tax (Amendment) Act, 1989, w.e.f. 24-1-1989.

19. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1991.

20. Inserted by the Finance Act, 1982, w.e.f. 1-4-1983.

21. Inserted by the Finance Act, 1985, w.e.f. 1-4-1985.

22. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992.

23. Inserted by the Finance Act, 1993, w.e.f. 1-4-1993. Earlier sub-clause (*iiie*) was omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989 and earlier inserted by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date.

24. Inserted by the Finance Act, 1993, w.e.f. 1-4-1994.

25. For notified educational institution, refer Taxmann's Direct Taxes Circulars.

26. The prescribed authority under rule 18AAA is as follows : in relation to a university or any non-technical institution of national eminence : Director-General (Income-tax Exemption) in concurrence with the Secretary, University Grants Commission; in relation to any technical institution of national eminence : Director-General (Income-tax Exemption) in concurrence with the Secretary, All India Council of Technical Education.

27. Inserted by the Finance Act, 1994, w.e.f. 1-4-1994.

28. Inserted by the Taxation Laws (Amendment) Act, 2001, w.r.e.f. 3-2-2001.

29. Inserted by the Finance Act, 1995, w.e.f. 1-4-1996.

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[30][(*iiiha*) the National Blood Transfusion Council or to any State Blood Transfusion Council which has its sole object the control, supervision, regulation or encouragement in India of the services related to operation and requirements of blood banks.

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

(*a*) "National Blood Transfusion Council" means a society registered under the Societies Registration Act, 1860 (21 of 1860) and has an officer not below the rank of an Additional Secretary to the Government of India dealing with the AIDS Control Project as its Chairman, by whatever name called;

(*b*) "State Blood Transfusion Council" means a society registered, in consultation with the National Blood Transfusion Council, under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India and has Secretary to the Government of that State dealing with the Department of Health, as its Chairman, by whatever name called; or

(*iiihb*) any fund set up by a State Government to provide medical relief to the poor; or

(*iiihc*) the Army Central Welfare Fund or the Indian Naval Benevolent Fund or the Air Force Central Welfare Fund established by the armed forces of the Union for the welfare of the past and present members of such forces or their dependants; or]

[31][(*iiihd*) the Andhra Pradesh Chief Minister's Cyclone Relief Fund, 1996; or]

[32][(*iiihe*) the National Illness Assistance Fund; or]

[33][(*iiihf*) the Chief Minister's Relief Fund or the Lieutenant Governor's Relief Fund in respect of any State or Union territory, as the case may be :

Provided that such Fund is—

(*a*) the only Fund of its kind established in the State or the Union territory, as the case may be;

(*b*) under the overall control of the Chief Secretary or the Department of Finance of the State or the Union territory, as the case may be;

(*c*) administered in such manner as may be specified by the State Government or the Lieutenant Governor, as the case may be; or]

[34][(*iiihg*) the National Sports Fund to be set up by the Central Government; or

(*iiihh*) the National Cultural Fund set up by the Central Government; or]

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30. Inserted by the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997.

31. Inserted by the Income-tax (Amendment) Act, 1996, w.e.f. 14-11-1996.

32. Inserted by the Income-tax (Amendment) Act, 1997, w.e.f. 1-4-1997.

33. Inserted by the Finance Act, 1997, w.e.f. 1-4-1998.

34. Sub-clauses (*iiihg*) and (*iiihh*) inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999.

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[35][(*iiihi*) the Fund for Technology Development and Application set up by the Central Government; or]

[36][(*iiihj*) the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities constituted under sub-section (1) of section 3 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999); or]

(*iv*) any other fund or any institution to which this section applies; or

(*v*) the Government or any local authority, to be utilised for any charitable purpose [37][other than the purpose of promoting family planning; or]

[38][[39][(*vi*) an authority constituted in India by or under any law enacted either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both;]

[40][(*via*) any corporation referred to in clause (*26BB*) of section 10; or]

(*vii*) the Government or to any such local authority, institution or association as may be approved in this behalf by the Central Government, to be utilised for the purpose of promoting family planning;]

(*b*) any sums paid by the assessee in the previous year as donations for the renovation or repair of any such temple, mosque, gurdwara, church or other place as is notified[41] by the Central Government in the Official Gazette to be of historic, archaeological or artistic importance or to be a place of public worship of renown throughout any State or States;

[42][(*c*) any sums paid by the assessee, being a company, in the previous year as donations to the Indian Olympic Association or to any other association or institution [43][established in India, as the Central Government may, having regard to the prescribed guidelines[44], by notification in the Official Gazette[45], specify in this behalf] for—

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35. Inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

36. Inserted by the Finance Act, 2001, w.e.f. 1-4-2002.

37. Inserted by the Finance Act, 1976, w.e.f. 1-4-1977.

38. Sub-clauses (*vi*) and (*vii*) inserted, *ibid.*

39. Substituted by the Finance Act, 2002, w.e.f. 1-4-2003. Prior to its substitution, sub-clause (*vi*) read as under :

"(*vi*) any authority referred to in clause (*20A*) of section 10; or"

40. Inserted by the Finance Act, 1995, w.e.f. 1-4-1995.

41. For complete list of places of public worship, etc., notified under this clause, *see* Taxmann's Direct Taxes Circulars and Taxmann's Yearly Tax Digest & Referencer.

42. Inserted by the Finance Act, 2000, w.e.f. 1-4-2001.

43. Substituted for "as notified by the Central Government under clause (*23*) of section 10" by the Finance Act, 2002, w.e.f. 1-4-2003.

44. *See* rule 18AAAAA.

45. For notified sports associations/institutions, *see* Taxmann's Direct Taxes Circulars.

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(*i*) the development of infrastructure for sports and games; or

(*ii*) the sponsorship of sports and games,

in India;]

[46][(*d*) any sums paid by the assessee, during the period beginning on the 26th day of January, 2001 and ending on the 30th day of September, 2001, to any trust, institution or fund to which this section applies for providing relief to the victims of earthquake in Gujarat.]

(3) [*Omitted by the Finance Act, 1994, w.e.f. 1-4-1994.*]

[47][(4) Where the aggregate of the sums referred to in sub-clauses (*iv*), (*v*), (*vi*) [48][, (*via*)] and (*vii*) of clause (*a*) and in [49][clauses (*b*) and (*c*)] of sub-section (2) exceeds ten per cent of the gross total income (as reduced by any portion thereof on which income-tax is not payable under any provision of this Act and by any amount in respect of which the assessee is entitled to a deduction under any other provision of this Chapter), then the amount in excess of ten per cent of the gross total income shall be ignored for the purpose of computing the aggregate of the sums in respect of which deduction is to be allowed under sub-section (1)].

(5) This section applies to donations to any institution or fund referred to in sub-clause (*iv*) of clause (*a*) of sub-section (2), only if it is established in India for a charitable purpose and if it fulfils the following conditions, namely :—

[50][(*i*) where the institution or fund derives any income, such income would not be liable to inclusion in its total income under the provisions of sections 11 and 12 [51][* * *] [52][53][***]] [54][or clause (*23AA*)] [55][or clause (*23C*)] of section 10 :

[56][**Provided** that where an institution or fund derives any income, being profits and gains of business, the condition that such income would not be liable to inclusion in its total income under the provisions of section 11 shall not apply in relation to such income, if—

(*a*) the institution or fund maintains separate books of account in respect of such business;

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46. Inserted by the Taxation Laws (Amendment) Act, 2001, w.r.e.f. 3-2-2001.

47. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Prior to its substitution, sub-section (4) was amended by the Taxation Laws (Amendment) Act, 1970, w.r.e.f. 1-4-1968, Finance (No. 2) Act, 1977, w.e.f. 1-4-1978 and substituted by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1981.

48. Inserted by the Finance Act, 1995, w.e.f. 1-4-1995.

49. Substituted for "clause (*b*)" by the Finance Act, 2000, w.e.f. 1-4-2001.

50. Restored to its original provision by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Earlier, it was substituted by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date.

51. Words "or clause (*22*) or clause (*22A*)" omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999. Earlier "or clause (*22A*)" was inserted by the Finance Act, 1970, w.e.f. 1-4-1970.

52. Inserted by the Finance Act, 1973, w.e.f. 1-4-1974.

53. Words "or clause (*23*)" omitted by the Finance Act, 2002, w.e.f. 1-4-2003.

54. Inserted by the Finance Act, 1987, w.e.f. 1-4-1988.

55. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

56. Inserted by the Finance Act, 1983, w.e.f. 1-4-1984.

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(*b*) the donations made to the institution or fund are not used by it, directly or indirectly, for the purposes of such business; and

(*c*) the institution or fund issues to a person making the donation a certificate to the effect that it maintains separate books of account in respect of such business and that the donations received by it will not be used, directly or indirectly, for the purposes of such business;]]

(*ii*) the instrument under which the institution or fund is constituted does not, or the rules governing the institution or fund do not, contain any provision for the transfer or application at any time of the whole or any part of the income or assets of the institution or fund for any purpose other than a charitable purpose;

(*iii*) the institution or fund is not expressed to be for the benefit of any particular religious community or caste;

(*iv*) the institution or fund maintains regular accounts of its receipts and expenditure; [57][* * *]

(*v*) the institution or fund is either constituted as a public charitable trust or is registered under the Societies Registration Act, 1860 (21 of 1860), or under any law corresponding to that Act in force in any part of India or under section 25[58] of the Companies Act, 1956 (1 of 1956), or is a University established by law, or is any other educational institution recognised by the Government or by a University established by law, or affiliated to any University established by law, [59][[60][***]] or is an institution financed wholly or in part by the Government or a local authority; [61][***]

[62][(*vi*) in relation to donations made after the 31st day of March, 1992, the institution or fund is for the time being approved by the Commissioner in accordance with the rules[63] made in this behalf [64][; and]

[65][***]]

[64][(*vii*) where any institution or fund had been approved under clause (*vi*) for the previous year beginning on the 1st day of April, 2007 and ending on the 31st day of March, 2008, such institution or fund shall, for the

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57. Word "and" omitted by the Finance Act, 1994, w.e.f. 1-4-1994.

58. For text of section 25 of the Companies Act, 1956, *see* **Appendix**.

59. Inserted by the Finance Act, 1973, w.e.f. 1-4-1974. Restored to its original expression by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Earlier, it was omitted by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date.

60. Words "or is an institution approved by the Central Government for the purposes of clause (*23*) of section 10," omitted by the Finance Act, 2002, w.e.f. 1-4-2003.

61. Word "and" omitted by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-2009. Earlier, it was inserted by the Finance Act, 1994, w.e.f. 1-4-1994.

62. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

63. *See* rule 11AA and Form No. 10G.

64. Inserted by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-2009.

65. Proviso omitted by the Finance (No. 2) Act, 2009, w.e.f. 1-10-2009. Prior to its omission, proviso, as amended by the Finance Act, 1993, w.e.f. 1-4-1993, read as under :

"**Provided** that any approval shall have effect for such assessment year or years, not exceeding five assessment years, as may be specified in the approval."

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purposes of this section and notwithstanding anything contained in the proviso to clause (*15*) of section 2, be deemed to have been,—

(*a*) established for charitable purposes for the previous year beginning on the 1st day of April, 2008 and ending on the 31st day of March, 2009; and

(*b*) approved under the said clause (*vi*) for the previous year beginning on the 1st day of April, 2008 and ending on the 31st day of March, 2009.]

[66][(5A) Where a deduction under this section is claimed and allowed for any assessment year in respect of any sum specified in sub-section (2), the sum in respect of which deduction is so allowed shall not qualify for deduction under any other provision of this Act for the same or any other assessment year.]

[67][(5B) Notwithstanding anything contained in clause (*ii*) of sub-section (5) and *Explanation 3,* an institution or fund which incurs expenditure, during any previous year, which is of a religious nature for an amount not exceeding five per cent of its total income in that previous year shall be deemed to be an institution or fund to which the provisions of this section apply.]

[68][(5C) This [69][section] applies in relation to amounts referred to in clause (*d*) of sub-section (2) only if the trust or institution or fund is established in India for a charitable purpose and it fulfils the following conditions, namely :—

(*i*) it is approved in terms of clause (*vi*) of sub-section (5);

(*ii*) it maintains separate accounts of income and expenditure for providing relief to the victims of earthquake in Gujarat;

(*iii*) the donations made to the trust or institution or fund are applied only for providing relief to the earthquake victims of Gujarat on or before the 31st day of March, [70][2004];

[71][(*iv*) the amount of donation remaining unutilised on the 31st day of March, [70][2004] is transferred to the Prime Minister's National Relief Fund on or before the 31st day of March, [70][2004];]

(*v*) it renders accounts of income and expenditure to such authority[72] and in such manner as may be prescribed[73], on or before the 30th day of June, [70][2004].]

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66. Inserted by the Finance (No. 2) Act, 1980, w.r.e.f. 1-4-1962.

67. Inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

68. Inserted by the Taxation Laws (Amendment) Act, 2001, w.r.e.f. 3-2-2001.

69. Substituted for "sub-section" by the Finance Act, 2002, w.r.e.f. 3-2-2001.

70. Substituted for "2003" by the Finance Act, 2003, w.r.e.f. 3-2-2001. Earlier "2003" was substituted for "2002" by the Finance Act, 2002, w.r.e.f. 3-2-2001.

71. Substituted by the Finance Act, 2002, w.r.e.f. 3-2-2001. Prior to its substitution, clause (*iv*) read as under:

"(*iv*) the amount of donation remaining unutilised on the 31st day of March, 2002 is transferred to the Prime Minister's National Relief Fund on or before the 31st day of March, 2002;"

72. Prescribed authority under rule 18AAAA, is Director General of Income-tax (Exemptions).

73. *See* rule 18AAAA and Form No.10AA.

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Explanation 1.—An institution or fund established for the benefit of Scheduled Castes, backward classes, Scheduled Tribes or of women and children shall not be deemed to be an institution or fund expressed to be for the benefit of a religious community or caste within the meaning of clause (*iii*) of sub-section (5).

[74][*Explanation 2.*—For the removal of doubts, it is hereby declared that a deduction to which the assessee is entitled in respect of any donation made to an institution or fund to which sub-section (5) applies shall not be denied merely on either or both of the following grounds, namely :—

[75][(*i*) that, subsequent to the donation, any part of the income of the institution or fund has become chargeable to tax due to non-compliance with any of the provisions of section 11, [76][section 12 or section 12A];

(*ii*) that, under clause (*c*) of sub-section (1) of section 13, the exemption under section 11 [76][or section 12] is denied to the institution or fund in relation to any income arising to it from any investment referred to in clause (*h*) of sub-section (2) of section 13 where the aggregate of the funds invested by it in a concern referred to in the said clause (*h*) does not exceed five per cent of the capital of that concern.]]

Explanation 3.—In this section, "charitable purpose" does not include any purpose the whole or substantially the whole of which is of a religious nature.

[77][*Explanation 4.*—For the purposes of this section, an association or institution having as its object the control, supervision, regulation or encouragement in India of such games or sports as the Central Government may, by notification in the Official Gazette[78], specify in this behalf, shall be deemed to be an institution established in India for a charitable purpose.]

[79][*Explanation 5.*—For the removal of doubts, it is hereby declared that no deduction shall be allowed under this section in respect of any donation unless such donation is of a sum of money.]

(6) [80][* * *]

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74. Substituted by the Finance Act, 1970, w.e.f. 1-4-1971.

75. Restored to its original position by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Earlier, clauses (*i*) and (*ii*) were substituted by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date.

76. Inserted by the Finance Act, 1972, w.e.f. 1-4-1973.

77. Substituted by the Finance Act, 2002, w.e.f. 1-4-2003. Prior to its substitution, *Explanation 4*, as inserted by the Finance Act, 1973, w.e.f. 1-4-1974, later on omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989 and restored to its original provision by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989, read as under :

"*Explanation 4.*—For the purposes of this section, an association approved by the Central Government for the purposes of clause (*23*) of section 10 shall also be deemed to be an institution, and every association or institution approved by the Central Government for the purposes of the said clause shall be deemed to be an institution established in India for a charitable purpose."

78. For notified games and sports, *see* Taxmann's Master Guide to Income-tax Act.

79. Inserted by the Finance Act, 1976, w.e.f. 1-4-1976.

80. Omitted by the Finance Act, 1968, w.e.f. 1-4-1969.

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[81][**Deductions in respect of rents paid.**[82]

80GG. In computing the total income of an assessee, not being an assessee having any income falling within clause (*13A*) of section 10, there shall be deducted any expenditure incurred by him in excess of ten per cent of his total income towards payment of rent (by whatever name called) in respect of any furnished or unfurnished accommodation occupied by him for the purposes of his own residence, to the extent to which such excess expenditure does not exceed two thousand rupees per month or twenty-five per cent of his total income for the year, whichever is less, and subject to such other conditions or limitations as may be prescribed[83], having regard to the area or place in which such accommodation is situated and other relevant considerations :

Provided that nothing in this section shall apply to an assessee in any case where any residential accommodation is—

(*i*) owned by the assessee or by his spouse or minor child or, where such assessee is a member of a Hindu undivided family, by such family at the place where he ordinarily resides or performs duties of his office or employment or carries on his business or profession; or

(*ii*) owned by the assessee at any other place, being accommodation in the occupation of the assessee, the value of which is to be determined [84][under clause (*a*) of sub-section (2) or, as the case may be, clause (*a*) of sub-section (4) of section 23].

Explanation.—In this section, the expressions "ten per cent of his total income" and "twenty-five per cent of his total income" shall mean ten per cent or twenty-five per cent, as the case may be, of the assessee's total income before allowing deduction for any expenditure under this section.]

[85][**Deduction in respect of certain donations for scientific research or rural development.**

80GGA. (1) In computing the total income of an assessee, there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2).

(2) The sums referred to in sub-section (1) shall be the following, namely :—

(*a*) any sum paid by the assessee in the previous year to a [85a]**[***scientific research association***]** which has as its object the undertaking of

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81. Reintroduced by the Finance (No. 2) Act, 1998, w.r.e.f. 1-4-1998. Earlier original section 80GG, as inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976 and further amended by the Finance Act, 1982, w.e.f. 1-4-1983, the Finance Act, 1983, w.e.f. 1-4-1984, the Finance Act, 1986, w.e.f. 1-4-1987 and the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997, was omitted by the Finance Act, 1997, w.e.f. 1-4-1998.

82. *See* also Circular No. 327, dated 8-2-1982. For details, *see* Taxmann's Master Guide to Income-tax Act.

83. Rule 11B provides that to claim deduction under section 80GG, the assessee should file a declaration in Form No. 10BA.

84. Substituted for "under sub-clause (*i*) of clause (*a*) or, as the case may be, clause (*b*) of sub-section (2) of section 23" by the Finance Act, 2001, w.e.f. 1-4-2002.

85. Inserted by the Finance Act, 1979, w.e.f. 1-4-1980. Restored to its original position by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Earlier section 80GGA was omitted by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date.

85a. Words "research association" shall be substituted for "scientific research association" by the Finance Act, 2010, w.e.f. **1-4-2011**.

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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 clause (*ii*) of sub-section (1) of section 35;

[86][(*aa*) any sum paid by the assessee in the previous year [86a]**[***to a University***]**, college or other institution to be used for research in social science or statistical research :

Provided that [86b]**[***such University***]**, college or institution is for the time being approved for the purposes of clause (*iii*) of sub-section (1) of section 35.]

[87][*Explanation*.—The deduction, to which the assessee is entitled in respect of any sum paid to a [87a]**[***scientific research association***]**, University, college or other institution to which clause (*a*) or clause (*aa*) applies, shall not be denied merely on the ground that, subsequent to the payment of such sum by the assessee, the approval to such association, University, college or other institution referred to in clause (*a*) or clause (*aa*), as the case may be, has been withdrawn;]

(*b*) any sum paid by the assessee in the previous year—

(*i*) to an association or institution, which has as its object the undertaking of any programme of rural development, to be used for carrying out any programme of rural development approved for the purposes of section 35CCA; or

(*ii*) to an association or institution which has as its object the training of persons for implementing programmes of rural development :

[88][**Provided** that the assessee furnishes the certificate referred to in sub-section (2) or, as the case may be, sub-section (2A) of section 35CCA from such association or institution.]

[87][*Explanation*.—The deduction, to which the assessee is entitled in respect of any sum paid to an association or institution for carrying out the programme of rural development to which this clause applies, shall not be denied merely on the ground that subsequent to the payment of such sum by the assessee, the approval granted to such programme, or as the case may be, to the association or institution has been withdrawn;]

[89][(*bb*) any sum paid by the assessee in the previous year to a public sector company or a local authority or to an association or institution approved by the National Committee, for carrying out any eligible project or scheme :

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86. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992.

86a. Words "to a research association which has as its object the undertaking of research in social science or statistical research or to a University", shall be substituted for "to a University" by the Finance Act, 2010, w.e.f. **1-4-2011**.

86b. Words "such association, University" shall be substituted for "such University", *ibid.*

87. Inserted by the Taxation Laws (Amendment) Act, 2006, w.r.e.f. 1-4-2006.

87a. Words "research association" shall be substituted for "scientific research association" by the Finance Act, 2010, w.e.f. **1-4-2011**.

88. Substituted by the Finance Act, 1983, w.e.f. 1-4-1983.

89. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992.

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Provided that the assessee furnishes the certificate referred to in clause (*a*) of sub-section (2) of section 35AC from such public sector company or local authority or, as the case may be, association or institution.

[90][*Explanation 1.*— The deduction, to which the assessee is entitled in respect of any sum paid to a public sector company, or to a local authority or to an association or institution for carrying out the eligible project or scheme referred to in section 35AC, shall not be denied merely on the ground that subsequent to the payment of such sum by the assessee,—

(*a*) the approval granted to such association or institution has been withdrawn; or

(*b*) the notification notifying the eligible project or scheme referred to in section 35AC carried out by the public sector company, or local authority or association or institution has been withdrawn.]

Explanation [91][*2*].—For the purposes of this clause, the expressions "National Committee" and "eligible project or scheme" shall have the meanings respectively assigned to them in the *Explanation* to section 35AC;]

[92][(*c*) [93][any sum paid by the assessee in any previous year ending on or before the 31st day of March, 2002] to an association or institution, which has as its object the undertaking of any programme of conservation of natural resources [94][or of afforestation], to be used for carrying out any programme of conservation of natural resources [94][or of afforestation] approved for the purposes of section 35CCB :

Provided that the association or institution is for the time being approved for the purposes of sub-section (2) of section 35CCB;]

[94][(*cc*) [93][any sum paid by the assessee in any previous year ending on or before the 31st day of March, 2002] to such fund for afforestation as is notified by the Central Government under clause (*b*) of sub-section (1) of section 35CCB;]

[95][(*d*) any sum paid by the assessee in the previous year to a rural development fund set up and notified by the Central Government for the purposes of clause (*c*) of sub-section (1) of section 35CCA;]

[96][(*e*) any sum paid by the assessee in the previous year to the National Urban Poverty Eradication Fund set up and notified by the Central Government for the purposes of clause (*d*) of sub-section (1) of section 35CCA.]

(3) Notwithstanding anything contained in sub-section (1), no deduction under this section shall be allowed in the case of an assessee whose gross total income

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90. Inserted by the Taxation Laws (Amendment) Act, 2006, w.r.e.f. 1-4-2006.

91. Renumbered as *Explanation 2, ibid.*

92. Inserted by the Finance Act, 1982, w.e.f. 1-6-1982.

93. Substituted for "any sum paid by the assessee in the previous year" by the Finance Act, 2002, w.e.f. 1-4-2003.

94. Inserted by the Finance Act, 1990, w.e.f. 1-4-1991.

95. Inserted by the Finance Act, 1983, w.e.f. 1-4-1983.

96. Inserted by the Finance Act, 1995, w.e.f. 1-4-1996.

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includes income which is chargeable under the head "Profits and gains of business or profession".

(4) Where a deduction under this section is claimed and allowed for any assessment year in respect of any payments of the nature specified in sub-section (2), deduction shall not be allowed in respect of such payments under any other provision of this Act for the same or any other assessment year.]]

[97][**Deduction in respect of contributions given by companies to political parties.**

80GGB. In computing the total income of an assessee, being an Indian company, there shall be deducted any sum contributed by it, in the previous year to any political party [98][*or an electoral trust*].

Explanation.—For the removal of doubts, it is hereby declared that for the purposes of this section, the word "contribute", with its grammatical variation, has the meaning assigned to it under section 293A[99] of the Companies Act, 1956 (1 of 1956).

Deduction in respect of contributions given by any person to political parties.

80GGC. In computing the total income of an assessee, being any person, except local authority and every artificial juridical person wholly or partly funded by the Government, there shall be deducted any amount of contribution made by him, in the previous year, to a political party [98][*or an electoral trust*].

Explanation.—For the purposes of sections 80GGB and 80GGC, "political party" means a political party registered under section 29A of the Representation of the People Act, 1951 (43 of 1951).]

C.—Deductions in respect of certain incomes

Deduction in case of new industrial undertakings employing displaced persons, etc.

80H. [*Omitted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976. Originally, it was inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968.*]

[1][**Deduction in respect of profits and gains from newly established industrial undertakings or hotel business in backward areas.**

[2]**80HH.** (1) Where the gross total income of an assessee includes any profits and gains derived[3] from an industrial undertaking[3], 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 twenty per cent 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[3] articles[3] after the 31st day of December, 1970 [4][but before the 1st day of April, 1990], in any backward area;

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97. Inserted by the Election and Other Related Laws (Amendment) Act, 2003, w.e.f. 11-9-2003.

98. Inserted by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2010**.

99. For text of section 293A of the Companies Act, 1956, *see* **Appendix**.

1. Inserted by the Direct Taxes (Amendment) Act, 1974, w.e.f. 1-4-1974.

2. *See* also Circular No. 484, dated 1-5-1987. For details, *see* Taxmann's Direct Taxes Circulars.

3. For the meaning of the terms/expressions "derived", "industrial undertaking", "manufacture or produce", "articles" and "it employs", *see* Taxmann's Direct Taxes Manual, Vol. 3.

4. Inserted by the Finance Act, 1990, w.e.f. 1-4-1990.

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(*ii*) it is not formed by the splitting up, or the reconstruction, of a business already in existence in any backward area :

Provided that this condition 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 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*) [5]it employs ten or more workers[6] 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 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 twenty 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) 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 [7][but before the 1st day of April, 1990], in any backward area;

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

(*iii*) the hotel is for the time being approved for the purposes 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 beginning 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 articles, and

(*ii*) in the case of the business of a hotel which has started functioning,

after the 31st day of 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.

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5. For the meaning of the term/expression "it employs", *see* Taxmann's Direct Taxes Manual, Vol. 3.

6. For the meaning of the term "workers", *see* Taxmann's Direct Taxes Manual, Vol. 3.

7. Inserted by the Finance Act, 1990, w.e.f. 1-4-1990.

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(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[8] duly signed and verified by such accountant.

(6) Where any goods held for the purposes of the business 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 business of 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 transfer, then, for the purposes 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 that date :

Provided that where, in the opinion of the [9][Assessing] 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 [9][Assessing] 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 [9][Assessing] Officer that, owing to the 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 [10][Assessing] 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) [11][***]

(9) In a case where the assessee is entitled also to the deduction under [12][section 80-I 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 provisions of this section.

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8. *See* rule 18B and Form No. 10C for form of audit report.

9. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

10. Substituted, *ibid.*

11. Omitted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

12. Inserted by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1981.

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[13][(9A) Where a deduction in relation to the profits and gains of a small-scale industrial undertaking to which section 80HHA 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 this section for the same or any other assessment year.]

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

[14][(11) For the purposes of this section, "backward area" means such area as the Central Government may, having regard to the stage of development of that area, by notification[15] in the Official Gazette, specify in this behalf :

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

[16][**Deduction in respect of profits and gains from newly established small-scale industrial undertakings in certain areas.**

[17]**80HHA.** (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 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 twenty per cent thereof.

(2) This section applies to any small-scale industrial undertaking which fulfils all the following conditions, namely :—

(*i*) it begins to manufacture or produce articles after the 30th day of September, 1977 [18][but before the 1st day of April, 1990], 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, reconstruction or revival 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 ;

(*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 industrial undertaking, any machinery or plant or any part thereof previously used for any purpose is

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13. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 1-4-1978.

14. Substituted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 10-9-1986.

15. For notified backward areas, *see* Taxmann's Direct Taxes Circulars.

16. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 1-4-1978.

17. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

18. Inserted by the Finance Act, 1990, w.e.f. 1-4-1990.

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transferred to a new business and the total value of the machinery or plant or part so transferred does not exceed twenty 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 (1) shall be allowed in computing the total income [19][of each of the ten previous years beginning with the previous year in which the industrial undertaking] begins to manufacture or produce articles :

[20][**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 a 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[21] duly signed and verified by such accountant.

(5) The provisions of sub-sections (6) and (7) 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 of the deduction under that section.

(6) In a case where the assessee is entitled also to the deduction under [22][section 80-I 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 section 80HH 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 this section for the same or any other assessment year.

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

Explanation.—For the purposes of this section,—

[23][(*a*) "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,

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19. Substituted for "in respect of each of the ten assessment years beginning with the assessment year relevant to the previous year in which the small-scale industrial undertaking" by the Finance Act, 1981, w.e.f. 1-4-1981.

20. Inserted, *ibid.*

21. *See* rule 18BB and Form No. 10CC for form of audit report.

22. Inserted by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1981.

23. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

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notified area committee, town area committee, town committee or by any other name) or a cantonment board and which has a population of not less than ten thousand 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 fifteen kilometres from the local limits of any municipality or cantonment board referred to in sub-clause (*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 considerations specify in this behalf by notification[24] in the Official Gazette ;]

[25][(*b*) an industrial undertaking shall be deemed to be a small-scale industrial undertaking which is, on the last day of the previous year, regarded as a small-scale industrial undertaking under section 11B[26] of the Industries (Development and Regulation) Act, 1951 (65 of 1951)].

[27][**Deduction in respect of profits and gains from projects outside India.**

[28]**80HHB.** (1) Where the gross total income of an assessee being an Indian company or a person (other than a company) who is resident in India includes any profits and gains derived from the business of[29]—

(*a*) the execution of a foreign project[29] undertaken by the assessee in pursuance of a contract entered into by him, or

(*b*) the execution of any work undertaken by him and forming part of a foreign project[30] undertaken by any other person in pursuance of a contract entered into by such other person,

with the Government of a foreign State or any statutory or other public authority or agency in a foreign State, or a foreign enterprise, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, [31][a deduction from such profits and gains of an amount equal to—

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24. For specified areas, *see* Taxmann's Direct Taxes Circulars.

25. Substituted by the Finance Act, 1999, w.r.e.f. 1-4-1978. Prior to its substitution, clause (*b*) was amended by the Finance Act, 1981, w.e.f. 1-4-1981 and Finance Act, 1986, w.r.e.f. 1-4-1985.

26. For text of section 11B of the Industries (Development and Regulation) Act, 1951, *see* **Appendix**.

27. Inserted by the Finance Act, 1982, w.e.f. 1-4-1983.

28. *See* also Circular No. 563, dated 23-5-1990, Circular No. 575, dated 31-8-1990 and Circular No. 711, dated 24-7-1995. For details, *see* Taxmann's Master Guide to Income-tax Act.

For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

29. For the meaning of the expression "business of the execution of a foreign project", *see* Taxmann's Direct Taxes Manual, Vol. 3.

30. For the meaning of the expression "forming part of a foreign project", *see* Taxmann's Direct Taxes Manual, Vol. 3.

31. Substituted for "a deduction from such profits and gains of an amount equal to fifty per cent thereof" by the Finance Act, 2000, w.e.f. 1-4-2001. Prior to its substitution, the quoted portion was amended by the Income-tax (Amendment) Act, 1986, w.e.f. 1-4-1987.

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(*i*) forty per cent thereof for an assessment year beginning on the 1st day of April, 2001;

(*ii*) thirty per cent thereof for an assessment year beginning on the 1st day of April, 2002;

(*iii*) twenty per cent thereof for an assessment year beginning on the 1st day of April, 2003;

(*iv*) ten per cent thereof for an assessment year beginning on the 1st day of April, 2004,

and no deduction shall be allowed in respect of the assessment year beginning on the 1st day of April, 2005 and any subsequent assessment year] :

Provided that the consideration for the execution of such project or, as the case may be, of such work is payable in convertible foreign exchange.

(2) For the purposes of this section,—

(*a*) "convertible foreign exchange" means foreign exchange which is for the time being treated by the Reserve Bank of India as convertible foreign exchange for the purposes of the Foreign Exchange Regulation Act, 1973 (46 of 1973), and any rules made thereunder ;

(*b*) "foreign project" means a project for—

(*i*) the construction of any building, road, dam, bridge or other structure outside India ;

(*ii*) the assembly or installation of any machinery or plant outside India ;

(*iii*) the execution of such other work (of whatever nature) as may be prescribed[32].

(3) The deduction under this section shall be allowed only if the following conditions are fulfilled, namely :—

(*i*) the assessee maintains separate accounts in respect of the profits and gains derived from the business of the execution of the foreign project, or, as the case may be, of the work forming part of the foreign project undertaken by him and, where the assessee is a person other than an Indian company or a co-operative society, such accounts 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[33] duly signed and verified by such accountant ;

[34][(*ia*) the assessee furnishes, along with his return of income, a certificate in the prescribed form[35] from an accountant as defined in the *Explanation* below sub-section (2) of section 288, duly signed and verified by such accountant, certifying that the deduction has been correctly claimed in accordance with the provisions of this section ;]

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32. *See* rule 17D.

33. *See* rule 18BBA(1) and Form No. 10CCA for form of audit report.

34. Inserted by the Finance Act, 1999, w.e.f. 1-6-1999.

35. *See* rule 18BBA(1B) and Form No. 10CCAH.

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(*ii*) an amount equal to [36][such percentage of the profits and gains as is referred to in sub-section (1) in relation to the relevant assessment year] is debited to the profit and loss account of the previous year in respect of which the deduction under this section is to be allowed and credited to a reserve account (to be called the "Foreign Projects Reserve Account") to be utilised by the assessee during a period of five years next following for the purposes of his business other than for distribution by way of dividends or profits ;

(*iii*) an amount equal to [37][such percentage of the profits and gains as is referred to in sub-section (1) in relation to the relevant assessment year] is brought by the assessee in convertible foreign exchange into India, in accordance with the provisions of the Foreign Exchange Regulation Act, 1973 (46 of 1973), and any rules made thereunder, within a period of six months from the end of the previous year referred to in clause (*ii*) or, [38][within such further period as the competent authority may allow in this behalf] :

Provided that where the amount credited by the assessee to the Foreign Projects Reserve Account in pursuance of clause (*ii*) or the amount brought into India by the assessee in pursuance of clause (*iii*) or each of the said amounts is less than [39][such percentage of the profits and gains as is referred to in sub-section (1) in relation to the relevant assessment year], the deduction under that sub-section shall be limited to the amount so credited in pursuance of clause (*ii*) or the amount so brought into India in pursuance of clause (*iii*), whichever is less.

[40][*Explanation*.—For the purposes of clause (*iii*), the expression "competent authority" means the Reserve Bank of India or such other authority as is authorised under any law for the time being in force for regulating payments and dealings in foreign exchange.]

(4) If at any time before the expiry of five years from the end of the previous year in which the deduction under sub-section (1) is allowed, the assessee utilises the amount credited to the Foreign Projects Reserve Account for distribution by way of dividends or profits or for any other purpose which is not a purpose of the

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36. Substituted for "fifty per cent of the profits and gains referred to in sub-section (1)" by the Finance Act, 2000, w.e.f. 1-4-2001. Earlier the quoted portion was amended by the Income-tax (Amendment) Act, 1986, w.e.f. 1-4-1987.

37. Substituted for "fifty per cent of the profits and gains referred to in sub-section (1)" by the Finance Act, 2000, w.e.f. 1-4-2001. Earlier the quoted portion was amended by the Income-tax (Amendment) Act, 1986, w.e.f. 1-4-1987.

38. Substituted for the portion beginning with the words "where the Chief Commissioner" and ending with the words "may allow in this behalf" by the Finance Act, 1999, w.e.f. 1-6-1999. Prior to its substitution, the said portion, as amended by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988, read as under :

"where the Chief Commissioner or Commissioner is satisfied (for reasons to be recorded in writing) that the assessee is, for reasons beyond his control, unable to do so within the said period of six months, within such further period as the Chief Commissioner or Commissioner may allow in this behalf :"

39. Substituted for "fifty per cent of the profits and gains referred to in sub-section (1)" by the Finance Act, 2000, w.e.f. 1-4-2001. Earlier the quoted portion was amended by the Income-tax (Amendment) Act, 1986, w.e.f. 1-4-1987.

40. Inserted by the Finance Act, 1999, w.e.f. 1-6-1999.

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business of the assessee, the deduction originally allowed under sub-section (1) shall be deemed to have been wrongly allowed, and the [41][Assessing] Officer may, notwithstanding anything contained in this Act, recompute the total income of the assessee for the relevant previous year and make the necessary amendment; and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the end of the previous year in which the money was so utilised.

(5) Notwithstanding anything contained in any other provision of this Chapter under the heading *"C.—Deductions in respect of certain incomes"*, no part of the consideration or of the income comprised in the consideration payable to the assessee for the execution of a foreign project referred to in clause (*a*) of sub-section (1) or of any work referred to in clause (*b*) of that sub-section shall qualify for deduction for any assessment year[42] under any such other provision.]

[43][**Deduction in respect of profits and gains from housing projects in certain cases.**

80HHBA. (1) Where the gross total income of an assessee being an Indian company or a person (other than a company) who is a resident in India includes any profits and gains derived from the execution of a housing project awarded to the assessee on the basis of global tender and such project is aided by the World Bank, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, [44][a deduction from such profits and gains of an amount equal to—

(*i*) forty per cent thereof for an assessment year beginning on the 1st day of April, 2001;

(*ii*) thirty per cent thereof for an assessment year beginning on the 1st day of April, 2002;

(*iii*) twenty per cent thereof for an assessment year beginning on the 1st day of April, 2003;

(*iv*) ten per cent thereof for an assessment year beginning on the 1st day of April, 2004,

and no deduction shall be allowed in respect of the assessment year beginning on the 1st day of April, 2005 and any subsequent assessment year].

(2) The deductions under this section shall be allowed only if the following conditions are fulfilled, namely :—

(*i*) the assessee maintains separate accounts in respect of the profits and gains derived from the business of the execution of the housing project undertaken by him and, where the assessee is a person other than an Indian company or a co-operative society, such accounts have been audited by an accountant as defined in the *Explanation*

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41. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

42. For the meaning of the expression "any assessment year", *see* Taxmann's Direct Taxes Manual, Vol. 3.

43. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999.

44. Substituted for "a deduction from such profits and gains of an amount equal to fifty per cent thereof" by the Finance Act, 2000, w.e.f. 1-4-2001.

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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[45] duly signed and verified by such accountant;

(*ii*) an amount equal to [46][such percentage of the profits and gains as is referred to in sub-section (1) in relation to the relevant assessment year] is debited to the profit and loss account of the previous year in respect of which the deduction under this section is to be allowed and credited to a reserve account (to be called the Housing Projects Reserve Account) to be utilised by the assessee during a period of five years next following for the purposes of his business other than for distribution by way of dividends or profit :

Provided that where the amount credited by the assessee to the Housing Projects Reserve Account in pursuance of clause (*ii*) is less than [46][such percentage of the profits and gains as is referred to in sub-section (1) in relation to the relevant assessment year], the deduction under this section shall be limited to the amount so credited in pursuance of clause (*ii*).

(3) If at any time before the expiry of five years from the end of the previous year in which the deduction under sub-section (1) is allowed, the assessee utilises the amount credited to the Housing Projects Reserve Account for distribution by way of dividends or profit or for any other purpose which is not a purpose of the business of the assessee, the deduction originally allowed under sub-section (1) shall be deemed to have been wrongly allowed and the Assessing Officer may, notwithstanding anything contained in this Act, recompute the total income of the assessee for the relevant previous year and make necessary amendment and the provision of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the end of the previous year in which the money was so utilised.

(4) Notwithstanding anything contained in any other provision of this Chapter under heading *"C.—Deduction in respect of certain incomes*", no part of the income payable to the assessee for the execution of a housing project under sub-section (1) shall qualify for deduction for any assessment year under any other provision.

Explanation.—For the purposes of this section,—

(*a*) "housing project" means a project for—

(*i*) the construction of any building, road, bridge or other structure in any part of India;

(*ii*) the execution of such other work (of whatever nature) as may be prescribed;

(*b*) "World Bank" means the International Bank for Reconstruction and Development Bank referred to in the International Monetary Fund and Bank Act, 1945.]

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45. *See* rule 18BBA(1A) and Form No. 10CCAA.

46. Substituted for "fifty per cent of the profits and gains referred to in sub-section (1)" by the Finance Act, 2000, w.e.f. 1-4-2001.

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[47][**Deduction in respect of profits retained for export business.**

[48]**80HHC.** [49][(1) Where an assessee, being an Indian company or a person (other than a company) resident in India, is engaged in the business of export out of India of any goods or merchandise 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, [50][a deduction to the extent of profits[51], referred to in sub-section (1B),] derived by the assessee from the export of such goods or merchandise :

Provided that if the assessee, being a holder of an Export House Certificate or a Trading House Certificate (hereafter in this section referred to as an Export House or a Trading House, as the case may be,) issues a certificate referred to in clause (*b*) of sub-section (4A), that in respect of the amount of the export turnover specified therein, the deduction under this sub-section is to be allowed to a supporting manufacturer, then the amount of deduction in the case of the assessee shall be reduced by such amount which bears to the [52][total profits derived by the assessee from the export of trading goods, the same proportion as the amount of export turnover specified in the said certificate bears to the total export turnover of the assessee in respect of such trading goods].

(1A) Where the assessee, being a supporting manufacturer, has during the previous year, sold goods or merchandise to any Export House or Trading House in respect of which the Export House or Trading House has issued a certificate under the proviso to sub-section (1), there shall, in accordance with and subject to the provisions of this section, be allowed in computing the total income of the assessee, [53][a deduction to the extent of profits, referred to in sub-section (1B),] derived by the assessee from the sale of goods or merchandise to the Export House or Trading House in respect of which the certificate has been issued by the Export House or Trading House.]

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47. Substituted by the Finance Act, 1985, w.e.f. 1-4-1986. Original section was inserted by the Finance Act, 1983, w.e.f. 1-4-1983.

48. *See* also Letter [F.No. 178/206/83-IT(A-I)], dated 22-5-1984, Circular No. 466, dated 14-8-1986, Circular No. 562, dated 23-5-1990, Circular No. 571, dated 1-8-1990, Circular No. 575, dated 31-8-1990, Circular No. 600, dated 23-4-1991, Circular No. 624, dated 23-1-1992, Circular No. 693, dated 17-11-1994, Circular No. 729, dated 1-11-1995, Circular No. 1/2001, dated 17-1-2001, Circular No. *Nil*, dated 17-2-2004, Clarifications dated 12-4-2005, 29-6-2005 & 31-10-2005, Circular No. 2/2006, dated 17-1-2006 and Circular No. 5/2006, dated 15-5-2006. For details, *see* Taxmann's Master Guide to Income-tax Act.

49. Substituted by the Finance Act, 1988, w.e.f. 1-4-1989. Prior to its substitution, sub-section (1) was amended by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1987.

50. Substituted for "a deduction of the profits" by the Finance Act, 2000, w.e.f. 1-4-2001. Earlier the quoted portion was amended by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

51. For the meaning of the terms "profits" and "derived from", *see* Taxmann's Direct Taxes Manual, Vol. 3.

52. Substituted for the words "total profits of the export business of the assessee the same proportion as the amount of export turnover specified in the said certificate bears to the total export turnover of the assessee" by the Finance Act, 1992, w.e.f. 1-4-1992.

53. Substituted for "a deduction of the profits" by the Finance Act, 2000, w.e.f. 1-4-2001. Earlier the quoted portion was amended by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

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[54][(1B) For the purposes of sub-sections (1) and (1A), the extent of deduction of the profits shall be an amount equal to—

(*i*) eighty per cent thereof for an assessment year beginning on the 1st day of April, 2001;

[55][(*ii*) seventy per cent thereof for an assessment year beginning on the 1st day of April, 2002;

(*iii*) fifty per cent thereof for an assessment year beginning on the 1st day of April, 2003;

(*iv*) thirty per cent thereof for an assessment year beginning on the 1st day of April, 2004,]

and no deduction shall be allowed in respect of the assessment year beginning on the 1st day of April, 2005 and any subsequent assessment year.]

(2)(*a*) This section applies to all goods or merchandise, other than those specified in clause (*b*), if the sale proceeds[56] of such goods or merchandise exported out of India are [57][received in, or brought into, India] by the assessee [58][(other than the supporting manufacturer)] in convertible foreign exchange [59][, within a period of six months from the end of the previous year or, [60][within such further period as the competent authority may allow in this behalf].]

[61][*Explanation.*—For the purposes of this clause, the expression "competent authority" means the Reserve Bank of India or such other authority as is authorised under any law for the time being in force for regulating payments and dealings in foreign exchange.]

(*b*) This section does not apply to the following goods or merchandise, namely :—

(*i*) mineral oil ; and

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54. Inserted by the Finance Act, 2000, w.e.f. 1-4-2001.

55. Substituted by the Finance Act, 2001, w.e.f. 1-4-2002. Prior to their substitution, clauses (*ii*), (*iii*) and (*iv*) read as under :

"(*ii*) sixty per cent thereof for an assessment year beginning on the 1st day of April, 2002;

(*iii*) forty per cent thereof for an assessment year beginning on the 1st day of April, 2003;

(*iv*) twenty per cent thereof for an assessment year beginning on the 1st day of April, 2004,"

56. For the meaning of the expression "sale proceeds .... assessee", *see* Taxmann's Direct Taxes Manual, Vol. 3.

57. Substituted for "receivable" by the Finance Act, 1990, w.e.f. 1-4-1991.

58. Inserted, *ibid.,* w.r.e.f. 1-4-1989.

59. Inserted by the Finance Act, 1990, w.e.f. 1-4-1991.

60. Substituted for the portion beginning with the words "where the Chief Commissioner" and ending with the words "may allow in this behalf" by the Finance Act, 1999, w.e.f. 1-6-1999. Prior to substitution, the said portion, as inserted by the Finance Act, 1990, w.e.f. 1-4-1991, read as under :

"where the Chief Commissioner or Commissioner is satisfied (for reasons to be recorded in writing) that the assessee is, for reasons beyond his control, unable to do so within the said period of six months, within such further period as the Chief Commissioner or Commissioner may allow in this behalf."

61. Inserted by the Finance Act, 1999, w.e.f. 1-6-1999.

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(*ii*) minerals[62] and ores [63][(other than[62] processed minerals and ores specified in the Twelfth Schedule)].

[64][*Explanation 1.*—The sale proceeds referred to in clause (*a*) shall be deemed to have been received in India where such sale proceeds are credited to a separate account maintained for the purpose by the assessee with any bank outside India with the approval of the Reserve Bank of India.

Explanation 2.—For the removal of doubts, it is hereby declared that where any goods or merchandise are transferred by an assessee to a branch, office, warehouse or any other establishment of the assessee situate outside India and such goods or merchandise are sold from such branch, office, warehouse or establishment, then, such transfer shall be deemed to be export out of India of such goods and merchandise and the value of such goods or merchandise declared in the shipping bill or bill of export as referred to in sub-section (1) of section 50[65] of the Customs Act, 1962 (52 of 1962), shall, for the purposes of this section, be deemed to be the sale proceeds thereof.]

[66][(3) For the purposes of sub-section (1),—

(*a*) where the export out of India is of goods or merchandise manufactured [67][or processed] by the assessee, the profits[68] derived from such export shall be the amount which bears to the profits[69] of the business[69], the same proportion as the export turnover in respect of such goods bears to the total turnover of the business carried on by the assessee ;

(*b*) where the export out of India is of trading goods, the profits derived from such export shall be the export turnover[69] in respect of such trading goods as reduced by the direct costs and indirect costs attributable to such export ;

(*c*) where the export out of India is of goods or merchandise manufactured [70][or processed] by the assessee and of trading goods, the profits derived from such export shall,—

(*i*) in respect of the goods or merchandise manufactured [70][or processed] by the assessee, be the amount which bears to the adjusted profits of the business, the same proportion as the adjusted export turnover in respect of such goods bears to the adjusted total turnover of the business carried on by the assessee ; and

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62. For the meaning of the terms "minerals" and "other than", *see* Taxmann's Direct Taxes Manual, Vol. 3.

63. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1991.

64. Inserted, *ibid.,* w.e.f. 1-4-1992.

65. For text of section 50 of the Customs Act, 1962, *see* **Appendix**.

66. Substituted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992. Prior to substitution, sub-section (3) was substituted by the Finance Act, 1990, w.e.f. 1-4-1991.

67. Inserted by the Finance Act, 1992, w.e.f. 1-4-1992.

68. For the meaning of the term "profits", *see* Taxmann's Direct Taxes Manual, Vol. 3.

69. For the meaning of the terms "profits", "business" and "turnover", *see* Taxmann's Direct Taxes Manual, Vol. 3.

70. Inserted by the Finance Act, 1992, w.e.f. 1-4-1992.

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(*ii*) in respect of trading goods, be the export turnover in respect of such trading goods as reduced by the direct and indirect costs attributable to export of such trading goods :

Provided that the profits computed under clause (*a*) or clause (*b*) or clause (*c*) of this sub-section shall be further increased by the amount which bears to ninety per cent of any sum referred to in clause (*iiia*) (not being profits on sale of a licence acquired from any other person), and clauses (*iiib*) and (*iiic*) of section 28, the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee :

[71][**Provided further** that in the case of an assessee having export turnover not exceeding rupees ten crores during the previous year, the profits computed under clause (*a*) or clause (*b*) or clause (*c*) of this sub-section or after giving effect to the first proviso, as the case may be, shall be further increased by the amount which bears to ninety per cent of any sum referred to in clause (*iiid*) or clause (*iiie*), as the case may be, of section 28, the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee :

Provided also that in the case of an assessee having export turnover exceeding rupees ten crores during the previous year, the profits computed under clause (*a*) or clause (*b*) or clause (*c*) of this sub-section or after giving effect to the first proviso, as the case may be, shall be further increased by the amount which bears to ninety per cent of any sum referred to in clause (*iiid*) of section 28, the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee, if the assessee has necessary and sufficient evidence to prove that,—

(*a*) he had an option to choose either the duty drawback or the Duty Entitlement Pass Book Scheme, being the Duty Remission Scheme; and

(*b*) the rate of drawback credit attributable to the customs duty was higher than the rate of credit allowable under the Duty Entitlement Pass Book Scheme, being the Duty Remission Scheme :

Provided also that in the case of an assessee having export turnover exceeding rupees ten crores during the previous year, the profits computed under clause (*a*) or clause (*b*) or clause (*c*) of this sub-section or after giving effect to the first proviso, as the case may be, shall be further increased by the amount which bears to ninety per cent of any sum referred to in clause (*iiie*) of section 28, the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee, if the assessee has necessary and sufficient evidence to prove that,—

(*a*) he had an option to choose either the duty drawback or the Duty Free Replenishment Certificate, being the Duty Remission Scheme; and

(*b*) the rate of drawback credit attributable to the customs duty was higher than the rate of credit allowable under the Duty Free Replenishment Certificate, being the Duty Remission Scheme.

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71. Second, third and fourth provisos inserted by the Taxation Laws (Amendment) Act, 2005, w.r.e.f. 1-4-1998.

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Explanation.—For the purposes of this clause, "rate of credit allowable" means the rate of credit allowable under the Duty Free Replenishment Certificate, being the Duty Remission Scheme calculated in the manner as may be notified by the Central Government :]

[72][**Provided also** that in case the computation under clause (*a*) or clause (*b*) or clause (*c*) of this sub-section is a loss, such loss shall be set off against the amount which bears to ninety per cent of—

(*a*) any sum referred to in clause (*iiia*) or clause (*iiib*) or clause (*iiic*), as the case may be, or

(*b*) any sum referred to in clause (*iiid*) or clause (*iiie*), as the case may be, of section 28, as applicable in the case of an assessee referred to in the second or the third or the fourth proviso, as the case may be,

the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee.]

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

(*a*) "adjusted export turnover" means the export turnover as reduced by the export turnover in respect of trading goods ;

(*b*) "adjusted profits of the business" means the profits of the business as reduced by the profits derived from the business of export out of India of trading goods as computed in the manner provided in clause (*b*) of sub-section (3) ;

(*c*) "adjusted total turnover" means the total turnover of the business as reduced by the export turnover in respect of trading goods ;

(*d*) "direct costs" means costs directly attributable to the trading goods exported out of India including the purchase price of such goods ;

(*e*) "indirect costs" means costs, not being direct costs, allocated in the ratio of the export turnover in respect of trading goods to the total turnover ;

(*f*) "trading goods" means goods which are not manufactured [73][or processed] by the assessee.]

[74][(3A) For the purposes of sub-section (1A), profits derived by a supporting manufacturer from the sale of goods or merchandise shall be,—

(*a*) in a case where the business carried on by the supporting manufacturer consists exclusively of sale of goods or merchandise to one or more Export Houses or Trading Houses, the profits of the business [75][***] ;

(*b*) in a case where the business carried on by the supporting manufacturer does not consist exclusively of sale of goods or merchandise to one or more Export Houses or Trading Houses, the amount which bears to the profits of the business [75][***] the same proportion as the turnover in respect of sale to the respective Export House or Trading

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72. Fifth proviso inserted by the Taxation Laws (Amendment) Act, 2005, w.r.e.f. 1-4-1992.

73. Inserted by the Finance Act, 1992, w.e.f. 1-4-1992.

74. Inserted by the Finance Act, 1988, w.e.f. 1-4-1989.

75. Words 'as computed under the head "Profits and gains of business or profession"' omitted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992.

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House bears to the total turnover of the business carried on by the assessee.]

[76][(4) The deduction under sub-section (1) shall not be admissible unless the assessee furnishes in the prescribed form[77], along with the return of income, the report of an accountant, as defined in the *Explanation* below sub-section (2) of section 288, certifying that the deduction has been correctly claimed [78][in accordance with the provisions of this section:]]

[79][**Provided** that in the case of an undertaking referred to in sub-section (4C), the assessee shall also furnish along with the return of income, a certificate from the undertaking in the special economic zone containing such particulars as may be prescribed[80], duly certified by the auditor auditing the accounts of the undertaking in the special economic zone under the provisions of this Act or under any other law for the time being in force.]

[81][(4A) The deduction under sub-section (1A) shall not be admissible unless the supporting manufacturer furnishes in the prescribed form along with his return of income,—

(*a*) the report of an accountant[82], as defined in the *Explanation* below sub-section (2) of section 288, certifying that the deduction has been correctly claimed on the basis of the [83][profits] of the supporting manufacturer in respect of his sale of goods or merchandise to the Export House or Trading House ; and

(*b*) a certificate from the Export House or Trading House containing such particulars as may be prescribed and verified in the manner prescribed[84] that in respect of the export turnover mentioned in the certificate, the Export House or Trading House has not claimed the deduction under this section :

Provided that the certificate specified in clause (*b*) shall be duly certified by the auditor auditing the accounts of the Export House or Trading House under the provisions of this Act or under any other law.]

[85][(4B) For the purposes of computing the total income under sub-section (1) or sub-section (1A), any income not charged to tax under this Act shall be excluded.]

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76. Inserted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1987.

77. *See* rule 18BBA(3) and Form No. 10CCAC for form of report of accountant.

78. Substituted for "on the basis of the amount of export turnover" by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992. Earlier, words "export turnover" were substituted for "net foreign exchange realisation as determined in accordance with the Import and Export Policy of the Government of India for the relevant period" by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

79. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

80. *See* rule 18BBA(2A) and Form No. 10CCABA.

81. Inserted by the Finance Act, 1988, w.e.f. 1-4-1989.

82. *See* rule 18BBA(3) and Form No. 10CCAC for form of report of accountant.

83. Substituted for "income" by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

84. *See* rule 18BBA(2) and Form No. 10CCAB for form of certificate from export/trading house to supporting manufacturer.

85. Inserted by the Finance Act, 1999, w.r.e.f. 1-4-1992.

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[86][(4C) The provisions of this section shall apply to an assessee,—

(*a*) for an assessment year beginning after the 31st day of March, 2004 and ending before the 1st day of April, 2005;

(*b*) who owns any undertaking which manufactures or produces goods or merchandise anywhere in India (outside any special economic zone) and sells the same to any undertaking situated in a special economic zone which is eligible for deduction under section 10A and such sale shall be deemed to be export out of India for the purposes of this section.]

Explanation.—For the purposes of this section,—

(*a*) "convertible foreign exchange" means foreign exchange which is for the time being treated by the Reserve Bank of India as convertible foreign exchange for the purposes of the Foreign Exchange Regulation Act, 1973 (46 of 1973), and any rules made thereunder ;

[87][(*aa*) "export out of India" shall not include any transaction by way of sale or otherwise[88], in a shop,[89]emporium or any other establishment situate in India, not involving clearance at any customs station[90] as defined in the Customs Act, 1962 (52 of 1962) ;]

(*b*) "export turnover" means the sale proceeds[91][, received in, or brought into, India] by the assessee in convertible foreign exchange [92][in accordance with clause (*a*) of sub-section (2)] of any goods or merchandise to which this section applies and which are exported out of India, but does not include freight or insurance attributable to the transport of the goods or merchandise beyond the customs station[90] as defined in the Customs Act, 1962 (52 of 1962) ;]

[93][(*ba*) "total turnover" shall not include freight or insurance attributable to the transport of the goods or merchandise beyond the customs station[90] as defined in the Customs Act, 1962 (52 of 1962) :

Provided that in relation to any assessment year commencing on or after the 1st day of April, 1991, the expression "total turnover" shall have effect as if it also excluded any sum referred to in clauses (*iiia*), (*iiib*) [94][, (*iiic*), (*iiid*) and (*iiie*)] of section 28 ;]

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86. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

87. Inserted by the Finance (No. 2) Act, 1991, w.r.e.f. 1-4-1986.

88. For the meaning of expression "or otherwise", *see* Taxmann's Direct Taxes Manual, Vol. 3.

89. *See* Circular No. 624, dated 23-1-1992. For details, *see* Taxmann's Master Guide to Income-tax Act.

90. Section 2(*13*) of the Customs Act, 1962, defines "customs station" as follows :
'(*13*) "customs station" means any customs port, customs airport or land customs station ;'

91. Substituted for "receivable" by the Finance Act, 1990, w.e.f. 1-4-1991.

92. Inserted, *ibid.*

93. Inserted by the Finance (No. 2) Act, 1991, w.r.e.f. 1-4-1987.

94. Substituted for "and (*iiic*)" by the Taxation Laws (Amendment) Act, 2005, w.r.e.f. 1-4-1998.

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[95][(*baa*) "profits of the business" means the profits of the business as computed under the head "Profits and gains of business or profession" as reduced by—

(*1*) ninety per cent of any sum referred to in clauses (*iiia*), (*iiib*) [96][, (*iiic*), (*iiid*) and (*iiie*)] of section 28 or of any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in such profits[97] ; and

(*2*) the profits of any branch, office, warehouse or any other establishment of the assessee situate outside India ;]

(*bb*) [98][***]

[99][[1][(*c*)] "Export House Certificate" or "Trading House Certificate" means a valid Export House Certificate or Trading House Certificate, as the case may be, issued by the Chief Controller of Imports and Exports, Government of India ;

[1][(*d*)] "supporting manufacturer" means a person being an Indian company or a person (other than a company) resident in India, [2][manufacturing (including processing) goods] or merchandise and selling such goods or merchandise to an Export House or a Trading House for the purposes of export;]

[3][(*e*) "special economic zone" shall have the meaning assigned to it in clause (*viii*) of the *Explanation 2* to section 10A.]

[4][**Deduction in respect of earnings in convertible foreign exchange.**

80HHD. (1) Where an assessee, being an Indian company or a person (other than a company) resident in India, is engaged in the business of a hotel or of a tour operator, approved by the prescribed authority[5] in this behalf or of

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95. Inserted by the Finance (No. 2) Act, 1991, w.r.e.f. 1-4-1987.

96. Substituted for "and (*iiic*)" by the Taxation Laws (Amendment) Act, 2005, w.r.e.f. 1-4-1998.

97. For the meaning of expression "such profits", *see* Taxmann's Direct Taxes Manual, Vol. 3.

98. Omitted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1991. Prior to its omission, clause (*bb*) was inserted by the Finance Act, 1990, w.e.f. 1-4-1991.

99. Inserted by the Finance Act, 1988, w.e.f. 1-4-1989. Clause (*c*) was earlier omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Original clause (*c*) was inserted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1987.

1. Relettered by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

2. Substituted for "manufacturing goods" by the Finance Act, 1990, w.e.f. 1-4-1991.

3. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

4. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

5. The prescribed authority under rule 18BBA(5) is Director General, Directorate General of Tourism, Government of India.

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a travel agent, there shall, in accordance with and subject to the provisions of this section, be allowed, [6][in computing the total income of the assessee—

(*a*) for an assessment year beginning on the 1st day of April, 2001, a deduction of a sum equal to the aggregate of—

(*i*) forty per cent of the profits derived by him from services provided to foreign tourists; and

(*ii*) so much of the amount not exceeding forty per cent of the profits referred to in sub-clause (*i*) as is debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account to be utilised for the purposes of the business of the assessee in the manner laid down in sub-section (4);

(*b*) for an assessment year beginning on the 1st day of April, 2002, a deduction of a sum equal to the aggregate of—

(*i*) thirty per cent of the profits derived by him from services provided to foreign tourists; and

(*ii*) so much of the amount not exceeding thirty per cent of the profits referred to in sub-clause (*i*) as is debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account to be utilised for the purposes of the business of the assessee in the manner laid down in sub-section (4);

(*c*) for an assessment year beginning on the 1st day of April, 2003, a deduction of a sum equal to the aggregate of—

(*i*) [7][twenty-five] per cent of the profits derived by him from services provided to foreign tourists; and

(*ii*) so much of the amount not exceeding [7][twenty-five] per cent of the profits referred to in sub-clause (*i*) as is debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account to be utilised for the purposes of the business of the assessee in the manner laid down in sub-section (4);

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6. Substituted for the portion beginning with the words "in computing the total income of the assessee, a deduction of a sum equal to the aggregate of—" and ending with the words "manner laid down in sub-section (4) :" by the Finance Act, 2000, w.e.f. 1-4-2001. Prior to its substitution, the quoted portion read as under :

"in computing the total income of the assessee, a deduction of a sum equal to the aggregate of—

(*a*) fifty per cent of the profits derived by him from services provided to foreign tourists ; and

(*b*) so much of the amount out of the remaining profits referred to in clause (*a*) as is debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account to be utilised for the purposes of the business of the assessee in the manner laid down in sub-section (4) :"

7. Substituted for "twenty" by the Finance Act, 2002, w.e.f. 1-4-2003.

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(*d*) for an assessment year beginning on the 1st day of April, 2004, a deduction of a sum equal to the aggregate of—

(*i*) [8][fifteen] per cent of the profits derived by him from services provided to foreign tourists; and

(*ii*) so much of the amount not exceeding [8][fifteen] per cent of the profits referred to in sub-clause (*i*) as is debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account to be utilised for the purposes of the business of the assessee in the manner laid down in sub-section (4),

and no deduction shall be allowed in respect of the assessment year beginning on the 1st day of April, 2005 and any subsequent assessment year] :

[9][**Provided** that a hotel or, as the case may be, a tour operator approved by the prescribed authority on or after the 30th day of November, 1989 and before the 1st day of October, 1991, shall be deemed to have been approved by the prescribed authority for the purposes of this section in relation to the assessment year commencing on the 1st day of April, 1989 or the 1st day of April, 1990 or, as the case may be, the 1st day of April, 1991 if the assessee was engaged in the business of such hotel or as such tour operator during the previous year relevant to any of the said assessment years.]

(2) This section applies only to services provided to foreign tourists the receipts in relation to which are received [10][in, or brought into, India by the assessee in convertible foreign exchange within a period of six months from the end of the previous year or, [11][within such further period as the competent authority may allow in this behalf].]

[12][*Explanation* [13][*1*].—For the purposes of this sub-section, any payment received by an assessee, engaged in the business of a hotel or of a tour operator or of a travel agent, in Indian currency obtained by conversion of foreign exchange brought into India through an authorised dealer, [14][from another hotelier, tour operator or travel agent, as the case may be,] on behalf of a foreign tourist or group of foreign tourists, shall be deemed to have been received by the assessee

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8. Substituted for "ten" by the Finance Act, 2002, w.e.f. 1-4-2003.

9. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

10. Substituted for "by the assessee in convertible foreign exchange" by the Finance Act, 1990, w.e.f. 1-4-1991.

11. Substituted for the portion beginning with the words "where the Chief Commissioner" and ending with the words "may allow in this behalf" by the Finance Act, 1999, w.e.f. 1-6-1999. Prior to substitution, the quoted portion, as amended by the Finance Act, 1990, w.e.f. 1-4-1991, read as under :

"where the Chief Commissioner or Commissioner is satisfied (for reasons to be recorded in writing) that the assessee is, for reasons beyond his control, unable to do so within the said period of six months, within such further period as the Chief Commissioner or Commissioner may allow in this behalf."

12. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992.

13. Inserted by the Finance Act, 1999, w.e.f. 1-6-1999.

14. Substituted for "from a tour operator or, as the case may be, a travel agent" by the Finance Act, 1994, w.e.f. 1-4-1995.

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in convertible foreign exchange if the person making the payment furnishes to the assessee a certificate specified in sub-section (2A).

[15][*Explanation 2.*—For the purposes of this sub-section, the expression "competent authority" means the Reserve Bank of India or such other authority as is authorised under any law for the time being in force for regulating payments and dealings in foreign exchange.]

(2A) Every person making payment to an assessee referred to in the *Explanation* [15][*1*] to sub-section (2) out of Indian currency obtained by conversion of foreign exchange received from or on behalf of a foreign tourist or a group of foreign tourists shall furnish to that assessee a certificate in the prescribed form[16] indicating the amount received in foreign exchange, its conversion into Indian currency and such other particulars as may be prescribed.]

[17][(3) For the purposes of sub-section (1), profits derived from services provided to foreign tourists shall be the amount which bears to the profits of the business (as computed under the head "Profits and gains of business or profession") the same proportion as the receipts specified in sub-section (2)[18][[as reduced by any payment, referred to in sub-section (2A), made by the assessee]] bear to the total receipts of the business carried on by the assessee.]

(4) The amount credited to the reserve account under clause (*b*) of sub-section (1), shall be utilised by the assessee before the expiry of a period of five years next following the previous year in which the amount was credited for the following purposes, namely :—

(*a*) construction of new hotels approved by the prescribed authority in this behalf or expansion of facilities in existing hotels already so approved;

(*b*) purchase of new cars and new coaches by tour operators already so approved or by travel agents ;

(*c*) purchase of sports' equipment for mountaineering, trekking, golf, river-rafting and other sports in or on water ;

(*d*) construction of conference or convention centres ;

(*e*) provision of such new facilities for the growth of Indian tourism as the Central Government may, by notification in the Official Gazette, specify in this behalf ;

[19][(*f*) subscription to equity shares forming part of any eligible issue of capital made by a public company:]

Provided that where any of the activities referred to in clauses (*a*) to [20][(*f*)] would result in creation of any asset owned by the assessee outside India, such asset should be created only after obtaining prior approval of the prescribed authority.

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15. Inserted by the Finance Act, 1999, w.e.f. 1-6-1999.

16. *See* rule 18BBA(6) and Form No. 10CCAE for certificate from person making payment to an assessee engaged in business of tour operator/hotel/travel agent.

17. Substituted by the Finance Act, 1990, w.e.f. 1-4-1991.

18. Inserted by the Finance Act, 1994, w.e.f. 1-4-1995.

19. Inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

20. Substituted for "(*e*)", *ibid.*

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(5) Where any amount credited to the reserve account under clause (*b*) of sub-section (1),—

(*a*) has been utilised for any purpose other than those referred to in sub-section (4), the amount so utilised; or

(*b*) has not been utilised in the manner specified in sub-section (4), the amount not so utilised,

shall be deemed to be the profits,—

(*i*) in a case referred to in clause (*a*), in the year in which the amount was so utilised; or

(*ii*) in a case referred to in clause (*b*), in the year immediately following the period of five years specified in sub-section (4),

and shall be charged to tax accordingly.

[21][(5A) Where any amount credited to the reserve account under clause (*b*) of sub-section (1) has been utilised for subscription to any equity shares referred to in clause (*f*) of sub-section (4) and either whole or any part of such equity shares are transferred or converted into money by the assessee at any time within a period of three years from the date of their acquisition, the aggregate amount so utilised in respect of such equity shares shall be deemed to be the profits of the previous year in which the equity shares are transferred or converted into money.

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 public company.]

(6) The deduction under sub-section (1) shall not be admissible unless the assessee furnishes in the prescribed form[22], along with the return of income, the report of an accountant, as defined in the *Explanation* below sub-section (2) of section 288, certifying that the deduction has been correctly claimed on the basis of the [23][[24][***] amount of convertible foreign exchange received by the assessee for services provided by him to foreign tourists [25][, payments made by him to any assessee referred to in sub-section (2A)] and the payments received by him in Indian currency as referred to in the *Explanation* [26][*1*] to sub-section (2).]

[27][(7) Where a deduction under sub-section (1) is claimed and allowed in respect of profits derived from the business of a hotel, such part of profits shall not qualify to that extent for deduction for any assessment year under any other provisions of this Chapter under the heading "*C.—Deductions in respect of certain incomes*", and shall in no case exceed the profits and gains of such hotel.]

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21. Inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

22. *See* rule 18BBA(4) and Form No. 10CCAD for form of report of accountant.

23. Substituted for "amount of convertible foreign exchange received by the assessee for services provided by him to the foreign tourists" by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992.

24. Words "aggregate of the" omitted by the Finance Act, 1994, w.e.f. 1-4-1995.

25. Inserted, *ibid.*

26. Inserted by the Finance Act, 1999, w.e.f. 1-6-1999.

27. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999.

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Explanation.—For the purposes of this section,—

(*a*) "travel agent" means a travel agent or other person (not being an airline or a shipping company) who holds a valid licence granted by the Reserve Bank of India under section 32[28] of the Foreign Exchange Regulation Act, 1973 (46 of 1973);

(*b*) "convertible foreign exchange" shall have the meaning assigned to it in clause (*a*) of the *Explanation* to section 80HHC;

(*c*) "services provided to foreign tourists" shall not include services by way of sale in any shop owned or managed by the person who carries on the business of a hotel or of a tour operator or of a travel agent;

[29][(*d*) [30]"authorised dealer", [31]"foreign exchange" and [32]"Indian currency" shall have the meanings respectively assigned to them in clauses (*b*), (*h*) and (*k*) of section 2 of the Foreign Exchange Regulation Act, 1973 (46 of 1973);]

[33][(*e*) "eligible issue of capital" means an issue made by a public company formed and registered in India and the entire proceeds of the issue is utilised wholly and exclusively for the purpose of carrying on the business of—

(*i*) setting up and running of new hotels approved by the prescribed authority; or

(*ii*) providing such new facility for the growth of tourism in India, as the Central Government may, by notification in the Official Gazette, specify.]

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28. Section 32 of FERA, 1973 was omitted by the Foreign Exchange Regulation (Amendment) Act, 1993, w.r.e.f. 8-1-1993.

29. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992.

30. Section 2(*b*) of the Foreign Exchange Regulation Act, 1973, defines "authorised dealer" as under:

'(*b*) "authorised dealer" means a person for the time being authorised under section 6 to deal in foreign exchange;'

For the definition of term under FEMA, 1999, *see* **Appendix**.

31. Clause (*h*) of section 2 of the Foreign Exchange Regulation Act, 1973, defines "foreign exchange" as follows :

'(*h*) "foreign exchange" means foreign currency and includes—

(*i*) all deposits, credits and balances payable in any foreign currency, and any drafts, traveller's cheques, letters of credit and bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency;

(*ii*) any instrument payable, at the option of the drawee or holder thereof or any other party thereto, either in Indian currency or in foreign currency or partly in one and partly in the other ;'

For the definition of term under FEMA, 1999, *see* **Appendix**.

32. Section 2(*k*) of the Foreign Exchange Regulation Act, 1973, defines "Indian currency" as under :

'(*k*) "Indian currency" means currency which is expressed or drawn in Indian rupees but does not include special bank notes and special one rupee notes issued under section 28A of the Reserve Bank of India Act, 1934 (2 of 1934);'

For the definition of term under FEMA, 1999, *see* **Appendix**.

33. Inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

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[34][**Deduction in respect of profits from export of computer software, etc.**[35]

80HHE. (1) Where an assessee, being an Indian company or a person (other than a company) resident in India, is engaged in the business of,—

(*i*) export out of India of computer software or its transmission from India to a place outside India by any means;

(*ii*) providing technical services outside India in connection with the development or production of computer software,

there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, [36][a deduction to the extent of the profits, referred to in sub-section (1B),] derived by the assessee from such business :

[37][***]

[38][**Provided** that if the assessee, being a company, engaged in the export out of India of computer software, issues a certificate referred to in clause (*b*) of sub-section (4A), that in respect of the amount of the export specified therein, the deduction under this sub-section is to be allowed to a supporting software developer, then the amount of deduction in the case of an assessee shall be reduced by such amount which bears to the total profits derived by the assessee from the export, the same proportion as the amount of the export turnover specified in such certificate bears to the total export turnover of the assessee.

[39][*Explanation.*—For the removal of doubts, it is hereby declared that the profits and gains derived from on site development of computer software (including services for development of software) outside India shall be deemed to be the profits and gains derived from the export of computer software outside India.]

(1A) Where the assessee, being a supporting software developer, has during the previous year, developed and sold computer software to an exporting company in respect of which the said company has issued a certificate under the proviso to sub-section (1), 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 of the profits derived by the assessee from the developing and selling of computer software to the exporting company in respect of which the certificate has been issued by the said company [40][to such extent and for such years as specified in sub-section (1B)].]

[40][(1B) For the purposes of sub-sections (1) and (1A), the extent of deduction of profits shall be an amount equal to—

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34. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1991.

35. *See* also Circular No. 3/2004, dated 12-2-2004. For details, *see* Taxmann's Master Guide to Income-tax Act.

36. Substituted for "a deduction of the profits" by the Finance Act, 2000, w.e.f. 1-4-2001.

37. Proviso omitted by the Finance Act, 1995, w.e.f. 1-4-1996. Prior to its omission, the proviso was amended by the Finance Act, 1993, w.e.f. 13-5-1993 and the Finance Act, 1994, w.e.f. 13-5-1994.

38. Proviso and sub-section (1A) inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999.

39. Inserted by the Finance Act, 2001, w.e.f. 1-4-2001. *See* also Circular No. 3/2004, dated 12-2-2004. For details, *see* Taxmann's Master Guide to Income-tax Act.

40. Inserted by the Finance Act, 2000, w.e.f. 1-4-2001.

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(*i*) eighty per cent of such profits for an assessment year beginning on the 1st day of April, 2001;

[41][(*ii*) seventy per cent thereof for an assessment year beginning on the 1st day of April, 2002;

(*iii*) fifty per cent thereof for an assessment year beginning on the 1st day of April, 2003;

(*iv*) thirty per cent thereof for an assessment year beginning on the 1st day of April, 2004,]

and no deduction shall be allowed in respect of the assessment year beginning on the 1st day of April, 2005 and any subsequent assessment year.]

(2) The deduction specified in sub-section (1) shall be allowed only if the consideration in respect of the computer software referred to in that sub-section is received in, or brought into, India by the assessee in convertible foreign exchange, within a period of six months from the end of the previous year or, [42][within such further period as the competent authority may allow in this behalf].

Explanation [43][*1*].—The said consideration shall be deemed to have been received in India where it is credited to a separate account maintained for the purpose by the assessee with any bank outside India with the approval of the Reserve Bank of India.

[43][*Explanation 2.*—For the purposes of this sub-section, the expression "competent authority" means the Reserve Bank of India or such other authority as is authorised under any law for the time being in force for regulating payments and dealings in foreign exchange.]

(3) For the purposes of sub-section (1), profits derived from the business referred to in that sub-section shall be the amount which bears to the profits of the business, the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee.

[44][(3A) For the purposes of sub-section (1A), profits derived by a supporting software developer shall be,—

(*i*) in a case where the business carried on by the supporting software developer consists exclusively of developing and selling of computer

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41. Substituted by the Finance Act, 2001, w.e.f. 1-4-2002. Prior to their substitution, clauses (*ii*), (*iii*) and (*iv*) read as under :

"(*ii*) sixty per cent of such profits for an assessment year beginning on the 1st day of April, 2002;

(*iii*) forty per cent of such profits for an assessment year beginning on the 1st day of April, 2003;

(*iv*) twenty per cent of such profits for an assessment year beginning on the 1st day of April, 2004,"

42. Substituted for the portion beginning with the words "where the Commissioner" and ending with the words "may allow in this behalf" by the Finance Act, 1999, w.e.f. 1-6-1999. Prior to substitution, the said portion was inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1991.

43. Inserted by the Finance Act, 1999, w.e.f. 1-6-1999.

44. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999.

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software to one or more exporting companies solely engaged in exports, the profits of such business;

(*ii*) in a case where the business carried on by a supporting software developer does not consist exclusively of developing and selling of computer software to one or more exporting companies, the amount which bears to the profits of the business, the same proportion as the turnover in respect of sale to the respective exporting company bears to the total turnover of the business carried on by the assessee.]

(4) The deduction under sub-section (1) shall not be admissible unless the assessee furnishes in the prescribed form[45], along with the return of income, the report of an accountant, as defined in the *Explanation* below sub-section (2) of section 288, certifying that the deduction has been correctly claimed in accordance with the provisions of this section.

[46][(4A) The deduction under sub-section (1A) shall not be admissible unless the supporting software developer furnishes in the prescribed form along with his return of income,—

*(*i*) the report of an accountant[47], as defined in the *Explanation* below sub-section (2) of section 288, certifying that the deduction has been correctly claimed on the basis of the profits of the supporting software developer in respect of sale of computer software to the exporting company; and

†(*ii*) a certificate[48] from the exporting company containing such particulars as may be prescribed and verified in the manner prescribed that in respect of the export turnover mentioned in the certificate, the exporting company has not claimed deduction under this section :

Provided that the certificate specified in clause (*b*) shall be duly certified by the auditor auditing the accounts of the exporting assessee under the provisions of this Act or under any other law.]

(5) Where a deduction under this section is claimed and allowed in respect of profits of the business referred to in sub-section (1) for any assessment year, no deduction shall be allowed in relation to such profits under any other provision of this Act for the same or any other assessment year.

Explanation.—For the purposes of this section,—

(*a*) "convertible foreign exchange" shall have the meaning assigned to it in clause (*a*) of the *Explanation* to section 80HHC;

[49][(*b*) "computer software" means,—

(*i*) any computer programme recorded on any disc, tape, perforated media or other information storage device; or

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45. *See* rule 18BBA(7) and Form No. 10CCAF for form of report of accountant.

46. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999.

47. *See* rule 18BBA(7) and Form No. 10CCAF for form of report of accountant.

48. *See* rule 18BBA(8) and Form No. 10CCAG.

49. Substituted by the Finance Act, 2000, w.e.f. 1-4-2001. Prior to its substitution, item (*b*) was amended by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999.

*"(*i*)" should be read as "(*a*)".

†"(*ii*)" should be read as "(*b*)".

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(*ii*) any customised electronic data or any product or service of similar nature as may be notified[50] by the Board,

which is transmitted or exported from India to a place outside India by any means;]

(*c*) "export turnover" means the consideration in respect of computer software received in, or brought into, India by the assessee in convertible foreign exchange in accordance with sub-section (2), but does not include freight, telecommunication charges or insurance attributable to the delivery of the computer software outside India or expenses, if any, incurred in foreign exchange in providing the technical services outside India;

[51][(*ca*) "exporting company" means a company referred to in sub-section (1) making actual export of computer software;]

(*d*) "profits of the business" means the profits of the business as computed under the head "Profits and gains of business or profession" as reduced by—

(*1*) ninety per cent of any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in such profits; and

(*2*) the profits of any branch, office, warehouse or any other establishment of the assessee situate outside India;

(*e*) "total turnover" shall not include—

(*i*) any sum referred to in clauses (*iiia*), (*iiib*) and (*iiic*) of section 28;

(*ii*) any freight, telecommunication charges or insurance attributable to the delivery of the computer software outside India; and

(*iii*) expenses, if any, incurred in foreign exchange in providing the technical services outside India;]

[51][(*ea*) "supporting software developer" means an Indian company or a person (other than a company) resident in India, developing and selling computer software to an exporting company for the purposes of export.]

[52][**Deduction in respect of profits and gains from export or transfer of film software, etc.**

80HHF. (1) Where an assessee, being an Indian company [53][or a person (other than a company) resident in India], is engaged in the business of export or transfer by any means out of India, of any film software, television software,

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50. For notified information technology enabled products/services, *see* Taxmann's Master Guide to Income-tax Act.

51. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999.

52. Inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

53. Inserted by the Finance Act, 2000, w.e.f. 1-4-2000.

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music software, television news software, including telecast rights (hereafter in this section referred to as the software or software rights), there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, [54][a deduction to the extent of profits, referred to in sub-section (1A),] derived by the assessee from such business.

[55][(1A) For the purposes of sub-section (1), the extent of deduction of profits shall be an amount equal to—

(*i*) eighty per cent of such profits for an assessment year beginning on the 1st day of April, 2001;

[56][(*ii*) seventy per cent thereof for an assessment year beginning on the 1st day of April, 2002;

(*iii*) fifty per cent thereof for an assessment year beginning on the 1st day of April, 2003;

(*iv*) thirty per cent thereof for an assessment year beginning on the 1st day of April, 2004,]

and no deduction shall be allowed in respect of the assessment year beginning on the 1st day of April, 2005 and any subsequent assessment year.]

(2) The deduction specified in sub-section (1) shall be allowed only if the consideration in respect of the software or software rights referred to in that sub-section is received in, or brought into, India by the assessee in convertible foreign exchange, within a period of six months from the end of the previous year or within such further period as the competent authority may allow in this behalf.

(3) For the purposes of sub-section (1), profits derived from the business referred to in that sub-section shall be the amount which bears to the profits of the business, the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee.

(4) The deduction under sub-section (1) shall not be admissible unless the assessee furnishes in the prescribed form[57], along with the return of income, the report of an accountant, as defined in the *Explanation* below sub-section (2) of section 288, certifying that the deduction has been correctly claimed in accordance with the provisions of this section.

(5) Where a deduction under this section is claimed and allowed in respect of profits of the business referred to in sub-section (1) for any assessment year, no deduction shall be allowed in relation to such profits under any other provision of this Act for the same or any other assessment year.

(6) Notwithstanding anything contained in this section, no deduction shall be allowed in respect of the software or software rights referred to in sub-section (1), if such business is prohibited by any law for the time being in force.

Explanation.—For the purposes of this section,—

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54. Substituted for "a deduction of the profits" by the Finance Act, 2000, w.e.f. 1-4-2001.

55. Inserted, *ibid.*

56. Substituted by the Finance Act, 2001, w.e.f. 1-4-2002.

57. *See* rule 18BBA(9) and Form No. 10CCAI.

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(*a*) "competent authority" means the Reserve Bank of India or such other authority as is authorised under any law for the time being in force for regulating payments and dealings in foreign exchange;

(*b*) "convertible foreign exchange" shall have the meaning assigned to it in clause (*a*) of the *Explanation* to section 80HHC;

(*c*) "export turnover" means the consideration in respect of the software or software rights specified in clauses (*d*), (*e*), (*g*), (*h*) and (*i*), received in, or brought into, India by the assessee in convertible foreign exchange in accordance with sub-section (2), but does not include freight, telecommunication charges or insurance attributable to the delivery of such software outside India or expenses, if any, incurred in foreign exchange in providing the technical services outside India;

(*d*) "film software" means a copy of a cinematograph film made by any process analogous to cinematography on acetate polyester or celluloid film positive, magnetic tape, digital media or other optical or magnetic devices and certified by the Board of film certification constituted by the Central Government under section 3 of the Cinematograph Act, 1952 (37 of 1952);

(*e*) "music software" includes series of sounds or music recorded on magnetic tape, cassette, compact discs and digital media which can be played or reproduced on any appropriate apparatus;

(*f*) "profits of the business" means the profits of the business as computed under the head "Profits and gains of business or profession" as reduced by—

(*A*) ninety per cent of any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in such profits; and

(*B*) the profits of any branch, office, warehouse or any other establishment of the assessee situated outside India;

(*g*) "telecast rights" means a licence or contract to exhibit motion pictures or television programmes over a television network either through terrestrial transmission or through a satellite broadcast in a specified territory;

(*h*) "television news software" means a collection of sounds and images, reportage, data and voice of actualities broadcast either through terrestrial transmission, wire or satellite, live or pre-recorded on video cassettes or digital media;

(*i*) "television software" means any programme or series of sounds and images recorded on film or tape or digital media or broadcast through terrestrial transmitter, satellite or any other means of diffusion;

(*j*) "total turnover" shall not include—

(*A*) any sum referred to in clauses (*iiia*), (*iiib*) and (*iiic*) of section 28;

(*B*) any freight, telecommunication charges or insurance attributable to the delivery of the film software, music software, telecast

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rights, television news software, or television software as defined in clause (*d*), (*e*), (*g*), (*h*) or (*i*), as the case may be, outside India;

(*C*) expenses, if any, incurred in foreign exchange in providing the technical services outside India.]

[58][**Deduction in respect of profits and gains from industrial undertakings after a certain date, etc.**

[59]**80-I.** (1) Where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking[60] or a ship or the business of a hotel [61][or the business of repairs to ocean-going vessels or other powered craft], 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 twenty per cent thereof :

Provided that in the case of an assessee, being a company, the provisions of this sub-section shall have effect [61][in relation to profits and gains derived from an industrial undertaking or a ship or the business of a hotel] as if for the words "twenty per cent", the words "twenty-five per cent" had been substituted.

[62][(1A) Notwithstanding anything contained in sub-section (1), in relation to any profits and gains derived by an assessee from—

(*i*) an industrial undertaking which begins to manufacture or produce articles or things or to operate its cold storage plant or plants; or

(*ii*) a ship which is first brought into use; or

(*iii*) the business of a hotel which starts functioning,

on or after the 1st day of April, 1990, [63][but before the 1st day of April, 1991], 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 twenty-five per cent thereof :

Provided that in the case of an assessee, being a company, the provisions of this sub-section shall have effect in relation to profits and gains derived from an industrial undertaking or a ship or the business of a hotel as if for the words "twenty-five per cent", the words "thirty per cent" had been substituted.]

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

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58. Inserted by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1981. Originally, provision relating to priority industries was dealt with by section 80E which was inserted by the Finance Act, 1966, w.e.f. 1-4-1966. That section was omitted and in its place section 80-I was introduced by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968. Section 80-I was also omitted by the Finance Act, 1972, w.e.f. 1-4-1973.

59. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

60. For the meaning of the expression "industrial undertaking", *see* Taxmann's Direct Taxes Manual, Vol. 3.

61. Inserted by the Finance Act, 1983, w.e.f. 1-4-1984.

62. Inserted by the Finance Act, 1990, w.e.f. 1-4-1990.

63. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1991.

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(*i*) it is not formed[64] by the splitting up[64], or the reconstruction[64], of a business already in existence;

(*ii*) it is not formed by the transfer[65] to a new business of machinery or plant previously used for any purpose;

(*iii*) it manufactures or produces[65] any article[65] or thing, not being any article or thing specified in the list in the Eleventh Schedule, or operates one or more cold storage plant or plants, in any part of India, and begins to manufacture or produce articles or things or to operate such plant or plants, at any time within the period of [66][ten] years next following the 31st day of March, 1981, or such further period as the Central Government may, by notification in the Official Gazette, specify with reference to any particular industrial undertaking;

(*iv*) in a case where the industrial undertaking manufactures or produces articles or things, the undertaking 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 :

Provided that the condition in clause (*i*) 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 referred to in section 33B, in the circumstances and within the period specified in that section :

Provided further that the condition in clause (*iii*) shall, in relation to a small-scale industrial undertaking, apply as if the words "not being any article or thing specified in the list in the Eleventh Schedule" had been omitted.

Explanation 1.—For the purposes of clause (*ii*) of this sub-section, any machinery or plant which was used outside India by 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 provisions of 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.

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64. For the meaning of the terms/expressions "formed", "splitting up" and "reconstruction", *see* Taxmann's Direct Taxes Manual, Vol. 3.

65. For the meaning of the terms/expressions "transfer", "manufactures or produces", "articles" and "workers", *see* Taxmann's Direct Taxes Manual, Vol. 3.

66. Substituted for "fourteen" by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1991. Earlier "fourteen" was substituted for "nine" by the Finance Act, 1990, w.e.f. 1-4-1990 which was earlier substituted for "four" by the Finance Act, 1985, w.e.f. 1-4-1985.

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Explanation 2.—Where in the case of an industrial 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 twenty 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 complied with.

Explanation 3.—For the purposes of this sub-section, "small-scale industrial undertaking" shall have the same meaning as in clause (*b*) of the *Explanation* below sub-section (8) of section 80HHA.

(3) This section applies to any ship, where all the following conditions are fulfilled, namely :—

(*i*) it is owned by an Indian company and is wholly used for the purposes of the business carried on by it;

(*ii*) it was not, previous to the date of its acquisition by the Indian company, owned or used in Indian territorial waters by a person resident in India; and

(*iii*) it is brought into use by the Indian company at any time within the period of [67][ten] years next following the 1st day of April, 1981.

(4) This section applies to the business of any hotel, where all the following conditions are fulfilled, namely :—

(*i*) 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;

(*ii*) 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;

(*iii*) the hotel is for the time being approved for the purposes of this sub-section by the Central Government;

(*iv*) the business of the hotel starts functioning after the 31st day of March, 1981, but before the 1st day of April, [68][1991].

[69][(4A) This section applies to the business of repairs to ocean-going vessels or other powered craft which fulfils all the following conditions, namely :—

(*i*) the business is not formed by the splitting up, or the reconstruction, of a business already in existence;

(*ii*) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose;

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67. Substituted for "fourteen" by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1991. Earlier "fourteen" was substituted for "nine" by the Finance Act, 1990, w.e.f. 1-4-1990 which was earlier substituted for "four" by the Finance Act, 1985, w.e.f. 1-4-1985.

68. Substituted for "1995" by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1991. Earlier "1995" was substituted for "1990" by the Finance Act, 1990, w.e.f. 1-4-1990 which was earlier substituted for "1985" by the Finance Act, 1985, w.e.f. 1-4-1985.

69. Inserted by the Finance Act, 1983, w.e.f. 1-4-1984.

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(*iii*) 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 the 31st day of March, 1983, but before the 1st day of April, 1988; and

(*iv*) it is for the time being approved for the purposes of this sub-section by the Central Government.]

(5) 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 begins to manufacture or produce articles or things, 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 [70][or the company commences work by way of repairs to ocean-going vessels or other powered craft] (such assessment year being hereafter in this section referred to as the initial assessment year) and each of the seven assessment years immediately succeeding 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 if for the words "seven assessment years", the words "nine assessment years" had been substituted :

[70][**Provided further** that in the case of an assessee carrying on the business of repairs to ocean-going vessels or other powered craft, the provisions of this sub-section shall have effect as if for the words "seven assessment years", the words "four assessment years" had been substituted:]

[71][**Provided also** that in the case of—

(*i*) an industrial undertaking which begins to manufacture or produce articles or things or to operate its cold storage plant or plants; or

(*ii*) a ship which is first brought into use; or

(*iii*) the business of a hotel which starts functioning,

on or after the 1st day of April, 1990 [72][but before the 1st day of April, 1991], provisions of this sub-section shall have effect as if for the words "seven assessment years", the words "nine assessment years" had been substituted :

Provided also that in the case of an assessee, being a co-operative society, deriving profits and gains from an industrial undertaking or a ship or a hotel referred to in the third proviso, the provisions of that proviso shall have effect as if for the words "nine assessment years", the words "eleven assessment years" had been substituted.]

(6) Notwithstanding anything contained in any other provision of this Act, the profits and gains of an industrial undertaking or a ship or the business of a hotel [73][or the business of repairs to ocean-going vessels or other powered craft] to which the provisions of sub-section (1) apply shall, for the purposes of determining the quantum of deduction under sub-section (1) for the assessment year immediately succeeding the initial assessment year or any subsequent assessment year, be computed as if such industrial undertaking or ship or the business

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70. Inserted by the Finance Act, 1983, w.e.f. 1-4-1984.

71. Inserted by the Finance Act, 1990, w.e.f. 1-4-1990.

72. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1991.

73. Inserted by the Finance Act, 1983, w.e.f. 1-4-1984.

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of the hotel [74][or the business of repairs to ocean-going vessels or other powered craft] were the only source of income of the assessee during the previous years relevant to the initial assessment year and to every subsequent assessment year up to and including the assessment year for which the determination is to be made.

(7) Where the assessee is a person other than a company or a co-operative society, the deduction under sub-section (1) from profits and gains derived from an industrial undertaking shall not be admissible unless the accounts of the 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[75] duly signed and verified by such accountant.

(8) Where any goods held for the purposes of the business of the industrial undertaking or the hotel or the operation of the ship [76][or the business of repairs to ocean-going vessels or other powered craft] 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 business of the industrial undertaking or the hotel or the operation of the ship [76][or the business of repairs to ocean-going vessels or other powered craft] 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 or the operation of the ship [76][or the business of repairs to ocean-going vessels or other powered craft] does not correspond to the market value of such goods as on the date of the transfer, then, for the purposes 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 [76][or the business of repairs to ocean-going vessels or other powered craft] shall be computed as if the transfer, in either case, had been made at the market value of such goods as on that date :

Provided that where, in the opinion of the [77][Assessing] Officer, the computation of the profits and gains of the industrial undertaking or the business of the hotel or the operation of the ship [76][or the business of repairs to ocean-going vessels or other powered craft] in the manner hereinbefore specified presents exceptional difficulties, the [77][Assessing] 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.

(9) Where it appears to the [77][Assessing] Officer that, owing to the close connection between the assessee carrying on the business of the industrial undertaking or the hotel or the operation of the ship [76][or the business of repairs to ocean-going vessels or other powered craft] to which this section applies and

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74. Inserted by the Finance Act, 1983, w.e.f. 1-4-1984.

75. *See* rule 18BBB and Form No. 10CCB for form of audit report.

76. Inserted by the Finance Act, 1983, w.e.f. 1-4-1984.

77. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

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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 or the operation of the ship [78][or the business of repairs to ocean-going vessels or other powered craft], the [79][Assessing] Officer shall, in computing the profits and gains of the industrial undertaking or the hotel or the ship [80][or the business of repairs to ocean-going vessels or other powered craft] for the purposes of the deduction under this section, take the amount of profits as may be reasonably deemed to have been derived therefrom.

(10) The Central Government may, after making such inquiry as it may think fit, direct, by notification in the Official Gazette, that the exemption conferred by this section shall not apply to any class of industrial undertakings with effect from such date as it may specify in the notification.]

[81][**Deductions in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development, etc.**[82]

80-IA. [83][(1) Where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in sub-section (4) (such business being hereinafter referred to as the eligible business), there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a

78. Inserted by the Finance Act, 1983, w.e.f. 1-4-1984.

79. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

80. Inserted by the Finance Act, 1983, w.e.f. 1-4-1984.

81. Sections 80-IA and 80-IB substituted for section 80-IA by the Finance Act, 1999, w.e.f. 1-4-2000. Prior to its substitution, section 80-IA, as inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1991 and later on amended by the Finance Act, 1992, w.e.f. 1-4-1993, Finance Act, 1993, w.e.f. 1-4-1994, Finance Act, 1994, w.e.f. 1-4-1994/1-4-1995, Finance Act, 1995, w.e.f. 1-4-1996, Finance (No. 2) Act, 1996, w.e.f. 1-4-1997, Finance Act, 1997, w.r.e.f. 1-4-1996/ w.e.f. 1-4-1998, Income-tax (Amendment) Act, 1998, w.r.e.f. 1-4-1995/w.e.f. 1-4-1998 and Finance (No. 2) Act, 1998, w.r.e.f. 1-4-1998/w.e.f. 1-4-1999, read as under :

'80-IA. *Deduction in respect of profits and gains from industrial undertakings, etc., in certain cases.*—(1) Where the gross total income of an assessee includes any profits and gains derived from any business of an industrial undertaking or a hotel or operation of a ship or developing, maintaining and operating any infrastructure facility or scientific and industrial research and development or providing telecommunication services whether basic or cellular including radio paging, domestic satellite service or network of trunking and electronic data interchange services or construction and development of housing projects or operating an industrial park or commercial production or refining of mineral oil in the North Eastern Region or in any part of India on or after the 1st day of April, 1997 (such business being hereinafter referred to as the eligible business), 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 the percentage specified in sub-section (5) and for such number of assessment years as is specified in sub-section (6).

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

(*i*) it is not formed by splitting up, or the reconstruction, of a business already in existence:

(Contd. on p. 1.450)

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(Contd. from p. 1.449)

Provided that this condition shall not apply in respect of an 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 referred to in section 33B, in the circumstances and within the period specified in that section;

(*ii*) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose;

(*iii*) it manufactures or produces any article or thing, not being any article or thing specified in the list in the Eleventh Schedule, or operates one or more cold storage plant or plants, in any part of India :

Provided that the condition in this clause shall, in relation to a small scale industrial undertaking or an industrial undertaking referred to in sub-clause (*b*) of clause (*iv*) which begins to manufacture or produce an article or thing during the period beginning on the 1st day of April, 1993 and ending on the 31st day of March, 2000, apply as if the words "not being any article or thing specified in the list in the Eleventh Schedule" had been omitted;

(*iv*) (*a*) in the case of an industrial undertaking not specified in sub-clause (*b*) or sub-clause (*c*), it begins to manufacture or produce articles or things or to operate such plant or plants, at any time during the period beginning on the 1st day of April, 1991 and ending on the 31st day of March, 1995, or such further period as the Central Government may, by notification in the Official Gazette, specify with reference to any particular industrial undertaking;

(*b*) in the case of an industrial undertaking located in an industrially backward State specified in the Eighth Schedule or set up in any part of India for the generation, or generation and distribution, of power, it begins to manufacture or produce articles or things or to operate its cold storage plant or plants or to generate power at any time during the period beginning on the 1st day of April, 1993 and ending on the 31st day of March, 2000 :

Provided that in the case of an industrial undertaking set up in any part of India for the generation, or generation and distribution, of power, the period ending shall have effect as if for the figures "1998", the figures "2003" had been substituted;

(*c*) in the case of an industrial undertaking located in such industrially backward district as the Central Government may, having regard to the prescribed guidelines, by notification in the Official Gazette, specify in this behalf, as an industrially backward district of Category A or an industrially backward district of Category B, and, it begins to manufacture or produce articles or things or to operate its cold storage plant or plants at any time during the period beginning on the 1st day of October, 1994, and ending on the 31st day of March, 2000;

(*d*) in the case of an industrial undertaking being a small scale industrial undertaking, not specified in sub-clause (*b*) or in sub-clause (*c*), it begins to manufacture or produce articles or things or to operate its cold storage plant at any time during the period beginning on the 1st day of April, 1995 and ending on the 31st day of March, 2000;

(*v*) in a case where the industrial undertaking manufactures or produces articles or things, the undertaking 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 1.—For the purposes of clause (*ii*) of this sub-section, any machinery or plant which was used outside India by 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;

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(Contd. from p. 1.450)

(*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 provisions of 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 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 twenty 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 complied with.

(3) This section applies to any ship, where all the following conditions are fulfilled, namely:—

(*i*) it is owned by an Indian company and is wholly used for the purposes of the business carried on by it;

(*ii*) it was not, previous to the date of its acquisition by the Indian company, owned or used in Indian territorial waters by a person resident in India; and

(*iii*) it is brought into use by the Indian company at any time during the period beginning on the 1st day of April, 1991 and ending on the 31st day of March, 1995.

(4) This section applies to the business of any hotel—

(*a*) where conditions (*i*), (*ii*) and (*v*); and

(*b*) either of the conditions (*iii*) or (*iv*); or

(*c*) either of the conditions (*iiia*) or (*iva*),

are fulfilled, namely :—

(*i*) 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;

(*ii*) 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;

(*iii*) the business of the hotel, located in a hilly area or a rural area or a place of pilgrimage or such other place as the Central Government may having regard to the need for development of infrastructure for tourism in any place and other relevant considerations specify for the purpose of this clause, starts functioning at any time during the period beginning on the 1st day of April, 1990 and ending on the 31st day of March, 1994;

(*iiia*) the business of the hotel, located in a hilly area or a rural area or a place of pilgrimage or such other place as the Central Government may, having regard to the need for development of infrastructure for tourism in any place and other relevant considerations, specify for the purpose of this clause, starts functioning at any time during the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2001 :

Provided that nothing contained in this clause shall apply to any hotel located at a place within the municipal jurisdiction (whether known as a municipality, municipal corporation, notified area committee, town area committee or a cantonment board or by any other name) of Calcutta, Chennai, Delhi and Mumbai;

(*iv*) the business of the hotel—

(*1*) located in any place, or

(*2*) located in a place other than a place referred to in clause (*iii*) of this sub-section,

starts functioning at any time during the period beginning on the 1st day of April, 1991 and ending on the 31st day of March, 1995;

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(*iva*) the business of the hotel, located in a place other than a place referred to in clause (*iiia*) of this sub-section and not being located at a place within the municipal jurisdiction (whether known as a municipality, municipal corporation, notified area committee, town area committee or a cantonment board or by any other name) of Calcutta, Chennai, Delhi and Mumbai, starts functioning at any time during the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2001;

(*v*) the hotel is for the time being approved by the prescribed authority.

(4A) This section applies to any enterprise carrying on the business of developing, maintaining and operating any infrastructure facility which fulfils all the following conditions, namely :—

(*i*) the enterprise is owned by a company registered in India or by a consortium of such companies;

(*ii*) the enterprise has entered into an agreement with the Central Government or a State Government or a local authority or any other statutory body for developing, maintaining and operating a new infrastructure facility subject to the condition that such infrastructure facility shall be transferred to the Central Government, State Government, local authority or such other statutory body, as the case may be, within the period stipulated in the agreement;

(*iii*) the enterprise starts operating and maintaining the infrastructure facility on or after the 1st day of April, 1995.

(4B) This section applies to any company registered in India carrying on scientific and industrial research and development which fulfils all the following conditions, namely :—

(*i*) the company has the main object of scientific and industrial research and development;

(*ii*) the company is for the time being approved by the prescribed authority at any time before the 1st day of April, 1999.

(4C) This section applies to any undertaking which starts providing telecommunication services whether basic or cellular including radiopaging, domestic satellite service or network of trunking and electronic data interchange services at any time on or after the 1st day of April, 1995 but before the 31st day of March, 2000.

(4D) This section applies to any undertaking which begins to operate an industrial park notified by the Central Government in accordance with the scheme framed and notified by that Government for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2002.

(4E) This section applies to any undertaking which begins commercial production or refining of mineral oil in the North-Eastern Region or in any part of India on or after the 1st day of April, 1997 :

Provided that the provisions of this section shall apply in case of refining of mineral oil where the undertaking begins refining on or after the 1st day of October, 1998.

(4F) This section applies to an undertaking, engaged in developing and building housing projects approved by a local authority subject to the condition that the size of the plot of land has a minimum area of one acre, and the residential unit has a built up area not exceeding one thousand square feet :

Provided that the undertaking commences development and construction of the housing project on or after the 1st day of October, 1998 and completes the same before the 31st day of March, 2001.

(5) The amount referred to in sub-section (1) shall be—

(*i*) (*a*) in the case of an industrial undertaking referred to in sub-clause (*a*) or sub-clause (*d*) of clause (*iv*) of sub-section (2), twenty-five per cent of the profits and gains derived from such industrial undertakings;

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(*b*) in the case of an industrial undertaking referred to in sub-clause (*b*) or sub-clause (*c*) of clause (*iv*) of sub-section (2), hundred per cent of the profits and gains derived from such industrial undertaking for the initial five assessment years and thereafter twenty-five per cent of the profits and gains derived from such industrial undertaking :

Provided that where the assessee is a company, the provisions of this clause shall have effect as if for the words "twenty-five per cent", the words "thirty per cent" had been substituted :

Provided further that in case of an industrial undertaking located in an industrially backward district of Category B, the provisions of this clause shall have effect as if for the words "five assessment years", the words "three assessment years" had been substituted;

(*ia*) in the case of an enterprise referred to in sub-section (4A), hundred per cent of the profits and gains derived from such business for the initial five assessment years and thereafter, thirty per cent of such profits and gains;

(*ib*) in the case of a company referred to in sub-section (4B), hundred per cent of the profits and gains derived from such business;

(*ic*) in the case of an undertaking referred to in sub-section (4C), hundred per cent of the profits and gains derived from such business for the initial five assessment years and thereafter, twenty-five per cent of the profits and gains derived from such business :

Provided that where the assessee is a company, the provisions of this clause shall have effect as if for the words "twenty-five per cent", the words "thirty per cent" had been substituted;

(*id*) in the case of an industrial park referred to in sub-section (4D), hundred per cent of the profits and gains derived from such business for the initial five assessment years and thereafter, twenty-five per cent of the profits and gains derived from such business :

Provided that where the assessee is a company, the provisions of this clause shall have effect as if for the words "twenty-five per cent", the words "thirty per cent" had been substituted;

(*ii*) in the case of a hotel referred to in clause (*iii*) of sub-section (4), fifty per cent of the profits and gains derived from the business of such hotel :

Provided that the said hotel is approved by the prescribed authority for the purpose of this clause in accordance with the rules made under this Act :

Provided further that the said hotel approved by the prescribed authority before the 31st day of March, 1992, shall be deemed to have been approved by the prescribed authority for the purposes of this section in relation to the assessment year commencing on the 1st day of April, 1991;

(*iia*) in the case of a hotel referred to in clause (*iiia*) of sub-section (4), fifty per cent of the profits and gains derived from the business of such hotel :

Provided that the said hotel is approved by the prescribed authority for the purposes of this clause in accordance with the rules made under this Act;

(*iii*) in the case of a hotel referred to in clause (*iv*) or clause (*iva*) of sub-section (4), thirty per cent of the profits and gains derived from the business of such hotel;

(*iv*) in the case of a ship, thirty per cent of the profits and gains derived from such ship;

(*v*) in the case of undertaking referred to in sub-section (4E) hundred per cent of profits and gains derived from such business for the initial seven assessment years;

(*vi*) in the case of a housing project referred to in sub-section (4F), hundred per cent of profits and gains derived from such business.

(6) The number of assessment years referred to in sub-section (1) shall, including the initial assessment year, be—

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(*i*) twelve in the case of an assessee, being a co-operative society, deriving profits and gains from an industrial undertaking;

(*ii*) ten in the case of an assessee, not being a co-operative society, deriving profits and gains from an industrial undertaking specified in sub-clause (*a*) or sub-clause (*b*) or sub-clause (*d*) of clause (*iv*) of sub-section (2) or located in an industrially backward district of Category A specified in sub-clause (*c*) of clause (*iv*) of that sub-section;

(*iia*) eight in the case of an assessee deriving profits and gains from an industrial undertaking located in an industrially backward district of Category B specified in sub-clause (*c*) of clause (*iv*) of sub-section (2) and such an undertaking is not covered under clauses (*i*) and (*ii*) of this sub-section;

(*iii*) ten in the case of any other assessee deriving profits and gains, from a ship or the business of a hotel;

(*iv*) any ten consecutive assessment years falling within a period of twelve assessment years beginning with the assessment year in which an assessee begins operating and maintaining infrastructure facility :

Provided that where the assessee begins operating and maintaining any infrastructure facility referred to in sub-clause (*ii*) of clause (*ca*) of sub-section (12), the provisions of this clause shall have effect as if for the word "twelve", the word "twenty" had been substituted;

(*v*) five in the case of an assessee, being a company referred to in sub-section (4B), deriving profits and gains from scientific and industrial research and development;

(*vi*) ten in the case of an assessee, being an undertaking referred to in sub-section (4C), deriving profits and gains from telecommunication services whether basic or cellular including radio-paging and domestic satellite service;

(*vii*) ten in the case of an assessee, being an undertaking referred to in sub-section (4D), deriving profits and gains from operating an industrial park;

(*viii*) seven in the case of an assessee being an undertaking referred to in sub-section (4E) deriving profits and gains from commercial production or refining of mineral oil in the North-Eastern Region and other parts of the country on or after the 1st day of April, 1997.

(7) Notwithstanding anything contained in any other provision of this Act, the profits and gains of an eligible business to which the provisions of sub-section (1) apply shall, for the purposes of determining the quantum of deduction under sub-section (5) for the assessment year immediately succeeding the initial assessment year or any subsequent assessment year, be computed as if such eligible business were the only source of income of the assessee during the previous year relevant to the initial assessment year and to every subsequent assessment year up to and including the assessment year for which the determination is to be made.

(7A) Notwithstanding anything contained in sub-section (4A), where housing or other activities are an integral part of the highway project and the profits of which are computed on such basis and manner as may be prescribed, such profit shall not be liable to tax where the profit has been transferred to a special reserve account and the same is actually utilised for the highway project excluding housing and other activities before the expiry of three years following the year in which such amount was transferred to the reserve account; and the amount remaining unutilised shall be chargeable to tax as income of the year in which transfer to reserve account took place.

(8) Where the assessee is a person other than a company or a co-operative society, the deduction under sub-section (1) from profits and gains derived from an industrial undertaking shall not be admissible unless the accounts of the 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.

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(9) Where any goods held for the purposes of the eligible business 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 eligible business and, in either case, the consideration, if any, for such transfer as recorded in the accounts of the eligible business does not correspond to the market value of such goods as on the date of the transfer, then, for the purposes of the deduction under this section, the profits and gains of such eligible business shall be computed as if the transfer, in either case, had been made at the market value of such goods as on that date :

Provided that where, in the opinion of the Assessing Officer, the computation of the profits and gains of the eligible business in the manner hereinbefore specified presents exceptional difficulties, the Assessing 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.

(9A) Where any amount of profits and gains of an industrial undertaking or of a hotel in the case of an assessee is claimed and allowed under this section for any assessment year, deduction to the extent of such profits and gains shall not be allowed under any other provisions of this Chapter under the heading "*C.—Deductions in respect of certain incomes*", and shall in no case exceed the profits and gains of the undertaking or hotel, as the case may be.

(10) Where it appears to the Assessing Officer that, owing to the close connection between the assessee carrying on the eligible business 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 such eligible business, the Assessing Officer shall, in computing the profits and gains of such eligible business for the purposes of the deduction under this section, take the amount of profits as may be reasonably deemed to have been derived therefrom.

(11) The Central Government may, after making such inquiry as it may think fit, direct, by notification in the Official Gazette, 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.

(12) For the purposes of this section,—

(*a*) "domestic satellite" means a satellite owned and operated by an Indian company for providing telecommunication service;

(*aa*) "hilly area" means any area located at a height of one thousand metres or more above the sea level;

(*b*) "industrial undertaking" shall have the meaning assigned to it in the *Explanation* to section 33B;

(*c*) "initial assessment year"—

(*1*) in the case of an industrial undertaking or cold storage plant or ship or hotel, means the assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce articles or things, 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;

(*2*) in the case of an enterprise, carrying on the business of developing, operating and maintaining any infrastructure facility, means the assessment year specified by the assessee at his option to be the initial year, not falling beyond the twelfth assessment year starting from the previous year in which the enterprise begins operating and maintaining the infrastructure facility;

(*3*) in the case of a company carrying on scientific and industrial research and development, means the assessment year relevant to the previous year in which the company is approved by the prescribed authority for the purposes of sub-section (4B);

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(*4*) in the case of an undertaking referred to in sub-section (4C) means the assessment year relevant to the previous year in which the undertaking starts to provide the telecommunication services whether basic or cellular including radio-paging and domestic satellite service;

(*5*) in the case of an undertaking operating an industrial park referred to in sub-section (4D) means the assessment year relevant to the previous year in which the undertaking starts operating such industrial park notified for the purposes of the said sub-section;

(*6*) in the case of an undertaking engaged in the business of commercial production or refining of mineral oil referred to in sub-section (4E) means the assessment year relevant to the previous year in which the undertaking commences the commercial production of mineral oil;

(*ca*) "infrastructure facility" means—

(*i*) a road, bridge, airport, port, inland waterways and inland ports, rail system or any other public facility of a similar nature as may be notified by the Board in this behalf in the Official Gazette;

(*ii*) a highway project including housing or other activities being an integral part of the highway project; and

(*iii*) a water supply project, irrigation project, sanitation and sewerage system;

(*d*) "place of pilgrimage" means a place where any temple, mosque, gurdwara, church or other place of public worship of renown throughout any State or States is situated;

(*e*) "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 or by any other name) or a cantonment board and which has a population of not less than ten thousand according to the preceding census of which relevant figures have been published before the first day of the previous year; or

(*ii*) an area within such distance not being more than fifteen kilometres from the local limits of any municipality or cantonment board referred to in sub-clause (*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 considerations specify in this behalf by notification in the Official Gazette;

(*f*) "small-scale industrial undertaking" means an industrial undertaking which is, as on the last day of the previous year, regarded as a small-scale industrial undertaking under section 11B of the Industries (Development and Regulation) Act, 1951 (65 of 1951);

(*g*) "North Eastern Region" means the region comprising of the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura.'

82. *See* Circular No. 7/2002, dated 26-8-2002, Circular No. 10/2005, dated 16-12-2005 and Circular No. 1/2006, dated 12-1-2006. For details, *see* Taxmann's Master Guide to Income-tax Act.

83. Substituted by the Finance Act, 2001, w.e.f. 1-4-2002. Prior to its substitution, sub-section (1) read as under :

'(1) Where the gross total income of an assessee includes any profits and gains derived from any business of an industrial undertaking or an enterprise referred to in sub-section (4) (such business being hereinafter referred to as the eligible business), 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 hundred per cent of profits and gains derived from such business for the first five assessment years commencing at any time during the periods as specified in sub-section (2) and thereafter, twenty-five per cent of the profits and gains for further five assessment years:

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deduction of an amount equal to hundred per cent of the profits and gains derived from such business for ten consecutive assessment years.]

(2) The deduction specified in sub-section (1) may, at the option of the assessee, be claimed by him for any ten consecutive assessment years out of fifteen years beginning from the year in which the undertaking or the enterprise develops and begins to operate any infrastructure facility or starts providing telecommunication service or develops an industrial park [84][or develops [85][***] a special economic zone referred to in clause (*iii*) of sub-section (4)] or generates power or commences transmission or distribution of power [86][or undertakes substantial renovation and modernisation of the existing transmission or distribution lines [87][[88][***]]] :

[89][**Provided** that where the assessee develops or operates and maintains or develops, operates and maintains any infrastructure facility referred to in clause (*a*) or clause (*b*) or clause (*c*) of the *Explanation* to clause (*i*) of sub-section (4), the provisions of this sub-section shall have effect as if for the words "fifteen years", the words "twenty years" had been substituted.]

[90][(2A) Notwithstanding anything contained in sub-section (1) or sub-section (2), the deduction in computing the total income of an undertaking providing telecommunication services, specified in clause (*ii*) of sub-section (4), shall be hundred per cent of the profits and gains of the eligible business for the first five assessment years commencing at any time during the periods as specified in sub-section (2) and thereafter, thirty per cent of such profits and gains for further five assessment years.]

(3) This section applies to [91][an [92][undertaking] referred to in [93][clause (*ii*) or] clause (*iv*) [94][[95][***]] of sub-section (4)] which fulfils all the following conditions, namely :—

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Provided that where the assessee is a company, the provisions of this sub-section shall have effect as if for the words "twenty-five per cent", the words "thirty per cent" had been substituted.'

84. Inserted by the Finance Act, 2002, w.e.f. 1-4-2003.

85. Words "or develops and operates or maintains and operates" omitted by the Finance Act, 2003, w.r.e.f. 1-4-2002.

86. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005.

87. Inserted by the Finance Act, 2007, w.e.f. 1-4-2008.

88. Words "or lays and begins to operate a cross-country natural gas distribution network" omitted by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2010**.

89. Substituted by the Finance Act, 2001, w.e.f. 1-4-2002. Prior to its substitution, proviso read as under :

'**Provided** that where the assessee begins operating and maintaining any infrastructure facility referred to in clause (*b*) of *Explanation* to clause (*i*) of sub-section (4), the provisions of this sub-section shall have effect as if for the words "fifteen years", the words "twenty years" had been substituted.'

90. Inserted by the Finance Act, 2001, w.e.f. 1-4-2001.

91. Substituted for "any industrial undertaking" by the Finance Act, 2000, w.e.f. 1-4-2000.

92. Substituted for "industrial undertaking" by the Finance Act, 2001, w.e.f. 1-4-2002.

93. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005.

94. Inserted by the Finance Act, 2007, w.e.f. 1-4-2008.

95. Words "or clause (*vi*)" omitted by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2010**.

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(*i*) it is not formed by splitting up, or the reconstruction, of a business already in existence :

Provided that this condition shall not apply in respect of an [96][undertaking] which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such [96][undertaking] as is referred to in section 33B, in the circumstances and within the period specified in that section;

(*ii*) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose:

[97][**Provided** that nothing contained in this sub-section shall apply in the case of transfer, either in whole or in part, of machinery or plant previously used by a State Electricity Board referred to in clause (*7*) of section 2 of the Electricity Act, 2003 (36 of 2003), whether or not such transfer is in pursuance of the splitting up or reconstruction or reorganisation of the Board under Part XIII of that Act.]

Explanation 1.—For the purposes of clause (*ii*), any machinery or plant which was used outside India by 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 provisions of this Act in computing the total income of any person for any period prior to the date of the installation of machinery or plant by the assessee.

Explanation 2.—Where in the case of an [98][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 twenty 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 complied with.

(4) This section applies to—

(*i*) any enterprise carrying on the business [99][of (*i*) developing or (*ii*) operating and maintaining or (*iii*) developing, operating and maintaining] any infrastructure facility which fulfils all the following conditions, namely :—

(*a*) it is owned by a company registered in India or by a consortium of such companies [1][or by an authority or a board or a corpora-

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96. Substituted for "industrial undertaking" by the Finance Act, 2001, w.e.f. 1-4-2002.

97. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005.

98. Substituted for "industrial undertaking" by the Finance Act, 2001, w.e.f. 1-4-2002.

99. Substituted for "of (*i*) developing, (*ii*) maintaining and operating or (*iii*) developing, maintaining and operating" by the Finance Act, 2001, w.e.f. 1-4-2002.

1. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

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tion or any other body established or constituted under any Central or State Act;]

[2][(*b*) it has entered into an agreement with the Central Government or a State Government or a local authority or any other statutory body for (*i*) developing or (*ii*) operating and maintaining or (*iii*) developing, operating and maintaining a new infrastructure facility;]

(*c*) it has started or starts operating and maintaining the infrastructure facility on or after the 1st day of April, 1995:

Provided that where an infrastructure facility is transferred on or after the 1st day of April, 1999 by an enterprise which developed such infrastructure facility (hereafter referred to in this section as the transferor enterprise) to another enterprise (hereafter in this section referred to as the transferee enterprise) for the purpose of operating and maintaining the infrastructure facility on its behalf in accordance with the agreement with the Central Government, State Government, local authority or statutory body, the provisions of this section shall apply to the transferee enterprise as if it were the enterprise to which this clause applies and the deduction from profits and gains would be available to such transferee enterprise for the unexpired period during which the transferor enterprise would have been entitled to the deduction, if the transfer had not taken place.

[3][*Explanation*.—For the purposes of this clause, "infrastructure facility" means—

(*a*) a road including toll road, a bridge or a rail system;

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2. Substituted by the Finance Act, 2001, w.e.f. 1-4-2002. Prior to its substitution, sub-clause (*b*) read as under :

"(*b*) it has entered into an agreement with the Central Government or a State Government or a local authority or any other statutory body for (*i*) developing, (*ii*) maintaining and operating or (*iii*) developing, maintaining and operating a new infrastructure facility subject to the condition that such infrastructure facility shall be transferred to the Central Government, State Government, local authority or such other statutory body, as the case may be, within the period stipulated in the agreement;"

3. Substituted by the Finance Act, 2001, w.e.f. 1-4-2002. Prior to its substitution, *Explanation,* as amended by the Finance Act, 2000, w.e.f. 1-4-2001, read as under :

'*Explanation.*—For the purposes of this clause, "infrastructure facility" means,—

(*a*) a road, bridge, airport, port, inland waterways and inland ports, rail system or any other public facility of a similar nature as may be notified by the Board in this behalf in the Official Gazette;

(*b*) a highway project including housing or other activities being an integral part of the highway project; and

(*c*) a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system;'

See also Circular No. 7/2002, dated 26-8-2002. For details, *see* Taxmann's Master Guide to Income-tax Act.

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(*b*) a highway project including housing or other activities being an integral part of the highway project;

(*c*) a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system;

(*d*) a port[4], airport, inland waterway [5][, inland port or navigational channel in the sea];]

[6][(*ii*) any undertaking which has started or starts providing telecommunication services, whether basic or cellular, including radio paging, domestic satellite service, network of trunking, broadband network and internet services on or after the 1st day of April, 1995, but on or before the 31st day of March, [7][2005].]

Explanation.—For the purposes of this clause, "domestic satellite" means a satellite owned and operated by an Indian company for providing telecommunication service;

(*iii*) any undertaking which develops, develops and operates or maintains and operates an industrial park [8][or special economic zone] notified[9] by the Central Government in accordance with the scheme framed[9] and notified[10] by that Government for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, [11][2006] :

[12][**Provided** that in a case where an undertaking develops an industrial park on or after the 1st day of April, 1999 or a special economic zone on or after the 1st day of April, 2001 and transfers the operation and maintenance of such industrial park or such special economic zone, as the case may be, to another undertaking (hereafter in this section

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4. For definition of "port", *see* Circular No. 793, dated 23-6-2000. For details, *see* Taxmann's Master Guide to Income-tax Act.
5. Substituted for "or inland port" by the Finance Act, 2007, w.e.f. 1-4-2008.
6. Substituted by the Finance Act, 2001, w.e.f. 1-4-2001. Prior to its substitution, clause (*ii*) read as under :

   '(*ii*) any undertaking which has started or starts providing telecommunication services whether basic or cellular, including radio-paging, domestic satellite service or network of trunking and electronic data interchange services at any time on or after the 1st day of April, 1995, but before the 31st day of March, 2000.'
7. Substituted for "2004" by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005. Earlier "2004" was substituted for "2003" by the Finance Act, 2003, w.e.f. 1-4-2004.
8. Inserted by the Finance Act, 2001, w.e.f. 1-4-2002.
9. For notified Industrial Park Scheme, 2008, and notified Scheme for Special Economic Zones, *see* Taxmann's Income-tax Rules. For notified undertakings, etc., *see* Taxmann's Direct Taxes Circulars and Taxmann's Yearly Tax Digest & Referencer.
10. *See* rule 18C.
11. Substituted for "2002" by the Finance Act, 2001, w.e.f. 1-4-2001.
12. Substituted by the Finance Act, 2003, w.r.e.f. 1-4-2002. Prior to its substitution, the proviso read as under :

    "**Provided** that in a case where an undertaking develops an industrial park on or after the 1st day of April, 1999 and transfers the operation and maintenance of such industrial park to another undertaking (hereafter in this section referred to as the transferee undertaking) the deduction under sub-section (1), shall be allowed to such transferee undertaking for the remaining period in the ten consecutive assessment years in a manner as if the operation and maintenance were not so transferred to the transferee undertaking;"

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referred to as the transferee undertaking), the deduction under sub-section (1) shall be allowed to such transferee undertaking for the remaining period in the ten consecutive assessment years as if the operation and maintenance were not so transferred to the transferee undertaking :

[13][**Provided further** that in the case of any undertaking which develops, develops and operates or maintains and operates an industrial park, the provisions of this clause shall have effect as if for the figures, letters and words "31st day of March, 2006", the figures, letters and words "31st day of March, [14][2011]" had been substituted;]

(*iv*) an [15][undertaking] which,—

(*a*) is set up in any part of India for the generation or generation and distribution of power if it begins to generate power at any time during the period beginning on the 1st day of April, 1993 and ending on the 31st day of March, [16][2011];

(*b*) starts transmission or distribution by laying a network of new transmission or distribution lines at any time during the period beginning on the 1st day of April, 1999 and ending on the 31st day of March, [16][2011] :

Provided that the deduction under this section to an [17][undertaking] under sub-clause (*b*) shall be allowed only in relation to the profits derived from laying of such network of new lines for transmission or distribution;

[18][(*c*) undertakes substantial renovation and modernisation of the existing network of transmission or distribution lines at any time during the period beginning on the 1st day of April, 2004 and ending on the 31st day of March, [19][2011].

Explanation.—For the purposes of this sub-clause, "substantial renovation and modernisation" means an increase in the plant and machinery in the network of transmission or distribution lines by at least fifty per cent of the book value of such plant and machinery as on the 1st day of April, 2004;]

[20][(*v*) an undertaking owned by an Indian company and set up for reconstruction or revival of a power generating plant, if—

(*a*) such Indian company is formed before the 30th day of November, 2005 with majority equity participation by public sector compa-

13. Inserted by the Finance Act, 2006, w.e.f. 1-4-2007.

14. Substituted for "2009" by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-2009.

15. Substituted for "industrial undertaking" by the Finance Act, 2001, w.e.f. 1-4-2002.

16. Substituted for "2010" by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-2009. Earlier "2010" was substituted for "2006" by the Finance Act, 2006, w.e.f. 1-4-2007 and "2006" was substituted for "2003" by the Finance Act, 2001, w.e.f. 1-4-2002.

17. Substituted for "industrial undertaking" by the Finance Act, 2001, w.e.f. 1-4-2002.

18. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005.

19. Substituted for "2010" by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-2009. Earlier "2010" was substituted for "2006" by the Finance Act, 2006, w.e.f. 1-4-2007.

20. Inserted by the Taxation Laws (Amendment) Act, 2005, w.e.f. 1-4-2006.

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nies for the purposes of enforcing the security interest of the lenders to the company owning the power generating plant and such Indian company is notified[21] before the 31st day of December, 2005 by the Central Government for the purposes of this clause;

(*b*) such undertaking begins to generate or transmit or distribute power before the 31st day of March, [22][2011];]

(*vi*) [23][***]

(5) Notwithstanding anything contained in any other provision of this Act, the profits and gains of an eligible business to which the provisions of sub-section (1) apply shall, for the purposes of determining the quantum of deduction under that sub-section for the assessment year immediately succeeding the initial assessment year or any subsequent assessment year, be computed as if such eligible business were the only source of income of the assessee during the previous year relevant to the initial assessment year and to every subsequent

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21. For notified Indian company, *see* Taxmann's Master Guide to Income-tax Act.

22. Substituted for "2008" by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-2008. Earlier "2008" was substituted for "2007" by the Finance Act, 2007, w.e.f. 1-4-2008.

23. Omitted by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2010**. Prior to its omission, clause (*vi*), as inserted by the Finance Act, 2007, w.e.f. 1-4-2008, read as under:

"(*vi*) any undertaking carrying on the business of laying and operating a cross-country natural gas distribution network, including pipelines and storage facilities being an integral part of such network, which fulfils the following conditions, namely:—

(*a*) it is owned by a company registered in India or by a consortium of such companies or by an authority or a board or a corporation established or constituted under any Central or State Act;

(*b*) it has been approved by the Petroleum and Natural Gas Regulatory Board established under sub-section (1) of section 3 of the Petroleum and Natural Gas Regulatory Board Act, 2006 (19 of 2006) and notified by the Central Government in the Official Gazette;

(*c*) one-third of its total pipeline capacity is available for use on common carrier basis by any person other than the assessee or an associated person;

(*d*) it has started or starts operating on or after the 1st day of April, 2007; and

(*e*) any other condition which may be prescribed.

Explanation.—For the purposes of this clause, an "associated person" in relation to the assessee means a person—

(*i*) who participates directly or indirectly or through one or more intermediaries in the management or control or capital of the assessee;

(*ii*) who holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in the assessee;

(*iii*) who appoints more than half of the Board of directors or members of the governing board, or one or more executive directors or executive members of the governing board of the assessee; or

(*iv*) who guarantees not less than ten per cent of the total borrowings of the assessee."

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assessment year up to and including the assessment year for which the determination is to be made.

(6) Notwithstanding anything contained in sub-section (4), where housing or other activities are an integral part of the highway project and the profits of which are computed on such basis and manner as may be prescribed[24], such profit shall not be liable to tax where the profit has been transferred to a special reserve account and the same is actually utilised for the highway project excluding housing and other activities before the expiry of three years following the year in which such amount was transferred to the reserve account; and the amount remaining unutilised shall be chargeable to tax as income of the year in which such transfer to reserve account took place.

(7) [25][The deduction] under sub-section (1) from profits and gains derived from an [26][undertaking] shall not be admissible unless the accounts of the [26][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[27] duly signed and verified by such accountant.

(8) Where any goods [28][or services] held for the purposes of the eligible business are transferred to any other business carried on by the assessee, or where any goods [28][or services] held for the purposes of any other business carried on by the assessee are transferred to the eligible business and, in either case, the consideration, if any, for such transfer as recorded in the accounts of the eligible business does not correspond to the market value of such goods [28][or services] as on the date of the transfer, then, for the purposes of the deduction under this section, the profits and gains of such eligible business shall be computed as if the transfer, in either case, had been made at the market value of such goods [28][or services] as on that date :

Provided that where, in the opinion of the Assessing Officer, the computation of the profits and gains of the eligible business in the manner hereinbefore specified presents exceptional difficulties, the Assessing Officer may compute such profits and gains on such reasonable basis as he may deem fit.

[29][*Explanation.*—For the purposes of this sub-section, "market value", in relation to any goods or services, means the price that such goods or services would ordinarily fetch in the open market.]

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24. *See* rule 18BBE and Form No. 10CCC.

25. Substituted for "Where the assessee is a person other than a company or a co-operative society, the deduction" by the Finance Act, 2002, w.e.f. 1-4-2003.

26. Substituted for "industrial undertaking" by the Finance Act, 2001, w.e.f. 1-4-2002.

27. *See* rule 18BBB and Form No. 10CCB. Rule 12 provides that the return of income shall not be accompanied by any document or copy of any account or form or report of audit required to be attached with return of income under any of the provisions of the Act.

28. Inserted by the Finance Act, 2001, w.e.f. 1-4-2002.

29. Substituted, *ibid.* Prior to its substitution, *Explanation* read as under :
'*Explanation.*—For the purposes of 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.'

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(9) Where any amount of profits and gains of an [30][undertaking] or of an enterprise in the case of an assessee is claimed and allowed under this section for any assessment year, deduction to the extent of such profits and gains shall not be allowed under any other provisions of this Chapter under the heading "*C.—Deductions in respect of certain incomes*", and shall in no case exceed the profits and gains of such eligible business of [30][undertaking] or enterprise, as the case may be.

(10) Where it appears to the Assessing Officer that, owing to the close connection between the assessee carrying on the eligible business 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 such eligible business, the Assessing Officer shall, in computing the profits and gains of such eligible business for the purposes of the deduction under this section, take the amount of profits as may be reasonably deemed to have been derived therefrom.

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

(12) Where any undertaking of an Indian company which is entitled to the deduction under this section is transferred, before the expiry of the period specified in this section, to another Indian company in a scheme of amalgamation or demerger—

(*a*) no deduction shall be admissible under this section to the amalgamating or the demerged company for the previous year in which the amalgamation or the demerger takes place; and

(*b*) the provisions of this section shall, as far as may be, apply to the amalgamated or the resulting company as they would have applied to the amalgamating or the demerged company if the amalgamation or demerger had not taken place.

[31][(12A) Nothing contained in sub-section (12) shall apply to any enterprise or undertaking which is transferred in a scheme of amalgamation or demerger on or after the 1st day of April, 2007.]

[32][(13) Nothing contained in this section shall apply to any Special Economic Zones notified on or after the 1st day of April, 2005 in accordance with the scheme referred to in sub-clause (*iii*) of clause (*c*) of sub-section (4).]

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30. Substituted for "industrial undertaking" by the Finance Act, 2001, w.e.f. 1-4-2002.

31. Inserted by the Finance Act, 2007, w.e.f. 1-4-2008.

32. Inserted by the Special Economic Zones Act, 2005, w.e.f. 10-2-2006.

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[33][*Explanation.*—For the removal of doubts, it is hereby declared that nothing contained in this section shall apply in relation to a business referred to in sub-section (4) which is in the nature of a works contract awarded by any person (including the Central or State Government) and executed by the undertaking or enterprise referred to in sub-section (1).]

[34][**Deductions in respect of profits and gains by an undertaking or enterprise engaged in development of Special Economic Zone.**

80-IAB. (1) Where the gross total income of an assessee, being a Developer, includes any profits and gains derived by an undertaking or an enterprise from any business of developing a Special Economic Zone, notified on or after the 1st day of April, 2005 under the Special Economic Zones Act, 2005, 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 of an amount equal to one hundred per cent of the profits and gains derived from such business for ten consecutive assessment years.

(2) The deduction specified in sub-section (1) may, at the option of the assessee, be claimed by him for any ten consecutive assessment years out of fifteen years beginning from the year in which a Special Economic Zone has been notified by the Central Government :

Provided that where in computing the total income of any undertaking, being a Developer for any assessment year, its profits and gains had not been included by application of the provisions of sub-section (13) of section 80-IA, the undertaking being the Developer shall be entitled to deduction referred to in this section only for the unexpired period of ten consecutive assessment years and thereafter it shall be eligible for deduction from income as provided in sub-section (1) or sub-section (2), as the case may be :

Provided further that in a case where an undertaking, being a Developer who develops a Special Economic Zone on or after the 1st day of April, 2005 and transfers the operation and maintenance of such Special Economic Zone to another Developer (hereafter in this section referred to as the transferee Developer), the deduction under sub-section (1) shall be allowed to such transferee Developer for the remaining period in the ten consecutive assessment years as if the operation and maintenance were not so transferred to the transferee Developer.

(3) The provisions of sub-section (5) and sub-sections (7) to (12) of section 80-IA shall apply to the Special Economic Zones for the purpose of allowing deductions under sub-section (1).

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33. Substituted by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-2000. Prior to its substitution, *Explanation,* as inserted by the Finance Act, 2007, w.r.e.f. 1-4-2000, read as under :
"*Explanation*.—For the removal of doubts, it is hereby declared that nothing contained in this section shall apply to a person who executes a works contract entered into with the undertaking or enterprise, as the case may be."

34. Inserted by the Special Economic Zones Act, 2005, w.e.f. 10-2-2006.

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Explanation.—For the purposes of this section, "Developer" and "Special Economic Zone" shall have the same meanings respectively as assigned to them in clauses (*g*) and (*za*) of section 2 of the Special Economic Zones Act, 2005[35].]

Deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings.[36]

80-IB. (1) Where the gross total income of an assessee includes any profits and gains derived from any business referred to in sub-sections (3) to [37][(11), (11A) and (11B)[38]] (such business being hereinafter referred to as the eligible business), 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 such percentage and for such number of assessment years as specified in this section.

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

(*i*) it is not formed[39] by splitting up[39], or the reconstruction[39], of a business already in existence :

Provided that this condition shall not apply in respect of an 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 referred to in section 33B, in the circumstances and within the period specified in that section;

(*ii*) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose;

(*iii*) it manufactures or produces any article or thing, not being any article or thing specified in the list in the Eleventh Schedule, or operates one or more cold storage plant or plants, in any part of India :

Provided that the condition in this clause shall, in relation to a small scale industrial undertaking or an industrial undertaking referred to in sub-section (4) shall apply as if the words "not being any article or thing specified in the list in the Eleventh Schedule" had been omitted.

Explanation 1.—For the purposes of clause (*ii*), any machinery or plant which was used outside India by 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

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35. For text of section 2(*g*) and (*za*) of Special Economic Zones Act, 2005, *see* **Appendix**.

36. *See* also Instruction No. 4/2009, dated 30-6-2009. For details, *see* Taxmann's Master Guide to Income-tax Act.

37. Substituted for "(11) and (11A)" by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005. Earlier "and (11A)" was inserted by the Finance Act, 2001, w.e.f. 1-4-2002.

38. Mention of 'sub-section (11C)', as inserted with effect from 1-4-2009, should also be incorporated in sub-section (1).

39. For the meaning of the terms/expressions "formed", "splitting up" and "reconstruction", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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(*c*) no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of 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 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 twenty 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 complied with;

(*iv*) in a case where the industrial undertaking manufactures or produces articles or things, the undertaking 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.

(3) The amount of deduction in the case of an industrial undertaking shall be twenty-five per cent (or thirty per cent where the assessee is a company), of the profits and gains derived from such industrial undertaking for a period of ten consecutive assessment years (or twelve consecutive assessment years where the assessee is a co-operative society) beginning with the initial assessment year subject to the fulfilment of the following conditions, namely :—

(*i*) it begins to manufacture or produce, articles or things or to operate such plant or plants at any time during the period beginning from the 1st day of April, 1991 and ending on the 31st day of March, 1995 or such further period as the Central Government may, by notification in the Official Gazette, specify with reference to any particular undertaking;

(*ii*) where it is an industrial undertaking being a small scale industrial undertaking, it begins to manufacture or produce articles or things or to operate its cold storage plant [not specified in sub-section (4) or sub-section (5)] at any time during the period beginning on the 1st day of April, 1995 and ending on the 31st day of March, [40][2002].

[41](4) The amount of deduction in the case of an industrial undertaking in an industrially backward State specified in the Eighth Schedule shall be hundred per cent of the profits and gains derived from such industrial undertaking for five assessment years beginning with the initial assessment year and thereafter twenty-five per cent (or thirty per cent where the assessee is a company) of the profits and gains derived from such industrial undertaking :

Provided that the total period of deduction does not exceed ten consecutive assessment years (or twelve consecutive assessment years where the assessee is

40. Substituted for "2000" by the Finance Act, 2000, w.e.f. 1-4-2001.

41. *See* also Circular No. 788, dated 11-4-2000. For details, *see* Taxmann's Master Guide to Income-tax Act.

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a co-operative society) subject to fulfilment of the condition that it begins to manufacture or produce articles or things or to operate its cold storage plant or plants during the period beginning on the 1st day of April, 1993 and ending on the 31st day of March, [42][2004] :

Provided further that in the case of such industries in the North-Eastern Region, as may be notified[43] by the Central Government, the amount of deduction shall be hundred per cent of profits and gains for a period of ten assessment years, and the total period of deduction shall in such a case not exceed ten assessment years :

[44][**Provided also** that no deduction under this sub-section shall be allowed for the assessment year beginning on the 1st day of April, 2004 or any subsequent year to any undertaking or enterprise referred to in sub-section (2) of section 80-IC:]

[45][**Provided also** that in the case of an industrial undertaking in the State of Jammu and Kashmir, the provisions of the first proviso shall have effect as if for the figures, letters and words "31st day of March, 2004", the figures, letters and words "31st day of March, [46][2012]" had been substituted :

Provided also that no deduction under this sub-section shall be allowed to an industrial undertaking in the State of Jammu and Kashmir which is engaged in the manufacture or production of any article or thing specified in Part C of the Thirteenth Schedule.]

(5) The amount of deduction in the case of an industrial undertaking located in such industrially backward districts as the Central Government may, having regard to the prescribed guidelines[47], by notification[48] in the Official Gazette, specify in this behalf as industrially backward district of category 'A' or an industrially backward district of category 'B' shall be,—

(*i*) hundred per cent of the profits and gains derived from an industrial undertaking located in a backward district of category 'A' for five assessment years beginning with the initial assessment year and thereafter, twenty-five per cent (or thirty per cent where the assessee is a company) of the profits and gains of an industrial undertaking :

Provided that the total period of deduction shall not exceed ten consecutive assessment years or where the assessee is a co-operative society, twelve consecutive assessment years :

Provided further that the industrial undertaking begins to manufacture or produce articles or things or to operate its cold storage

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42. Substituted for "2002" by the Finance Act, 2002, w.e.f. 1-4-2003. Earlier "2002" was substituted for "2000" by the Finance Act, 2000, w.e.f. 1-4-2001.

43. For notified industries, *see* Taxmann's Master Guide to Income-tax Act.

44. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

45. Fourth and fifth provisos inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005.

46. Substituted for "2007" by the Finance Act, 2007, w.e.f. 1-4-2008. Earlier "2007" was substituted for "2005" by the Finance Act, 2005, w.e.f. 1-4-2006.

47. *See* rule 11EA and Appendix III of Income-tax Rules.

48. For notified industrially backward districts, *see* Taxmann's Master Guide to Income-tax Act.

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plant or plants at any time during the period beginning on the 1st day of October, 1994 and ending on the 31st day of March, [49][2004];

(*ii*) hundred per cent of the profits and gains derived from an industrial undertaking located in a backward district of category 'B' for three assessment years beginning with the initial assessment year and thereafter, twenty-five per cent (or thirty per cent where the assessee is a company) of the profits and gains of an industrial undertaking :

Provided that the total period of deduction does not exceed eight consecutive assessment years (or where the assessee is a co-operative society, twelve consecutive assessment years) :

Provided further that the industrial undertaking begins to manufacture or produce articles or things or to operate its cold storage plant or plants at any time during the period beginning on the 1st day of October, 1994 and ending on the 31st day of March, [49][2004].

(6) The amount of deduction in the case of the business of a ship shall be thirty per cent of the profits and gains derived from such ship for a period of ten consecutive assessment years including the initial assessment year provided that the ship—

(*i*) is owned by an Indian company and is wholly used for the purposes of the business carried on by it;

(*ii*) was not, previous to the date of its acquisition by the Indian company, owned or used in Indian territorial waters by a person resident in India; and

(*iii*) is brought into use by the Indian company at any time during the period beginning on the 1st day of April, 1991 and ending on the 31st day of March, 1995.

(7) The amount of deduction in the case of any hotel shall be—

(*a*) fifty per cent of the profits and gains derived from the business of such hotel for a period of ten consecutive years beginning from the initial assessment year as is located in a hilly area or a rural area or a place of pilgrimage or such other place as the Central Government may, having regard to the need for development of infrastructure for tourism in any place and other relevant considerations, specify by notification in the Official Gazette and such hotel starts functioning at any time during the period beginning on the 1st day of April, 1990 and ending on the 31st day of March, 1994 or beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2001:

Provided that nothing contained in this clause shall apply to a hotel located at a place within the municipal jurisdiction (whether known as a municipality, municipal corporation, notified area committee or a cantonment board or by any other name) of Calcutta, Chennai,

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49. Substituted for "2002" by the Finance Act, 2002, w.e.f. 1-4-2003. Earlier "2002" was substituted for "2000" by the Finance Act, 2000, w.e.f. 1-4-2001.

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Delhi or Mumbai, which has started or starts functioning on or after the 1st day of April, 1997 and before the 31st day of March, 2001:

Provided further that the said hotel is approved by the prescribed authority for the purpose of this clause in accordance with the rules[50] made under this Act and where the said hotel is approved by the prescribed authority before the 31st day of March, 1992, shall be deemed to have been approved by the prescribed authority for the purpose of this section in relation to the assessment year commencing on the 1st day of April, 1991;

(*b*) thirty per cent of the profits and gains derived from the business of such hotel as is located in any place other than those mentioned in sub-clause (*a*) for a period of ten consecutive years beginning from the initial assessment year if such hotel has started or starts functioning at any time during the period beginning on the 1st day of April, 1991 and ending on the 31st day of March, 1995 or beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2001:

Provided that nothing contained in this clause shall apply to a hotel located at a place within the municipal jurisdiction (whether known as a municipality, municipal corporation, notified area committee, town area committee or a cantonment board or by any other name) of Calcutta, Chennai, Delhi or Mumbai, which has started or starts functioning on or after the 1st day of April, 1997 and before the 31st day of March, 2001;

(*c*) the deduction under clause (*a*) or clause (*b*) shall be available only if—

(*i*) 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;

(*ii*) 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;

(*iii*) the hotel is for the time being approved by the prescribed authority[50]:

Provided that any hotel approved by the prescribed authority[50] before the 1st day of April, 1999 shall be deemed to have been approved under this sub-section.

[51][(7A) The amount of deduction in the case of any multiplex theatre shall be—

(*a*) fifty per cent of the profits and gains derived, from the business of building, owning and operating a multiplex theatre, for a period of five consecutive years beginning from the initial assessment year in any place :

Provided that nothing contained in this clause shall apply to a multiplex theatre located at a place within the municipal jurisdiction

50. See rule 18BBC.

51. Sub-sections (7A) and (7B) inserted by the Finance Act, 2002, w.e.f. 1-4-2003.

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(whether known as a municipality, municipal corporation, notified area committee or a cantonment board or by any other name) of Chennai, Delhi, Mumbai or Kolkata;

(*b*) the deduction under clause (*a*) shall be allowable only if—

(*i*) such multiplex theatre is constructed at any time during the period beginning on the 1st day of April, 2002 and ending on the 31st day of March, 2005;

(*ii*) the business of the multiplex theatre 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 any building or of any machinery or of plant previously used for any purpose;

(*iii*) the assessee furnishes alongwith the return of income, the report of an audit in such form and containing such particulars as may be prescribed[52] and duly signed and verified by an accountant, as defined in the *Explanation* below sub-section (2) of section 288, certifying that the deduction has been correctly claimed.

(7B) The amount of deduction in the case of any convention centre shall be—

(*a*) fifty per cent of the profits and gains derived, by the assessee from the business of building, owning and operating a convention centre, for a period of five consecutive years beginning from the initial assessment year;

(*b*) the deduction under clause (*a*) shall be allowable only if—

(*i*) such convention centre is constructed at any time during the period beginning on the 1st day of April, 2002 and ending on the 31st day of March, 2005;

(*ii*) the business of the convention centre 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 any building or of any machinery or plant previously used for any purpose;

(*iii*) the assessee furnishes alongwith the return of income, the report of an audit in such form and containing such particulars as may be prescribed[53], and duly signed and verified by an accountant, as defined in the *Explanation* below sub-section (2) of section 288, certifying that the deduction has been correctly claimed.]

(8) The amount of deduction in the case of any company carrying on scientific research and development shall be hundred per cent of the profits and gains of such business for a period of five assessment years beginning from the initial assessment year if such company—

(*a*) is registered in India;

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52. *See* rule 18DB and Form No. 10CCBA. Rule 12 provides that the return of income shall not be accompanied by any document or copy of any account or form or report of audit required to be attached with return of income under any of the provisions of the Act.

53. *See* rule 18DC and Form No. 10CCBB. Rule 12 provides that the return of income shall not be accompanied by any document or copy of any account or form or report of audit required to be attached with return of income under any of the provisions of the Act.

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(*b*) has the main object of scientific and industrial research and development;

(*c*) is for the time being approved by the prescribed authority[54] at any time before the 1st day of April, 1999.

[55][(8A) The amount of deduction in the case of any company carrying on scientific research and development shall be hundred per cent of the profits and gains of such business for a period of ten consecutive assessment years, beginning from the initial assessment year, if such company—

(*i*) is registered in India;

(*ii*) has its main object the scientific and industrial research and development;

(*iii*) is for the time being approved by the prescribed authority[56] at any time after the 31st day of March, 2000 but before the 1st day of April, [57][2007];

(*iv*) fulfils such other conditions as may be prescribed[58].]

[59][(9) The amount of deduction to an undertaking shall be hundred per cent of the profits for a period of seven consecutive assessment years, including the initial assessment year, if such undertaking fulfils any of the following, namely:—

(*i*) is located in North-Eastern Region and has begun or begins commercial production of mineral oil before the 1st day of April, 1997;

(*ii*) is located in any part of India and has begun or begins commercial production of mineral oil on or after the 1st day of April, 1997;

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54. *See* rule 18BBD.

55. Inserted by the Finance Act, 2000, w.e.f. 1-4-2001.

56. Prescribed authority is Secretary, Department of Scientific and Industrial Research, Ministry of Science and Technology, Govt. of India.

57. Substituted for "2005" by the Finance Act, 2005, w.e.f. 1-4-2006. Earlier "2005" was substituted for "2004" by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005 and "2004" was substituted for "2003" by the Finance Act, 2003, w.e.f. 1-4-2004.

58. *See* rule 18DA.

59. Substituted by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-2000. Prior to its substitution, sub-section (9), as amended by the Finance Act, 2008, w.e.f. 1-4-2008, read as under :

"(9) The amount of deduction to an undertaking which begins commercial production or refining of mineral oil shall be hundred per cent of the profits for a period of seven consecutive assessment years including the initial assessment year :

Provided that where the undertaking is located in North-Eastern Region, it has begun or begins commercial production of mineral oil before the 1st day of April, 1997 and where it is located in any part of India, it begins commercial production of mineral oil on or after the 1st day of April, 1997 :

Provided further that where the undertaking is engaged in refining of mineral oil, it begins refining on or after the 1st day of October, 1998:

Provided also that where such undertaking begins refining of mineral oil on or after the 1st day of April, 2009, no deduction under this section shall be allowed in respect of such undertaking unless such undertaking fulfils all the following conditions, namely:—

(*i*) it is wholly owned by a public sector company or any other company in which a public sector company or companies hold at least forty-nine per cent of the voting rights;

(*ii*) it is notified by the Central Government in this behalf on or before the 31st day of May, 2008; and

(*iii*) it begins refining not later than the 31st day of March, 2012."

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(*iii*) is engaged in refining of mineral oil and begins such refining on or after the 1st day of October, 1998 [60][but not later than the 31st day of March, 2012];

[61][(iv) *is engaged in commercial production of natural gas in blocks licensed under the VIII Round of bidding for award of exploration contracts (hereafter referred to as "NELP-VIII") under the New Exploration Licencing Policy announced by the Government of India* vide *Resolution No. O-19018/22/95-ONG.DO.VL, dated 10th February, 1999 and begins commercial production of natural gas on or after the 1st day of April, 2009;*

(v) *is engaged in commercial production of natural gas in blocks licensed under the IV Round of bidding for award of exploration contracts for Coal Bed Methane blocks and begins commercial production of natural gas on or after the 1st day of April, 2009.*]

Explanation.—For the purposes of claiming deduction under this sub-section, all blocks licensed under a single contract, which has been awarded under the New Exploration Licencing Policy announced by the Government of India *vide* Resolution No. O-19018/22/95-ONG.DO.VL, dated 10th February, 1999 or has been awarded in pursuance of any law for the time being in force or has been awarded by Central or a State Government in any other manner, shall be treated as a single "undertaking".]

[62][(10) [62a]The amount of deduction in the case of an undertaking developing and building housing projects approved before the 31st day of March, [63][2008] by a local authority shall be hundred per cent of the profits derived in the previous year relevant to any assessment year from such housing project if,—

(*a*) such undertaking has commenced or commences development and construction of the housing project on or after the 1st day of October, 1998 and completes such construction,—

(*i*) in a case where a housing project has been approved by the local authority before the 1st day of April, 2004, on or before the 31st day of March, 2008;

(*ii*) in a case where a housing project has been, or, is approved by the local authority on or after the 1st day of April, 2004 [63a]**[***but not later than the 31st day of March, 2005***]**, within four years from the end of the financial year in which the housing project is approved by the local authority;

[63a]**[**(iii) *in a case where a housing project has been approved by the local authority on or after the 1st day of April, 2005, within five years from the end of the financial year in which the housing project is approved by the local authority.***]**

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60. Inserted by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-2009.

61. Inserted, *ibid.,* w.e.f. **1-4-2010.**

62. Substituted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005. Prior to its substitution, sub-section (10), as amended by the Finance Act, 2000, w.e.f. 1-4-2001 and Finance Act, 2003, w.r.e.f. 1-4-2002, read as under :

"(10) The amount of profits in case of an undertaking developing and building housing projects approved before the 31st day of March, 2005 by a local authority, shall be hundred per cent of the profits derived in any previous year relevant to any assessment year from such housing project if,—

(Contd. on p. 1.474)

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Explanation.—For the purposes of this clause,—

(*i*) in a case where the approval in respect of the housing project is obtained more than once, such housing project shall be deemed to have been approved on the date on which the building plan of such housing project is first approved by the local authority;

(*ii*) the date of completion of construction of the housing project shall be taken to be the date on which the completion certificate in respect of such housing project is issued by the local authority;

(*b*) the project is on the size of a plot of land which has a minimum area of one acre:

Provided that nothing contained in clause (*a*) or clause (*b*) shall apply to a housing project carried out in accordance with a scheme framed by the Central Government or a State Government for reconstruction or redevelopment of existing buildings in areas declared to be slum areas under any law for the time being in force and such scheme is notified by the Board in this behalf;

(*c*) the residential unit has a maximum built-up area of one thousand square feet where such residential unit is situated within the city of Delhi or Mumbai or within twenty-five kilometres from the municipal limits of these cities and one thousand and five hundred square feet at any other place; [64][***]

(*d*) the built-up area of the shops and other commercial establishments included in the housing project does not exceed [64a]**[***three***]** per cent of the aggregate built-up area of the housing project or [64b]**[***five thousand square feet, whichever is higher***]**;]

[65][(e) *not more than one residential unit in the housing project is allotted to any person not being an individual; and*

(f) *in a case where a residential unit in the housing project is allotted to a person being an individual, no other residential unit in such housing project is allotted to any of the following persons, namely:—*

(i) *the individual or the spouse or the minor children of such individual,*

(ii) *the Hindu undivided family in which such individual is the karta,*

(Contd. from p. 1.473)

(*a*) such undertaking has commenced or commences development and construction of the housing project on or after the 1st day of October, 1998;

(*b*) the project is on the size of a plot of land which has a minimum area of one acre; and

(*c*) the residential unit has a maximum built-up area of one thousand square feet where such residential unit is situated within the cities of Delhi or Mumbai or within twenty-five kilometres from the municipal limits of these cities and one thousand and five hundred square feet at any other place."

62a. *See* Instruction No. 4/2009, dated 30-6-2009. For details, *see* Taxmann's Master Guide to Income-tax Act.

63. Substituted for "2007" by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-2009.

63a. Inserted by the Finance Act, 2010, w.e.f. **1-4-2010**.

64. Word "and" omitted by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2010**.

64a. Substituted for "five" by the Finance Act, 2010, w.e.f. **1-4-2010**.

64b. Substituted for "two thousand square feet, whichever is less", *ibid.*

65. Inserted by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2010.**

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(iii) *any person representing such individual, the spouse or the minor children of such individual or the Hindu undivided family in which such individual is the karta.*]

[66][*Explanation.*—For the removal of doubts, it is hereby declared that nothing contained in this sub-section shall apply to any undertaking which executes the housing project as a works contract awarded by any person (including the Central or State Government).]

(11) Notwithstanding anything contained in clause (*iii*) of sub-section (2) and sub-sections (3), (4) and (5), the amount of deduction in a case of industrial undertaking deriving profit from the business of setting up and operating a cold chain facility for agricultural produce, shall be hundred per cent of the profits and gains derived from such industrial undertaking for five assessment years beginning with the initial assessment year and thereafter, twenty-five per cent (or thirty per cent where the assessee is a company) of the profits and gains derived from the operation of such facility in a manner that the total period of deduction does not exceed ten consecutive assessment years (or twelve consecutive assessment years where the assessee is a co-operative society) and subject to fulfilment of the condition that it begins to operate such facility on or after the 1st day of April, 1999 but before the [67][1st day of April, 2004].

[68][(11A) The amount of deduction in a case of [69][an undertaking deriving profit from the business of processing, preservation and packaging of fruits or vegetables or [70][*meat and meat products or poultry or marine or dairy products or*] from] the integrated business of handling, storage and transportation of foodgrains, shall be hundred per cent of the profits and gains derived from such undertaking for five assessment years beginning with the initial assessment year and thereafter, twenty-five per cent (or thirty per cent where the assessee is a company) of the profits and gains derived from the operation of such business in a manner that the total period of deduction does not exceed ten consecutive assessment years and subject to fulfilment of the condition that it begins to operate such business on or after the 1st day of April, 2001 :]

[70][**Provided** *that the provisions of this section shall not apply to an undertaking engaged in the business of processing, preservation and packaging of meat or meat products or poultry or marine or dairy products if it begins to operate such business before the 1st day of April, 2009.*]

[71][(11B) The amount of deduction in the case of an undertaking deriving profits from the business of operating and maintaining a hospital in a rural area shall be hundred per cent of the profits and gains of such business for a period of five consecutive assessment years, beginning with the initial assessment year, if—

(*i*) such hospital is constructed at any time during the period beginning on the 1st day of October, 2004 and ending on the 31st day of March, 2008;

(*ii*) the hospital has at least one hundred beds for patients;

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66. Inserted by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-2001.

67. Substituted for "31st day of March, 2003" by the Finance Act, 2003, w.e.f. 1-4-2004.

68. Inserted by the Finance Act, 2001, w.e.f. 1-4-2002.

69. Substituted for "an undertaking deriving profit from" by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005.

70. Inserted by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2010**.

71. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005.

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(*iii*) the construction of the hospital is in accordance with the regulations, for the time being in force, of the local authority; and

(*iv*) the assessee furnishes along with the return of income, the report of audit in such form and containing such particulars as may be prescribed[72], and duly signed and verified by an accountant, as defined in the *Explanation* below sub-section (2) of section 288, certifying that the deduction has been correctly claimed.

Explanation.—For the purposes of this sub-section, a hospital shall be deemed to have been constructed on the date on which a completion certificate in respect of such construction is issued by the concerned local authority.]

[73][(11C) The amount of deduction in the case of an undertaking deriving profits from the business of operating and maintaining a hospital located anywhere in India, other than the excluded area, shall be hundred per cent of the profits and gains derived from such business for a period of five consecutive assessment years, beginning with the initial assessment year, if—

(*i*) the hospital is constructed and has started or starts functioning at any time during the period beginning on the 1st day of April, 2008 and ending on the 31st day of March, 2013;

(*ii*) the hospital has at least one hundred beds for patients;

(*iii*) the construction of the hospital is in accordance with the regulations or bye-laws of the local authority; and

(*iv*) the assessee furnishes along with the return of income, a report of audit in such form and containing such particulars, as may be prescribed[74], and duly signed and verified by an accountant, as defined in the *Explanation* to sub-section (2) of section 288, certifying that the deduction has been correctly claimed.

Explanation.—For the purposes of this sub-section—

(*a*) a hospital shall be deemed to have been constructed on the date on which a completion certificate in respect of such construction is issued by the local authority concerned;

(*b*) "initial assessment year" means the assessment year relevant to the previous year in which the business of the hospital starts functioning;

(*c*) "excluded area" shall mean an area comprising—

(*i*) Greater Mumbai urban agglomeration;

(*ii*) Delhi urban agglomeration;

(*iii*) Kolkata urban agglomeration;

(*iv*) Chennai urban agglomeration;

(*v*) Hyderabad urban agglomeration;

(*vi*) Bangalore urban agglomeration;

(*vii*) Ahmedabad urban agglomeration;

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72. *See* rule 18DD and Form No. 10CCBC. Rule 12 provides that the return of income shall not be accompanied by any document or copy of any account or form or report of audit required to be attached with return of income under any of the provisions of the Act.

73. Inserted by the Finance Act, 2008, w.e.f. 1-4-2009.

74. *See* rule 18DDA and Form No. 10CCBD. Rule 12 provides that the return of income shall not be accompanied by any document or copy of any account or form or report of audit required to be attached with return of income under any of the provisions of the Act.

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(*viii*) District of Faridabad;

(*ix*) District of Gurgaon;

(*x*) District of Gautam Budh Nagar;

(*xi*) District of Ghaziabad;

(*xii*) District of Gandhinagar; and

(*xiii*) City of Secunderabad;

(*d*) the area comprising an urban agglomeration shall be the area included in such urban agglomeration on the basis of the 2001 census.]

(12) Where any undertaking of an Indian company which is entitled to the deduction under this section is transferred, before the expiry of the period specified in this section, to another Indian company in a scheme of amalgamation or demerger—

(*a*) no deduction shall be admissible under this section to the amalgamating or the demerged company for the previous year in which the amalgamation or the demerger takes place; and

(*b*) the provisions of this section shall, as far as may be, apply to the amalgamated or the resulting company as they would have applied to the amalgamating or the demerged company if the amalgamation or demerger had not taken place.

(13) The provisions contained in sub-section (5) and sub-sections (7) to (12) of section 80-IA shall, so far as may be, apply to the eligible business under this section[75].

(14) For the purposes of this section,—

[76][(*a*) "built-up area" means the inner measurements of the residential unit at the floor level, including the projections and balconies, as increased by the thickness of the walls but does not include the common areas shared with other residential units;]

[77][(*aa*)] "cold chain facility" means a chain of facilities for storage or transportation of agricultural produce under scientifically controlled conditions including refrigeration and other facilities necessary for the preservation of such produce;

[78][[79][(*ab*)] "convention centre" means a building of a prescribed area comprising of convention halls to be used for the purpose of holding conferences and seminars, being of such size and number and having such other facilities and amenities, as may be prescribed[80];]

(*b*) "hilly area" means any area located at a height of one thousand metres or more above the sea level;

(*c*) "initial assessment year"—

(*i*) in the case of an industrial undertaking or cold storage plant or ship or hotel, means the assessment year relevant to the previous

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75. *See* rule 18BBB and Form No. 10CCB.

76. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005.

77. Clause (*a*) re-lettered as clause (*aa*), *ibid.*

78. Inserted by the Finance Act, 2002, w.e.f. 1-4-2003.

79. Clause (*aa*) re-lettered as clause (*ab*) by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005.

80. *See* rule 18DC and Form No. 10CCBB.

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year in which the industrial undertaking begins to manufacture or produce articles or things, or to operate its cold storage plant or plants or the cold chain facility or the ship is first brought into use or the business of the hotel starts functioning;

(*ii*) in the case of a company carrying on scientific and industrial research and development, means the assessment year relevant to the previous year in which the company is approved by the prescribed authority for the purposes of sub-section (8);

(*iii*) in the case of an undertaking engaged in the business of commercial production or refining of mineral oil referred to in sub-section (9), means the assessment year relevant to the previous year in which the undertaking commences the commercial production or refining of mineral oil;

[81][(*iv*) in the case of an undertaking engaged [82][in the business of processing, preservation and packaging of fruits or vegetables or] in the integrated business of handling, storage and transportation of foodgrains, means the assessment year relevant to the previous year in which the undertaking begins such business;]

[83][(*v*) in the case of a multiplex theatre, means the assessment year relevant to the previous year in which a cinema hall, being a part of the said multiplex theatre, starts operating on a commercial basis;

(*vi*) in the case of a convention centre, means the assessment year relevant to the previous year in which the convention centre starts operating on a commercial basis;]

[84][(*vii*) in the case of an undertaking engaged in operating and maintaining a hospital in a rural area, means the assessment year relevant to the previous year in which the undertaking begins to provide medical services;]

(*d*) "North-Eastern Region" means the region comprising the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura;

[85][(*da*) "multiplex theatre" means a building of a prescribed area, comprising of two or more cinema theatres and commercial shops of such size and number and having such other facilities and amenities as may be prescribed[86];]

(*e*) "place of pilgrimage" means a place where any temple, mosque, gurdwara, church or other place of public worship of renown throughout any State or States is situated;

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81. Inserted by the Finance Act, 2001, w.e.f. 1-4-2002.

82. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005.

83. Sub-clauses (*v*) and (*vi*) inserted by the Finance Act, 2002, w.e.f. 1-4-2003.

84. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005.

85. Inserted by the Finance Act, 2002, w.e.f. 1-4-2003.

86. *See* rule 18DB.

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(*f*) "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 or by any other name) or a cantonment board and which has a population of not less than ten thousand according to the preceding census of which relevant figures have been published before the first day of the previous year; or

(*ii*) an area within such distance not being more than fifteen kilometres from the local limits of any municipality or cantonment board referred to in sub-clause (*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 considerations specify in this behalf by notification in the Official Gazette[87];

(*g*) "small-scale industrial undertaking" means an industrial undertaking which is, as on the last day of the previous year, regarded as a small-scale industrial undertaking under section 11B[88] of the Industries (Development and Regulation) Act, 1951 (65 of 1951).]

[89][**Special provisions in respect of certain undertakings or enterprises in certain special category States**[90]**.**

80-IC. (1) Where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in sub-section (2), 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, as specified in sub-section (3).

(2) This section applies to any undertaking or enterprise,—

(*a*) which has begun or begins to manufacture or produce any article or thing, not being any article or thing specified in the Thirteenth Schedule, or which manufactures or produces any article or thing, not being any article or thing specified in the Thirteenth Schedule and undertakes substantial expansion during the period beginning—

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87. For notified areas falling outside local limits of municipality or cantonment board, *see* Taxmann's Master Guide to Income-tax Act.

88. For the text of section 11B of the Industries (Development & Regulation) Act, 1951, *see* **Appendix**.

89. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

90. Notified Centre/Park/Areas, etc., u/s 80-IC(2)—

- Sikkim [*Notification No. SO 169(E), dated 6-2-2004*, as corrected by *Notification No. 55/2004 [F. No. 142/35/2003-TPL], dated 19-2-2004*].
- Assam, Tripura, Meghalaya, Mizoram, Nagaland, Manipur, Arunachal Pradesh - *Notification No. 116/2004 [F. No. 142/49/2003-TPL], dated 26-3-2004.*
- Uttaranchal - *Notification No. SO 741(E), dated 28-6-2004, as amended by Notification No. 283/2006 [F. No. 142/30/2005-TPL], dated 3-10-2006.*
- Himachal Pradesh - *Notification No. SO 1269(E), dated 4-11-2003, as amended by, Notification No. SO 2215(E), dated 27-8-2008.*

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(*i*) on the 23rd day of December, 2002 and ending before the 1st day of April, [91][2007], in any Export Processing Zone or Integrated Infrastructure Development Centre or Industrial Growth Centre or Industrial Estate or Industrial Park or Software Technology Park or Industrial Area or Theme Park, as notified by the Board in accordance with the scheme framed and notified[92] by the Central Government in this regard, in the State of Sikkim; or

(*ii*) on the 7th day of January, 2003 and ending before the 1st day of April, 2012, in any Export Processing Zone or Integrated Infrastructure Development Centre or Industrial Growth Centre or Industrial Estate or Industrial Park or Software Technology Park or Industrial Area or Theme Park, as notified by the Board in accordance with the scheme framed and notified[92] by the Central Government in this regard, in the State of Himachal Pradesh or the State of Uttaranchal; or

(*iii*) on the 24th day of December, 1997 and ending before the 1st day of April, 2007, in any Export Processing Zone or Integrated Infrastructure Development Centre or Industrial Growth Centre or Industrial Estate or Industrial Park or Software Technology Park or Industrial Area or Theme Park, as notified[92] by the Board in accordance with the scheme framed and notified by the Central Government in this regard, in any of the North-Eastern States;

(*b*) which has begun or begins to manufacture or produce any article or thing, specified in the Fourteenth Schedule or commences any operation specified in that Schedule, or which manufactures or produces any article or thing, specified in the Fourteenth Schedule or commences any operation specified in that Schedule and undertakes substantial expansion during the period beginning—

(*i*) on the 23rd day of December, 2002 and ending before the 1st day of April, [93][2007], in the State of Sikkim; or

(*ii*) on the 7th day of January, 2003 and ending before the 1st day of April, 2012, in the State of Himachal Pradesh or the State of Uttaranchal; or

(*iii*) on the 24th day of December, 1997 and ending before the 1st day of April, 2007, in any of the North-Eastern States.

(3) The deduction referred to in sub-section (1) shall be—

(*i*) in the case of any undertaking or enterprise referred to in sub-clauses (*i*) and (*iii*) of clause (*a*) or sub-clauses (*i*) and (*iii*) of clause (*b*), of sub-section (2), one hundred per cent of such profits and gains for ten assessment years commencing with the initial assessment year;

(*ii*) in the case of any undertaking or enterprise referred to in sub-clause (*ii*) of clause (*a*) or sub-clause (*ii*) of clause (*b*), of sub-section (2), one

91. Substituted for "2012" by the Finance Act, 2007, w.e.f. 1-4-2008.

92. *See* footnote No. 90 on page 1.479.

93. Substituted for "2012" by the Finance Act, 2007, w.e.f. 1-4-2008.

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hundred per cent of such profits and gains for five assessment years commencing with the initial assessment year and thereafter, twenty-five per cent (or thirty per cent where the assessee is a company) of the profits and gains.

(4) This section applies to any undertaking or enterprise which fulfils all the following conditions, namely:—

(*i*) it is not formed by splitting up, or the reconstruction, of a business already in existence :

Provided that this condition shall not apply in respect of an undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section;

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

Explanation.—The provisions of *Explanations 1* and *2* to sub-section (3) of section 80-IA shall apply for the purposes of clause (*ii*) of this sub-section as they apply for the purposes of clause (*ii*) of that sub-section.

(5) Notwithstanding anything contained in any other provision of this Act, in computing the total income of the assessee, no deduction shall be allowed under any other section contained in Chapter VIA or in section 10A or section 10B, in relation to the profits and gains of the undertaking or enterprise.

(6) Notwithstanding anything contained in this Act, no deduction shall be allowed to any undertaking or enterprise under this section, where the total period of deduction inclusive of the period of deduction under this section, or under the second proviso to sub-section (4) of section 80-IB or under section 10C, as the case may be, exceeds ten assessment years.

(7) The provisions contained in sub-section (5) and sub-sections (7) to (12) of section 80-IA shall, so far as may be, apply to the eligible undertaking or enterprise under this section[94].

(8) For the purposes of this section,—

(*i*) "Industrial Area" means such areas, which the Board, may, by notification in the Official Gazette, specify in accordance with the scheme framed and notified by the Central Government;

(*ii*) "Industrial Estate" means such estates, which the Board, may, by notification in the Official Gazette, specify in accordance with the scheme framed and notified by the Central Government;

(*iii*) "Industrial Growth Centre" means such centres, which the Board, may, by notification in the Official Gazette, specify in accordance with the scheme framed and notified by the Central Government;

(*iv*) "Industrial Park" means such parks, which the Board, may, by notification in the Official Gazette, specify in accordance with the scheme framed and notified by the Central Government;

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94. See rule 18BBB and Form No. 10CCB.

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(*v*) "Initial assessment year" means the assessment year relevant to the previous year in which the undertaking or the enterprise begins to manufacture or produce articles or things, or commences operation or completes substantial expansion;

(*vi*) "Integrated Infrastructure Development Centre" means such centres, which the Board, may, by notification in the Official Gazette, specify in accordance with the scheme framed and notified by the Central Government;

(*vii*) "North-Eastern States" means the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura;

(*viii*) "Software Technology Park" means any park set up in accordance with the Software Technology Park Scheme notified by the Government of India in the Ministry of Commerce and Industry;

(*ix*) "substantial expansion" means increase in the investment in the plant and machinery by at least fifty per cent of the book value of plant and machinery (before taking depreciation in any year), as on the first day of the previous year in which the substantial expansion is undertaken;

(*x*) "Theme Park" means such parks, which the Board, may, by notification in the Official Gazette, specify in accordance with the scheme framed and notified by the Central Government.]

[95][**Deduction in respect of profits and gains from business of hotels and convention centres in specified area.**

80-ID. (1) Where the gross total income of an assessee includes any profits and gains derived by an undertaking from any business referred to in sub-section (2) (such business being hereinafter referred to as the eligible business), 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 of an amount equal to hundred per cent of the profits and gains derived from such business for five consecutive assessment years beginning from the initial assessment year.

(2) This section applies to any undertaking,—

(*i*) engaged in the business of hotel located in the specified area, if such hotel is constructed and has started or starts functioning at any time during the period beginning on the 1st day of April, 2007 and ending on [95a]**[***the 31st day of March, 2010***]**; or

(*ii*) engaged in the business of building, owning and operating a convention centre, located in the specified area, if such convention centre is constructed at any time during the period beginning on the 1st day of April, 2007 and ending on [95a]**[***the 31st day of March, 2010***]**; [96][or]

[97][(*iii*) engaged in the business of hotel located in the specified district having a World Heritage Site, if such hotel is constructed and has started or starts functioning at any time during the period beginning on the 1st day of April, 2008 and ending on the 31st day of March, 2013.]

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95. Inserted by the Finance Act, 2007, w.e.f. 1-4-2008.

95a. Words "the 31st day of July, 2010" shall be substituted for words "the 31st day of March, 2010" by the Finance Act, 2010, w.e.f. **1-4-2011**.

96. Word "or" should be inserted in view of insertion of clause (*iii*) of sub-section (2) of section 80-ID.

97. Inserted by the Finance Act, 2008, w.e.f. 1-4-2009.

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(3) The deduction under sub-section (1) shall be available only if—

(*i*) the eligible business is not formed by the splitting up, or the reconstruction, of a business already in existence;

(*ii*) the eligible business is not formed by the transfer to a new business of a building previously used as a hotel or a convention centre, as the case may be;

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

Explanation.—The provisions of *Explanations 1* and *2* to sub-section (3) of section 80-IA shall apply for the purposes of clause (*iii*) of this sub-section as they apply for the purposes of clause (*ii*) of that sub-section;

(*iv*) the assessee furnishes along with the return of income, the report of an audit in such form and containing such particulars as may be prescribed[98], and duly signed and verified by an accountant, as defined in the *Explanation* below sub-section (2) of section 288, certifying that the deduction has been correctly claimed.

(4) Notwithstanding anything contained in any other provision of this Act, in computing the total income of the assessee, no deduction shall be allowed under any other section contained in Chapter VIA or section 10AA, in relation to the profits and gains of the undertaking.

(5) The provisions contained in sub-section (5) and sub-sections (8) to (11) of section 80-IA shall, so far as may be, apply to the eligible business under this section.

(6) For the purposes of this section,—

(*a*) "convention centre" means a building of a prescribed area comprising of convention halls to be used for the purpose of holding conferences and seminars, being of such size and number and having such other facilities and amenities, as may be prescribed[99];

(*b*) "hotel" means a hotel of two-star, three-star or four-star category as classified by the Central Government;

(*c*) "initial assessment year"—

(*i*) in the case of a hotel, means the assessment year relevant to the previous year in which the business of the hotel starts functioning;

(*ii*) in the case of a convention centre, means the assessment year relevant to the previous year in which the convention centre starts operating on a commercial basis;

(*d*) "specified area" means the National Capital Territory of Delhi and the districts of Faridabad, Gurgaon, Gautam Budh Nagar and Ghaziabad;]

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98. *See* rule 18DE and Form No. 10CCBBA. Rule 12 provides that the return of income shall not be accompanied by any document or copy of any account or form or report of audit required to be attached with return of income under any of the provisions of the Act.

99. *See* rule 18DE.

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[1][(*e*) "specified district having a World Heritage Site" means districts, specified in column (2) of the Table below, of the States, specified in the corresponding entry in column (3) of the said Table:

TABLE

S.No.	*Name of district*	*Name of State*
(1)	*(2)*	*(3)*
1.	Agra	Uttar Pradesh
2.	Jalgaon	Maharashtra
3.	Aurangabad	Maharashtra
4.	Kancheepuram	Tamil Nadu
5.	Puri	Orissa
6.	Bharatpur	Rajasthan
7.	Chhatarpur	Madhya Pradesh
8.	Thanjavur	Tamil Nadu
9.	Bellary	Karnataka
10.	South 24 Parganas (excluding areas falling within the Kolkata urban agglomeration on the basis of the 2001 census)	West Bengal
11.	Chamoli	Uttarakhand
12.	Raisen	Madhya Pradesh
13.	Gaya	Bihar
14.	Bhopal	Madhya Pradesh
15.	Panchmahal	Gujarat
16.	Kamrup	Assam
17.	Goalpara	Assam
18.	Nagaon	Assam
19.	North Goa	Goa
20.	South Goa	Goa
21.	Darjeeling	West Bengal
22.	Nilgiri	Tamil Nadu.]

[2][**Special provisions in respect of certain undertakings in North-Eastern States.**

80-IE. (1) Where the gross total income of an assessee includes any profits and gains derived by an undertaking, to which this section applies, from any business referred to in sub-section (2), there shall be allowed, in computing the total income of the assessee, a deduction of an amount equal to hundred per cent

1. Inserted by the Finance Act, 2008, w.e.f. 1-4-2009.

2. Inserted by the Finance Act, 2007, w.e.f. 1-4-2008.

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of the profits and gains derived from such business for ten consecutive assessment years commencing with the initial assessment year.

(2) This section applies to any undertaking which has, during the period beginning on the 1st day of April, 2007 and ending before the 1st day of April, 2017, begun or begins, in any of the North-Eastern States,—

(*i*) to manufacture or produce any eligible article or thing;

(*ii*) to undertake substantial expansion to manufacture or produce any eligible article or thing;

(*iii*) to carry on any eligible business.

(3) This section applies to any undertaking which fulfils all the following conditions, namely :—

(*i*) it is not formed by splitting up, or the reconstruction, of a business already in existence :

Provided that this condition shall not apply in respect of an undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertaking as referred to in section 33B, in the circumstances and within the period specified in the said section;

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

Explanation.—The provisions of *Explanations 1* and *2* to sub-section (3) of section 80-IA shall apply for the purposes of clause (*ii*) of this sub-section as they apply for the purposes of clause (*ii*) of that sub-section.

(4) Notwithstanding anything contained in any other provision of this Act, in computing the total income of the assessee, no deduction shall be allowed under any other section contained in Chapter VIA or in section 10A or section 10AA or section 10B or section 10BA, in relation to the profits and gains of the undertaking.

(5) Notwithstanding anything contained in this Act, no deduction shall be allowed to any undertaking under this section, where the total period of deduction inclusive of the period of deduction under this section, or under section 80-IC or under the second proviso to sub-section (4) of section 80-IB or under section 10C, as the case may be, exceeds ten assessment years.

(6) The provisions contained in sub-section (5) and sub-sections (7) to (12) of section 80-IA shall, so far as may be, apply to the eligible undertaking under this section.

(7) For the purposes of this section,—

(*i*) "initial assessment year" means the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce articles or things, or completes substantial expansion;

(*ii*) "North-Eastern States" means the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura;

(*iii*) "substantial expansion" means increase in the investment in the plant and machinery by at least twenty-five per cent of the book value of

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plant and machinery (before taking depreciation in any year), as on the first day of the previous year in which the substantial expansion is undertaken;

(*iv*) "eligible article or thing" means the article or thing other than the following :—

(*a*) goods falling under Chapter 24 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), which pertains to tobacco and manufactured tobacco substitutes;

(*b*) pan masala as covered under Chapter 21 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

(*c*) plastic carry bags of less than 20 microns as specified by the Ministry of Environment and Forests *vide* Notification No. S.O. 705(E), dated the 2nd September, 1999 and S.O. 698(E), dated the 17th June, 2003; and

(*d*) goods falling under Chapter 27 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), produced by petroleum oil or gas refineries;

(*v*) "eligible business" means the business of,—

(*a*) hotel (not below two star category);

(*b*) adventure and leisure sports including ropeways;

(*c*) providing medical and health services in the nature of nursing home with a minimum capacity of 25 beds;

(*d*) running an old-age home;

(*e*) operating vocational training institute for hotel management, catering and food craft, entrepreneurship development, nursing and para-medical, civil aviation related training, fashion designing and industrial training;

(*f*) running information technology related training centre;

(*g*) manufacturing of information technology hardware; and

(*h*) bio-technology.]

Deduction in respect of profits and gains from newly established industrial undertakings or ships or hotel business in certain cases.

80J. [3][*Omitted by the Finance (No. 2) Act, 1996, w.r.e.f. 1-4-1989.*]

3. Prior to its omission, section 80J was inserted in place of section 84 (which was omitted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968), and later amended by the Finance Act, 1969, w.e.f. 1-4-1969, Finance Act, 1972, w.e.f. 1-4-1973, Finance Act, 1973, w.e.f. 1-4-1974, Direct Taxes (Amendment) Act, 1974, w.e.f. 1-4-1974, Finance Act, 1975, w.e.f. 1-4-1975/ 1-4-1976, Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976, Finance (No. 2) Act, 1977, w.e.f. 1-4-1978, Finance Act, 1979, w.e.f. 1-4-1979, Finance (No. 2) Act, 1980, w.r.e.f. 1-4-1972, Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988 and Finance Act, 1988, w.e.f. 1-4-1988.

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Deduction in respect of profits and gains from business of poultry farming.

80JJ. [4][*Omitted by the Finance Act, 1997, w.e.f. 1-4-1998.*]

[5][**Deduction in respect of profits and gains from business of collecting and processing of bio-degradable waste.**

80JJA. Where the gross total income of an assessee includes any profits and gains derived from the business of collecting and processing or treating of bio-degradable waste for generating power [6][or producing bio-fertilizers, bio-pesticides or other biological agents or for producing bio-gas or] making pellets or briquettes for fuel or organic manure, there shall be allowed, in computing the total income of the assessee, [7][a deduction of an amount equal to the whole of such profits and gains for a period of five consecutive assessment years beginning with the assessment year relevant to the previous year in which such business commences].]

[8][**Deduction in respect of employment of new workmen.**

80JJAA. (1) Where the gross total income of an assessee, being an Indian company, includes any profits and gains derived from any industrial undertaking engaged in the manufacture or production of article or thing, there shall, subject to the conditions specified in sub-section (2), be allowed a deduction of an amount equal to thirty per cent of additional wages paid to the new regular workmen employed by the assessee in the previous year for three assessment years including the assessment year relevant to the previous year in which such employment is provided.

(2) No deduction under sub-section (1) shall be allowed—

(*a*) if the industrial undertaking is formed by splitting up or reconstruction of an existing undertaking or amalgamation with another industrial undertaking;

(*b*) unless the assessee furnishes along with the return of income the report of the accountant, as defined in the *Explanation* below sub-section (2) of section 288 giving such particulars in the report as may be prescribed[9].

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4. Prior to its omission, section 80JJ was inserted by the Finance Act, 1989, w.e.f. 1-4-1990. Earlier section 80JJ was inserted by the Finance Act, 1975, w.e.f. 1-4-1976, amended by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1981 and the Finance Act, 1983, w.e.f. 1-4-1984 and later on omitted by the Finance Act, 1985, w.e.f. 1-4-1986.

5. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999. Earlier section 80JJA was inserted by the Finance Act, 1979, w.e.f. 1-4-1980 and later on omitted by the Finance Act, 1983, w.e.f. 1-4-1984.

6. Substituted for ", producing bio-gas," by the Finance Act, 1999, w.e.f. 1-4-2000.

7. Substituted for "a deduction from such profits and gains of an amount equal to the whole of such income, or five lakh rupees, whichever is less" by the Finance Act, 1999, w.e.f. 1-4-2000.

8. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999.

9. See rule 19AB and Form No. 10DA for form of report. Rule 12 provides that the return of income shall not be accompanied by any document or copy of any account or form or report of audit required to be attached with return of income under any of the provisions of the Act.

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Explanation.—For the purposes of this section, the expressions,—

(*i*) "additional wages" means the wages paid to the new regular workmen in excess of one hundred workmen employed during the previous year :

Provided that in the case of an existing undertaking, the additional wages shall be *nil* if the increase in the number of regular workmen employed during the year is less than ten per cent of existing number of workmen employed in such undertaking as on the last day of the preceding year;

(*ii*) "regular workman", does not include—

(*a*) a casual workman; or

(*b*) a workman employed through contract labour; or

(*c*) any other workman employed for a period of less than three hundred days during the previous year;

(*iii*) "workman" shall have the meaning assigned to it in clause (*s*) of section 2[10] of the Industrial Disputes Act, 1947 (14 of 1947).]

Deduction in respect of dividends attributable to profits and gains from new industrial undertakings or ships or hotel business.

80K. [11][*Omitted by the Finance Act, 1986, w.e.f. 1-4-1987. Original section was inserted, in place of section 85 which was deleted, by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968.*]

Deductions in respect of interest on certain securities, dividends, etc.

80L. [12][*Omitted by the Finance Act, 2005, w.e.f. 1-4-2006.*]

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10. For text of clause (*s*) of section 2 of the Industrial Disputes Act, 1947, defining "workman", *see* **Appendix.**

11. Omitted section 80K was originally inserted from 1-4-1968 by the Finance (No. 2) Act, 1967, and amended from the same date. Later it was substituted by the Taxation Laws (Amendment) Act, 1970, w.r.e.f. 1-4-1968 and amended by the Finance Act, 1975, w.e.f. 1-4-1975.

12. Prior to its omission, section 80L, as inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968 and substituted by the Finance Act, 1968, w.e.f. 1-4-1969 and Finance Act, 1970, w.e.f. 1-4-1971 and further amended by the Finance (No. 2) Act, 1971, w.e.f. 1-4-1972, Finance Act, 1972, w.e.f. 1-4-1973, Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976, Finance (No. 2) Act, 1980, w.e.f. 1-4-1981, Finance Act, 1982, w.e.f. 1-4-1983, Finance Act, 1983, w.e.f. 1-4-1984, Finance Act, 1984, w.e.f. 1-4-1985, Taxation Laws (Amendment) Act, 1984, w.r.e.f. 1-4-1972/1-4-1976, Finance Act, 1986, w.e.f. 1-4-1987, Finance Act, 1987, w.e.f. 1-4-1987, Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988, Finance Act, 1988, w.e.f. 1-4-1988/1-4-1989, Direct Tax Laws (Second Amendment) Act, 1989, w.r.e.f. 1-4-1984, Finance Act, 1990, w.e.f. 1-4-1990, Finance (No. 2) Act, 1991, w.e.f. 1-4-1992, Finance Act, 1992, w.e.f. 1-4-1993, Finance Act, 1993, w.e.f. 1-4-1994, Finance Act, 1994, w.r.e.f. 1-4-1968, Finance Act, 1995, w.e.f. 1-4-1996, Finance (No. 2) Act, 1996, w.e.f. 1-4-1997, Finance Act, 1997, w.e.f. 1-4-1998, Finance Act, 1999, w.e.f. 1-4-2000, Finance Act, 2000, w.e.f. 1-4-2000, Finance Act, 2001, w.e.f. 1-4-2002, Finance Act, 2002, w.e.f. 1-4-2003 and Finance Act, 2003, w.e.f. 1-4-2003/1-4-2004, read as under :

'*80L. *Deductions in respect of interest on certain securities, dividends, etc.*—(1) Where the gross total income of an assessee, being—

(*a*) an individual**, or

(Contd. on p. 1.489)

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(Contd. from p. 1.488)

(*b*) a Hindu undivided family,

(*c*) [***]

includes any income by way of—

(*i*) interest on any security of the Central Government or a State Government;

(*ia*) interest on National Savings Certificates (VI Issue) or National Savings Certificates (VII Issue) or National Savings Certificates (VIII Issue) issued under the Government Savings Certificates Act, 1959 (46 of 1959);

(*ii*) interest on such debentures, issued by any institution or authority or any public sector company, or any co-operative society (including a co-operative land mortgage bank or a co-operative land development bank), as the Central Government may, by notification*** in the Official Gazette, specify in this behalf;
[***]

(*iia*) interest on deposits under such National Deposit Scheme as may be framed by the Central Government and notified† by it in this behalf in the Official Gazette;

(*iii*) interest on deposits under any other scheme framed by the Central Government and notified†† by it in this behalf in the Official Gazette;

(*iiia*) interest on deposits under the Post Office (Monthly Income Account) Rules, 1987;

(*iv*) [***]

(*v*) [***]

(*va*) [***]

(*vi*) interest on deposits with a banking company to which the Banking Regulation Act, 1949 (10 of 1949), applies (including any bank or banking institution referred to in section 51 of that Act) or a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank);

(*via*) interest on deposits with any such bank, not being a banking company or a co-operative society referred to in clause (*vi*) but being a bank established by or under any law made by Parliament, as may be approved††† by the Central Government for the purposes of this clause;

(*vii*) interest on deposits with a financial corporation which is engaged in providing long-term finance for industrial development in India and which is eligible for deduction under clause (*viii*) of sub-section (1) of section 36;

(*viia*) interest on deposits with any authority constituted in India by or under any law enacted either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both;

(*viii*) interest on deposits with a co-operative society, not being a co-operative society referred to in clause (*vi*), made by a member of the society;

(*ix*) dividends from any co-operative society; or

(*x*) interest on deposits with any public company formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes and which is eligible for deduction under clause (*viii*) of sub-section (1) of section 36,

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 as specified hereunder, namely :—

(*1*) in a case where the amount of such income does not exceed in the aggregate twelve thousand rupees, the whole of such amount; and

(*2*) in any other case, twelve thousand rupees :

Provided that where any income referred to in clause (*1*) remains unallowed after the deduction under the foregoing provision of this section, there shall be allowed in computing the total income of the assessee, an additional deduction of an amount equal to so much of such income as has remained unallowed; so, however, that the amount of such additional deduction shall not exceed three thousand rupees.

(Contd. on p. 1.490)

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[13][**Deductions in respect of certain incomes of Offshore Banking Units and International Financial Services Centre.**

80LA. (1) Where the gross total income of an assessee,—

(*i*) being a scheduled bank, or, any bank incorporated by or under the laws of a country outside India; and having an Offshore Banking Unit in a Special Economic Zone; or

(Contd. from p. 1.489)

Explanation.—For the purposes of this sub-section, the expression "security" means a Government security‡ as defined in clause (*2*) of section 2 of the Public Debt Act, 1944 (18 of 1944).

(2) [***]

(3) For the removal of doubts, it is hereby declared that where the income referred to in sub-section (1) is derived from any asset held by, or on behalf of, a firm, an association of persons or a body of individuals, no deduction shall be allowed under the said sub-section in respect of such income in computing the total income of any partner of the firm or any member of the association or body.'

**See* also Press Note, dated 30-3-1982, issued by Press Information Bureau, Circular No. 243, dated 22-6-1978, Circular No. 406, dated 15-1-1985, Circular No. 64, dated 25-8-1971 and Circular No. 687, dated 19-8-1994. For details and for relevant case laws, *see* Taxmann's Direct Taxes Circulars.

**For the meaning of the term "individual", *see* Taxmann's Direct Taxes Manual, Vol. 3.

***For complete list of notified debentures, bonds or institutions, *see* Taxmann's Direct Taxes Circulars and Taxmann's Yearly Tax Digest & Referencer.

†For National Deposits Scheme, refer Taxmann's Direct Taxes Circulars. It has since been discontinued on and from 1-4-1987 *vide* Notification No. F. 4(13) W & M/87, dated 31-3-1987. *See* Taxmann's Direct Taxes Circulars.

††For other notified schemes, *see* Taxmann's Direct Taxes Circulars.

†††For notified banks, *see* Taxmann's Direct Taxes Circulars.

‡Clause (*2*) of section 2 of the Public Debt Act, 1944, defines "Government security" as follows:

'(*2*) "Government security" means—

(*a*) a security, created and issued, whether before or after the commencement of this Act, by the Central Government for the purpose of raising a public loan, and having one of the following forms, namely :—

(*i*) stock transferable by registration in the books of the Bank; or

(*ii*) a promissory note payable to order; or

(*iii*) a bearer bond payable to bearer; or

(*iv*) a form prescribed in this behalf;

(*b*) any other security created and issued by the Central Government in such form and for such of the purposes of this Act as may be prescribed;'

13. Substituted by the Special Economic Zones Act, 2005, w.e.f. 10-2-2006. Prior to its substitution, section 80LA, as inserted by the Finance Act, 2003, w.e.f. 1-4-2004, read as under :

'80LA. *Deduction in respect of certain incomes of Offshore Banking Units.*—(1) Where the gross total income of an assessee,—

(*i*) being a scheduled bank (not being a bank incorporated by or under the laws of a country outside India);

(*ii*) owning an offshore banking unit in a special economic zone,

includes any income referred to in sub-section (2), there shall be allowed, in accordance with and subject to the provisions of this section, a deduction from such income, of an amount equal to—

(Contd. on p. 1.491)

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(*ii*) being a Unit of an International Financial Services Centre,

includes any income referred to in sub-section (2), there shall be allowed, in accordance with and subject to the provisions of this section, a deduction from such income, of an amount equal to—

(*a*) one hundred per cent of such income for five consecutive assessment years beginning with the assessment year relevant to the previous year in which the permission, under clause (*a*) of sub-section (1) of section 23 of the Banking Regulation Act, 1949 (10 of 1949) or permission or registration under the Securities and Exchange Board of India Act, 1992 (15 of 1992) or any other relevant law was obtained, and thereafter;

(*b*) fifty per cent of such income for five consecutive assessment years.

(2) The income referred to in sub-section (1) shall be the income—

(*a*) from an Offshore Banking Unit in a Special Economic Zone; or

(*b*) from the business referred to in sub-section (1) of section 6 of the Banking Regulation Act, 1949 (10 of 1949) with an undertaking located in a Special Economic Zone or any other undertaking which develops, develops and operates or develops, operates and maintains a Special Economic Zone; or

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(Contd. from p. 1.490)

(*a*) one hundred per cent of such income for three consecutive assessment years beginning with the assessment year relevant to the previous year in which the permission, under clause (*a*) of sub-section (1) of section 23 of the Banking Regulation Act, 1949 (10 of 1949), was obtained, and thereafter;

(*b*) fifty per cent of such income for two consecutive assessment years.

(2) The income referred to in sub-section (1) shall be the income—

(*a*) from an offshore banking unit in a special economic zone;

(*b*) from the business, referred to in sub-section (1) of section 6 of the Banking Regulation Act, 1949 (10 of 1949), with an undertaking located in a special economic zone or any other undertaking which develops, develops and operates or operates and maintains a special economic zone;

(*c*) received in convertible foreign exchange, in accordance with the regulations made under the Foreign Exchange Management Act, 1999 (42 of 1999).

(3) No deduction under this section shall be allowed unless the assessee furnishes along with the return of income,—

(*i*) in the prescribed form, the report of an accountant as defined in the *Explanation* below sub-section (2) of section 288, certifying that the deduction has been correctly claimed in accordance with the provisions of this section; and

(*ii*) a copy of the permission obtained under clause (*a*) of sub-section (1) of section 23 of the Banking Regulation Act, 1949 (10 of 1949).

Explanation.—For the purposes of this section,—

(*a*) "convertible foreign exchange" shall have the same meaning assigned to it in clause (*a*) of the *Explanation* below sub-section (4C) of section 80HHC;

(*b*) "Offshore Banking Unit" means a branch of a bank in India located in the special economic zone and has obtained the permission under clause (*a*) of sub-section (1) of section 23 of the Banking Regulation Act, 1949 (10 of 1949);

(*c*) "scheduled bank" shall have the same meaning assigned to it in clause (*e*) of section 2 of the Reserve Bank of India Act, 1934 (2 of 1934);

(*d*) "special economic zone" shall have the same meaning assigned to it in clause (*viii*) of the *Explanation 2* to section 10A.'

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(*c*) from any Unit of the International Financial Services Centre from its business for which it has been approved for setting up in such a Centre in a Special Economic Zone.

(3) No deduction under this section shall be allowed unless the assessee furnishes[14] along with the return of income,—

(*i*) the report, in the form specified by the Central Board of Direct Taxes under clause (*i*) of sub-section (2)[15] of section 80LA, as it stood immediately before its substitution by this section, of an accountant as defined in the *Explanation* below sub-section (2) of section 288, certifying that the deduction has been correctly claimed in accordance with the provisions of this section[16]; and

(*ii*) a copy of the permission obtained under clause (*a*) of sub-section (1) of section 23 of the Banking Regulation Act, 1949 (10 of 1949).

Explanation.—For the purposes of this section,—

(*a*) "International Financial Services Centre" shall have the same meaning as assigned to it in clause (*q*) of section 2 of the Special Economic Zones Act, 2005[17];

(*b*) "scheduled bank" shall have the same meaning as assigned to it in clause (*e*) of section 2 of the Reserve Bank of India Act, 1934 (2 of 1934)[18];

(*c*) "Special Economic Zone" shall have the same meaning as assigned to it in clause (*za*)[19] of section 2 of the Special Economic Zones Act, 2005;

(*d*) "Unit" shall have the same meaning as assigned to it in clause (*zc*)[19] of section 2 of the Special Economic Zones Act, 2005.]

Deduction in respect of certain inter-corporate dividends.

80M. [20][*Omitted by the Finance Act, 2003, w.e.f. 1-4-2004.*]

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14. Rule 12 provides that the return of income shall not be accompanied by any document or copy of any account or form or report of audit required to be attached with return of income under any of the provisions of the Act.

15. Should be read as "(3)".

16. *See* rule 19AE and Form No. 10CCF.

17. For text of section 2(*q*), 2(*za*) and 2(*zc*) of the Special Economic Zones Act, 2005, *see* **Appendix**.

18. For text of section 2(*e*) of the Reserve Bank of India Act, 1934, *see* **Appendix**.

19. For text of section 2(*q*), 2(*za*) and 2(*zc*) of the Special Economic Zones Act, 2005, *see* **Appendix**.

20. Prior to its omission, section 80M, as inserted by the Finance Act, 2002, w.e.f. 1-4-2003, read as under :

'80M. *Deduction in respect of certain inter-corporate dividends.*—(1) Where the gross total income of a domestic company, in any previous year, includes any income by way of dividends from another domestic company, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of such domestic company, a deduction of an amount equal to so much of the amount of income by way of dividends from another domestic company as does not exceed the amount of dividend distributed by the first-mentioned domestic company on or before the due date.

(Contd. on p. 1.493)

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Deduction in the case of an Indian company in respect of royalties, etc., received from any concern in India.

80MM. [21][*Omitted by the Finance Act, 1983, w.e.f. 1-4-1984. Original section was inserted by the Finance Act, 1969, w.e.f. 1-4-1970.*]

Deduction in respect of dividends received from certain foreign companies.

80N. [22][*Omitted by the Finance Act, 1985, w.e.f. 1-4-1986. This topic was originally dealt with by section 85B which was inserted by the Finance Act, 1966, w.e.f. 1-4-1966. Omitted section 80N was inserted in place of section 85B which was deleted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968.*]

[23][[24]**Deduction in respect of royalties, etc., from certain foreign enterprises.**

[25]**80-O.** [26][Where the gross total income of an assessee, being an Indian company [27][or a person (other than a company) who is resident in India]], includes [28][any income received by the assessee from the Government of

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(Contd. from p. 1.492)

(2) Where any deduction, in respect of the amount of dividend distributed by the domestic company, has been allowed under sub-section (1) in any previous year, no deduction shall be allowed in respect of such amount in any other previous year.

Explanation.—For the purposes of this section, the expression "due date" means the date for furnishing the return of income under sub-section (1) of section 139.'

Earlier original section 80M was introduced in place of section 85A (inserted by the Finance Act, 1965, w.e.f. 1-4-1965) by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968. Section 80M, which had earlier undergone several amendments by the Finance Act, 1968, w.e.f. 1-4-1968, Finance Act, 1970, w.e.f. 1-4-1971, Finance (No. 2) Act, 1971, w.e.f. 1-4-1972, Finance Act, 1975, w.e.f. 1-4-1976, Finance Act, 1976, w.e.f. 1-4-1977, Finance Act, 1981, w.e.f. 1-4-1982, Finance Act, 1982, w.e.f. 1-4-1983, Finance Act, 1984, w.e.f. 1-4-1985 and Finance Act, 1986, w.e.f. 1-4-1987, was substituted by the Finance Act, 1990, w.e.f. 1-4-1991 and further amended by the Finance Act, 1993, w.e.f. 1-4-1994, and later on omitted by the Finance Act, 1997, w.e.f. 1-4-1998.

21. Prior to its omission, section 80MM was amended by the Finance Act, 1970, w.e.f. 1-4-1970, the Finance (No. 2) Act, 1971, w.e.f. 1-4-1972 and the Finance Act, 1974, w.e.f. 1-4-1975.
22. Omitted section was amended by the Finance Act, 1968, w.e.f. 1-4-1969, the Finance (No. 2) Act, 1971, w.e.f. 1-4-1972, the Finance Act, 1974, w.r.e.f. 1-4-1969/w.e.f. 1-4-1975 and the Finance Act, 1984, w.e.f. 1-4-1985.
23. Substituted by the Finance (No. 2) Act, 1971, w.e.f. 1-4-1972. This topic was originally dealt with by section 85C which was inserted by the Finance Act, 1966, w.e.f. 1-4-1966. Section 80-O was inserted, in place of section 85C which was deleted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968. Section 80-O was later on amended by the Finance Act, 1968, w.e.f. 1-4-1969.
24. *See* also Circular No. 253, dated 30-4-1979, Circular No. 700, dated 23-3-1995 and Circular No. 731, dated 20-12-1995. For details, *see* Taxmann's Master Guide to Income-tax Act.
25. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.
26. Substituted for "(1) Where the gross total income of an assessee, being an Indian company or a person (other than a company) who is resident in India," by the Finance Act, 1974, w.e.f. 1-4-1975.
27. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992.
28. Substituted for the portion beginning with the words "any income by way of royalty" and ending with the words "outside India to such Government or enterprise by the assessee," by the Finance Act, 1997, w.e.f. 1-4-1998. Earlier the quoted portion was amended by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992.

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a foreign State or foreign enterprise[29] in consideration for the use[29] outside India of any patent, invention, design or registered trade mark] [30][***] [31][and such income is received in convertible foreign exchange in India, or having been received in convertible foreign exchange outside India, or having been converted into convertible foreign exchange outside India, is brought into India, by or on behalf of the assessee in accordance with any law for the time being in force for regulating payments and dealings in foreign exchange, there shall be allowed, in accordance with and subject to the provisions of this section, [32][a deduction of an amount equal to—

(*i*) forty per cent for an assessment year beginning on the 1st day of April, 2001;

(*ii*) thirty per cent for an assessment year beginning on the 1st day of April, 2002;

(*iii*) twenty per cent for an assessment year beginning on the 1st day of April, 2003;

(*iv*) ten per cent for an assessment year beginning on the 1st day of April, 2004,

of the income so received in, or brought into, India, in computing the total income of the assessee and no deduction shall be allowed in respect of the assessment year beginning on the 1st day of April, 2005 and any subsequent assessment year]] :

[33][***]

[34][**Provided** [35][***] that such income is received in India within a period of six

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29. For the meaning of the terms/expressions "foreign enterprise" and "use", *see* Taxmann's Direct Taxes Manual, Vol. 3.

30. Words "under an agreement approved in this behalf by the Chief Commissioner or the Director General;" omitted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992. Earlier these words were substituted for "under an agreement approved by the Board in this behalf" by the Finance Act, 1988, w.e.f. 1-4-1989.

31. Substituted for "and such income is received in convertible foreign exchange in India, there shall be allowed, in accordance with and subject to the provisions of this section, a deduction of an amount equal to fifty per cent of the income so received in India in computing the total income of the assessee" (as it stood after the amendment made by the Finance Act, 1987) by the Finance Act, 1988, w.e.f. 1-4-1988. Earlier, this portion of the section was amended by the Finance Act, 1974, w.r.e.f. 1-4-1972 and later on by the Finance Act, 1984, w.e.f. 1-4-1985.

32. Substituted for the portion beginning with the words "a deduction of an amount" and ending with the words "total income of the assessee" by the Finance Act, 2000, w.e.f. 1-4-2001. Prior to its substitution, the quoted portion read as under :

"a deduction of an amount equal to fifty per cent of the income so received in, or brought into, India, in computing the total income of the assessee".

33. Omitted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992. Prior to omission, the provisos as substituted by the Finance Act, 1988, w.e.f. 1-4-1989.

34. Inserted by the Finance Act, 1987, w.e.f. 1-4-1988.

35. Word "also" omitted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992.

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months from the end of the previous year, or[36][within such further period as the competent authority may allow in this behalf]:]

[37][**Provided further** that no deduction under this section shall be allowed unless the assessee furnishes a certificate, in the prescribed form[38], along with the return of income, certifying that the deduction has been correctly claimed in accordance with the provisions of this section.]

[39][*Explanation.*—For the purposes of this section,—

(*i*) "convertible foreign exchange" means foreign exchange which is for the time being treated by the Reserve Bank of India as convertible foreign exchange for the purposes of the law for the time being in force for regulating payments and dealings in foreign exchange;

[40][(*ii*) "foreign enterprise" means a person who is a non-resident;]]

[41][(*iii*) services rendered or agreed to be rendered outside India shall include services rendered from India but shall not include services rendered in India;]

[42][(*iv*) "competent authority" means the Reserve Bank of India or such other authority as is authorised under any law for the time being in force for regulating payments and dealings in foreign exchange.]

(2) [43][***]]

[44][**Deduction in respect of income of co-operative societies.**

[45]**80P.** (1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.

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36. Substituted for the portion beginning with the words "where the Chief Commissioner" and ending with the words "may allow in this behalf" by the Finance Act, 1999, w.e.f. 1-6-1999. Prior to its substitution, the said portion, as amended by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988, read as under :

"where the Chief Commissioner or Commissioner is satisfied (for reasons to be recorded in writing) that the assessee is, for reasons beyond his control, unable to do so within the said period of six months, within such further period as the Chief Commissioner or Commissioner may allow in this behalf ".

37. Inserted by the Finance Act, 1999, w.e.f. 1-6-1999.

38. *See* rule 29AA and Form No. 10HA.

39. Substituted by the Finance Act, 1985, w.e.f. 1-4-1986. Earlier the *Explanation* was inserted by the Finance Act, 1974, w.r.e.f. 1-4-1972.

40. Substituted by the Finance Act, 1987, w.e.f. 1-4-1988.

41. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992.

42. Inserted by the Finance Act, 1999, w.e.f. 1-6-1999.

43. Omitted by the Finance Act, 1974, w.e.f. 1-4-1975.

44. Inserted in place of section 81, which was deleted, by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968.

45. *See* also Circular No. 319, dated 11-1-1982 and Circular No. 722, dated 19-9-1995. For details, *see* Taxmann's Master Guide to Income-tax Act.

For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

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(2) The sums referred to in sub-section (1) shall be the following, namely :—

(*a*) in the case of a co-operative society engaged in—

(*i*) carrying on the business of banking or providing credit facilities[46] to its members[46], or

(*ii*) a cottage industry[47], or

[48][(*iii*) the marketing[47] of agricultural produce grown by its members, or]

(*iv*) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, or

(*v*) the processing, without the aid of power, of the agricultural produce of its members, [49][or]

[49][(*vi*) the collective disposal of the labour of its members, or

(*vii*) fishing or allied activities, that is to say, the catching, curing, processing, preserving, storing or marketing of fish or the purchase of materials and equipment in connection therewith for the purpose of supplying them to its members,]

the whole of the amount of profits and gains of business attributable to any one or more of such activities[50] :

[51][**Provided** that in the case of a co-operative society falling under sub-clause (*vi*), or sub-clause (*vii*), the rules and bye-laws of the society restrict the voting rights to the following classes of its members, namely:—

(*1*) the individuals who contribute their labour or, as the case may be, carry on the fishing or allied activities;

(*2*) the co-operative credit societies which provide financial assistance to the society;

(*3*) the State Government;]

[52][(*b*) in the case of a co-operative society, being a primary society engaged in supplying milk, oilseeds, fruits or vegetables raised or grown by its members to—

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46. For the meaning of the terms/expressions "providing credit facilities" and "members", *see* Taxmann's Direct Taxes Manual, Vol. 3.

47. For the meaning of the terms/expressions "cottage industry" and "marketing", *see* Taxmann's Direct Taxes Manual, Vol. 3.

48. Substituted by the Income-tax (Second Amendment) Act, 1998, w.r.e.f. 1-4-1968. Prior to its substitution, sub-clause (*iii*), as inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968, read as under :

"(*iii*) the marketing of the agricultural produce of its members, or"

49. Inserted by the Finance (No. 2) Act, 1971, w.e.f. 1-4-1972.

50. For the meaning of the expression "the whole of the amount of ... such activities", *see* Taxmann's Direct Taxes Manual, Vol. 3.

51. Inserted by the Finance (No. 2) Act, 1971, w.e.f. 1-4-1972.

52. Substituted by the Finance Act, 1983, w.e.f. 1-4-1984. Earlier, it was substituted by the Finance Act, 1978, w.e.f. 1-4-1979.

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(*i*) a federal co-operative society, being a society engaged in the business of supplying milk, oilseeds, fruits, or vegetables, as the case may be; or

(*ii*) the Government or a local authority; or

(*iii*) a Government company[53] as defined in section 617 of the Companies Act, 1956 (1 of 1956), or a corporation established by or under a Central, State or Provincial Act (being a company or corporation engaged in supplying milk, oilseeds, fruits or vegetables, as the case may be, to the public),

the whole of the amount of profits and gains of such business;]

(*c*) in the case of a co-operative society engaged in activities[54] other than those specified in clause (*a*) or clause (*b*) (either independently of, or in addition to, all or any of the activities so specified), so much of its profits and gains attributable[55] to such activities as [56][does not exceed,—

(*i*) where such co-operative society is a consumers' co-operative society, [57][one hundred] thousand rupees; and

(*ii*) in any other case, [58][fifty] thousand rupees.

Explanation.—In this clause, "consumers' co-operative society" means a society for the benefit of the consumers;]

(*d*) in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income;

(*e*) in respect of any income derived by the co-operative society from the letting of godowns or warehouses[59] for storage, processing or facilitating the marketing of commodities[59], the whole of such income;

(*f*) in the case of a co-operative society, not being a housing society or an urban consumers' society or a society carrying on transport business or a society engaged in the performance of any manufacturing operations with the aid of power, where the gross total income does not exceed twenty thousand rupees, the amount of any income by way of interest on securities [60][***] or any income from house property chargeable under section 22.

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53. For definition of "Government company", *see* footnote 71 on p. 1.23 *ante*.

54. For the meaning of the term "activities", *see* Taxmann's Direct Taxes Manual, Vol. 3.

55. For the meaning of the term "attributable", *see* Taxmann's Direct Taxes Manual, Vol. 3.

56. Substituted for "does not exceed *twenty thousand rupees"* by the Finance Act, 1979, w.e.f. 1-4-1980. Italicised words were substituted for "fifteen thousand" by the Finance Act, 1969, w.e.f. 1-4-1970.

57. Substituted for "forty" by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999.

58. Substituted for "twenty", *ibid.*

59. For the meaning of the expressions "godowns or warehouses" and "facilitating the marketing of commodities", *see* Taxmann's Direct Taxes Manual, Vol. 3.

60. "chargeable under section 18" omitted by the Finance Act, 1988, w.e.f. 1-4-1989.

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Explanation.—For the purposes of this section, an "urban consumers' co-operative society" means a society for the benefit of the consumers within the limits of a municipal corporation, municipality, municipal committee, notified area committee, town area or cantonment.

(3) In a case where the assessee is entitled also to the deduction under [61][***] [62][section 80HH] [63][or section 80HHA] [64][or section 80HHB] [65][or section 80HHC] [66][or section 80HHD] [67][or section 80-I] [68][or section 80-IA] or section [69]80J [70][***] [71][***], the deduction under sub-section (1) of this section, in relation to the sums specified in clause (*a*) or clause (*b*) or clause (*c*) of sub-section (2), shall be allowed with reference to the income, if any, as referred to in those clauses included in the gross total income as reduced by the deductions under [72][***] [73][section 80HH,] [74][section 80HHA,] [75][section 80HHB,] [76][section 80HHC,] [77][section 80HHD,] [78][section 80-I,] [79][section 80-IA,] [80][[81][section 80J[82] and section 80JJ]].]

[83][(4) The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

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61. "section 80H or" omitted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

62. Inserted by the Direct Taxes (Amendment) Act, 1974, w.e.f. 1-4-1974.

63. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 1-4-1978.

64. Inserted by the Finance Act, 1982, w.e.f. 1-4-1983.

65. Inserted by the Finance Act, 1983, w.e.f. 1-4-1983.

66. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

67. Inserted by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1981.

68. Inserted by the Finance Act, 1993, w.r.e.f. 1-4-1991.

69. Section 80J has now been omitted by the Finance (No. 2) Act, 1996, w.r.e.f. 1-4-1989.

70. Words "or section 80JJ" omitted by the Finance Act, 1997, w.e.f. 1-4-1998. Earlier the quoted words were inserted by the Finance Act, 1975, w.e.f. 1-4-1976 and later on omitted by the Finance Act, 1985, w.e.f. 1-4-1986 and again inserted by the Finance Act, 1989, w.e.f. 1-4-1990.

71. "or section 80JJA", which expression was earlier inserted by the Finance Act, 1979, w.e.f. 1-4-1980, omitted by the Finance Act, 1983, w.e.f. 1-4-1984.

72. "section 80H," omitted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

73. Inserted by the Direct Taxes (Amendment) Act, 1974, w.e.f. 1-4-1974.

74. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 1-4-1978.

75. Inserted by the Finance Act, 1982, w.e.f. 1-4-1983.

76. Inserted by the Finance Act, 1983, w.e.f. 1-4-1983.

77. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

78. Inserted by the Finance Act, 1981, w.e.f. 1-4-1981.

79. Inserted by the Finance Act, 1993, w.r.e.f. 1-4-1991.

80. Substituted for "section 80J and section 80JJ" by the Finance Act, 1985, w.e.f. 1-4-1986. Earlier, "section 80J and section 80JJ" was substituted for "section 80J, section 80JJ and section 80JJA" by the Finance Act, 1983, w.e.f. 1-4-1984, "section 80J, section 80JJ and section 80JJA" substituted for "section 80J and section 80JJ" by the Finance Act, 1979, w.e.f. 1-4-1980 and "sections 80J and 80JJ" substituted for "and section 80J" by the Finance Act, 1975, w.e.f. 1-4-1976.

81. Substituted for "and section 80J" by the Finance Act, 1989, w.e.f. 1-4-1990.

82. Section 80J has now been omitted by the Finance (No. 2) Act, 1996, w.r.e.f. 1-4-1989.

83. Inserted by the Finance Act, 2006, w.e.f. 1-4-2007. Earlier sub-section (4) was omitted by the Finance Act, 1969, w.e.f. 1-4-1970.

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

(*a*) "co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);

(*b*) "primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities.]

[84][**Deduction in respect of profits and gains from the business of publication of books.**

[85]**80Q.** (1) Where in the case of an assessee the gross total income of the previous year relevant to the assessment year commencing on the 1st day of April, 1992, or to any one of the four assessment years next following that assessment year, includes any profits and gains derived from a business carried on in India of printing and publication of books or publication of books, 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 twenty per cent thereof.

(2) In a case where the assessee is entitled also to the deduction under section 80HH or section 80HHA or section 80HHC or section 80-I or section 80-IA or section 80J[86] or section 80P, in relation to any part of the profits and gains referred to in sub-section (1), the deduction under sub-section (1) shall be allowed with reference to such profits and gains included in the gross total income as reduced by the deductions under section 80HH, section 80HHA, section 80HHC, section 80-I, section 80-IA, section 80J[86] and section 80P.

(3) For the purposes of this section, "books" shall not include newspapers, journals, magazines, diaries, brochures, tracts, pamphlets and other publications of a similar nature by whatever name called.]

Deduction in respect of profits and gains from the business of publication of books.

80QQ. [87][*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Original section was inserted by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.*]

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84. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992. Earlier section 80Q was omitted by the Finance Act, 1972, w.e.f. 1-4-1973. Originally, it was inserted in place of section 82 which was deleted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968.

85. *See* also Circular No. 706, dated 26-6-1995, as corrected by Circular No. 746, dated 26-7-1996. For details, *see* Taxmann's Direct Taxes Circulars.

For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

86. Section 80J has now been omitted by the Finance (No. 2) Act, 1996, w.r.e.f. 1-4-1989.

87. Prior to its omission, section 80QQ, was amended by the Direct Taxes (Amendment) Act, 1974, w.e.f. 1-4-1974, Finance Act, 1975, w.e.f. 1-4-1975, Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976, Finance (No. 2) Act, 1977, w.e.f. 1-4-1978, Finance Act, 1979, w.e.f. 1-4-1980 and Finance Act, 1981, w.e.f. 1-4-1981.

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[88][**Deduction in respect of professional income of authors of text books in Indian languages.**

80QQA. (1) Where, in the case of an individual resident in India, being an author, the gross total income of the previous year relevant to the assessment year [89][commencing on—

(*a*) the 1st day of April, 1980, or to any one of the nine assessment years next following that assessment year; or

(*b*) the 1st day of April, 1992, or to any one of the four assessment years next following that assessment year,

includes] any income derived by him in the exercise of his profession on account of any lump sum consideration for the assignment or grant of any of his interests in the copyright of any book, or of royalties or copyright fees (whether receivable in lump sum or otherwise) in respect of such book, 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 income of an amount equal to twenty-five per cent thereof.

(2) No deduction under sub-section (1) shall be allowed unless—

(*a*) the book is either in the nature of a dictionary, thesaurus or encyclopaedia or is one that has been prescribed or recommended as a text book, or included in the curriculum, by any University, for a degree or post-graduate course of that University; and

(*b*) the book is written in any language specified in the Eighth Schedule to the Constitution[90] or in any such other language as the Central Government may, by notification in the Official Gazette, specify in this behalf having regard to the need for promotion of publication of books of the nature referred to in clause (*a*) in that language and other relevant factors.

Explanation.—For the purposes of this section,—

(*i*) "author" includes a joint author;

(*ii*) "lump sum", in regard to royalties or copyright fees, includes an advance payment on account of such royalties or copyright fees which is not returnable;

(*iii*) "University" shall have the same meaning as in the *Explanation* to clause (*ix*) of section 47.]

[91][**Deduction in respect of royalty income, etc., of authors of certain books other than text-books.**

80QQB. (1) Where, in the case of an individual resident in India, being an author, the gross total income includes any income, derived by him in the

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88. Inserted by the Finance Act, 1979, w.e.f. 1-4-1980.

89. Substituted for the words "commencing on the 1st day of April, 1980, or to any one of the nine assessment years next following that assessment year, includes" by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992. Earlier "nine" was substituted for "four" by the Finance Act, 1985, w.e.f. 1-4-1985.

90. For text of Eighth Schedule to the Constitution, *see* **Appendix**.

91. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

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exercise of his profession, on account of any lump sum consideration for the assignment or grant of any of his interests in the copyright of any book being a work of literary, artistic or scientific nature, or of royalty or copyright fees (whether receivable in lump sum or otherwise) in respect of such book, 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 income, computed in the manner specified in sub-section (2).

(2) The deduction under this section shall be equal to the whole of such income referred to in sub-section (1), or an amount of three lakh rupees, whichever is less :

Provided that where the income by way of such royalty or the copyright fee, is not a lump sum consideration in lieu of all rights of the assessee in the book, so much of the income, before allowing expenses attributable to such income, as is in excess of fifteen per cent of the value of such books sold during the previous year shall be ignored :

Provided further that in respect of any income earned from any source outside India, so much of the income shall be taken into account for the purpose of this section as is brought into India by, or on behalf of, the assessee in convertible foreign exchange within a period of six months from the end of the previous year in which such income is earned or within such further period as the competent authority may allow in this behalf.

(3) No deduction under this section shall be allowed unless the assessee furnishes a certificate in the prescribed form[92] and in the prescribed manner, duly verified by any person responsible for making such payment to the assessee as referred to in sub-section (1), along with the return of income, setting forth such particulars as may be prescribed[92].

(4) No deduction under this section shall be allowed in respect of any income earned from any source outside India, unless the assessee furnishes a certificate, in the prescribed form[93] from the prescribed authority[94], along with the return of income in the prescribed manner.

(5) Where a deduction for any previous year has been claimed and allowed in respect of any income referred to in this section, no deduction in respect of such income shall be allowed under any other provision of this Act in any assessment year.

Explanation.—For the purposes of this section,—

(*a*) "author" includes a joint author;

(*b*) "books" shall not include brochures, commentaries, diaries, guides, journals, magazines, newspapers, pamphlets, text-books for schools, tracts and other publications of similar nature, by whatever name called;

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92. See rule 19AC and Form 10CCD. Rule 12 provides that the return of income shall not be accompanied by any document or copy of any account or form or report of audit required to be attached with return of income under any of the provisions of the Act.

93. See rule 29A(1) and Form No. 10H.

94. See rule 29A(2).

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(*c*) "competent authority" means the Reserve Bank of India or such other authority as is authorised under any law for the time being in force for regulating payments and dealings in foreign exchange;

(*d*) "lump sum", in regard to royalties or copyright fees, includes an advance payment on account of such royalties or copyright fees which is not returnable.]

[95][**Deduction in respect of remuneration from certain foreign sources in the case of professors, teachers, etc.**[96]

80R. Where the gross total income of an individual who is a citizen of India includes any remuneration received by him outside India from any University or other educational institution established outside India or [97][any other association or body established outside India], for any service rendered by him during his stay outside India in his capacity as a professor, teacher or research worker in such University, institution, association or body, there shall be [98][allowed, in computing the total income of the individual, [99][a deduction from such remuneration of an amount equal to—

(*i*) sixty per cent of such remuneration for an assessment year beginning on the 1st day of April, 2001;

(*ii*) forty-five per cent of such remuneration for an assessment year beginning on the 1st day of April, 2002;

(*iii*) thirty per cent of such remuneration for an assessment year beginning on the 1st day of April, 2003;

(*iv*) fifteen per cent of such remuneration for an assessment year beginning on the 1st day of April, 2004,

as is brought into India by, or on behalf of, the assessee in convertible foreign exchange within a period of six months from the end of the previous year or within such further period as the competent authority may allow in this behalf and no deduction shall be allowed in respect of the assessment year beginning on the 1st day of April, 2005 and any subsequent assessment year]] :

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95. This topic was dealt with by original section 80F which was inserted by the Finance (No. 2) Act, 1967, w.r.e.f. 1-4-1966. Section 80R was introduced in place of section 80F, which was deleted, by the Finance Act, 1967, w.e.f. 1-4-1968.

96. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

97. Substituted for "such other association or body established outside India as may be notified in this behalf by the Central Government in the Official Gazette" by the Finance Act, 1983, w.e.f. 1-4-1984.

98. Substituted for the words "allowed a deduction from such remuneration of an amount equal to fifty per cent thereof, in computing the total income of the individual :" by the Finance Act, 1990, w.e.f. 1-4-1991.

99. Substituted for the portion beginning with the words "a deduction from such remuneration of an amount" and ending with the words "competent authority may allow in this behalf" by the Finance Act, 2000, w.e.f. 1-4-2001. Prior to its substitution, the quoted portion, as amended by the Finance Act, 1990, w.e.f. 1-4-1991, Finance (No. 2) Act, 1996, w.e.f. 1-4-1997 and Finance Act, 1999, w.e.f. 1-6-1999, read as under :

"a deduction from such remuneration of an amount equal to seventy-five per cent of such remuneration, as is brought into India by, or on behalf of, the assessee in convertible foreign exchange within a period of six months from the end of the previous year or within such further period as the competent authority may allow in this behalf."

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[1][**Provided** that no deduction under this section shall be allowed unless the assessee furnishes a certificate, in the prescribed form[2], along with the return of income, certifying that the deduction has been correctly claimed in accordance with the provisions of this section.]]

[3][***]

[4][*Explanation.*—For the purposes of this section, the expression "competent authority" means the Reserve Bank of India or such other authority as is authorised under any law for the time being in force for regulating payments and dealings in foreign exchange.]

[5][**Deduction in respect of professional income from foreign sources in certain cases.**

[6]**80RR.** Where the gross total income of an individual resident in India, being an author, playwright, artist, [7][musician, actor or sportsman (including an athlete)], includes any income derived by him in the exercise of his profession from the Government of a foreign State or any person not resident in India, [8][there shall be allowed, in computing the total income of the individual, [9][a deduction from such income of an amount equal to—

(*i*) sixty per cent of such income for an assessment year beginning on the 1st day of April, 2001;

(*ii*) forty-five per cent of such income for an assessment year beginning on the 1st day of April, 2002;

(*iii*) thirty per cent of such income for an assessment year beginning on the 1st day of April, 2003;

(*iv*) fifteen per cent of such income for an assessment year beginning on the 1st day of April, 2004,

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1. Inserted by the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997.
2. *See* rule 29A and Form No. 10H.
3. Omitted by the Finance Act, 1990, w.e.f. 1-4-1991.
4. Inserted by the Finance Act, 1999, w.e.f. 1-6-1999.
5. Inserted by the Finance Act, 1969, w.e.f. 1-4-1970.
6. *See* also Circular No. 31, dated 25-10-1969 and Circular No. 675, dated 3-1-1994. For details, *see* Taxmann's Master Guide to Income-tax Act.
7. Substituted for "musician or actor" by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1980.
8. Substituted for the words "and such income is received in, or brought into, India by him or on his behalf in accordance with the Foreign Exchange Regulation Act, 1947 (7 of 1947), and any rules made thereunder, there shall be allowed a deduction from such income of an amount equal to twenty-five per cent of the income so received or brought, in computing the total income of the individual" by the Finance Act, 1990, w.e.f. 1-4-1991.
9. Substituted for the portion beginning with the words "a deduction from such income of an amount" and ending with the words "competent authority may allow in this behalf" by the Finance Act, 2000, w.e.f. 1-4-2001. Prior to its substitution, the quoted portion, as amended by the Finance Act, 1990, w.e.f. 1-4-1991, Finance (No. 2) Act, 1996, w.e.f. 1-4-1997 and Finance Act, 1999, w.e.f. 1-6-1999, read as under :

   "a deduction from such income of an amount equal to seventy-five per cent of such income, as is brought into India by, or on behalf of, the assessee in convertible foreign exchange within a period of six months from the end of the previous year or within such further period as the competent authority may allow in this behalf"

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as is brought into India by, or on behalf of, the assessee in convertible foreign exchange within a period of six months from the end of the previous year or within such further period as the competent authority may allow in this behalf and no deduction shall be allowed in respect of the assessment year beginning on the 1st day of April, 2005 and any subsequent assessment year]] :

[10][**Provided** that no deduction under this section shall be allowed unless the assessee furnishes a certificate, in the prescribed form[11], along with the return of income, certifying that the deduction has been correctly claimed in accordance with the provisions of this section.]]

[12][*Explanation.*—For the purposes of this section, the expression "competent authority" means the Reserve Bank of India or such other authority as is authorised under any law for the time being in force for regulating payments and dealings in foreign exchange.]

[13][**Deduction in respect of remuneration received for services rendered outside India.**

[14]**80RRA.** (1) Where the gross total income of an individual who is a citizen of India includes any remuneration[15] received by him in foreign currency from any employer[15] (being a foreign employer or an Indian concern) for any service rendered by him outside India, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the individual, [16][a deduction from such remuneration of an amount equal to—

(*i*) sixty per cent of such remuneration for an assessment year beginning on the 1st day of April, 2001;

(*ii*) forty-five per cent of such remuneration for an assessment year beginning on the 1st day of April, 2002;

(*iii*) thirty per cent of such remuneration for an assessment year beginning on the 1st day of April, 2003;

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10. Inserted by the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997.

11. *See* rule 29A and Form No. 10H.

12. Inserted by the Finance Act, 1999, w.e.f. 1-6-1999.

13. Substituted by the Finance (No. 2) Act, 1977, w.e.f. 1-4-1978. Original section was inserted by the Finance Act, 1975, w.e.f. 1-4-1975.

14. *See* also Circular No. 356, dated 17-3-1983 and Circular No. 705, dated 20-6-1995. For details, *see* Taxmann's Master Guide to Income-tax Act.

For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

15. For the meaning of the terms "employer" and "remuneration", *see* Taxmann's Direct Taxes Manual, Vol. 3.

16. Substituted for the portion beginning with the words "a deduction from such remuneration" and ending with the words "authority may allow in this behalf" by the Finance Act, 2000, w.e.f. 1-4-2001. Prior to its substitution, the quoted portion, as amended by the Finance Act, 1987, w.e.f. 1-4-1988, Finance (No. 2) Act, 1996, w.e.f. 1-4-1997 and Finance Act, 1999, w.e.f. 1-6-1999, read as under :

"a deduction from such remuneration of an amount equal to seventy-five per cent of such remuneration, as is brought into India by, or on behalf of, the assessee in convertible foreign exchange within a period of six months from the end of the previous year or within such further period as the competent authority may allow in this behalf"

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(*iv*) fifteen per cent of such remuneration for an assessment year beginning on the 1st day of April, 2004,

as is brought into India by, or on behalf of, the assessee in convertible foreign exchange within a period of six months from the end of the previous year or within such further period as the competent authority may allow in this behalf and no deduction shall be allowed in respect of the assessment year beginning on the 1st day of April, 2005 and any subsequent assessment year] :

[17][**Provided** that no deduction under this sub-section shall be allowed unless the assessee furnishes a certificate, in the prescribed form[18], along with the return of income, certifying that the deduction has been correctly claimed in accordance with the provisions of this section.]]

[19][***]

(2) The deduction under this section shall be allowed—

(*i*) in the case of an individual who is or was, immediately before undertaking such service, in the employment of the Central Government or any State Government, only if such service is sponsored by the Central Government;

(*ii*) in the case of any other individual, only if he is a technician and the terms and conditions of his service outside India are approved in this behalf by the Central Government or the prescribed authority.

Explanation.—For the purposes of this section,—

(*a*) "foreign currency"[20] shall have the meaning assigned to it in the Foreign Exchange Regulation Act, 1973 (46 of 1973);

(*b*) "foreign employer" means,—

(*i*) the Government of a foreign State; or

(*ii*) a foreign enterprise; or

(*iii*) any association or body established outside India;

(*c*) "technician" means a person having specialised knowledge and experience in—

(*i*) constructional or manufacturing operations or mining or the generation or distribution of electricity or any other form of power; or

(*ii*) agriculture, animal husbandry, dairy farming, deep sea fishing or ship building; or

(*iii*) public administration or industrial or business management; or

(*iv*) accountancy; or

(*v*) any field of natural or applied science (including medical science) or social science; or

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17. Inserted by the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997.

18. See rule 29A and Form No. 10H.

19. Omitted by the Finance Act, 1990, w.e.f. 1-4-1991.

20. For definition of "foreign currency", *see* footnote 51 on p. 1.64 *ante*.

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(*vi*) any other field which the Board may prescribe[21] in this behalf,

who is employed in a capacity in which such specialised knowledge and experience are actually utilised;]

[22][(*d*) "competent authority" means the Reserve Bank of India or such other authority as is authorised under any law for the time being in force for regulating payments and dealings in foreign exchange.]

[23][**Deduction in respect of royalty on patents.**

80RRB. (1) Where in the case of an assessee, being an individual, who is—

(*a*) resident in India;

(*b*) a patentee;

(*c*) in receipt of any income by way of royalty in respect of a patent registered on or after the 1st day of April, 2003 under the Patents Act, 1970 (39 of 1970), and

his gross total income of the previous year includes royalty, there shall, in accordance with and subject to the provisions of this section, be allowed a deduction, from such income, of an amount equal to the whole of such income or three lakh rupees, whichever is less:

Provided that where a compulsory licence is granted in respect of any patent under the Patents Act, 1970 (39 of 1970), the income by way of royalty for the purpose of allowing deduction under this section shall not exceed the amount of royalty under the terms and conditions of a licence settled by the Controller under that Act :

Provided further that in respect of any income earned from any source outside India, so much of the income, shall be taken into account for the purpose of this section as is brought into India by, or on behalf of, the assessee in convertible foreign exchange within a period of six months from the end of the previous year in which such income is earned or within such further period as the competent authority referred to in clause (*c*) of the *Explanation* to section 80QQB may allow in this behalf.

(2) No deduction under this section shall be allowed unless the assessee furnishes a certificate in the prescribed form[24], duly signed by the prescribed authority[25], along with the return of income setting forth such particulars as may be prescribed.

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21. Prescribed fields under rule 11C are as follows :

1. Profession of actuaries;

2. Banking;

3. Insurance;

4. Journalism.

22. Inserted by the Finance Act, 1999, w.e.f. 1-6-1999.

23. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

24. *See* rule 19AD(2) and Form No. 10CCE. Rule 12 provides that the return of income shall not be accompanied by any document or copy of any account or form or report of audit required to be attached with return of income under any of the provisions of the Act.

25. Prescribed authority is Controller General of Patents, Designs & Trade Marks, *see* rule 19AD(1).

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(3) No deduction under this section shall be allowed in respect of any income earned from any source outside India, unless the assessee furnishes a certificate in the prescribed form[26], from the authority or authorities, as may be prescribed[27], along with the return of income.

(4) Where a deduction for any previous year has been claimed and allowed in respect of any income referred to in this section, no deduction in respect of such income shall be allowed, under any other provision of this Act in any assessment year.

Explanation.—For the purposes of this section,—

(*a*) "Controller" shall have the meaning assigned to it in clause (*b*) of sub-section (1) of section 2 of the Patents Act, 1970 (39 of 1970)[28];

(*b*) "lump sum" includes an advance payment on account of such royalties which is not returnable;

(*c*) "patent" means a patent (including a patent of addition) granted under the Patents Act, 1970 (39 of 1970);

(*d*) "patentee" means the person, being the true and first inventor of the invention, whose name is entered on the patent register as the patentee, in accordance with the Patents Act, 1970 (39 of 1970), and includes every such person, being the true and first inventor of the invention, where more than one person is registered as patentee under that Act in respect of that patent;

(*e*) "patent of addition" shall have the meaning assigned to it in clause (*q*) of sub-section (1) of section 2 of the Patents Act, 1970 (39 of 1970)[29];

(*f*) "patented article" and "patented process" shall have the meanings respectively assigned to them in clause (*o*) of sub-section (1) of section 2 of the Patents Act, 1970 (39 of 1970)[30];

(*g*) "royalty", in respect of a patent, means consideration (including any lump sum consideration but excluding any consideration which would be the income of the recipient chargeable under the head "Capital gains" or consideration for sale of product manufactured with the use of patented process or of the patented article for commercial use) for—

(*i*) the transfer of all or any rights (including the granting of a licence) in respect of a patent; or

(*ii*) the imparting of any information concerning the working of, or the use of, a patent; or

(*iii*) the use of any patent; or

(*iv*) the rendering of any services in connection with the activities referred to in sub-clauses (*i*) to (*iii*);

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26. *See* rule 29A(1) and Form No. 10H.

27. *See* rule 29A(2).

28. For text of section 2(1)(*b*) of the Patents Act, 1970, *see* **Appendix**.

29. For text of section 2(1)(*q*) of the Patents Act, 1970, *see* **Appendix**.

30. For text of section 2(1)(*o*)/(*y*) of the Patents Act, 1970, *see* **Appendix**.

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(*h*) "true and first inventor" shall have the meaning assigned to it in clause (*y*) of sub-section (1) of section 2 of the Patents Act, 1970 (39 of 1970)[31].]

Deduction in respect of compensation for termination of managing agency, etc., in the case of assessees other than companies.

80S. [32][*Omitted by the Finance Act, 1986, w.e.f. 1-4-1987. Original section was introduced in place of old section 112 by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968.*]

Deduction in respect of long-term capital gains in the case of assessees other than companies.

80T. [33][*Omitted by the Finance Act, 1987, w.e.f. 1-4-1988. Original section was inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968 in replacement of section 114.*]

Deduction in respect of winnings from lottery.

80TT. [*Omitted by the Finance Act, 1986, w.e.f. 1-4-1987. Original section was inserted by the Finance Act, 1972, w.e.f. 1-4-1972 and amended by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1981.*]

[34][*D.—Other deductions*

[35][**Deduction in case of a person with disability.**

80U. (1) In computing the total income of an individual, being a resident, who, at any time during the previous year, is certified by the medical authority to be a person with disability, there shall be allowed a deduction of a sum of fifty thousand rupees :

Provided that where such individual is a person with severe disability, the provisions of this sub-section shall have effect as if for the words "fifty thousand rupees", the words "seventy-five thousand rupees" had been substituted:

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31. For text of section 2(1)(*o*)/(*y*) of the Patents Act, 1970, *see* **Appendix**.

32. Omitted section 80S was earlier amended by the Finance Act, 1973, w.r.e.f. 1-4-1972.

33. Prior to its omission, section 80T was amended by the Finance (No. 2) Act, 1971, w.e.f. 1-4-1972, the Finance (No. 2) Act, 1974, w.e.f. 1-4-1975, the Finance (No. 2) Act, 1980, w.e.f. 1-4-1981, the Finance Act, 1982, w.e.f. 1-4-1983 and the Finance Act, 1986, w.e.f. 1-4-1987.

34. Inserted by the Finance Act, 1968, w.e.f. 1-4-1969.

35. Substituted by the Finance Act, 2003, w.e.f. 1-4-2004. Prior to its substitution, section 80U, as substituted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992 and later on amended by the Finance Act, 1995, w.e.f. 1-4-1996, read as under :

'80U. *Deduction in the case of permanent physical disability (including blindness).*—In computing the total income of an individual, being a resident, who, at the end of the previous year, is suffering from a permanent physical disability (including blindness) or is subject to mental retardation, being a permanent physical disability or mental retardation specified in the rules made in this behalf by the Board, which is certified by a physician, a surgeon, an oculist or a psychiatrist, as the case may be, working in a Government hospital, and which has the effect of reducing considerably such individual's capacity for normal work or engaging in a gainful employment or occupation, there shall be allowed a deduction of a sum of forty thousand rupees :

Provided that such individual produces the aforesaid certificate before the Assessing Officer in respect of the first assessment year for which he claims deduction under this section :

(Contd. on p. 1.509)

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[36][**Provided further** *that for the assessment years beginning on or after the 1st day of April, 2010, the provisions of the first proviso shall have effect as if for the words "seventy-five thousand rupees", the words "one lakh rupees" had been substituted.*]

(2) Every individual claiming a deduction under this section shall furnish a copy of the certificate issued by the medical authority in the form and manner, as may be prescribed[37], along with the return of income under section 139, in respect of the assessment year for which the deduction is claimed :

Provided that where the condition of disability requires reassessment of its extent after a period stipulated in the aforesaid certificate, no deduction under this section shall be allowed for any assessment year relating to any previous year beginning after the expiry of the previous year during which the aforesaid certificate of disability had expired, unless a new certificate is obtained from the medical authority in the form and manner, as may be prescribed[37], and a copy thereof is furnished along with the return of income under section 139.

[38][*Explanation*.—For the purposes of this section,—

(*a*) "disability" shall have the meaning assigned to it in clause (*i*) of section

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(Contd. from p. 1.508)

Provided further that the requirement of producing the aforesaid certificate from a physician, a surgeon, an oculist or a psychiatrist, as the case may be, working in a Government hospital shall not apply to an individual who has already produced a certificate before the Assessing Officer under the provisions of this section as they stood immediately before the 1st day of April, 1992.

Explanation.—For the purposes of this section, the expression "Government hospital" shall have the meaning assigned to it in the *Explanation* to section 80DD.'

Earlier section 80U was amended by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971, Finance (No. 2) Act, 1980, w.e.f. 1-4-1981, Finance Act, 1984, w.e.f. 1-4-1985, Finance Act, 1987, w.e.f. 1-4-1988, Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988 and the Finance Act, 1989, w.e.f. 1-4-1990.

36. Inserted by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2010.**

37. *See* rule 11A. For prescribed Forms, *see* Form No. 10-IA and Forms prescribed under Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995 [*see* Taxmann's Income-tax Rules]. Rule 12 provides that the return of income shall not be accompanied by any document or copy of any account or form or report of audit required to be attached with return of income under any of the provisions of the Act.

38. Substituted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005. Prior to its substitution, *Explanation* read as under :

'*Explanation*.—For the purposes of this section,—

(*a*) "disability" shall have the meaning assigned to it in clause (*i*) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996);

(*b*) "medical authority" means the medical authority as referred to in clause (*p*) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996);

(*c*) "person with disability" means a person referred to in clause (*t*) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996);

(*d*) "person with severe disability" means a person with eighty per cent or more of one or more disabilities, as referred to in sub-section (4) of section 56 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996).'

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2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996)[39], and includes "autism", "cerebral palsy" and "multiple disabilities" referred to in clauses (*a*), (*c*) and (*h*) of section 2[40] of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999);

(*b*) "medical authority" means the medical authority as referred to in clause (*p*) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996)[41], or such other medical authority as may, by notification, be specified by the Central Government for certifying "autism", "cerebral palsy", "multiple disabilities", "person with disability" and "severe disability" referred to in clauses (*a*), (*c*), (*h*), (*j*) and (*o*) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999)[42];

(*c*) "person with disability" means a person referred to in clause (*t*) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996)[41], or clause (*j*) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999)[42];

(*d*) "person with severe disability" means—

(*i*) a person with eighty per cent or more of one or more disabilities, as referred to in sub-section (4) of section 56 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996)[43]; or

(*ii*) a person with severe disability referred to in clause (*o*) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999)[44].]]

Deduction from gross total income of the parent in certain cases.

80V. [45][*Omitted by the Finance Act, 1994, w.e.f. 1-4-1995.*]

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39. For text of section 2(*i*) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, *see* **Appendix**.

40. For relevant text of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation & Multiple Disabilities Act, 1999, *see* **Appendix**.

41. For relevant text of section 2 and section 56(4) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, *see* **Appendix**.

42. For relevant text of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation & Multiple Disabilities Act, 1999, *see* **Appendix**.

43. For relevant text of section 2 and section 56(4) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, *see* **Appendix**.

44. For relevant text of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation & Multiple Disabilities Act, 1999, *see* **Appendix**.

45. Prior to omission, section 80V was inserted by the Finance Act, 1993, w.e.f. 1-4-1994.

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Deduction in respect of expenses incurred in connection with certain proceedings under the Act.

80VV. [*Omitted by the Finance Act, 1985, w.e.f. 1-4-1986. Original section was inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.*]

CHAPTER VI-B

RESTRICTION ON CERTAIN DEDUCTIONS IN THE CASE OF COMPANIES

[*Chapter VI-B consisting of section 80VVA omitted by the Finance Act, 1987, w.e.f. 1-4-1988. Original Chapter was inserted by the Finance Act, 1983, w.e.f. 1-4-1984 and amended by the Finance Act, 1985, w.e.f. 1-4-1986 and Finance Act, 1986, w.e.f. 1-4-1987.*]

CHAPTER VII

INCOMES FORMING PART OF TOTAL INCOME ON WHICH NO INCOME-TAX IS PAYABLE

81. to 85C. [*Omitted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968. Provisions of sections 81, 82, 83, 84, 85, 85A, 85B and 85C were incorporated from the same date in sections 80P, 80Q, 10(29), 80J (now omitted), 80K (now omitted), 80M (now omitted), 80N (now omitted) and 80-O, respectively.*]

[46][**Share of member of an association of persons or body of individuals in the income of the association or body.**

86. Where the assessee is a member of an association of persons or body of individuals (other than a company or a co-operative society or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any law corresponding to that Act in force in any part of India), income-tax shall not be payable by the assessee in respect of his share in the income of the association or body computed in the manner provided in section 67A :

Provided that,—

(*a*) where the association or body is chargeable to tax on its total income at the maximum marginal rate or any higher rate under any of the provisions of this Act, the share of a member computed as aforesaid shall not be included in his total income;

(*b*) in any other case, the share of a member computed as aforesaid shall form part of his total income :

Provided further that where no income-tax is chargeable on the total income of the association or body, the share of a member computed as aforesaid shall be chargeable to tax as part of his total income and nothing contained in this section shall apply to the case.]

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46. Substituted by the Finance Act, 1992, w.e.f. 1-4-1993. Prior to substitution, section 86 was amended by the Finance Act, 1964, w.e.f. 1-4-1964, the Finance Act, 1965, w.e.f. 1-4-1965, the Finance Act, 1968, w.e.f. 1-4-1969, the Finance (No. 2) Act, 1971, w.e.f. 1-4-1971, the Finance Act, 1981, w.e.f. 1-4-1981, the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989 and the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

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Deduction from tax on certain securities.

86A. [47][*Omitted by the Finance Act, 1988, w.e.f. 1-4-1989. Original section was inserted by the Finance Act, 1965, w.e.f. 1-4-1965.*]

CHAPTER VIII

[48][REBATES AND RELIEFS]

[49][*A.—Rebate of income-tax*

Rebate to be allowed in computing income-tax.

87. (1) In computing the amount of income-tax on the total income of an assessee with which he is chargeable for any assessment year, there shall be allowed from the amount of income-tax (as computed before allowing the deductions under this Chapter), in accordance with and subject to the provisions of [50][sections 88, 88A, 88B, 88C, 88D and 88E], the deductions specified in those sections.

(2) The aggregate amount of the deductions under section 88 or section 88A [51][or section 88B] [52][or section 88C] [53][or section 88D or section 88E] shall not, in any case, exceed the amount of income-tax (as computed before allowing the deductions under this Chapter) on the total income of the assessee with which he is chargeable for any assessment year.

Rebate on educational expenses in certain cases.

87A. [*Omitted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968.*]

Rebate on life insurance premia, contribution to provident fund, etc.

[54]**88.** [55][(1) Subject to the provisions of this section, an assessee, being an individual, or a Hindu undivided family, shall be entitled to a deduction, from the amount of income-tax (as computed before allowing the deductions under this Chapter) on his total income with which he is chargeable for any assessment year, of an amount equal to—

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47. Prior to its omission, section 86A was amended by the Finance Act, 1966, w.e.f. 1-4-1966.

48. Substituted for "Relief in respect of income-tax" by the Finance Act, 1990, w.e.f. 1-4-1991. Earlier existing heading was amended by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968.

49. Inserted by the Finance Act, 1990, w.e.f. 1-4-1991.

50. Substituted for "sections 88, 88A, 88B and 88C" by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005. Earlier the quoted portion was amended by the Finance Act, 1992, w.e.f. 1-4-1993 and Finance Act, 2000, w.e.f. 1-4-2001.

51. Inserted by the Finance Act, 1992, w.e.f. 1-4-1993.

52. Inserted by the Finance Act, 2000, w.e.f. 1-4-2001.

53. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005.

54. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

55. Substituted by the Finance Act, 2002, w.e.f. 1-4-2003. Prior to its substitution, sub-section (1), as amended by the Finance Act, 1990, w.e.f. 1-4-1991, Finance Act, 1992, w.e.f. 1-4-1993, Finance Act, 1994, w.r.e.f. 1-4-1991 and Finance Act, 2001, w.e.f. 1-4-2002, read as under :

'(1) Subject to the provisions of this section, an assessee, being—

(*a*) an individual, or

(*b*) a Hindu undivided family, [***]

(*c*) [***]

(Contd. on p. 1.513)

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(*i*) in the case of an individual or a Hindu undivided family, whose gross total income before giving effect to deductions under Chapter VI-A, is one lakh fifty thousand rupees or less, twenty per cent of the aggregate of the sums referred to in sub-section (2):

Provided that an individual shall be entitled to a deduction of an amount equal to thirty per cent of the aggregate of the sums referred to in sub-section (2) if his income under the head "Salaries"—

(*a*) does not exceed one lakh rupees during the previous year before allowing the deduction under section 16; and

(*b*) is not less than ninety per cent of his gross total income, as defined in sub-section (5) of section 80B;

(*ii*) in the case of an individual or a Hindu undivided family, whose gross total income before giving effect to deductions under Chapter VI-A, is more than one lakh fifty thousand rupees but does not exceed five lakh rupees, fifteen per cent of the aggregate of the sums referred to in sub-section (2);

(*iii*) in the case of an individual or a Hindu undivided family, whose gross total income before giving effect to deductions under Chapter VI-A, exceeds five lakh rupees, *nil*.]

(2) The sums referred to in sub-section (1) shall be any sums paid or deposited in the previous year by the assessee [56][***]—

(*i*) to effect or to keep in force an insurance on the life of persons specified in sub-section (4);

(*ii*) to effect or to keep in force a contract for a deferred annuity, [57][not being an annuity plan referred to in clause (*xiiia*)], on the life of persons specified in sub-section (4) :

(Contd. from p. 1.512)

shall be entitled to a deduction, from the amount of income-tax (as computed before allowing the deductions under this Chapter) on his total income with which he is chargeable for any assessment year, of an amount equal to twenty per cent of the aggregate of the sums referred to in sub-section (2) :

Provided that in the case of an individual, whose income, derived from the exercise of his profession as an author, playwright, artist, musician, actor or sportsman (including an athlete), is twenty-five per cent or more of his total income, the provisions of this sub-section shall have effect as if for the words "twenty per cent", the words "twenty-five per cent" had been substituted :

Provided further that an individual shall be entitled to a deduction of an amount equal to thirty per cent of the aggregate of the sums referred to in sub-section (2) if his income chargeable under the head "Salaries"—

(*a*) does not exceed one lakh rupees during the previous year before allowing deduction under section 16; and

(*b*) is not less than ninety per cent of his gross total income as defined in sub-section (5) of section 80B.'

56. Words "out of his income chargeable to tax" omitted by the Finance Act, 2002, w.e.f. 1-4-2003.

57. Substituted for "not being an annuity plan referred to in clause (*ii*) of sub-section (1) of section 80CCA" by the Finance Act, 1992, w.e.f. 1-4-1993.

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Provided that such contract does not contain a provision for the exercise by the insured of an option to receive a cash payment in lieu of the payment of the annuity;

(*iii*) by way of deduction from the salary payable by or on behalf of the Government to any individual being a sum deducted in accordance with the conditions of his service, for the purpose of securing to him a deferred annuity or making provision for his wife or children, in so far as the sum so deducted does not exceed one-fifth of the salary;

(*iv*) as a contribution by an individual to any provident fund to which the Provident Funds Act, 1925 (19 of 1925), applies;

(*v*) as a contribution to any provident fund set up by the Central Government and notified[58] by it in this behalf in the Official Gazette, where such contribution is to an account standing in the name of any person specified in sub-section (4);

(*vi*) as a contribution by an employee to a recognised provident fund;

(*vii*) as a contribution by an employee to an approved superannuation fund;

(*viii*) in a ten-year account or a fifteen-year account under the Post Office Savings Bank (Cumulative Time Deposits) Rules, 1959, as amended from time to time, where such sums are deposited in an account standing in the name of the persons specified in sub-section (4);

(*ix*) as subscription to any such security of the Central Government [59][or any such deposit scheme] as that Government may, by notification[60] in the Official Gazette, specify in this behalf;

(*x*) as subscription to the National Savings Certificates (VI Issue) and National Savings Certificates (VII Issue) issued under the Government Savings Certificates Act, 1959 (46 of 1959);

(*xi*) as subscription to any such savings certificate[61] as defined in clause (*c*) of section 2 of the Government Savings Certificates Act, 1959 (46 of 1959), as the Central Government may, by notification[62] in the Official Gazette, specify in this behalf;

(*xii*) as a contribution, [63][in the name of any person] specified in sub-section (4), for participation in the Unit-linked Insurance Plan, 1971 (hereafter in this section referred to as the Unit-linked Insurance Plan) deemed to have been made under sub-clause (*a*) of clause (*8*) of section 19 of the Unit Trust of India Act, 1963 (52 of 1963);

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58. Public provident fund has been notified - *Vide* SO 55(E), dated 31-1-1991. *See* Taxmann's Master Guide to Income-tax Act.

59. Inserted by the Finance Act, 1992, w.e.f. 1-4-1993.

60. National Savings Scheme has been notified—*Vide* GSR 819(E), dated 21-10-1992. *See* also Taxmann's Master Guide to Income-tax Act. Scheme is discontinued with effect from 1-11-2002 - [*Vide* GSR 710(E), dated 17-10-2002.]

61. For definition of "savings certificate", *see* footnote 85 on p. 1.130 *ante*.

62. NSC (VIII Issue) has been notified - *Vide* SO 54(E), dated 31-1-1991. *See* Taxmann's Master Guide to Income-tax Act.

63. Substituted for "by any person" by the Finance Act, 1994, w.r.e.f. 1-4-1991.

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(*xiii*) as a contribution [64][in the name of any person specified in sub-section (4)] for participation in any such unit-linked insurance plan of the LIC Mutual Fund notified under clause (*23D*) of section 10, as the Central Government may, by notification[65] in the Official Gazette, specify in this behalf;

[66][(*xiiia*) to effect or to keep in force a contract for such annuity plan of the Life Insurance Corporation [67][or any other insurer] as the Central Government may, by notification[68] in the Official Gazette, specify;

(*xiiib*) as subscription, not exceeding ten thousand rupees, to any units of any Mutual Fund notified under clause (*23D*) of section 10 or the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963), under any plan formulated in accordance with such scheme as the Central Government may, by notification in the Official Gazette, specify in this behalf;

(*xiiic*) as a contribution by an individual to any pension fund set up by any Mutual Fund notified under clause (*23D*) of section 10 [69][or by the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963)], as the Central Government may, by notification[70] in the Official Gazette, specify in this behalf;]

(*xiv*) as subscription to any such deposit scheme of [71][, or as a contribution to any such pension fund set up by,] the National Housing Bank established under section 3 of the National Housing Bank Act, 1987 (53 of 1987) (hereafter in this section referred to as the National Housing Bank), as the Central Government may, by notification[72] in the Official Gazette, specify in this behalf;

[73][(*xiva*) as subscription to any such deposit scheme of—

(*a*) a public sector company which is engaged in providing long-term finance for construction or purchase of houses in India for residential purposes; or

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64. Substituted for "by any individual" by the Finance Act, 1994, w.r.e.f. 1-4-1991.

65. Dhanaraksha 1989 Plan of LIC Mutual Fund - *Vide* SO 56(E), dated 31-1-1991. *See* Taxmann's Master Guide to Income-tax Act.

66. Inserted by the Finance Act, 1992, w.e.f. 1-4-1993.

67. Inserted by the Finance Act, 2001, w.e.f. 1-4-2002.

68. Jeevan Dhara and Jeevan Akshay Plans of LIC - *Vide* Notification No. GSR 801(E), dated 7-10-1992. New Jeevan Dhara/New Jeevan Akshay Plans of LIC - *Vide* Notification No. 71/2002 [F. No. 174/9/2001-IT(A-I)], dated 2-4-2002. New Jeewan Dhara I and New Akshay Plan I of LIC - *Vide* Notification No. SO 306(E), dated 18-3-2003/New Jeewan Akshay-II - *Vide* Notification No. SO 569(E), dated 13-5-2004. *See* Taxmann's Master Guide to Income-tax Act.

69. Inserted by the Finance Act, 1994, w.e.f. 1-4-1995.

70. Retirement Benefit Unit Scheme of UTI - *Vide* Notification No. 9598 [F. No. 149/100/94-TPL], dated 1-9-1994/Kothari Pioneer Pension Plan—Notification No. SO 76(E), dated 30-1-1997. *See* Taxmann's Master Guide to Income-tax Act.

71. Inserted by the Finance Act, 1992, w.e.f. 1-4-1993.

72. Home Loan Account Scheme of National Housing Bank has been notified - *Vide* SO 57(E), dated 31-1-1991. For details, *see* Taxmann's Master Guide to Income-tax Act.

73. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992.

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(*b*) any authority constituted in India by or under any law enacted either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both,

not being a scheme the interest on deposits whereunder qualifies for the purposes of computing the deduction under section 80L, as the Central Government may, by notification in the Official Gazette, specify in this behalf;]

[74][(*xivb*) as tuition fees (excluding any payment towards any development fees or donation or payment of similar nature), whether at the time of admission or thereafter,—

(*a*) to any university, college, school or other educational institution situated within India;

(*b*) for the purpose of full-time education of any of the persons specified in sub-section (4);]

(*xv*) for the purposes of purchase or construction of a residential house property the [75][***] income from which is chargeable to tax under the head "Income from house property" (or which would, if it had not been used for the assessee's own residence, have been chargeable to tax under that head), where such payments are made towards or by way of—

(*a*) any instalment or part payment of the amount due under any self-financing or other scheme of any development authority, housing board or other authority engaged in the construction and sale of house property on ownership basis; or

(*b*) any instalment or part payment of the amount due to any company or co-operative society of which the assessee is a shareholder or member towards the cost of the house property allotted to him; or

(*c*) repayment of the amount borrowed by the assessee from—

(*1*) the Central Government or any State Government, or

(*2*) any bank, including a co-operative bank, or

(*3*) the Life Insurance Corporation, or

(*4*) the National Housing Bank, or

(*5*) any public company formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes [76][which is eligible for deduction under clause (*viii*) of sub-section (1) of section 36], or

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74. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

75. Words "construction of which is completed after the 31st day of March, 1987, and the" omitted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992.

76. Substituted for "which is approved for the purposes of clause (*viii*) of sub-section (1) of section 36" by the Finance Act, 2000, w.e.f. 1-4-2000.

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(*6*) any company in which the public are substantially interested or any co-operative society, where such company or co-operative society is engaged in the business of financing the construction of houses, or

[77][(*6A*) the assessee's employer where such employer is an authority or a board or a corporation or any other body established or constituted under a Central or State Act, or]

(*7*) the assessee's employer where such employer is a public company or a public sector company or a University established by law or a college affiliated to such University or a local authority [78][or a co-operative society];

(*d*) stamp duty, registration fee and other expenses for the purpose of transfer of such house property to the assessee,

but shall not include any payment towards or by way of—

(*A*) the admission fee, cost of share and initial deposit which a shareholder of a company or a member of a co-operative society has to pay for becoming such shareholder or member; or

(*B*) [*Omitted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992;*]

(*C*) the cost of any addition or alteration to, or renovation or repair of, the house property which is carried out after the issue of the completion certificate in respect of the house property by the authority competent to issue such certificate or after the house property or any part thereof has either been occupied by the assessee or any other person on his behalf or been let out; or

(*D*) any expenditure in respect of which deduction is allowable under the provisions of section 24;

[79][(*xvi*) as subscription to equity shares or debentures forming part of any eligible issue of capital approved by the Board on an application made by a public company [80][or as subscription to any eligible issue of capital by any public financial institution] in the prescribed form[81]:

Provided that where a deduction is claimed and allowed under this clause with reference to the cost of any equity shares or debentures, the cost of such shares or debentures shall not be taken into account for the purposes of sections 54EA and 54EB.

[82][*Explanation*.—For the purposes of this clause,—

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77. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005.

78. Inserted by the Finance Act, 1992, w.e.f. 1-4-1992.

79. Inserted by the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997.

80. Inserted by the Finance Act, 1997, w.e.f. 1-4-1998.

81. *See* rule 20 and Form No. 59.

82. Substituted by the Finance Act, 2003, w.e.f. 1-4-2004. Prior to its substitution, *Explanation*, as amended by the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997, Finance Act, 1997, w.e.f. 1-4-1998 and Finance Act, 1999, w.e.f. 1-4-2000, read as under :

'*Explanation*.—For the purposes of this clause,—

(Contd. on p. 1.518)

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(*i*) "eligible issue of capital" means an issue made by a public company formed and registered in India or a public financial institution and the entire proceeds of the issue are utilised wholly and exclusively for the purposes of any business referred to in sub-section (4) of section 80-IA;

(*ii*) "public company"[83] shall have the meaning assigned to it in section 3 of the Companies Act, 1956 (1 of 1956);

(*iii*) "public financial institution"[84] shall have the meaning assigned to it in section 4A of the Companies Act, 1956 (1 of 1956);]

(*xvii*) as subscription to any units of any mutual fund referred to in clause (*23D*) of section 10 and approved by the Board on an application made by such mutual fund in the prescribed form[85] :

Provided that where a deduction is claimed and allowed under this clause with reference to the cost of units, the cost of such units shall not be taken into account for the purposes of sections 54EA and 54EB :

Provided further that this clause shall apply if the amount of subscription to such units is subscribed only in the eligible issue of capital of any company.

Explanation.—For the purposes of this clause "eligible issue of capital" means an issue referred to in clause (*i*) of the *Explanation* to clause (*xvi*) of sub-section (2) of section 88.]

[86][(2A) The provisions of sub-section (2) shall apply only to so much of any premium or other payment made on an insurance policy other than a contract for a deferred annuity as is not in excess of twenty per cent of the actual capital sum assured.

Explanation.—In calculating any such actual capital sum, no account shall be taken—

(Contd. from p. 1.517)

(*i*) "eligible issue of capital" means an issue made by a public company formed and registered in India or a public financial institution and the entire proceeds of the issue is utilised wholly and exclusively either for the purposes of developing, maintaining and operating an infrastructure facility or for generating, or for generating and distributing, power or for providing telecommunication services whether basic or cellular ;

(*ii*) "infrastructure facility" shall have the meaning assigned to it in the *Explanation* to sub-section (4) of section 80-IA;

(*iii*) "public company" shall have the meaning assigned to it in section 3 of the Companies Act, 1956 (1 of 1956);

(*iv*) "public financial institution" shall have the meaning assigned to it in section 4A of the Companies Act, 1956 (1 of 1956);'

83. Clause (*iv*) of section 3(1) of the Companies Act, 1956, defines "public company". For text of section 3, *see* **Appendix**.

84. For text of section 4A of the Companies Act, 1956, *see* **Appendix**.

85. *See* rule 20A and Form No. 59A.

86. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

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(*i*) of the value of any premiums agreed to be returned, or

(*ii*) of any benefit by way of bonus or otherwise over and above the sum actually assured, which is to be, or, may be, received under the policy by any person.]

[87][(3) The sums referred to in sub-section (2) shall be paid or deposited at any time during the previous year, and the assessee, being an individual or a Hindu undivided family, shall be entitled to a deduction under sub-section (1) on so much of the aggregate of such sums paid or deposited as does not exceed the total income of the assessee, chargeable to tax during the relevant previous year.]

(4) The persons referred to in sub-section (2) shall be the following, namely :—

[88][(*a*) for the purposes of clauses (*i*), (*v*), (*xii*) and (*xiii*) of that sub-section,—

(*i*) in the case of an individual, the individual, the wife or husband and any child of such individual, and

(*ii*) in the case of a Hindu undivided family, any member thereof;]

(*b*) for the purposes of clause (*ii*) of that sub-section,—

(*i*) in the case of an individual, the individual, the wife or husband and any child of such individual, and

(*ii*) [89][***]

(*c*) for the purposes of [90][clause (*viii*)] of that sub-section,—

(*i*) in the case of an individual, such individual or a minor of whom he is the guardian;

(*ii*) in the case of a Hindu undivided family, any member of the family;

(*iii*) [91][***]

[92][(*d*) for the purpose of clause (*xivb*) of that sub-section, in the case of an individual, any two children of such individual.]

[93][(5) Where the aggregate of any sums specified in clause (*i*) to clause (*xvii*) of sub-section (2) exceeds an amount of one hundred thousand rupees, a deduction under sub-section (1) shall be allowed with reference to so much of the aggregate as does not exceed an amount of one hundred thousand rupees:

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87. Inserted by the Finance Act, 2002, w.e.f. 1-4-2003. Earlier existing sub-section (3) was omitted by the Finance Act, 1995, w.e.f. 1-4-1996.

88. Substituted by the Finance Act, 1994, w.r.e.f. 1-4-1991.

89. Omitted, *ibid.*

90. Substituted for "clauses (*v*) and (*viii*)", *ibid.*

91. Omitted by the Finance Act, 1994, w.r.e.f. 1-4-1991.

92. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004. Earlier clause (*d*) was omitted by the Finance Act, 1994, w.r.e.f. 1-4-1991.

93. Substituted by the Finance Act, 2002, w.e.f. 1-4-2003. Prior to its substitution, sub-section (5), as amended by the Finance Act, 2000, w.e.f. 1-4-2001, read as under :

"(5) Where the aggregate of any sums specified in clause (*xv*) of sub-section (2) exceeds an amount of twenty thousand rupees, a deduction under sub-section (1) shall be allowed with reference to so much of the aggregate as does not exceed an amount of twenty thousand rupees."

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Provided that where the aggregate of any sums specified in clause (*i*) to clause (*xv*) of sub-section (2) exceeds an amount of seventy thousand rupees, a deduction under sub-section (1) in respect of such sums shall be allowed with reference to so much of the aggregate as does not exceed an amount of seventy thousand rupees:

Provided further that where the aggregate of any sums specified in clause (*xv*) of sub-section (2) exceeds an amount of twenty thousand rupees, a deduction under sub-section (1) in respect of such sums shall be allowed with reference to so much of the aggregate as does not exceed an amount of twenty thousand rupees:

[94][**Provided also** that where the aggregate of any sum specified in clause (*xivb*) of sub-section (2) exceeds an amount of twelve thousand rupees in respect of a child, a deduction under sub-section (1) in respect of such sum shall be allowed with reference to so much of the aggregate as does not exceed an amount of twelve thousand rupees in respect of such child.]

(5A) [95][*Omitted by the Finance Act, 2002, w.e.f. 1-4-2003.*]

(6) [96][*Omitted by the Finance Act, 2002, w.e.f. 1-4-2003.*]

(7) Where, in any previous year, an assessee—

(*i*) terminates his contract of insurance referred to in clause (*i*) of sub-section (2), by notice to that effect or where the contract ceases to be in force by reason of failure to pay any premium, by not reviving [97][contract of insurance,—

(*a*) in case of any single premium policy, within two years after the date of commencement of insurance; or

(*b*) in any other case, before premiums have been paid for two years; or]

---

94. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

95. Prior to its omission, sub-section (5A), as inserted by the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997, read as under :

'(5A) Where the aggregate of any sums specified in clause (*i*) to clause (*xv*) of sub-section (2) exceeds an amount of sixty thousand rupees, a deduction under sub-section (1) shall be allowed with reference to so much of the aggregate as does not exceed an amount of sixty thousand rupees :

Provided that, in the case of an individual referred to in the proviso to sub-section (1), the provisions of this sub-section shall have effect as if for the words "sixty thousand rupees", the words "seventy thousand rupees" had been substituted.'

96. Prior to its omission, sub-section (6), as amended by the Finance Act, 1992, w.e.f. 1-4-1993, Finance (No. 2) Act, 1996, w.e.f. 1-4-1997 and Finance Act, 2000, w.e.f. 1-4-2001, read as under :

"(6) The deduction from the amount of income-tax under sub-section (1) shall not exceed—

(*i*) in the case of an individual, whose income, derived from the exercise of his profession as an author, playwright, artist, musician, actor or sportsman (including an athlete), is twenty-five per cent or more of his total income, seventeen thousand five hundred rupees;

(*ii*) in any other case, sixteen thousand rupees."

97. Substituted for "contract of insurance, before premiums have been paid for two years; or" by the Finance Act, 1995, w.e.f. 1-4-1996.

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(*ii*) terminates his participation in any unit-linked insurance plan referred to in clause (*xii*) or clause (*xiii*) of sub-section (2), by notice to that effect or where he ceases to participate by reason of failure to pay any contribution, by not reviving his participation, before contributions in respect of such participation have been paid for five years; or

(*iii*) transfers the house property referred to in clause (*xv*) of sub-section (2) before the expiry of five years from the end of the financial year in which possession of such property is obtained by him, or receives back, whether by way of refund or otherwise, any sum specified in that clause,

then,—

(*a*) no deduction shall be allowed to the assessee under sub-section (1) with reference to any of the sums, referred to in clauses (*i*), (*xii*), (*xiii*) and (*xv*) of sub-section (2), paid in such previous year; and

(*b*) the aggregate amount of the deductions of income-tax so allowed in respect of the previous year or years preceding such previous year, shall be deemed to be tax payable by the assessee in the assessment year relevant to such previous year and shall be added to the tax on the total income of the assessee with which he is chargeable for such assessment year.

[98][(7A) If any equity shares or debentures, 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 three years from the date of their acquisition, the aggregate amount of the deductions of income-tax so allowed in respect of such equity shares or debentures in the previous year or years preceding the previous year in which such sale or transfer has taken place shall be deemed to be tax payable by the assessee for the assessment year relevant to such previous year and shall be added to the amount of income-tax on the total income of the assessee with which he is chargeable for such assessment year.

Explanation.—A person shall be treated as having acquired any shares or debentures on the date on which his name is entered in relation to those shares or debentures in the register of members or of debenture-holders, as the case may be, of the public company.]

(8) In this section,—

(*i*) "contribution" to any fund shall not include any sums in repayment of loan;

(*ii*) "insurance" shall include—

(*a*) a policy of insurance on the life of an individual or the spouse or the child of such individual or a member of a Hindu undivided family securing the payment of specified sum on the stipulated date of maturity, if such person is alive on such date notwithstanding that the policy of insurance provides only for the return

98. Inserted by the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997.

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of premiums paid (with or without any interest thereon) in the event of such person dying before the said stipulated date;

(*b*) a policy of insurance effected by an individual or a member of a Hindu undivided family for the benefit of a minor with the object of enabling the minor, after he has attained majority to secure insurance on his own life by adopting the policy and on his being alive on a date (after such adoption) specified in the policy in this behalf;

(*iii*) "Life Insurance Corporation" means the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (31 of 1956);

(*iv*) "public company"[99] shall have the same meaning as in section 3 of the Companies Act, 1956 (1 of 1956);

(*v*) "security" means a Government security[1] as defined in clause (*2*) of section 2 of the Public Debt Act, 1944 (18 of 1944);

(*vi*) "transfer" shall be deemed to include also the transactions referred to in clause (*f*) of section 269UA.

[2][(9) No deduction from the amount of income-tax shall be allowed under this section to an assessee, being an individual or a Hindu undivided family for the assessment year beginning on the 1st day of April, 2006 and subsequent years.]

Rebate in respect of investment in certain new shares or units.

88A. [3][*Omitted by the Finance (No. 2) Act, 1996, w.r.e.f. 1-4-1994.*]

Rebate of income-tax in case of individuals of sixty-five years or above.

88B. [4][*Omitted by the Finance Act, 2005, w.e.f. 1-4-2006.*]

Rebate of income-tax in case of women below sixty-five years.

88C. [5][*Omitted by the Finance Act, 2005, w.e.f. 1-4-2006.*]

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99. Clause (*iv*) of section 3(1) of the Companies Act, 1956, defines "public company". For text of section 3, *see* **Appendix**.

1. For definition of "Government security", *see* footnote 12 on p. 1.488 *ante*.

2. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

3. Prior to its omission, section 88A was amended by the Finance Act, 1990, w.e.f. 1-4-1991 and Finance Act, 1994, w.r.e.f. 1-4-1991.

4. Prior to its omission, section 88B, as inserted by the Finance Act, 1992, w.e.f. 1-4-1993 and later on amended by the Finance Act, 1993, w.e.f. 1-4-1994, Finance Act, 1994, w.e.f. 1-4-1995 and Finance (No. 2) Act, 1996, w.e.f. 1-4-1997, substituted by the Finance Act, 1997, w.e.f. 1-4-1998 and further amended by the Finance Act, 2000, w.e.f. 1-4-2001 and Finance Act, 2003, w.e.f. 1-4-2004, read as under :

"88B. *Rebate of income-tax in case of individuals of sixty-five years or above.*—An assessee, being an individual resident in India, who is of the age of sixty-five years or more at any time during the previous year shall be entitled to a deduction from the amount of income-tax (as computed before allowing the deductions under this Chapter) on his total income, with which he is chargeable for any assessment year, of an amount equal to hundred per cent of such income-tax or an amount of twenty thousand rupees, whichever is less."

5. Prior to its omission, section 88C, as inserted by the Finance Act, 2000, w.e.f. 1-4-2001, read as under :

(Contd. on p. 1.523)

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Rebate of income-tax in case of certain individuals.

88D. [6][*Omitted by the Finance Act, 2005, w.e.f. 1-4-2006.*]

[7][**Rebate in respect of securities transaction tax.**

88E. (1) Where the total income of an assessee in a previous year includes any income, chargeable under the head "Profits and gains of business or profession", arising from taxable securities transactions, he shall be entitled to a deduction, from the amount of income-tax on such income arising from such transactions, computed in the manner provided in sub-section (2), of an amount equal to the securities transaction tax paid by him in respect of the taxable securities transactions entered into in the course of his business during that previous year:

Provided that no deduction under this sub-section shall be allowed unless the assessee furnishes along with the return of income, evidence of payment of securities transaction tax in the prescribed form[8]:

Provided further that the amount of deduction under this sub-section shall not exceed the amount of income-tax on such income computed in the manner provided in sub-section (2).

(2) For the purposes of sub-section (1), the amount of income-tax on the income arising from the taxable securities transactions, referred to in that sub-section, shall be equal to the amount calculated by applying the average rate of income-tax on such income.

(Contd. from p. 1.522)

"88C. *Rebate of income-tax in case of women below sixty-five years.*—An assessee,—

(*a*) being a woman resident in India; and

(*b*) below the age of sixty-five years, at any time during the previous year,

shall be entitled to a deduction from the amount of income-tax (as computed before allowing the deductions under this Chapter) on her total income, with which she is chargeable for any assessment year, of an amount equal to hundred per cent of such income-tax or an amount of five thousand rupees, whichever is less."

6. Prior to its omission, section 88D, as inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005, read as under :

"88D. *Rebate of income-tax in case of certain individuals.*—An assessee, being an individual resident in India,—

(*a*) whose total income does not exceed one hundred thousand rupees, shall be entitled to a deduction from the amount of income-tax (as computed before allowing the deductions under this Chapter) on his total income with which he is chargeable for any assessment year, of an amount equal to hundred per cent of such income-tax;

(*b*) whose total income exceeds one hundred thousand rupees and the income-tax payable on such total income (as computed before allowing the deductions under this Chapter) exceeds the amount by which such total income is in excess of one hundred thousand rupees, shall be entitled to a deduction from the amount of income-tax on his total income, of an amount equal to the amount by which the income-tax payable on such total income is in excess of the amount by which the total income exceeds one hundred thousand rupees."

7. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005.

8. *See* rule 20AB and Form Nos. 10DB & 10DC. Rule 12 provides that the return of income shall not be accompanied by any document or copy of any account or form or report of audit required to be attached with return of income under any of the provisions of the Act.

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[9][(3) No deduction under this section shall be allowed in, or after, the assessment year beginning on the 1st day of April, 2009.]

Explanation.—For the purposes of this section, the expressions, "taxable securities transaction" and "securities transaction tax" shall have the same meanings respectively assigned to them under Chapter VII of the Finance (No. 2) Act, 2004.]

B.—Relief for income-tax]

[10][**Relief when salary, etc., is paid in arrears or in advance.**

89. Where an assessee is in receipt of a sum in the nature of salary, being paid in arrears or in advance or is in receipt, in any one financial year, of salary for more than twelve months or a payment which under the provisions of clause (*3*) of section 17 is a profit in lieu of salary, or is in receipt of a sum in the nature of family pension as defined in the *Explanation* to clause (*iia*) of section 57, being paid in arrears, due to which his total income is assessed at a rate higher than that at which it would otherwise have been assessed, the Assessing Officer shall, on an application made to him in this behalf, grant such relief as may be prescribed[11]:]

[12][**Provided** *that no such relief shall be granted in respect of any amount received or receivable by an assessee on his voluntary retirement or termination of his service, in accordance with any scheme or schemes of voluntary retirement or in the case of a public sector company referred to in sub-clause (*i*) of clause (*10C*) of section 10, a scheme of voluntary separation, if an exemption in respect of any amount received or receivable on such voluntary retirement or termination of his service or voluntary separation has been claimed by the assessee under clause (*10C*) of section 10 in respect of such, or any other, assessment year*.]

Tax relief in relation to export turnover.

89A. [*Omitted by the Finance Act, 1983, w.e.f. 1-4-1983. The provisions of this section were later substituted by scheme contained in section 80HHC, inserted by the Finance Act, 1983, w.e.f. 1-4-1983. Originally section 89A was inserted by the Finance Act, 1982, w.e.f. 1-6-1982.*]

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9. Inserted by the Finance Act, 2008, w.e.f. 1-4-2008.

10. Substituted by the Finance Act, 2002, w.r.e.f. 1-4-1996. Prior to its substitution, section 89 was amended by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971, the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988 and the Finance Act, 1988, w.e.f. 1-4-1989.

11. *See* rule 21A for rules for computation of relief. *See* rule 21AA and Form No. 10E for prescribed particulars for claiming relief under section 89.
See also Circular No. 331, dated 22-3-1982 and Circular No. 431, dated 12-9-1985. For details, *see* Taxmann's Master Guide to Income-tax Act.
For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

12. Inserted by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2010**.

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CHAPTER IX

DOUBLE TAXATION RELIEF

[13]**[Agreement with foreign countries or specified territories.**

[14]**90.** (1) The Central Government may enter into an agreement with the Government of any country outside India or specified territory outside India,—

(*a*) for the granting of relief in respect of—

(*i*) income on which have been paid both income-tax under this Act and income-tax in that country or specified territory, as the case may be, or

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13. Substituted by the Finance (No. 2) Act, 2009, w.e.f. 1-10-2009. Prior to its substitution, section 90, as amended by the Finance Act, 1972, w.e.f. 1-4-1972, Finance (No. 2) Act, 1991, w.r.e.f. 1-4-1972, Finance Act, 2001, w.r.e.f. 1-4-1962, Finance Act, 2003, w.e.f. 1-4-2004 and Finance (No. 2) Act, 2004, w.r.e.f. 1-4-1962 read as under :

"90. *Agreement with foreign countries.*—(1) The Central Government may enter into an agreement with the Government of any country outside India—

(*a*) for the granting of relief in respect of—

(*i*) income on which have been paid both income-tax under this Act and income-tax in that country; or

(*ii*) income-tax chargeable under this Act and under the corresponding law in force in that country to promote mutual economic relations, trade and investment, or

(*b*) for the avoidance of double taxation of income under this Act and under the corresponding law in force in that country, or

(*c*) for exchange of information for the prevention of evasion or avoidance of income-tax chargeable under this Act or under the corresponding law in force in that country, or investigation of cases of such evasion or avoidance, or

(*d*) for recovery of income-tax under this Act and under the corresponding law in force in that country,

and may, by notification in the Official Gazette, make such provisions as may be necessary for implementing the agreement.

(2) Where the Central Government has entered into an agreement with the Government of any country outside India under sub-section (1) for granting relief of tax, or as the case may be, avoidance of double taxation, then, in relation to the assessee to whom such agreement applies, the provisions of this Act shall apply to the extent they are more beneficial to that assessee.

(3) Any term used but not defined in this Act or in the agreement referred to in sub-section (1) shall, unless the context otherwise requires, and is not inconsistent with the provisions of this Act or the agreement, have the same meaning as assigned to it in the notification issued by the Central Government in the Official Gazette in this behalf.

Explanation.—For the removal of doubts, it is hereby declared that the charge of tax in respect of a foreign company at a rate higher than the rate at which a domestic company is chargeable, shall not be regarded as less favourable charge or levy of tax in respect of such foreign company."

14. For notified agreements for avoidance of double taxation, refer Taxmann's Direct Taxes Circulars and Taxmann's Yearly Tax Digest & Referencer.

See also Circular No. 333, dated 2-4-1982, Circular No. 638, dated 28-10-1992, Circular No. 659, dated 8-9-1993, Circular No. 682, dated 30-3-1994, Circular No. 789, dated 13-4-2000, Circular No. 1/2003, dated 10-2-2003, Instruction No. 3/2004, dated 19-3-2004, Instruction No. 10/2007, dated 23-10-2007, Instruction No. 7/2008, dated 24-6-2008 and Notification No. 2123(E), dated 28-8-2008. For details, *see* Taxmann's Master Guide to Income-tax Act.

For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

See also rules 44G & 44H & Form No. 34F.

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(*ii*) income-tax chargeable under this Act and under the corresponding law in force in that country or specified territory, as the case may be, to promote mutual economic relations, trade and investment, or

(*b*) for the avoidance of double taxation of income under this Act and under the corresponding law in force in that country or specified territory, as the case may be, or

(*c*) for exchange of information for the prevention of evasion or avoidance of income-tax chargeable under this Act or under the corresponding law in force in that country or specified territory, as the case may be, or investigation of cases of such evasion or avoidance, or

(*d*) for recovery of income-tax under this Act and under the corresponding law in force in that country or specified territory, as the case may be,

and may, by notification in the Official Gazette, make such provisions as may be necessary for implementing the agreement.

(2) Where the Central Government has entered into an agreement with the Government of any country outside India or specified territory outside India, as the case may be, under sub-section (1) for granting relief of tax, or as the case may be, avoidance of double taxation, then, in relation to the assessee to whom such agreement applies, the provisions of this Act shall apply to the extent they are more beneficial to that assessee.

(3) Any term used but not defined in this Act or in the agreement referred to in sub-section (1) shall, unless the context otherwise requires, and is not inconsistent with the provisions of this Act or the agreement, have the same meaning as assigned to it in the notification issued by the Central Government in the Official Gazette in this behalf.

Explanation 1.—For the removal of doubts, it is hereby declared that the charge of tax in respect of a foreign company at a rate higher than the rate at which a domestic company is chargeable, shall not be regarded as less favourable charge or levy of tax in respect of such foreign company.

Explanation 2.—For the purposes of this section, "specified territory" means any area outside India which may be notified[14a] as such by the Central Government.]

[15][**Adoption by Central Government of agreement between specified associations for double taxation relief.**

90A. (1) Any specified association in India may enter into an agreement with any specified association in the specified territory outside India and the Central

14a. For specified territories, *see* Taxmann's Master Guide to Income-tax Act.

15. Inserted by the Finance Act, 2006, w.e.f. 1-6-2006.

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Government may, by notification in the Official Gazette, make such provisions as may be necessary for adopting and implementing such agreement—

(*a*) for the granting of relief in respect of—

(*i*) income on which have been paid both income-tax under this Act and income-tax in any specified territory outside India; or

(*ii*) income-tax chargeable under this Act and under the corresponding law in force in that specified territory outside India to promote mutual economic relations, trade and investment, or

(*b*) for the avoidance of double taxation of income under this Act and under the corresponding law in force in that specified territory outside India, or

(*c*) for exchange of information for the prevention of evasion or avoidance of income-tax chargeable under this Act or under the corresponding law in force in that specified territory outside India, or investigation of cases of such evasion or avoidance, or

(*d*) for recovery of income-tax under this Act and under the corresponding law in force in that specified territory outside India.

(2) Where a specified association in India has entered into an agreement with a specified association of any specified territory outside India under sub-section (1) and such agreement has been notified under that sub-section, for granting relief of tax, or as the case may be, avoidance of double taxation, then, in relation to the assessee to whom such agreement applies, the provisions of this Act shall apply to the extent they are more beneficial to that assessee.

(3) Any term used but not defined in this Act or in the agreement referred to in sub-section (1) shall, unless the context otherwise requires, and is not inconsistent with the provisions of this Act or the agreement, have the same meaning as assigned to it in the notification issued by the Central Government in the Official Gazette[16] in this behalf.

Explanation 1.—For the removal of doubts, it is hereby declared that the charge of tax in respect of a company incorporated in the specified territory outside India at a rate higher than the rate at which a domestic company is chargeable, shall not be regarded as less favourable charge or levy of tax in respect of such company.

Explanation 2.—For the purposes of this section, the expressions—

(*a*) "specified association" means any institution, association or body, whether incorporated or not, functioning under any law for the time being in force in India or the laws of the specified territory outside India and which may be notified[16] as such by the Central Government for the purposes of this section;

(*b*) "specified territory" means any area outside India which may be notified[16] as such by the Central Government for the purposes of this section.]

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16. For relevant notifications, *see* Taxmann's Master Guide to Income-tax Act.

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Countries with which no agreement exists.

[17]**91.** (1) If any person who is resident in India in any previous year proves that, in respect of his income which accrued or arose during that previous year outside India (and which is not deemed to accrue or arise in India), he has paid in any country with which there is no agreement under section 90 for the relief or avoidance of double taxation, income-tax, by deduction or otherwise, under the law in force in that country, he shall be entitled to the deduction from the Indian income-tax payable by him of a sum calculated on such doubly taxed income[18] at the Indian rate of tax or the rate of tax of the said country, whichever is the lower, or at the Indian rate of tax if both the rates are equal.

(2) If any person who is resident in India in any previous year proves that in respect of his income which accrued or arose to him during that previous year in Pakistan he has paid in that country, by deduction or otherwise, tax payable to the Government under any law for the time being in force in that country relating to taxation of agricultural income, he shall be entitled to a deduction from the Indian income-tax payable by him—

(*a*) of the amount of the tax paid in Pakistan under any law aforesaid on such income which is liable to tax under this Act also; or

(*b*) of a sum calculated on that income at the Indian rate of tax;

whichever is less.

(3) If any non-resident person is assessed on his share in the income of a registered firm assessed as resident in India in any previous year and such share includes any income accruing or arising outside India during that previous year (and which is not deemed to accrue or arise in India) in a country with which there is no agreement under section 90 for the relief or avoidance of double taxation and he proves that he has paid income-tax by deduction or otherwise under the law in force in that country in respect of the income so included he shall be entitled to a deduction from the Indian income-tax payable by him of a sum calculated on such doubly taxed income so included at the Indian rate of tax or the rate of tax of the said country, whichever is the lower, or at the Indian rate of tax if both the rates are equal.

Explanation.—In this section,—

(*i*) the expression "Indian income-tax" means income-tax [19][***] charged in accordance with the provisions of this Act;

(*ii*) the expression "Indian rate of tax" means the rate determined by dividing the amount of Indian income-tax after deduction of any relief due under the provisions of this Act but before deduction of any relief due under this [20][Chapter], by the total income;

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17. *See* also Circular No. 11/68/63-TPL, dated 13-12-1963 and Instruction No. 992, dated 29-7-1976. For details, *see* Taxmann's Master Guide to Income-tax Act.
For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

18. For the meaning of the expression "such doubly taxed income", *see* Taxmann's Direct Taxes Manual, Vol. 3.

19. "and super-tax" omitted by the Finance Act, 1965, w.e.f. 1-4-1965.

20. Substituted for "section" by the Finance Act, 1964, w.e.f. 1-4-1964.

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(*iii*) the expression "rate of tax of the said country" means income-tax and super-tax actually paid in the said country in accordance with the corresponding laws in force in the said country after deduction of all relief due, but before deduction of any relief due in the said country in respect of double taxation, divided by the whole amount of the income as assessed in the said country;

(*iv*) the expression "income-tax" in relation to any country includes any excess profits tax or business profits tax charged on the profits by the Government of any part of that country or a local authority in that country.

CHAPTER X

SPECIAL PROVISIONS RELATING TO AVOIDANCE OF TAX

[21][[22]**Computation of income from international transaction having regard to arm's length price.**

92. (1) Any income arising from an international transaction shall be computed having regard to the arm's length price.

Explanation.—For the removal of doubts, it is hereby clarified that the allowance for any expense or interest arising from an international transaction shall also be determined having regard to the arm's length price.

(2) Where in an international transaction, two or more associated enterprises enter into a mutual agreement or arrangement for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises, the cost or expense allocated or apportioned to, or, as the case may be, contributed by, any such enterprise shall be determined having regard to the arm's length price of such benefit, service or facility, as the case may be.

(3) The provisions of this section shall not apply in a case where the computation of income under sub-section (1) or the determination of the allowance for any

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21. Sections 92 to 92F substituted for section 92 by the Finance Act, 2001, w.e.f. 1-4-2002. *See* also Circular No. 12/2001, dated 23-8-2001, Instruction No. 3, dated 20-5-2003 and Instruction No. 8/2003, dated 11-8-2003. For details, *see* Taxmann's Master Guide to Income-tax Act.

22. Substituted by the Finance Act, 2002, w.e.f. 1-4-2002. Prior to its substitution, section 92, as substituted by the Finance Act, 2001, w.e.f. 1-4-2002, read as under :

"92. *Computation of income from international transaction having regard to arm's length price.*—(1) Any income arising from an international transaction shall be computed having regard to the arm's length price.

(2) In computing income under sub-section (1), the allowance for any expense or interest shall also be determined having regard to the arm's length price.

(3) Where in an international transaction, two or more associated enterprises enter into a mutual agreement or arrangement for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises, the cost or expense allocated or apportioned to, or, as the case may be, contributed by, any such enterprise shall be determined having regard to the arm's length price of such benefit, service or facility, as the case may be."

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expense or interest under that sub-section, or the determination of any cost or expense allocated or apportioned, or, as the case may be, contributed under sub-section (2), has the effect of reducing the income chargeable to tax or increasing the loss, as the case may be, computed on the basis of entries made in the books of account in respect of the previous year in which the international transaction was entered into.]

Meaning of associated enterprise.

92A. (1) For the purposes of this section and sections 92, 92B, 92C, 92D, 92E and 92F, "associated enterprise", in relation to another enterprise, means an enterprise—

(*a*) which participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise; or

(*b*) in respect of which one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the same persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise.

(2) [23][For the purposes of sub-section (1), two enterprises shall be deemed to be associated enterprises if, at any time during the previous year,—]

(*a*) one enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in the other enterprise; or

(*b*) any person or enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in each of such enterprises; or

(*c*) a loan advanced by one enterprise to the other enterprise constitutes not less than fifty-one per cent of the book value of the total assets of the other enterprise; or

(*d*) one enterprise guarantees not less than ten per cent of the total borrowings of the other enterprise; or

(*e*) more than half of the board of directors or members of the governing board, or one or more executive directors or executive members of the governing board of one enterprise, are appointed by the other enterprise; or

(*f*) more than half of the directors or members of the governing board, or one or more of the executive directors or members of the governing board, of each of the two enterprises are appointed by the same person or persons; or

(*g*) the manufacture or processing of goods or articles or business carried out by one enterprise is wholly dependent on the use of know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature, or any data,

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23. Substituted for "Two enterprises shall be deemed to be associated enterprises if, at any time during the previous year,—" by the Finance Act, 2002, w.e.f. 1-4-2002.

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documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has exclusive rights; or

(*h*) ninety per cent or more of the raw materials and consumables required for the manufacture or processing of goods or articles carried out by one enterprise, are supplied by the other enterprise, or by persons specified by the other enterprise, and the prices and other conditions relating to the supply are influenced by such other enterprise; or

(*i*) the goods or articles manufactured or processed by one enterprise, are sold to the other enterprise or to persons specified by the other enterprise, and the prices and other conditions relating thereto are influenced by such other enterprise; or

(*j*) where one enterprise is controlled by an individual, the other enterprise is also controlled by such individual or his relative or jointly by such individual and relative of such individual; or

(*k*) where one enterprise is controlled by a Hindu undivided family, the other enterprise is controlled by a member of such Hindu undivided family or by a relative of a member of such Hindu undivided family or jointly by such member and his relative; or

(*l*) where one enterprise is a firm, association of persons or body of individuals, the other enterprise holds not less than ten per cent interest in such firm, association of persons or body of individuals; or

(*m*) there exists between the two enterprises, any relationship of mutual interest, as may be prescribed.

Meaning of international transaction.

92B. (1) For the purposes of this section and sections 92, 92C, 92D and 92E, "international transaction" means a transaction between two or more associated enterprises, either or both of whom are non-residents, in the nature of purchase, sale or lease of tangible or intangible property, or provision of services, or lending or borrowing money, or any other transaction having a bearing on the profits, income, losses or assets of such enterprises, and shall include a mutual agreement or arrangement between two or more associated enterprises for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises.

(2) A transaction entered into by an enterprise with a person other than an associated enterprise shall, for the purposes of sub-section (1), be deemed to be a transaction entered into between two associated enterprises, if there exists a prior agreement in relation to the relevant transaction between such other person and the associated enterprise, or the terms of the relevant transaction are determined in substance between such other person and the associated enterprise.

Computation of arm's length price.

92C. (1) The arm's length price in relation to an international transaction shall be determined by any of the following methods, being the most appropriate method, having regard to the nature of transaction or class of transaction or class

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of associated persons or functions performed by such persons or such other relevant factors as the Board may prescribe[24], namely :—

(*a*) comparable uncontrolled price method;

(*b*) resale price method;

(*c*) cost plus method;

(*d*) profit split method;

(*e*) transactional net margin method;

(*f*) such other method as may be prescribed[24] by the Board.

(2) The most appropriate method referred to in sub-section (1) shall be applied, for determination of arm's length price, in the manner as may be prescribed[25] :

[26][**Provided** that where more than one price is determined by the most appropriate method, the arm's length price shall be taken to be the arithmetical mean of such prices:

Provided further that if the variation between the arm's length price so determined and price at which the international transaction has actually been undertaken does not exceed five per cent of the latter, the price at which the international transaction has actually been undertaken shall be deemed to be the arm's length price.]

(3) Where during the course of any proceeding for the assessment of income, the Assessing Officer is, on the basis of material or information or document in his possession, of the opinion that—

(*a*) the price charged or paid in an international transaction has not been determined in accordance with sub-sections (1) and (2); or

(*b*) any information and document relating to an international transaction have not been kept and maintained by the assessee in accordance with the provisions contained in sub-section (1) of section 92D and the rules made in this behalf; or

(*c*) the information or data used in computation of the arm's length price is not reliable or correct; or

(*d*) the assessee has failed to furnish, within the specified time, any information or document which he was required to furnish by a notice issued under sub-section (3) of section 92D,

the Assessing Officer may proceed to determine the arm's length price in relation to the said international transaction in accordance with sub-sections (1) and (2), on the basis of such material or information or document available with him:

Provided that an opportunity shall be given by the Assessing Officer by serving a notice calling upon the assessee to show cause, on a date and time to be specified in the notice, why the arm's length price should not be so determined

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24. *See* rule 10B.

25. *See* rule 10C.

26. Substituted by the Finance (No. 2) Act, 2009, w.e.f. 1-10-2009. Prior to its substitution, proviso, as substituted by the Finance Act, 2002, w.e.f. 1-4-2002, read as under :

"**Provided** that where more than one price is determined by the most appropriate method, the arm's length price shall be taken to be the arithmetical mean of such prices, or, at the option of the assessee, a price which may vary from the arithmetical mean by an amount not exceeding five per cent of such arithmetical mean."

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on the basis of material or information or document in the possession of the Assessing Officer.

(4) Where an arm's length price is determined by the Assessing Officer under sub-section (3), the Assessing Officer may compute the total income of the assessee having regard to the arm's length price so determined :

Provided that no deduction under section 10A[27][or section 10AA] or section 10B or under Chapter VI-A shall be allowed in respect of the amount of income by which the total income of the assessee is enhanced after computation of income under this sub-section :

Provided further that where the total income of an associated enterprise is computed under this sub-section on determination of the arm's length price paid to another associated enterprise from which tax has been deducted [28][or was deductible] under the provisions of Chapter XVIIB, the income of the other associated enterprise shall not be recomputed by reason of such determination of arm's length price in the case of the first mentioned enterprise.

[29][**Reference to Transfer Pricing Officer.**

92CA. (1) Where any person, being the assessee, has entered into an international transaction in any previous year, and the Assessing Officer considers it necessary or expedient so to do, he may, with the previous approval of the Commissioner, refer the computation of the arm's length price in relation to the said international transaction under section 92C to the Transfer Pricing Officer.

(2) Where a reference is made under sub-section (1), the Transfer Pricing Officer shall serve a notice on the assessee requiring him to produce or cause to be produced on a date to be specified therein, any evidence on which the assessee may rely in support of the computation made by him of the arm's length price in relation to the international transaction referred to in sub-section (1).

(3) On the date specified in the notice under sub-section (2), or as soon thereafter as may be, after hearing such evidence as the assessee may produce, including any information or documents referred to in sub-section (3) of section 92D and after considering such evidence as the Transfer Pricing Officer may require on any specified points and after taking into account all relevant materials which he has gathered, the Transfer Pricing Officer shall, by order in writing, determine the arm's length price in relation to the international transaction in accordance with sub-section (3) of section 92C and send a copy of his order to the Assessing Officer and to the assessee.

[30][(3A) Where a reference was made under sub-section (1) before the 1st day of June, 2007 but the order under sub-section (3) has not been made by the Transfer Pricing Officer before the said date, or a reference under sub-section (1) is made on or after the 1st day of June, 2007, an order under sub-section (3) may be made at any time before sixty days prior to the date on which the period of limitation referred to in section 153, or as the case may be, in section 153B for making the

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27. Inserted by the Finance Act, 2006, w.e.f. 1-4-2007.

28. Inserted by the Finance Act, 2002, w.e.f. 1-4-2002.

29. Inserted, *ibid.,* w.e.f. 1-6-2002.

30. Inserted by the Finance Act, 2007, w.e.f. 1-6-2007.

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order of assessment or reassessment or recomputation or fresh assessment, as the case may be, expires.]

[31][(4) On receipt of the order under sub-section (3), the Assessing Officer shall proceed to compute the total income of the assessee under sub-section (4) of section 92C in conformity with the arm's length price as so determined by the Transfer Pricing Officer.]

(5) With a view to rectifying any mistake apparent from the record, the Transfer Pricing Officer may amend any order passed by him under sub-section (3), and the provisions of section 154 shall, so far as may be, apply accordingly.

(6) Where any amendment is made by the Transfer Pricing Officer under sub-section (5), he shall send a copy of his order to the Assessing Officer who shall thereafter proceed to amend the order of assessment in conformity with such order of the Transfer Pricing Officer.

(7) The Transfer Pricing Officer may, for the purposes of determining the arm's length price under this section, exercise all or any of the powers specified in clauses (*a*) to (*d*) of sub-section (1) of section 131 or sub-section (6) of section 133.

Explanation.—For the purposes of this section, "Transfer Pricing Officer" means a Joint Commissioner or Deputy Commissioner or Assistant Commissioner authorised by the Board[32] to perform all or any of the functions of an Assessing Officer specified in sections 92C and 92D in respect of any person or class of persons.]

[33]**[Power of Board to make safe harbour rules.**

92CB. (1) The determination of arm's length price under section 92C or section 92CA shall be subject to safe harbour rules.

(2) The Board may, for the purposes of sub-section (1), make rules for safe harbour.

Explanation.—For the purposes of this section, "safe harbour" means circumstances in which the income-tax authorities shall accept the transfer price declared by the assessee.]

Maintenance and keeping of information and document by persons entering into an international transaction.

92D. (1) Every person who has entered into an international transaction shall keep and maintain such information and document in respect thereof, as may be prescribed[34].

(2) Without prejudice to the provisions contained in sub-section (1), the Board may prescribe the period for which the information and document shall be kept and maintained under that sub-section.

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31. Substituted by the Finance Act, 2007, w.e.f. 1-6-2007. Prior to its substitution, sub-section (4) read as under :

"(4) On receipt of the order under sub-section (3), the Assessing Officer shall proceed to compute the total income of the assessee under sub-section (4) of section 92C having regard to the arm's length price determined under sub-section (3) by the Transfer Pricing Officer."

32. For notified subordinate officers, *see* Taxmann's Master Guide to Income-tax Act.

33. Inserted by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-2009.

34. *See* rule 10D.

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(3) The Assessing Officer or the Commissioner (Appeals) may, in the course of any proceeding under this Act, require any person who has entered into an international transaction to furnish any information or document in respect thereof, as may be prescribed under sub-section (1), within a period of thirty days from the date of receipt of a notice issued in this regard :

Provided that the Assessing Officer or the Commissioner (Appeals) may, on an application made by such person, extend the period of thirty days by a further period not exceeding thirty days.

Report from an accountant to be furnished by persons entering into international transaction.

92E. Every person who has entered into an international transaction during a previous year shall obtain a report from an accountant and furnish such report on or before the specified date in the prescribed form duly signed and verified in the prescribed manner by such accountant and setting forth such particulars as may be prescribed[35].

Definitions of certain terms relevant to computation of arm's length price, etc.

92F. In sections 92, 92A, 92B, 92C, 92D and 92E, unless the context otherwise requires,—

(*i*) "accountant" shall have the same meaning as in the *Explanation* below sub-section (2) of section 288;

(*ii*) "arm's length price" means a price which is applied or proposed to be applied in a transaction between persons other than associated enterprises, in uncontrolled conditions;

(*iii*) "enterprise" means a person (including a permanent establishment of such person) who is, or has been, or is proposed to be, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature, or any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has exclusive rights, or the provision of services of any kind,[36][or in carrying out any work in pursuance of a contract,] or in investment, or providing loan or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, whether such activity or business is carried on, directly or through one or more of its units or divisions or subsidiaries, or whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or places;

[36][(*iiia*) "permanent establishment", referred to in clause (*iii*), includes a fixed place of business through which the business of the enterprise is wholly or partly carried on;]

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35. *See* rule 10E and Form 3CEB.

36. Inserted by the Finance Act, 2002, w.e.f. 1-4-2002.

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[37][(*iv*) "specified date" shall have the same meaning as assigned to "due date" in *Explanation 2* below sub-section (1) of section 139;]

(*v*) "transaction" includes an arrangement, understanding or action in concert,—

(*A*) whether or not such arrangement, understanding or action is formal or in writing; or

(*B*) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceeding.]

Avoidance of income-tax by transactions resulting in transfer of income to non-residents.

[38]**93.** (1) Where there is a transfer of assets by virtue or in consequence whereof, either alone or in conjunction with associated operations, any income becomes payable to a non-resident, the following provisions shall apply—

(*a*) where any person has, by means of[39] any such transfer, either alone or in conjunction with associated operations, acquired any rights by virtue of which he has, within the meaning of this section, power to enjoy, whether forthwith or in the future, any income of a non-resident person which, if it were income of the first-mentioned person, would be chargeable to income-tax, that income shall, whether it would or would not have been chargeable to income-tax apart from the provisions of this section, be deemed to be income of the first-mentioned person for all the purposes of this Act;

(*b*) where, whether before or after any such transfer, any such first-mentioned person receives or is entitled to receive any capital sum the payment whereof is in any way connected with the transfer or any associated operations, then any income which, by virtue or in consequence of the transfer, either alone or in conjunction with associated operations, has become the income of a non-resident shall, whether it would or would not have been chargeable to income-tax apart from the provisions of this section, be deemed to be the income of the first-mentioned person for all the purposes of this Act.

Explanation.—The provisions of this sub-section shall apply also in relation to transfers of assets and associated operations carried out before the commencement of this Act.

(2) Where any person has been charged to income-tax on any income deemed to be his under the provisions of this section and that income is subsequently received by him, whether as income or in any other form, it shall not again be deemed to form part of his income for the purposes of this Act.

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37. Substituted by the Finance Act, 2002, w.e.f. 1-4-2002. Prior to its substitution, clause (*iv*) read as under :

'(*iv*) "specified date" means,—

(*a*) where the assessee is a company, the 31st day of October of the relevant assessment year;

(*b*) in any other case, the 31st day of July of the relevant assessment year;'

38. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

39. For the meaning of the terms/expressions "by means of" and "purpose", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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(3) The provisions of this section shall not apply if the first-mentioned person in sub-section (1) shows to the satisfaction of the [40][Assessing] Officer that—

(*a*) neither the transfer nor any associated operation had for its purpose[41] or for one of its purposes the avoidance of liability to taxation; or

(*b*) the transfer and all associated operations were *bona fide* commercial transactions and were not designed for the purpose of avoiding liability to taxation.

Explanation.—For the purposes of this section,—

(*a*) references to assets representing any assets, income or accumulations of income include references to shares in or obligation of any company to which, or obligation of any other person to whom, those assets, that income or those accumulations are or have been transferred;

(*b*) any body corporate incorporated outside India shall be treated as if it were a non-resident;

(*c*) a person shall be deemed to have power to enjoy the income of a non-resident if—

(*i*) the income is in fact so dealt with by any person as to be calculated at some point of time and, whether in the form of income or not, to enure for the benefit of the first-mentioned person in sub-section (1), or

(*ii*) the receipt or accrual of the income operates to increase the value to such first-mentioned person of any assets held by him or for his benefit, or

(*iii*) such first-mentioned person receives or is entitled to receive at any time any benefit provided or to be provided out of that income or out of moneys which are or will be available for the purpose by reason of the effect or successive effects of the associated operations on that income and assets which represent that income, or

(*iv*) such first-mentioned person has power by means of the exercise of any power of appointment or power of revocation or otherwise to obtain for himself, whether with or without the consent of any other person, the beneficial enjoyment of the income, or

(*v*) such first-mentioned person is able, in any manner whatsoever and whether directly or indirectly, to control the application of the income;

(*d*) in determining whether a person has power to enjoy income, regard shall be had to the substantial result and effect of the transfer and any associated operations, and all benefits which may at any time accrue to such person as a result of the transfer and any associated operations shall be taken into account irrespective of the nature or form of the benefits.

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40. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

41. For the meaning of the terms/expressions "by means of" and "purpose", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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(4) (*a*) "Assets" includes property or rights of any kind and "transfer" in relation to rights includes the creation of those rights ;

(*b*) "associated operation", in relation to any transfer, means an operation of any kind effected by any person in relation to—

(*i*) any of the assets transferred, or

(*ii*) any assets representing, whether directly or indirectly, any of the assets transferred, or

(*iii*) the income arising from any such assets, or

(*iv*) any assets representing, whether directly or indirectly, the accumulations of income arising from any such assets ;

(*c*) "benefit" includes a payment of any kind ;

(*d*) "capital sum" means—

(*i*) any sum paid or payable by way of a loan or repayment of a loan ; and

(*ii*) any other sum paid or payable otherwise than as income, being a sum which is not paid or payable for full consideration in money or money's worth.

Avoidance of tax by certain transactions in securities.

[42]**94.** (1) Where the owner of any securities (in this sub-section and in sub-section (2) referred to as "the owner") sells or transfers those securities, and buys back or reacquires the securities, then, if the result of the transaction is that any interest becoming payable in respect of the securities is receivable otherwise than by the owner, the interest payable as aforesaid shall, whether it would or would not have been chargeable to income-tax apart from the provisions of this sub-section, be deemed, for all the purposes of this Act, to be the income of the owner and not to be the income of any other person.

Explanation.—The references in this sub-section to buying back or reacquiring the securities shall be deemed to include references to buying or acquiring similar securities, so, however, that where similar securities are bought or acquired, the owner shall be under no greater liability to income-tax than he would have been under if the original securities had been bought back or reacquired.

(2) Where any person has had at any time during any previous year any beneficial interest in any securities, and the result of any transaction relating to such securities or the income thereof is that, in respect of such securities within such year, either no income is received by him or the income received by him is less than the sum to which the income would have amounted if the income from such securities had accrued from day to day and been apportioned accordingly, then the income from such securities for such year shall be deemed to be the income of such person.

(3) The provisions of sub-section (1) or sub-section (2) shall not apply if the owner, or the person who has had a beneficial interest in the securities, as the case may be, proves to the satisfaction of the [43][Assessing] Officer—

(*a*) that there has been no avoidance of income-tax, or

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42. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

43. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

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(*b*) that the avoidance of income-tax was exceptional and not systematic and that there was not in his case in any of the three preceding years any avoidance of income-tax by a transaction of the nature referred to in sub-section (1) or sub-section (2).

(4) Where any person carrying on a business which consists wholly or partly in dealing in securities, buys or acquires any securities and sells back or retransfers the securities, then, if the result of the transaction is that interest becoming payable in respect of the securities is receivable by him but is not deemed to be his income by reason of the provisions contained in sub-section (1), no account shall be taken of the transaction in computing for any of the purposes of this Act the profits arising from or loss sustained in the business.

(5) Sub-section (4) shall have effect, subject to any necessary modifications, as if references to selling back or retransferring the securities included references to selling or transferring similar securities.

(6) The [44][Assessing] Officer may, by notice in writing, require any person to furnish him within such time as he may direct (not being less than twenty-eight days), in respect of all securities of which such person was the owner or in which he had a beneficial interest at any time during the period specified in the notice, such particulars as he considers necessary for the purposes of this section and for the purpose of discovering whether income-tax has been borne in respect of the interest on all those securities.

[45][(7) Where—

(*a*) any person buys or acquires any securities or unit within a period of three months prior to the record date;

[46][(*b*) such person sells or transfers—

(*i*) such securities within a period of three months after such date; or

(*ii*) such unit within a period of nine months after such date;]

(*c*) the dividend or income on such securities or unit received or receivable by such person is exempt,

then, the loss, if any, arising to him on account of such purchase and sale of securities or unit, to the extent such loss does not exceed the amount of dividend or income received or receivable on such securities or unit, shall be ignored for the purposes of computing his income chargeable to tax.]

[47][(8) Where—

(*a*) any person buys or acquires any units within a period of three months prior to the record date;

(*b*) such person is allotted additional units without any payment on the basis of holding of such units on such date;

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44. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

45. Inserted by the Finance Act, 2001, w.e.f. 1-4-2002.

46. Substituted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005. Prior to its substitution, clause (*b*) read as under :

"(*b*) such person sells or transfers such securities or unit within a period of three months after such date;"

47. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005.

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(*c*) such person sells or transfers all or any of the units referred to in clause (*a*) within a period of nine months after such date, while continuing to hold all or any of the additional units referred to in clause (*b*),

then, the loss, if any, arising to him on account of such purchase and sale of all or any of such units shall be ignored for the purposes of computing his income chargeable to tax and notwithstanding anything contained in any other provision of this Act, the amount of loss so ignored shall be deemed to be the cost of purchase or acquisition of such additional units referred to in clause (*b*) as are held by him on the date of such sale or transfer.]

Explanation.—For the purposes of this section,—

(*a*) "interest" includes a dividend ;

[48][(*aa*) "record date" means such date as may be fixed by—

(*i*) a company for the purposes of entitlement of the holder of the securities to receive dividend; or

(*ii*) a Mutual Fund or the Administrator of the specified undertaking or the specified company as referred to in the *Explanation* to clause (*35*) of section 10, for the purposes of entitlement of the holder of the units to receive income, or additional unit without any consideration, as the case may be;]

(*b*) "securities" includes stocks and shares ;

(*c*) securities shall be deemed to be similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or in the manner in which they can be transferred;

[49][(*d*) "unit" shall have the meaning assigned to it in clause (*b*) of the *Explanation* to section 115AB.]

CHAPTER XI

ADDITIONAL INCOME-TAX ON UNDISTRIBUTED PROFITS

[*Chapter XI omitted by the Finance Act, 1987, w.e.f. 1-4-1988. While sections 95 to 103 were omitted by the Finance Act, 1965, w.e.f. 1-4-1965, sections 104 to 109 were omitted by the Finance Act, 1987, w.e.f. 1-4-1988.*]

Income-tax on undistributed income of certain companies.

104. [50][*Omitted by the Finance Act, 1987, w.e.f. 1-4-1988.*]

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48. Substituted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005. Prior to its substitution, clause (*aa*), as inserted by the Finance Act, 2001, w.e.f. 1-4-2002, read as under :

'(*aa*) "record date" means such date as may be fixed by a company or a Mutual Fund or the Unit Trust of India for the purposes of entitlement of the holder of the securities or the unit-holder, to receive dividend or income, as the case may be;'

49. Inserted by the Finance Act, 2001, w.e.f. 1-4-2002.

50. Omitted section 104 was earlier amended by the Finance Act, 1964, w.e.f. 1-4-1964, the Finance Act, 1965, w.e.f. 1-4-1965, the Finance Act, 1966, w.e.f. 1-4-1966, the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968, the Finance Act, 1973, w.e.f. 1-4-1974, the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976 and the Finance (No. 2) Act, 1977, w.e.f. 1-4-1978.

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Special provisions for certain companies.

105. [51][*Omitted by the Finance Act, 1987, w.e.f. 1-4-1988.*]

Period of limitation for making orders under section 104.

106. [52][*Omitted by the Finance Act, 1987, w.e.f. 1-4-1988.*]

Approval of Inspecting Assistant Commissioner for orders under section 104.

107. [53][*Omitted by the Finance Act, 1987, w.e.f. 1-4-1988.*]

Reduction of minimum distribution in certain cases.

107A. [54][*Omitted by the Finance Act, 1987, w.e.f. 1-4-1988. Original section was inserted by the Finance Act, 1964, w.e.f. 1-4-1964.*]

Savings for company in which public are substantially interested.

108. [*Omitted by the Finance Act, 1987, w.e.f. 1-4-1988.*]

"Distributable income", "investment company" and "statutory percentage" defined.

109. [55][*Omitted by the Finance Act, 1987, w.e.f. 1-4-1988.*]

CHAPTER XII

DETERMINATION OF TAX IN CERTAIN SPECIAL CASES

[56][**Determination of tax where total income includes income on which no tax is payable.**

110. Where there is included in the total income of an assessee any income on which no income-tax is payable under the provisions of this Act, the assessee shall be entitled to a deduction, from the amount of income-tax with which he is chargeable on his total income, of an amount equal to the income-tax calculated at the average rate of income-tax on the amount on which no income-tax is payable.]

Tax on accumulated balance of recognised provident fund.

111. (1) Where the accumulated balance due to an employee participating in a recognised provident fund is included in his total income, owing to the provisions of rule 8 of Part A of the Fourth Schedule not being applicable, the [57][Assessing] Officer shall calculate the total of the various sums of [58][tax] in accordance with the provisions of sub-rule (1) of rule 9 thereof.

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51. Omitted section 105 was earlier amended by the Finance Act, 1973, w.e.f. 1-4-1974.

52. Omitted section 106 was earlier amended by the Finance Act, 1964, w.e.f. 1-4-1964 and substituted by the Finance Act, 1975, w.e.f. 1-4-1975.

53. Omitted section 107 was earlier amended by the Finance Act, 1964, w.e.f. 1-4-1964.

54. Omitted section 107A was earlier amended by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

55. Omitted section 109 was earlier amended by the Finance (No. 2) Act, 1962, w.e.f. 1-4-1962, the Finance Act, 1964, w.e.f. 1-4-1964, the Finance Act, 1965, w.e.f. 1-4-1965, the Finance Act, 1966, w.e.f. 1-4-1966, the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968, the Finance Act, 1968, w.e.f. 1-4-1969, the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976, the Finance (No. 2) Act, 1977, w.e.f. 1-4-1978 and the Finance Act, 1983, w.e.f. 1-4-1984.

56. Substituted by the Finance Act, 1965, w.e.f. 1-4-1965.

57. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

58. Substituted for "income-tax and super tax" by the Finance Act, 1965, w.e.f. 1-4-1965.

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(2) Where the accumulated balance due to an employee participating in a recognised provident fund which is not included in his total income under the provisions of rule 8 of Part A of the Fourth Schedule becomes payable, super-tax shall be calculated in the manner provided in sub-rule (2) of rule 9 thereof.

[59][**Tax on short-term capital gains in certain cases.**

111A. (1) Where the total income of an assessee includes any income chargeable under the head "Capital gains", arising from the transfer of a short-term capital asset, being an equity share in a company or a unit of an equity oriented fund and—

(*a*) the transaction of sale of such equity share or unit is entered into on or after the date on which Chapter VII of the Finance (No. 2) Act, 2004 comes into force; and

(*b*) such transaction is chargeable to securities transaction tax under that Chapter,

the tax payable by the assessee on the total income shall be the aggregate of—

(*i*) the amount of income-tax calculated on such short-term capital gains at the rate of [60][fifteen] per cent; and

(*ii*) the amount of income-tax payable on the balance amount of the total income as if such balance amount were the total income of the assessee:

Provided that in the case of an individual or a Hindu undivided family, being a resident, where the total income as reduced by such short-term capital gains is below the maximum amount which is not chargeable to income-tax, then, such short-term capital gains shall be reduced by the amount by which the total income as so reduced falls short of the maximum amount which is not chargeable to income-tax and the tax on the balance of such short-term capital gains shall be computed at the rate of ten* per cent.

(2) Where the gross total income of an assessee includes any short term capital gains referred to in sub-section (1), the deduction under Chapter VI-A shall be allowed from the gross total income as reduced by such capital gains.

(3) Where the total income of an assessee includes any short-term capital gains referred to in sub-section (1), the rebate under section 88 shall be allowed from the income-tax on the total income as reduced by such capital gains.

Explanation.—For the purposes of this section, the expression "equity oriented fund" shall have the meaning assigned to it in the *Explanation* to clause (*38*) of section 10.]

[61][**Tax on long-term capital gains.**

[62]**112.** (1) Where the total income of an assessee includes any income, arising from the transfer of a long-term capital asset, which is chargeable under

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59. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005.

60. Substituted for "ten" by the Finance Act, 2008, w.e.f. 1-4-2009.

61. Inserted by the Finance Act, 1992, w.e.f. 1-4-1993. Earlier section 112 was omitted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968 and replaced by section 80S. Before its omission, the section was first amended by the Finance Act, 1965, w.e.f. 1-4-1965 and then by the Finance (No. 2) Act, 1965, w.e.f. 11-9-1965.

62. *See* also Circular No. 721, dated 13-9-1995. For details, *see* Taxmann's Master Guide to Income-tax Act.

*Word "fifteen" need be substituted for "ten".

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the head "Capital gains", the tax payable by the assessee on the total income shall be the aggregate of,—

(*a*) in the case of an individual or a Hindu undivided family, [63][being a resident,]—

(*i*) the amount of income-tax payable on the total income as reduced by the amount of such long-term capital gains, had the total income as so reduced been his total income ; and

(*ii*) the amount of income-tax calculated on such long-term capital gains at the rate of twenty per cent :

Provided that where the total income as reduced by such long-term capital gains is below the maximum amount which is not chargeable to income-tax, then, such long-term capital gains shall be reduced by the amount by which the total income as so reduced falls short of the maximum amount which is not chargeable to income-tax and the tax on the balance of such long-term capital gains shall be computed at the rate of twenty per cent ;

(*b*) in the case of a [63][domestic] company,—

(*i*) the amount of income-tax payable on the total income as reduced by the amount of such long-term capital gains, had the total income as so reduced been its total income ; and

(*ii*) the amount of income-tax calculated on such long-term capital gains at the rate of [64][twenty] per cent :

[65][***]

[66][(*c*) in the case of a non-resident (not being a company) or a foreign company,—

(*i*) the amount of income-tax payable on the total income as reduced by the amount of such long-term capital gains, had the total income as so reduced been its total income ; and

(*ii*) the amount of income-tax calculated on such long-term capital gains at the rate of twenty per cent ;]

[67][(*d*)] in any other case [68][of a resident],—

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63. Inserted by the Finance Act, 1994, w.e.f. 1-4-1995.

64. Substituted for "thirty" by the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997. Earlier "thirty" was substituted for "forty" by the Finance Act, 1994, w.e.f. 1-4-1995.

65. Proviso omitted by the Finance Act, 1995, w.e.f. 1-4-1996. Prior to its omission, the proviso, as amended by the Finance Act, 1994, w.e.f. 1-4-1995, read as under :

'**Provided** that in relation to long-term capital gains arising to a venture capital company from the transfer of equity shares of venture capital undertakings, the provisions of sub-clause (*ii*) shall have effect as if for the words "thirty per cent", the words "twenty per cent" had been substituted ;'

66. Inserted by the Finance Act, 1994, w.e.f. 1-4-1995.

67. Relettered, *ibid*.

68. Inserted, *ibid.*

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(*i*) the amount of income-tax payable on the total income as reduced by the amount of long-term capital gains, had the total income as so reduced been its total income ; and

(*ii*) the amount of income-tax calculated on such long-term capital gains at the rate of [69][twenty] per cent.

Explanation.—[70][***]

[71][**Provided** that where the tax payable in respect of any income arising from the transfer of a long-term capital asset, being listed securities [72][or unit] [73][or zero coupon bond], exceeds ten per cent of the amount of capital gains before giving effect to the provisions of the second proviso to section 48, then, such excess shall be ignored for the purpose of computing the tax payable by the assessee.

[74][*Explanation*.—For the purposes of this sub-section,—

(*a*) "listed securities" means the securities—

(*i*) as defined in clause (*h*) of section 2[75] of the Securities Contracts (Regulation) Act, 1956 (32 of 1956) ; and

(*ii*) listed in any recognised stock exchange in India;

(*b*) "unit" shall have the meaning assigned to it in clause (*b*) of *Explanation* to section 115AB.]]

(2) Where the gross total income of an assessee includes any income arising from the transfer of a long-term capital asset, the gross total income shall be reduced by the amount of such income and the deduction under Chapter VI-A shall be allowed as if the gross total income as so reduced were the gross total income of the assessee.

(3) Where the total income of an assessee includes any income arising from the transfer of a long-term capital asset, the total income shall be reduced by the amount of such income and the rebate under section 88 shall be allowed from the income-tax on the total income as so reduced.

Tax on interest on National Savings Certificates (First Issue).

112A. [*Omitted by the Finance Act, 1988, w.e.f. 1-4-1989. Original section 112A was inserted by the Finance (No. 2) Act, 1965, w.e.f. 11-9-1965 and later on amended by the Finance Act, 1966, w.e.f. 1-4-1966, Finance (No. 2) Act, 1967, w.e.f. 1-4-1968, Taxation Laws (Amendment) Act, 1970, w.r.e.f. 1-4-1968/1969 and Finance Act, 1973, w.r.e.f. 1-4-1972.*]

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69. Substituted for "thirty" by the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997.

70. *Explanation* omitted by the Finance Act, 1995, w.e.f. 1-4-1996.

71. Inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

72. Inserted by the Finance Act, 2000, w.e.f. 1-4-2000.

73. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

74. Substituted by the Finance Act, 2000, w.e.f. 1-4-2000. Prior to its substitution, *Explanation,* as inserted by the Finance Act, 1999, w.e.f. 1-4-2000, read as under :

'*Explanation*.—For the purposes of this sub-section, "listed securities" means the securities—

(*a*) as defined in clause (*h*) of section 2 of the Securities Contracts (Regulation) Act, 1956 (32 of 1956); and

(*b*) listed in any recognised stock exchange in India.'

75. For definition of "securities", *see* footnote 15 on p. 1.27 *ante*.

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[76][**Tax in the case of block assessment of search cases.**

113. The total undisclosed income of the block period, determined under section 158BC, shall be chargeable to tax at the rate of sixty per cent:]

[77][**Provided** that the tax chargeable under this section shall be increased by a surcharge, if any, levied by any Central Act and applicable in the assessment year relevant to the previous year in which the search is initiated under section 132 or the requisition is made under section 132A.]

Tax on capital gains in cases of assessees other than companies.

114. [*Omitted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968 and reintroduced with material modifications in section 80T. Section 114 was substituted first by the Finance (No. 2) Act, 1962, w.e.f. 1-4-1962 and later on amended by the Finance Act, 1964, w.e.f. 1-4-1964, the Finance Act, 1965, w.e.f. 1-4-1965, the Finance (No. 2) Act, 1965, w.e.f. 11-9-1965 and the Finance Act, 1966, w.e.f. 1-4-1966.*]

Tax on capital gains in case of companies.

115. [78][*Omitted by the Finance Act, 1987, w.e.f. 1-4-1988.*]

[79][**Tax on dividends, royalty and technical service fees in the case of foreign companies.**

[80]**115A.** [81][(1) Where the total income of—

(*a*) a non-resident (not being a company) or of a foreign company, includes any income by way of—

(*i*) dividends [82][other than dividends referred to in section 115-O]; or

(*ii*) interest received from Government or an Indian concern on monies borrowed or debt incurred by Government or the Indian concern in foreign currency ; or

(*iii*) income received in respect of units, purchased in foreign currency, of a Mutual Fund specified under clause (*23D*) of section 10 or of the Unit Trust of India,

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76. Inserted by the Finance Act, 1995, w.e.f. 1-7-1995. Earlier section 113 dealing with "Tax in the case of non-resident" was omitted by the Finance Act, 1965, w.e.f. 1-4-1965.

77. Inserted by the Finance Act, 2002, w.e.f. 1-6-2002.

78. Omitted section 115 was amended by the Finance (No. 2) Act, 1962, w.e.f. 1-4-1962, the Finance Act, 1964, w.e.f. 1-4-1964, the Finance Act, 1965, w.e.f. 1-4-1965, the Finance Act, 1966, w.e.f. 1-4-1966, the Finance (No. 2) Act, 1971, w.e.f. 1-4-1972, the Finance (No. 2) Act, 1974, w.e.f. 1-4-1975, the Finance Act, 1976, w.e.f. 1-4-1977 and the Finance Act, 1985, w.e.f. 1-4-1986.

79. Inserted by the Finance Act, 1976, w.e.f. 1-6-1976.

80. *See* also Circular No. 473, dated 29-10-1986, Circular No. 740, dated 17-4-1996 and Circular No. 742, dated 2-5-1996. For details, *see* Taxmann's Master Guide to Income-tax Act.

81. Substituted by the Finance Act, 1994, w.e.f. 1-4-1995. Prior to substitution, sub-section (1) was amended by the Finance (No. 2) Act, 1977, w.e.f. 1-4-1977/1-4-1978, the Finance Act, 1983, w.e.f. 1-6-1983, the Finance Act, 1986, w.e.f. 1-4-1987, the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989 and the Finance Act, 1992, w.e.f. 1-6-1992.

82. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004. Earlier the words "other than dividends referred to in section 115-O" were inserted by the Finance Act, 1997, w.e.f. 1-4-1998 and later on omitted by the Finance Act, 2002, w.e.f. 1-4-2003.

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the income-tax payable shall be aggregate of—

(*A*) the amount of income-tax calculated on the amount of income by way of dividends [83][other than dividends referred to in section 115-O], if any, included in the total income, at the rate of twenty per cent ;

(*B*) the amount of income-tax calculated on the amount of income by way of interest referred to in sub-clause (*ii*), if any, included in the total income, at the rate of twenty per cent ;

(*C*) the amount of income-tax calculated on the income in respect of units referred to in sub-clause (*iii*), if any, included in the total income, at the rate of twenty per cent ; and

(*D*) the amount of income-tax with which he or it would have been chargeable had his or its total income been reduced by the amount of income referred to in sub-clause (*i*), sub-clause (*ii*) and sub-clause (*iii*) ;

(*b*) [84][a non-resident (not being a company) or a foreign company, includes any income by way of royalty or fees for technical services other than income referred to in sub-section (1) of section 44DA] received from Government or an Indian concern in pursuance of an agreement made by the foreign company with Government or the Indian concern after the 31st day of March, 1976, and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy, then, subject to the provisions of sub-sections (1A) and (2), the income-tax payable shall be the aggregate of,—

[85][(*A*) the amount of income-tax calculated on the income by way of royalty, if any, included in the total income, at the rate of thirty per cent if such royalty is received in pursuance of an agreement made on or before the 31st day of May, 1997 and twenty per cent where such royalty is received in pursuance of an agreement made after the 31st day of May, 1997 [86][but before the 1st day of June, 2005];

[86][(*AA*) the amount of income-tax calculated on the income by way of royalty, if any, included in the total income, at the rate of ten per cent if such royalty is received in pursuance of an agreement made on or after the 1st day of June, 2005;]

(*B*) the amount of income-tax calculated on the income by way of fees for technical services, if any, included in the total income, at the rate of thirty per cent if such fees for technical services are received in pursuance of an agreement made on or before the

83. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004. Earlier the words "other than dividends referred to in section 115-O" were inserted by the Finance Act, 1997, w.e.f. 1-4-1998 and later on omitted by the Finance Act, 2002, w.e.f. 1-4-2003.

84. Substituted for "a foreign company, includes any income by way of royalty or fees for technical services" by the Finance Act, 2003, w.e.f. 1-4-2004.

85. Substituted by the Finance Act, 1997, w.e.f. 1-4-1998.

86. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

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31st day of May, 1997 and twenty per cent where such fees for technical services are received in pursuance of an agreement made after the 31st day of May, 1997 [87][but before the 1st day of June, 2005] ; and]

[87][(*BB*) the amount of income-tax calculated on the income by way of fees for technical services, if any, included in the total income, at the rate of ten per cent if such fees for technical services are received in pursuance of an agreement made on or after the 1st day of June, 2005; and]

(*C*) the amount of income-tax with which it would have been chargeable had its total income been reduced by the amount of income by way of royalty and fees for technical services.

Explanation.—For the purposes of this section,—

(*a*) "fees for technical services" shall have the same meaning as in *Explanation 2* to clause (*vii*) of sub-section (1) of section 9 ;

(*b*) "foreign currency" shall have the same meaning as in the *Explanation* below item (*g*) of sub-clause (*iv*) of clause (*15*) of section 10 ;

(*c*) "royalty" shall have the same meaning as in *Explanation 2* to clause (*vi*) of sub-section (1) of section 9 ;

(*d*) "Unit Trust of India" means the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963).]

[88][(1A) Where the royalty referred to in clause (*b*) of sub-section (1) is in consideration for the transfer of all or any rights (including the granting of a licence) in respect of copyright in any book to an Indian concern [89][or in respect of any computer software to a person resident in India], the provisions of sub-section (1) shall apply in relation to such royalty as if the words [90][[91][the agreement is approved by the Central Government or where it relates to a matter] included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy] occurring in the said clause had been omitted :

Provided that such book is on a subject, the books on which are permitted, according to the Import Trade Control Policy of the Government of India for the period commencing from the 1st day of April, 1977, and ending with the 31st day of March, 1978, to be imported into India under an Open General Licence :

[92][**Provided further** that such computer software is permitted according to the Import Trade Control Policy of the Government of India for the time being in force to be imported into India under an Open General Licence.]

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87. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

88. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 1-4-1978.

89. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1991.

90. Substituted for "and approved by the Central Government" by the Finance Act, 1992, w.e.f. 1-6-1992.

91. Substituted for "approved by the Central Government or where the agreement relates to a matter" by the Finance Act, 1994, w.e.f. 1-4-1995.

92. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1991.

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[93][*Explanation 1*].—In this sub-section, "Open General Licence" means an Open General Licence issued by the Central Government in pursuance of the Imports (Control) Order, 1955.]

[94][*Explanation 2*.—In this sub-section, the expression "computer software" shall have the meaning assigned to it in clause (*b*) of the *Explanation* to section 80HHE.]

(2) Nothing contained in sub-section (1) shall apply in relation to any income by way of royalty received by a foreign company from an Indian concern in pursuance of an agreement made by it with the Indian concern after the 31st day of March, 1976, if such agreement is deemed, for the [95][purposes of the first proviso] to clause (*vi*) of sub-section (1) of section 9, to have been made before the 1st day of April, 1976; and the provisions of the annual Finance Act for calculating, charging, deducting or computing income-tax shall apply in relation to such income as if such income had been received in pursuance of an agreement made before the 1st day of April, 1976.]

[96][(3) No deduction in respect of any expenditure or allowance shall be allowed to the assessee under sections 28 to 44C and section 57 in computing his or its income referred to in sub-section (1).

(4) Where in the case of an assessee referred to in sub-section (1),—

(*a*) the gross total income consists only of the income referred to in clause (*a*) of that sub-section, no deduction shall be allowed to him or it under Chapter VI-A;

(*b*) the gross total income includes any income referred to in clause (*a*) of that sub-section, the gross total income shall be reduced by the amount of such income and the deduction under Chapter VI-A shall be allowed as if the gross total income as so reduced were the gross total income of the assessee.

(5) It shall not be necessary for an assessee referred to in sub-section (1) to furnish under sub-section (1) of section 139 a return of his or its income if—

(*a*) his or its total income in respect of which he or it is assessable under this Act during the previous year consisted only of income referred to in clause (*a*) of sub-section (1); and

(*b*) the tax deductible at source under the provisions of Chapter XVII-B has been deducted from such income.]

[97][**Tax on income from units purchased in foreign currency or capital gains arising from their transfer.**

115AB. (1) Where the total income of an assessee, being an overseas financial organisation (hereinafter referred to as Offshore Fund) includes—

(*a*) income received in respect of units purchased in foreign currency; or

(*b*) income by way of long-term capital gains arising from the transfer of units purchased in foreign currency,

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93. Renumbered by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1991.

94. Inserted, *ibid.*

95. Substituted for "purposes of the proviso", *ibid.*

96. Inserted by the Finance Act, 1994, w.e.f. 1-4-1995.

97. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1992.

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the income-tax payable shall be the aggregate of—

(*i*) the amount of income-tax calculated on the income in respect of units referred to in clause (*a*), if any, included in the total income, at the rate of ten per cent;

(*ii*) the amount of income-tax calculated on the income by way of long-term capital gains referred to in clause (*b*), if any, included in the total income, at the rate of ten per cent; and

(*iii*) the amount of income-tax with which the Offshore Fund would have been chargeable had its total income been reduced by the amount of income referred to in clause (*a*) and clause (*b*).

(2) Where the gross total income of the Offshore Fund,—

(*a*) consists only of income from units or income by way of long-term capital gains arising from the transfer of units, or both, no deduction shall be allowed to the assessee under sections 28 to 44C [98][***] or clause (*i*) or clause (*iii*) of section 57 or under Chapter VI-A [99][and nothing contained in the provisions of the second proviso to section 48 shall apply to income referred to in clause (*b*) of sub-section (1)];

(*b*) includes any income referred to in clause (*a*), the gross total income shall be reduced by the amount of such income and the deduction under Chapter VI-A shall be allowed as if the gross total income as so reduced were the gross total income of the assessee.

Explanation.—For the purposes of this section,—

(*a*) "overseas financial organisation" means any fund, institution, association or body, whether incorporated or not, established under the laws of a country outside India, which has entered into an arrangement for investment in India with any public sector bank or public financial institution or a mutual fund specified under clause (*23D*) of section 10 and such arrangement is approved by the [1][Securities and Exchange Board of India, established under the Securities and Exchange Board of India Act, 1992 (15 of 1992),] for this purpose;

(*b*) "unit" means unit of a mutual fund specified under clause (*23D*) of section 10 or of the Unit Trust of India;

(*c*) "foreign currency"[2] shall have the meaning as in the Foreign Exchange Regulation Act, 1973 (46 of 1973);

(*d*) "public sector bank" shall have the meaning assigned to it in clause (*23D*) of section 10;

(*e*) "public financial institution" shall have the meaning assigned to it in section 4A[3] of the Companies Act, 1956 (1 of 1956);

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98. Words "or sub-section (2) of section 48" omitted by the Finance Act, 1992, w.e.f. 1-4-1993.

99. Inserted, *ibid.*

1. Substituted for "Central Government" by the Finance Act, 2001, w.e.f. 1-6-2001.

2. For definition of "foreign currency", *see* footnote 51 on p. 1.64 *ante*.

3. For text of section 4A of the Companies Act, 1956, and notified institutions thereunder, *see* **Appendix**.

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(*f*) "Unit Trust of India" means the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963)].

[4][**Tax on income from bonds or Global Depository Receipts purchased in foreign currency or capital gains arising from their transfer.**

115AC. (1) Where the total income of an assessee, being a non-resident, includes—

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4. Substituted by the Finance Act, 2001, w.e.f. 1-4-2002. Prior to its substitution, section 115AC, as inserted by the Finance Act, 1992, w.e.f. 1-4-1993 and amended by the Finance (No. 2) Act, 1996, w.e.f. 1-10-1996, Finance Act, 1997, w.e.f. 1-4-1998 and Finance Act, 1999, w.e.f. 1-4-2000, read as under:

"115AC. *Tax on income from bonds or shares purchased in foreign currency or capital gains arising from their transfer.*—(1) Where the total income of an assessee, being a non-resident, includes—

(*a*) income by way of interest or dividends other than dividends referred to in section 115-O, on bonds or shares of an Indian company issued in accordance with such scheme as the Central Government may, by notification in the Official Gazette, specify in this behalf or on bonds or shares of a public sector company, sold by the Government and purchased by him in foreign currency; or

(*b*) income by way of long-term capital gains arising from the transfer of bonds or, as the case may be, shares referred to in clause (*a*),

the income-tax payable shall be the aggregate of—

(*i*) the amount of income-tax calculated on the income by way of interest or dividends other than dividends referred to in section 115-O, as the case may be, in respect of bonds or shares referred to in clause (*a*), if any, included in the total income, at the rate of ten per cent;

(*ii*) the amount of income-tax calculated on the income by way of long-term capital gains referred to in clause (*b*), if any, at the rate of ten per cent; and

(*iii*) the amount of income-tax with which the non-resident would have been chargeable had his total income been reduced by the amount of income referred to in clause (*a*) and clause (*b*).

(2) Where the gross total income of the non-resident—

(*a*) consists only of income by way of interest or dividends other than dividends referred to in section 115-O in respect of bonds or, as the case may be, shares referred to in clause (*a*) of sub-section (1), no deduction shall be allowed to him under sections 28 to 44C or clause (*i*) or clause (*iii*) of section 57 or under Chapter VI-A;

(*b*) includes any income referred to in clause (*a*) or clause (*b*) of sub-section (1) the gross total income shall be reduced by the amount of such income and the deduction under Chapter VI-A shall be allowed as if the gross total income as so reduced, were the gross total income of the assessee.

(3) Nothing contained in the first and second provisos to section 48 shall apply for the computation of long-term capital gains arising out of the transfer of long-term capital asset, being bonds or shares referred to in clause (*b*) of sub-section (1).

(4) It shall not be necessary for a non-resident to furnish under sub-section (1) of section 139 a return of his income if—

(*a*) his total income in respect of which he is assessable under this Act during the previous year consisted only of income referred to in clause (*a*) of sub-section (1); and

(*b*) the tax deductible at source under the provisions of Chapter XVII-B has been deducted from such income.

(5) Where the assessee acquired shares or bonds in an amalgamated or resulting company by virtue of his holding shares or bonds in the amalgamating or demerged company, as the case may be, in accordance with the provisions of sub-section (1), the provisions of the said sub-section shall apply to such shares or bonds."

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(*a*) income by way of interest on bonds of an Indian company issued in accordance with such scheme as the Central Government may, by notification in the Official Gazette[5], specify in this behalf, or on bonds of a public sector company sold by the Government, and purchased by him in foreign currency; or

(*b*) income by way of dividends [6][, other than dividends referred to in section 115-O,] on Global Depository Receipts—

(*i*) issued in accordance with such scheme as the Central Government may, by notification in the Official Gazette[7], specify in this behalf, against the initial issue of shares of an Indian company and purchased by him in foreign currency through an approved intermediary; or

(*ii*) issued against the shares of a public sector company sold by the Government and purchased by him in foreign currency through an approved intermediary; or

(*iii*) [8][issued or] re-issued in accordance with such scheme as the Central Government may, by notification in the Official Gazette[7], specify in this behalf, against the existing shares of an Indian company purchased by him in foreign currency through an approved intermediary; or

(*iv*) [9][***]

(*c*) income by way of long-term capital gains arising from the transfer of bonds referred to in clause (*a*) or, as the case may be, Global Depository Receipts referred to in clause (*b*),

the income-tax payable shall be the aggregate of—

(*i*) the amount of income-tax calculated on the income by way of interest or dividends [10][, other than dividends referred to in section 115-O], as the case may be, in respect of bonds referred to in clause (*a*) or Global Depository Receipts referred to in clause (*b*), if any, included in the total income, at the rate of ten per cent;

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5. *See* Issue of Foreign Currency Exchangeable Bonds Scheme, 2008/Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993. For text of Schemes, *see* Taxmann's Income-tax Rules.

6. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004. Earlier the words ", other than dividends referred to in section 115-O," were omitted by the Finance Act, 2002, w.e.f. 1-4-2003.

7. *See* Issue of Foreign Currency Exchangeable Bonds Scheme, 2008/Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993. For text of Schemes, *see* Taxmann's Income-tax Rules.

8. Inserted by the Finance Act, 2002, w.e.f. 1-4-2002.

9. Omitted, *ibid*. Prior to its omission, clause (*iv*) read as under :

"(*iv*) issued in accordance with such scheme as the Central Government may, by notification in the Official Gazette, specify in this behalf, and purchased by him in foreign currency through an approved intermediary, against the shares of an Indian company arising out of disinvestment by such company in its subsidiary company, and the shares of both such Indian companies are listed in a recognised stock exchange in India; or"

10. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004. Earlier the words ", other than dividends referred to in section 115-O" were omitted by the Finance Act, 2002, w.e.f. 1-4-2003.

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(*ii*) the amount of income-tax calculated on the income by way of long-term capital gains referred to in clause (*c*), if any, at the rate of ten per cent; and

(*iii*) the amount of income-tax with which the non-resident would have been chargeable had his total income been reduced by the amount of income referred to in clauses (*a*), (*b*) and (*c*).

(2) Where the gross total income of the non-resident—

(*a*) consists only of income by way of interest or dividends[11][, other than dividends referred to in section 115-O] in respect of bonds referred to in clause (*a*) of sub-section (1) or, as the case may be, Global Depository Receipts referred to in clause (*b*) of that sub-section, no deduction shall be allowed to him under sections 28 to 44C or clause (*i*) or clause (*iii*) of section 57 or under Chapter VI-A;

(*b*) includes any income referred to in clause (*a*) or clause (*b*) or clause (*c*) of sub-section (1), the gross total income shall be reduced by the amount of such income and the deduction under Chapter VI-A shall be allowed as if the gross total income as so reduced, were the gross total income of the assessee.

(3) Nothing contained in the first and second provisos to section 48 shall apply for the computation of long-term capital gains arising out of the transfer of long-term capital asset, being bonds or Global Depository Receipts referred to in clause (*c*) of sub-section (1).

(4) It shall not be necessary for a non-resident to furnish under sub-section (1) of section 139 a return of his income if—

(*a*) his total income in respect of which he is assessable under this Act during the previous year consisted only of income referred to in clauses (*a*) and (*b*) of sub-section (1); and

(*b*) the tax deductible at source under the provisions of Chapter XVII-B has been deducted from such income.

(5) Where the assessee acquired Global Depository Receipts or bonds in an amalgamated or resulting company by virtue of his holding Global Depository Receipts or bonds in the amalgamating or demerged company, as the case may be, in accordance with the provisions of sub-section (1), the provisions of that sub-section shall apply to such Global Depository Receipts or bonds.

Explanation.—For the purposes of this section,—

(*a*) "approved intermediary" means an intermediary who is approved in accordance with such scheme as may be notified[12] by the Central Government in the Official Gazette;

(*b*) "Global Depository Receipts" shall have the same meaning as in clause (*a*) of the *Explanation* to section 115ACA.]

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11. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004. Earlier the words ", other than dividends referred to in section 115-O" were omitted by the Finance Act, 2002, w.e.f. 1-4-2003.

12. *See* Issue of Foreign Currency Exchangeable Bonds Scheme, 2008/Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993. For text of Schemes, *see* Taxmann's Income-tax Rules.

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[13][**Tax on income from Global Depository Receipts purchased in foreign currency or capital gains arising from their transfer.**

115ACA. [14][(1) Where the total income of an assessee, being an individual, who is a resident and an employee of an Indian company engaged in specified knowledge based industry or service, or an employee of its subsidiary engaged in specified knowledge based industry or service (hereafter in this section referred to as the resident employee), includes—

(*a*) income by way of dividends [15][, other than dividends referred to in section 115-O,] on Global Depository Receipts of an Indian company engaged in specified knowledge based industry or service, issued in accordance with such Employees' Stock Option Scheme as the Central Government may, by notification in the Official Gazette[16], specify in this behalf and purchased by him in foreign currency; or

(*b*) income by way of long-term capital gains arising from the transfer of Global Depository Receipts referred to in clause (*a*),

the income-tax payable shall be the aggregate of—

(*i*) the amount of income-tax calculated on the income by way of dividends [15][, other than dividends referred to in section 115-O,] in respect of Global Depository Receipts referred to in clause (*a*), if any, included in the total income, at the rate of ten per cent;

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13. Inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

14. Substituted by the Finance Act, 2001, w.e.f. 1-4-2001. Prior to its substitution, sub-section (1) read as under :

"(1) Where the total income of an assessee, being an individual, who is a resident and an employee of an Indian company engaged in information technology software and information technology services (hereafter in this section referred to as the resident employee), includes—

(*a*) income by way of dividends, other than dividends referred to in section 115-O, on Global Depository Receipts of an Indian company engaged in information technology software and information technology services, issued in accordance with such employees' stock option scheme as the Central Government may, by notification in the Official Gazette, specify in this behalf and purchased by him in foreign currency; or

(*b*) income by way of long-term capital gains arising from the transfer of Global Depository Receipts referred to in clause (*a*),

the income-tax payable shall be the aggregate of—

(*i*) the amount of income-tax calculated on the income by way of dividends, other than dividends referred to in section 115-O, in respect of Global Depository Receipts referred to in clause (*a*), if any, included in the total income, at the rate of ten per cent;

(*ii*) the amount of income-tax calculated on the income by way of long-term capital gains referred to in clause (*b*), if any, at the rate of ten per cent; and

(*iii*) the amount of income-tax with which the resident employee would have been chargeable had his total income been reduced by the amount of income referred to in clauses (*a*) and (*b*)."

15. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004. Earlier the words ", other than dividends referred to in section 115-O," were omitted by the Finance Act, 2002, w.e.f. 1-4-2003.

16. For notified scheme, *see* Taxmann's Master Guide to Income-tax Act.

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(*ii*) the amount of income-tax calculated on the income by way of long-term capital gains referred to in clause (*b*), if any, at the rate of ten per cent; and

(*iii*) the amount of income-tax with which the resident employee would have been chargeable had his total income been reduced by the amount of income referred to in clauses (*a*) and (*b*).

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

(*a*) "specified knowledge based industry or service" means—

(*i*) information technology software;

(*ii*) information technology service;

(*iii*) entertainment service;

(*iv*) pharmaceutical industry;

(*v*) bio-technology industry; and

(*vi*) any other industry or service, as may be specified by the Central Government, by notification in the Official Gazette;

(*b*) "subsidiary" shall have the meaning assigned to it in section 4[17] of the Companies Act, 1956 (1 of 1956) and includes subsidiary incorporated outside India.]

(2) Where the gross total income of the resident employee—

(*a*) consists only of income by way of dividends [18][, other than dividends referred to in section 115-O,] in respect of Global Depository Receipts referred to in clause (*a*) of sub-section (1), no deduction shall be allowed to him under any other provision of this Act;

(*b*) includes any income referred to in clause (*a*) or clause (*b*) of sub-section (1), the gross total income shall be reduced by the amount of such income and the deduction under any provision of this Act shall be allowed as if the gross total income as so reduced were the gross total income of the assessee.

(3) Nothing contained in the first and second provisos to section 48 shall apply for the computation of long-term capital gains arising out of the transfer of long-term capital asset, being Global Depository Receipts referred to in clause (*b*) of sub-section (1).

Explanation.—For the purposes of this section,—

(*a*) "Global Depository Receipts" means any instrument in the form of a depository receipt or certificate (by whatever name called) created by the Overseas Depository Bank outside India and issued to non-resident investors against the issue of ordinary shares or foreign currency convertible bonds of issuing company;

(*b*) "information technology service" means any service which results from the use of any information technology software over a system of information technology products for realising value addition;

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17. For definition of "subsidiary" under section 4 of the Companies Act, *see* **Appendix**.

18. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004. Earlier the words ", other than dividends referred to in section 115-O," were omitted by the Finance Act, 2002, w.e.f. 1-4-2003.

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(*c*) "information technology software" means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form and capable of being manipulated or providing inter-activity to a user, by means of an automatic data processing machine falling under heading information technology products but does not include non-information technology products;

(*d*) "Overseas Depository Bank" means a bank authorised by the issuing company to issue Global Depository Receipts against issue of Foreign Currency Convertible Bonds or ordinary shares of the issuing company.]

[19][**Tax on income of Foreign Institutional Investors from securities or capital gains arising from their transfer.**

115AD. (1) Where the total income of a Foreign Institutional Investor includes—

[20][(*a*) income [21][other than income by way of dividends referred to in section 115-O] received in respect of securities (other than unit referred to in section 115AB); or]

(*b*) income by way of short-term or long-term capital gains arising from the transfer of such securities,

the income-tax payable shall be the aggregate of—

(*i*) the amount of income-tax calculated on the income in respect of securities referred to in clause (*a*), if any, included in the total income, at the rate of twenty per cent;

(*ii*) the amount of income-tax calculated on the income by way of short-term capital gains referred to in clause (*b*), if any, included in the total income, at the rate of thirty per cent :

[22][**Provided** that the amount of income-tax calculated on the income by way of short-term capital gains referred to in section 111A shall be at the rate of [23][fifteen] per cent;]

(*iii*) the amount of income-tax calculated on the income by way of long-term capital gains referred to in clause (*b*), if any, included in the total income, at the rate of ten per cent; and

(*iv*) the amount of income-tax with which the Foreign Institutional Investor would have been chargeable had its total income been reduced by the amount of income referred to in clause (*a*) and clause (*b*).

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19. Inserted by the Finance Act, 1993, w.e.f. 1-4-1993.

20. Substituted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999. Prior to its substitution, clause (*a*) was amended by the Finance Act, 1997, w.e.f. 1-4-1998.

21. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004. Earlier the words "other than income by way of dividends referred to in section 115-O" were inserted by the Finance Act, 1999, w.e.f. 1-4-1999 and later on omitted by the Finance Act, 2002, w.e.f. 1-4-2003.

22. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005.

23. Substituted for word "ten" by the Finance Act, 2008, w.e.f. 1-4-2009.

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(2) Where the gross total income of the Foreign Institutional Investor—

(*a*) consists only of income in respect of securities referred to in clause (*a*) of sub-section (1), no deduction shall be allowed to it under sections 28 to 44C or clause (*i*) or clause (*iii*) of section 57 or under Chapter VI-A;

(*b*) includes any income referred to in clause (*a*) or clause (*b*) of sub-section (1), the gross total income shall be reduced by the amount of such income and the deduction under Chapter VI-A shall be allowed as if the gross total income as so reduced, were the gross total income of the Foreign Institutional Investor.

(3) Nothing contained in the first and second provisos to section 48 shall apply for the computation of capital gains arising out of the transfer of securities referred to in clause (*b*) of sub-section (1).

Explanation.—For the purposes of this section,—

(*a*) the expression "Foreign Institutional Investor" means such investor as the Central Government may, by notification in the Official Gazette[24], specify in this behalf;

(*b*) the expression "securities"[25] shall have the meaning assigned to it in clause (*h*) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956).]

[26][**Tax on profits and gains of life insurance business.**

115B. [27][(1)] Where the total income of an assessee includes any profits and gains from life insurance business, the income-tax payable shall be the aggregate of—

(*i*) the amount of income-tax calculated on the amount of profits and gains of the life insurance business included in the total income, at the rate of twelve and one-half per cent; and

(*ii*) the amount of income-tax with which the assessee would have been chargeable had the total income of the assessee been reduced by the amount of profits and gains of the life insurance business.]

[27][(2) Notwithstanding anything contained in sub-section (1) or in any other law for the time being in force or any instrument having the force of law, the assessee shall, in addition to the payment of income-tax computed under sub-section (1), deposit, during [28][the previous years relevant to the assessment years commencing on the 1st day of April, 1989 and the 1st day of April, 1990], an amount equal to thirty-three and one-third per cent of the amount of income-tax computed under clause (*i*) of sub-section (1), in such social security fund (hereafter in this sub-section referred to as the security fund), as the Central Government may, by notification[29] in the Official Gazette, specify in this behalf :

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24. For list of notified Foreign Institutional Investors, *see* Taxmann's Direct Taxes Circulars.

25. For definition of "securities", *see* footnote 15 on p. 1.27 *ante.*

26. Inserted by the Finance Act, 1976, w.e.f. 1-6-1976.

27. Inserted by the Finance Act, 1988, w.e.f. 1-4-1989.

28. Substituted for "the previous year relevant to the assessment year commencing on the 1st day of April, 1989" by the Finance Act, 1989, w.e.f. 1-4-1990.

29. For notified fund, *see* Taxmann's Master Guide to Income-tax Act.

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Provided that where the assessee makes during the said previous [30][years] any deposit of an amount of not less than two and one-half per cent of the profits and gains of the life insurance business in the security fund, the amount of income-tax payable by the assessee under the said clause (*i*) shall be reduced by an amount equal to two and one-half per cent of such profits and gains and, accordingly, the deposit of thirty-three and one-third per cent required to be made under this sub-section shall be calculated on the income-tax as so reduced.]

[31][**Tax on winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or gambling or betting of any form or nature whatsoever.**

115BB. Where the total income of an assessee includes any income by way of winnings from any lottery or crossword puzzle or race including horse race (not being income from the activity of owning and maintaining race horses) or card game and other game of any sort or from gambling or betting of any form or nature whatsoever, the income-tax payable shall be the aggregate of—

(*i*) the amount of income-tax calculated on income by way of winnings from such lottery or crossword puzzle or race including horse race or card game and other game of any sort or from gambling or betting of any form or nature whatsoever, at the rate of [32][thirty] per cent; and

(*ii*) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (*i*).

Explanation.—For the purposes of this section, "horse race" shall have the same meaning as in section 74A.]

[33][**Tax on non-resident sportsmen or sports associations.**

115BBA. (1) Where the total income of an assessee,—

(*a*) being a sportsman (including an athlete), who is not a citizen of India and is a non-resident, includes any income received or receivable by way of—

(*i*) participation in India in any game (other than a game the winnings wherefrom are taxable under section 115BB) or sport; or

(*ii*) advertisement; or

(*iii*) contribution of articles relating to any game or sport in India in newspapers, magazines or journals; or

(*b*) being a non-resident sports association or institution, includes any amount guaranteed to be paid or payable to such association or institution in relation to any game (other than a game the winnings wherefrom are taxable under section 115BB) or sport played in India,

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30. Substituted for "year" by the Finance Act, 1989, w.e.f. 1-4-1990.

31. Inserted by the Finance Act, 1986, w.e.f. 1-4-1987.

32. Substituted for "forty" by the Finance Act, 2001, w.e.f. 1-4-2002.

33. Inserted by the Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-4-1990.

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the income-tax payable by the assessee shall be the aggregate of—

(*i*) the amount of income-tax calculated on income referred to in clause (*a*) or clause (*b*) at the rate of ten per cent; and

(*ii*) the amount of income-tax with which the assessee would have been chargeable had the total income of the assessee been reduced by the amount of income referred to in clause (*a*) or clause (*b*) :

Provided that no deduction in respect of any expenditure or allowance shall be allowed under any provision of this Act in computing the income referred to in clause (*a*) or clause (*b*).

(2) It shall not be necessary for the assessee to furnish under sub-section (1) of section 139 a return of his income if—

(*a*) his total income in respect of which he is assessable under this Act during the previous year consisted only of income referred to in clause (*a*) or clause (*b*) of sub-section (1); and

(*b*) the tax deductible at source under the provisions of Chapter XVII-B has been deducted from such income.]

[34][**Tax on income from units of an open-ended equity oriented fund of the Unit Trust of India or of Mutual Funds.**

115BBB. (1) Where the total income of an assessee includes any income from units of an open-ended equity oriented fund of the Unit Trust of India or of a Mutual Fund, the income-tax payable shall be the aggregate of—

(*a*) the amount of income-tax calculated on income from units of an open-ended equity oriented fund of the Unit Trust of India or of a Mutual Fund, at the rate of ten per cent; and

(*b*) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (*a*).

(2) Nothing contained in sub-section (1) shall apply in relation to any income from units of an open-ended equity oriented fund of the Unit Trust of India or of the Mutual Fund arising after the 31st day of March, 2003.

Explanation.—For the purposes of this section, the expressions "Mutual Fund", "open-ended equity oriented fund" and "Unit Trust of India" shall have the meanings respectively assigned to them in the *Explanation* to section 115T.]

[35][**Anonymous donations to be taxed in certain cases.**

115BBC. (1) Where the total income of an assessee, being a person in receipt of income on behalf of any university or other educational institution referred to in sub-clause (*iiiad*) or sub-clause (*vi*) or any hospital or other institution referred to in sub-clause (*iiiae*) or sub-clause (*via*) or any fund or institution referred to in sub-clause (*iv*) or any trust or institution referred to in sub-clause (*v*) of clause (*23C*) of section 10 or any trust or institution referred to in section 11, includes any income by way of any anonymous donation, the income-tax payable shall be the aggregate of—

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34. Inserted by the Finance Act, 2002, w.e.f. 1-4-2003.

35. Inserted by the Finance Act, 2006, w.e.f. 1-4-2007.

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[36][*(i) the amount of income-tax calculated at the rate of thirty per cent on the aggregate of anonymous donations received in excess of the higher of the following, namely:—*

(A) five per cent of the total donations received by the assessee; or

(B) one lakh rupees; and

(ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the aggregate of anonymous donations received.]

(2) The provisions of sub-section (1) shall not apply to any anonymous donation received by—

(*a*) any trust or institution created or established wholly for religious purposes;

(*b*) any trust or institution created or established wholly for religious and charitable purposes other than any anonymous donation made with a specific direction that such donation is for any university or other educational institution or any hospital or other medical institution run by such trust or institution.

(3) For the purposes of this section, "anonymous donation" means any voluntary contribution referred to in sub-clause (*iia*) of clause (*24*) of section 2, where a person receiving such contribution does not maintain a record of the identity indicating the name and address of the person making such contribution and such other particulars as may be prescribed.]

[37][***CHAPTER XII-A***

SPECIAL PROVISIONS RELATING TO CERTAIN INCOMES OF NON-RESIDENTS

Definitions.

115C. In this Chapter, unless the context otherwise requires,—

(*a*) "convertible foreign exchange" means foreign exchange which is for the time being treated by the Reserve Bank of India as convertible foreign exchange for the purposes of the Foreign Exchange Regulation Act, 1973 (46 of 1973), and any rules made thereunder;

(*b*) "foreign exchange asset" means any specified asset which the assessee has acquired or purchased with, or subscribed to in, convertible foreign exchange;

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36. Substituted by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2010.** Prior to their substitution, clauses (*i*) and (*ii*) read as under:

"(*i*) the amount of income-tax calculated on the income by way of any anonymous donation, at the rate of thirty per cent; and

(*ii*) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (*i*)."

37. Chapter XII-A, consisting of sections 115C, 115D, 115E, 115F, 115G, 115H and 115-I, inserted by the Finance Act, 1983, w.e.f. 1-6-1983.

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(*c*) "investment income" means any income derived [38][other than dividends referred to in section 115-O] from a foreign exchange asset;

(*d*) "long-term capital gains" means income chargeable under the head "Capital gains" relating to a capital asset, being a foreign exchange asset which is not a short-term capital asset;

(*e*) "non-resident Indian" means an individual, being a citizen of India or a person of Indian origin who is not a "resident".

Explanation.—A person shall be deemed to be of Indian origin if he, or either of his parents or any of his grand-parents, was born in undivided India;

(*f*) "specified asset" means any of the following assets, namely :—

(*i*) shares in an Indian company;

(*ii*) debentures issued by an Indian company which is not a private company[39] as defined in the Companies Act, 1956 (1 of 1956);

(*iii*) deposits with an Indian company which is not a private company[39] as defined in the Companies Act, 1956 (1 of 1956);

(*iv*) any security of the Central Government as defined in clause (*2*) of section 2[40] of the Public Debt Act, 1944 (18 of 1944);

(*v*) such other assets as the Central Government may specify in this behalf by notification in the Official Gazette.

Special provision for computation of total income of non-residents.

115D. (1) No deduction in respect of any expenditure or allowance shall be allowed under any provision of this Act in computing the investment income of a non-resident Indian.

(2) Where in the case of an assessee, being a non-resident Indian,—

(*a*) the gross total income consists only of investment income or income by way of long-term capital gains or both, no deduction shall be allowed to the assessee [41][under Chapter VI-A and nothing contained in the provisions of the second proviso to section 48 shall apply to income chargeable under the head "Capital gains"];

(*b*) the gross total income includes any income referred to in clause (*a*), the gross total income shall be reduced by the amount of such income and the deductions under Chapter VI-A shall be allowed as if the gross total income as so reduced were the gross total income of the assessee.

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38. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004. Words "other than dividends referred to in section 115-O" inserted by the Finance Act, 1997, w.e.f. 1-4-1998 and later on omitted by the Finance Act, 2002, w.e.f. 1-4-2003.

39. Clause (*iii*) of section 3(1) of the Companies Act, 1956, defines "private company". For text of section 3, *see* **Appendix**.

40. For definition of "Government security" *see* footnote 12 on page 1.488 *ante*.

41. Substituted for "under sub-section (2) of section 48 or under Chapter VI-A" by the Finance Act, 1992, w.e.f. 1-4-1993. Earlier these words were substituted for "under Chapter VI-A" by the Direct Tax Laws (Second Amendment) Act, 1989, w.r.e.f. 1-4-1988.

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[42][**Tax on investment income and long-term capital gains.**

115E. Where the total income of an assessee, being a non-resident Indian, includes—

(*a*) any income from investment or income from long-term capital gains of an asset other than a specified asset;

(*b*) income by way of long-term capital gains,

the tax payable by him shall be the aggregate of—

(*i*) the amount of income-tax calculated on the income in respect of investment income referred to in clause (*a*), if any, included in the total income, at the rate of twenty per cent;

(*ii*) the amount of income-tax calculated on the income by way of long-term capital gains referred to in clause (*b*), if any, included in the total income, at the rate of ten per cent; and

(*iii*) the amount of income-tax with which he would have been chargeable had his total income been reduced by the amount of income referred to in clauses (*a*) and (*b*).]

Capital gains on transfer of foreign exchange assets not to be charged in certain cases.

115F. (1) Where, in the case of an assessee being a non-resident Indian, any long-term capital gains arise from the transfer of a foreign exchange asset (the asset so transferred being hereafter in this section referred to as the original asset), and the assessee has, within a period of six months after the date of such transfer, invested [43][***] the whole or any part of the net consideration in any specified asset [44][***], or in any savings certificates referred to in clause (*4B*) of section 10 (such specified asset [45][***], or such savings certificates being hereafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,—

(*a*) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45;

(*b*) if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of acquisition of the new asset bears to the net consideration shall not be charged under section 45.

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

(*i*) "cost", in relation to any new asset, being a deposit [46][***] referred to in sub-clause (*iii*), or specified under sub-clause (*v*), of clause (*f*) of section 115C, means the amount of such deposit;

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42. Substituted by the Finance Act, 1997, w.e.f. 1-4-1998. Prior to its substitution, section 115E was amended by the Finance Act, 1985, w.e.f. 1-4-1986.

43. "or deposited" omitted by the Finance Act, 1988, w.e.f. 1-4-1989.

44. "or in an account referred to in clause (*4A*)" omitted, *ibid.*

45. "or such deposit in the account aforesaid" omitted, *ibid.*

46. "referred to in clause (*4A*) of section 10 or" omitted, *ibid.*

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(*ii*) "net consideration", in relation to the transfer of the original asset, means the full value of the consideration received or accruing as a result of the transfer of such asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.

(2) Where the new asset is transferred or converted (otherwise than by transfer) into money, within a period of three years from the date of its acquisition, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such new asset as provided in clause (*a*) or, as the case may be, clause (*b*), of sub-section (1) shall be deemed to be income chargeable under the head "Capital gains" relating to capital assets other than short-term capital assets of the previous year in which the new asset is transferred or converted (otherwise than by transfer) into money.

Return of income not to be filed in certain cases.

115G. It shall not be necessary for a non-resident Indian to furnish under sub-section (1) of section 139 a return of his income if—

(*a*) his total income in respect of which he is assessable under this Act during the previous year consisted only of investment income or income by way of long-term capital gains or both; and

(*b*) the tax deductible at source under the provisions of Chapter XVII-B has been deducted from such income.

Benefit under Chapter to be available in certain cases even after the assessee becomes resident.

115H. Where a person, who is a non-resident Indian in any previous year, becomes assessable as resident in India in respect of the total income of any subsequent year, he may furnish to the [47][Assessing] Officer a declaration in writing along with his return of income[48] under section 139 for the assessment year for which he is so assessable, to the effect that the provisions of this Chapter shall continue to apply to him in relation to the investment income derived from any foreign exchange asset being an asset of the nature referred to in sub-clause (*ii*) or sub-clause (*iii*) or sub-clause (*iv*) or sub-clause (*v*) of clause (*f*) of section 115C; and if he does so, the provisions of this Chapter shall continue to apply to him in relation to such income for that assessment year and for every subsequent assessment year until the transfer or conversion (otherwise than by transfer) into money of such assets.

Chapter not to apply if the assessee so chooses.

115-I. A non-resident Indian may elect not to be governed by the provisions of this Chapter for any assessment year by furnishing [49][his return of income

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47. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

48. Rule 12 provides that the return of income shall not be accompanied by any document or copy of any account or form or report of audit required to be attached with return of income under any of the provisions of the Act.

49. Substituted for "to the Assessing Officer his return of income for that assessment year under section 139 together with a declaration in writing to the effect" by the Finance Act, 1990, w.e.f. 1-4-1990.

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for that assessment year under section 139 declaring therein] that the provisions of this Chapter shall not apply to him for that assessment year and if he does so, the provisions of this Chapter shall not apply to him for that assessment year and his total income for that assessment year shall be computed and tax on such total income shall be charged in accordance with the other provisions of this Act.]

[50][*CHAPTER XII-B*

SPECIAL PROVISIONS RELATING TO CERTAIN COMPANIES

Special provisions relating to certain companies.

115J. (1) Notwithstanding anything contained in any other provision of this Act, where in the case of an assessee being a company [51][(other than a company engaged in the business of generation or distribution of electricity)], the total income, as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 1988 [52][but before the 1st day of April, 1991] (hereafter in this section referred to as the relevant previous year), is less than thirty per cent of its book profit, the total income of such assessee chargeable to tax for the relevant previous year shall be deemed to be an amount equal to thirty per cent of such book profit.

[53][(1A) Every assessee, being a company, shall, for the purposes of this section, prepare its profit and loss account for the relevant previous year in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956 (1 of 1956).]

Explanation.—For the purposes of this section, "book profit" means the net profit as shown in the profit and loss account for the relevant previous year [54][prepared under sub-section (1A)], as increased by—

(*a*) the amount of income-tax paid or payable, and the provision therefor; or

(*b*) the amounts carried to any reserves [55][(other than the reserves specified in section 80HHD [56][or sub-section (1) of section 33AC])], by whatever name called; or

(*c*) the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities; or

(*d*) the amount by way of provision for losses of subsidiary companies; or

(*e*) the amount or amounts of dividends paid or proposed; or

(*f*) the amount or amounts of expenditure relatable to any income to which any of the provisions of Chapter III [57][applies; or]

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50. Inserted by the Finance Act, 1987, w.e.f. 1-4-1988.

51. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

52. Inserted by the Finance Act, 1990, w.e.f. 1-4-1990.

53. Inserted by the Finance Act, 1989, w.e.f. 1-4-1989.

54. Substituted for "prepared in accordance with the provisions of Parts II and III of the Sixth Schedule to the Companies Act, 1956 (1 of 1956)", *ibid.*

55. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

56. Inserted by the Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-4-1990.

57. Substituted for "applies," by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

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[58][(*g*) the amount withdrawn from the reserve account under section 80HHD, where it has been utilised for any purpose other than those referred to in sub-section (4) of that section; or

(*h*) the amount credited to the reserve account under section 80HHD, to the extent that amount has not been utilised within the period specified in sub-section (4) of that section;]

[59][(*ha*) the amount deemed to be the profits under sub-section (3) of section 33AC,]

[60][if any amount referred to in clauses (*a*) to (*f*) is debited or, as the case may be, the amount referred to in clauses (*g*) and (*h*) is not credited] to the profit and loss account, and as reduced by,—

(*i*) the amount withdrawn from reserves [61][(other than the reserves specified in section 80HHD)] or provisions, if any such amount is credited to the [62][profit and loss account :

Provided that, where this section is applicable to an assessee in any previous year (including the relevant previous year), the amount withdrawn from reserves created or provisions made in a previous year relevant to the assessment year commencing on or after the 1st day of April, 1988 shall not be reduced from the book profit unless the book profit of such year has been increased by those reserves or provisions (out of which the said amount was withdrawn) under this *Explanation;* or]

(*ii*) the amount of income to which any of the provisions of Chapter III applies, if any such amount is credited to the profit and loss account; or

[63][(*iii*) the amounts [as arrived at after increasing the net profit by the amounts referred to in clauses (*a*) to (*f*) and reducing the net profit by the amounts referred to in clauses (*i*) and (*ii*)] attributable to the business, the profits from which are eligible for deduction under section 80HHC or section 80HHD; so, however, that such amounts are computed in the manner specified in sub-section (3) or sub-section (3A) of section 80HHC or sub-section (3) of section 80HHD, as the case may be; or]

[64][(*iv*)] the amount of the loss or the amount of depreciation which would be required to be set off against the profit of the relevant previous year as if the provisions of clause (*b*) of the first proviso to sub-section (1) of section 205 of the Companies Act, 1956 (1 of 1956), are applicable.

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58. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

59. Inserted by the Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-4-1990.

60. Substituted for "if any such amount is debited" by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

61. Inserted, *ibid.*

62. Substituted for "profit and loss account; or" by the Finance Act, 1989, w.r.e.f. 1-4-1988.

63. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

64. Relettered, *ibid.*

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(2) Nothing contained in sub-section (1) shall affect the determination of the amounts in relation to the relevant previous year[65] to be carried forward to the subsequent year or years under the provisions of sub-section (2) of section 32 or sub-section (3) of section 32A or clause (*ii*) of sub-section (1) of section 72 or section 73 or section 74 or sub-section (3) of section 74A or sub-section (3) of section 80J.]

[66][**Deemed income relating to certain companies.**

115JA. (1) Notwithstanding anything contained in any other provisions of this Act, where in the case of an assessee, being a company, the total income, as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 1997 [67][but before the 1st day of April, 2001] (hereafter in this section referred to as the relevant previous year) is less than thirty per cent of its book profit, the total income of such assessee chargeable to tax for the relevant previous year shall be deemed to be an amount equal to thirty per cent of such book profit.

(2) Every assessee, being a company, shall, for the purposes of this section prepare its profit and loss account for the relevant previous year in accordance with the provisions of Parts II and III of Schedule VI[68] to the Companies Act, 1956 (1 of 1956) :

Provided that while preparing profit and loss account, the depreciation shall be calculated on the same method and rates which have been adopted for calculating the depreciation for the purpose of preparing the profit and loss account laid before the company at its annual general meeting in accordance with the provisions of section 210 of the Companies Act, 1956 (1 of 1956) :

Provided further that where a company has adopted or adopts the financial year under the Companies Act, 1956 (1 of 1956), which is different from the previous year under the Act, the method and rates for calculation of depreciation shall correspond to the method and rates which have been adopted for calculating the depreciation for such financial year or part of such financial year falling within the relevant previous year.

Explanation.—For the purposes of this section, "book profit" means the net profit as shown in the profit and loss account for the relevant previous year prepared under sub-section (2), as increased by—

(*a*) the amount of income-tax[69] paid or payable, and the provision therefor; or

(*b*) the amounts carried to any reserves by whatever name called; or

(*c*) the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities; or

(*d*) the amount by way of provision for losses of subsidiary companies; or

(*e*) the amount or amounts of dividends paid or proposed; or

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65. For the meaning of the term "previous year", *see* Taxmann's Direct Taxes Manual, Vol. 3.

66. Inserted by the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997.

67. Inserted by the Finance Act, 2000, w.e.f. 1-4-2001.

68. For text of Parts II and III of Schedule VI to the Companies Act, 1956, *see* **Appendix**.

69. For the meaning of expression "income-tax", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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(*f*) the amount or amounts of expenditure relatable to any income to which any of the provisions of Chapter III applies;

[70][(*g*) the amount or amounts set aside as provision for diminution in the value of any asset,

if any amount referred to in clauses (*a*) to (*g*) is debited to the profit and loss account, and as reduced by,—]

(*i*) the amount withdrawn from any reserves or provisions if any such amount is credited to the profit and loss account :

Provided that, where this section is applicable to an assessee in any previous year (including the relevant previous year), the amount withdrawn from reserves created or provisions made in a previous year relevant to the assessment year commencing on or after the 1st day of April, 1997 [71][but ending before the 1st day of April, 2001] shall not be reduced from the book profit unless the book profit of such year has been increased by those reserves or provisions (out of which the said amount was withdrawn) under this *Explanation*; or

(*ii*) the amount of income to which any of the provisions of Chapter III applies, if any such amount is credited to the profit and loss account; or

[72][(*iii*) the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account.

Explanation.—For the purposes of this clause,—

(*a*) the loss shall not include depreciation;

(*b*) the provisions of this clause shall not apply if the amount of loss brought forward or unabsorbed depreciation is *nil;* or]

(*iv*) the amount of profits derived by an industrial undertaking from the business of generation or generation and distribution of power; or

(*v*) the amount of profits derived by an industrial undertaking located in an industrially backward State or district as referred to in [73][sub-section (4) and sub-section (5) of section 80-IB], for the assessment years such industrial undertaking is eligible to claim a deduction of hundred per cent of the [74][profits and gains under sub-section (4) or sub-section (5) of section 80-IB]; or

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70. Substituted for the following by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-1998 :
"if any amount referred to in clauses (*a*) to (*f*) is debited to the profit and loss account, and as reduced by,—"

71. Inserted by the Finance Act, 2000, w.e.f. 1-4-2001.

72. Substituted by the Finance Act, 2002, w.r.e.f. 1-4-1997. Prior to its substitution, clause (*iii*) and the *Explanation* thereto read as under :
"(*iii*) the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account.
Explanation.—For the purposes of this clause, the loss shall not include depreciation; or"

73. Substituted for "sub-clause (*b*) or sub-clause (*c*) of clause (*iv*) of sub-section (2) of section 80-IA" by the Finance Act, 1999, w.e.f. 1-4-2000.

74. Substituted for "profits and gains under sub-section (5) of section 80-IA" by the Finance Act, 1999, w.e.f. 1-4-2000.

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(*vi*) the amount of profits derived by an industrial undertaking from the business of developing, maintaining and operating any infrastructure facility [75][as defined in the *Explanation* to sub-section (4) of section 80-IA and subject to fulfilling the conditions laid down in that sub-section]; or

(*vii*) the amount of profits of sick industrial company for the assessment year commencing from the assessment year relevant to the previous year in which the said company has become a sick industrial company under sub-section (1) of section 17 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and ending with the assessment year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses.

Explanation.—For the purposes of this clause, "net worth" shall have the meaning assigned to it in clause (*ga*)[76] of sub-section (1) of section 3 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986); [77][or]

[77][(*viii*) the amount of profits eligible for deduction under section 80HHC, computed under clause (*a*), (*b*) or (*c*) of sub-section (3) or sub-section (3A), as the case may be, of that section, and subject to the conditions specified in sub-sections (4) and (4A) of that section;

(*ix*) the amount of profits eligible for deduction under section 80HHE, computed under sub-section (3) of that section.]

(3) Nothing contained in sub-section (1) shall affect the determination of the amounts in relation to the relevant previous year to be carried forward to the subsequent year or years under the provisions of sub-section (2) of section 32 or sub-section (3) of section 32A or clause (*ii*) of sub-section (1) of section 72 or section 73 or section 74 or sub-section (3) of section 74A.

(4) Save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee, being a company, mentioned in this section.]

[78][**Tax credit in respect of tax paid on deemed income relating to certain companies.**

115JAA. (1) Where any amount of tax is paid under sub-section (1) of section 115JA by an assessee being a company for any assessment year, then, credit in respect of tax so paid shall be allowed to him in accordance with the provisions of this section.

[79][(1A) Where any amount of tax is paid under sub-section (1) of section 115JB by an assessee, being a company for the assessment year commencing on the 1st day of April, 2006 and any subsequent assessment year, then, credit in respect of tax so paid shall be allowed to him in accordance with the provisions of this section.]

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75. Substituted for "under sub-section (12) of section 80-IA, and subject to fulfilling the conditions laid down in sub-section (4A) of section 80-IA" by the Finance Act, 1999, w.e.f. 1-4-2000.

76. For definition of "net worth", *see* **Appendix**.

77. Inserted by the Finance Act, 1997, w.e.f. 1-4-1998.

78. Inserted, *ibid.*, w.e.f. 1-4-1997.

79. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

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[80][(2) The tax credit to be allowed under sub-section (1) shall be the difference of the tax paid for any assessment year under sub-section (1) of section 115JA and the amount of tax payable by the assessee on his total income computed in accordance with the other provisions of this Act:

Provided that no interest shall be payable on the tax credit allowed under sub-section (1).

(2A) The tax credit to be allowed under sub-section (1A) shall be the difference of the tax paid for any assessment year under sub-section (1) of section 115JB and the amount of tax payable by the assessee on his total income computed in accordance with the other provisions of this Act:

Provided that no interest shall be payable on the tax credit allowed under sub-section (1A).

(3) The amount of tax credit determined under sub-section (2) shall be carried forward and set off in accordance with the provisions of sub-sections (4) and (5) but such carry forward shall not be allowed beyond the fifth assessment year immediately succeeding the assessment year in which tax credit becomes allowable under sub-section (1).

(3A) The amount of tax credit determined under sub-section (2A) shall be carried forward and set off in accordance with the provisions of sub-sections (4) and (5) but such carry forward shall not be allowed beyond the [81][*tenth*] assessment year immediately succeeding the assessment year in which tax credit becomes allowable under sub-section (1A).]

(4) The tax credit shall be allowed set-off in a year when tax becomes payable on the total income computed in accordance with the provisions of this Act other than section 115JA [82][or section 115JB, as the case may be].

(5) Set off in respect of brought forward tax credit shall be allowed for any assessment year to the extent of the difference between the tax on his total income and the tax which would have been payable under the provisions of sub-section (1) of section 115JA [82][or section 115JB, as the case may be] for that assessment year.

(6) Where as a result of an order under sub-section (1) or sub-section (3) of section 143, section 144, section 147, section 154, section 155, sub-section (4) of section 245D, section 250, section 254, section 260, section 262, section 263 or section 264, the amount of tax payable under this Act is reduced or increased, as the case may

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80. Sub-sections (2) to (3A) substituted for sub-sections (2) and (3) by the Finance Act, 2006, w.e.f. 1-4-2007. Prior to their substitution, sub-sections (2) and (3), as amended by the Finance Act, 2005, w.e.f. 1-4-2006, read as under :

"(2) The tax credit to be allowed under sub-section (1) shall be the difference of the tax paid for any assessment year under sub-section (1) of section 115JA or under sub-section (1) of section 115JB, as the case may be, and the amount of tax payable by the assessee on his total income computed in accordance with the other provisions of this Act :

Provided that no interest shall be payable on the tax credit allowed under sub-section (1).

(3) The amount of tax credit determined under sub-section (2) shall be carried forward and set off in accordance with the provisions of sub-section (4) and sub-section (5) but such carry forward shall not be allowed beyond the fifth assessment year immediately succeeding the assessment year in which tax credit becomes allowable under sub-section (1)."

81. Substituted for "seventh" by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2010**.

82. Inserted by the Finance Act, 2000, w.e.f. 1-4-2001.

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be, the amount of tax credit allowed under this section shall also be increased or reduced accordingly.]

The following sub-section (7) shall be inserted after sub-section (6) of section 115JAA by the Finance Act, 2010, w.e.f. 1-4-2011 :

(7) In case of conversion of a private company or unlisted public company into a limited liability partnership under the Limited Liability Partnership Act, 2008 (6 of 2009), the provisions of this section shall not apply to the successor limited liability partnership.

Explanation.—*For the purposes of this section, the expressions "private company" and "unlisted public company" shall have the meanings respectively assigned to them in the Limited Liability Partnership Act, 2008 (6 of 2009).*

[83][**Special provision for payment of tax by certain companies.**[84]

115JB. (1) Notwithstanding anything contained in any other provision of this Act, where in the case of an assessee, being a company, the income-tax, payable on the total income as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after [84a]**[***the 1st day of April,* [85][[86][*2010*]]**]**, is less than [86a]**[**[87][[88][*fifteen per cent*]]**]** of its book profit, [89][such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee on such total income shall be the amount of income-tax at the rate of [86a]**[**[87][[88][*fifteen per cent*]]**]**.]

(2) Every assessee, being a company, shall, for the purposes of this section, prepare its profit and loss account for the relevant previous year in accordance with the provisions of Parts II and III of Schedule VI[90] to the Companies Act, 1956 (1 of 1956) :

Provided that while preparing the annual accounts including profit and loss account,—

(*i*) the accounting policies;

(*ii*) the accounting standards adopted for preparing such accounts including profit and loss account;

(*iii*) the method and rates adopted for calculating the depreciation,

shall be the same as have been adopted for the purpose of preparing such accounts including profit and loss account and laid before the company at its annual general meeting in accordance with the provisions of section 210 of the Companies Act, 1956 (1 of 1956) :

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83. Inserted by the Finance Act, 2000, w.e.f. 1-4-2001.

84. *See* also Circular No. 13/2001, dated 9-11-2001. For details, *see* Taxmann's Master Guide to Income-tax Act.

84a. Words "the 1st day of April, 2011" shall be substituted for the words "the 1st day of April, 2010" by the Finance Act, 2010, w.e.f. **1-4-2011**.

85. Substituted for "2001" by the Finance Act, 2006, w.e.f. 1-4-2007.

86. Substituted for "2007" by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2010**.

86a. Words "eighteen per cent" shall be substituted for the words "fifteen per cent" by the Finance Act, 2010, w.e.f. **1-4-2011**.

87. Substituted for "seven and one-half per cent" by the Finance Act, 2006, w.e.f. 1-4-2007.

88. Substituted for "ten per cent" by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2010**.

89. Substituted for "the tax payable for the relevant previous year shall be deemed to be seven and one-half per cent of such book profit" by the Finance Act, 2002, w.r.e.f. 1-4-2001.

90. For text of Parts II and III of Schedule VI to the Companies Act, 1956, *see* **Appendix**.

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Provided further that where the company has adopted or adopts the financial year under the Companies Act, 1956 (1 of 1956), which is different from the previous year under this Act,—

(*i*) the accounting policies;

(*ii*) the accounting standards adopted for preparing such accounts including profit and loss account;

(*iii*) the method and rates adopted for calculating the depreciation,

shall correspond to the accounting policies, accounting standards and the method and rates for calculating the depreciation which have been adopted for preparing such accounts including profit and loss account for such financial year or part of such financial year falling within the relevant previous year.

Explanation [91][*1*].—For the purposes of this section, "book profit" means the net profit as shown in the profit and loss account for the relevant previous year prepared under sub-section (2), as increased by—

(*a*) the amount of income-tax paid or payable, and the provision therefor; or

(*b*) the amounts carried to any reserves, by whatever name called [92][, other than a reserve specified under section 33AC]; or

(*c*) the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities; or

(*d*) the amount by way of provision for losses of subsidiary companies; or

(*e*) the amount or amounts of dividends paid or proposed ; or

(*f*) the amount or amounts of expenditure relatable to any income to which [93][section 10 (other than the provisions contained in clause (*38*) thereof) or [94][***] section 11 or section 12 apply; or]

[95][(*g*) the amount of depreciation,]

[96][(*h*) the amount of deferred tax and the provision therefor,

[97][(*i*) the amount or amounts set aside as provision for diminution in the value of any asset,

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91. Renumbered as *Explanation 1* by the Finance Act, 2008, w.r.e.f. 1-4-2001.

92. Inserted by the Finance Act, 2002, w.e.f. 1-4-2003.

93. Substituted for "section 10 (other than the provisions contained in clause (*23G*) thereof) or section 10A or section 10B or section 11 or section 12 apply," by the Finance Act, 2006, w.e.f. 1-4-2007. Earlier quoted portion was amended by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005.

94. Words "section 10A or section 10B or" omitted by the Finance Act, 2007, w.e.f. 1-4-2008.

95. Inserted by the Finance Act, 2006, w.e.f. 1-4-2007.

96. Substituted for the portion beginning with the words "if any amount referred" and ending with the words "as reduced by—" by the Finance Act, 2008, w.r.e.f. 1-4-2001. Prior to its substitution, this portion as amended by the Finance Act, 2006, w.e.f. 1-4-2007, read as under :

"if any amount referred to in clauses (*a*) to (*g*) is debited to the profit and loss account, and as reduced by—"

97. Substituted for the following by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-2001 :

"if any amount referred to in clauses (*a*) to (*h*) is debited to the profit and loss account, and as reduced by—"

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if any amount referred to in clauses (*a*) to (*i*) is debited to the profit and loss account, and as reduced by,—]]

[98][(*i*) the amount withdrawn from any reserve or provision (excluding a reserve created before the 1st day of April, 1997 otherwise than by way of a debit to the profit and loss account), if any such amount is credited to the profit and loss account:

Provided that where this section is applicable to an assessee in any previous year, the amount withdrawn from reserves created or provisions made in a previous year relevant to the assessment year commencing on or after the 1st day of April, 1997 shall not be reduced from the book profit unless the book profit of such year has been increased by those reserves or provisions (out of which the said amount was withdrawn) under this *Explanation* or *Explanation* below the second proviso to section 115JA, as the case may be; or]

(*ii*) the amount of income to which any of the provisions of [99][section 10 (other than the provisions contained in clause (*38*) thereof)] or [1][***] section 11 or section 12 apply, if any such amount is credited to the profit and loss account; or

[2][(*iia*) the amount of depreciation debited to the profit and loss account (excluding the depreciation on account of revaluation of assets); or

(*iib*) the amount withdrawn from revaluation reserve and credited to the profit and loss account, to the extent it does not exceed the amount of depreciation on account of revaluation of assets referred to in clause (*iia*); or]

[3][(*iii*) the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account.

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98. Substituted by the Finance Act, 2002, w.r.e.f. 1-4-2001. Prior to their substitution, clause (*i*) and the proviso read as under :

"(*i*) the amount withdrawn from any reserves or provisions, if any such amount is credited to the profit and loss account :

Provided that, where this section is applicable to an assessee in any previous year (including the relevant previous year), the amount withdrawn from reserves created or provisions made in a previous year relevant to the assessment year commencing on or after the 1st day of April, 2001 shall not be reduced from the book profit unless the book profit of such year has been increased by those reserves or provisions (out of which the said amount was withdrawn) under this *Explanation;* or"

99. Substituted for "section 10 (other than the provisions contained in clause (*23G*) thereof)" by the Finance Act, 2006, w.e.f. 1-4-2007. Prior to its substitution, the quoted words were amended by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005.

1. Words "section 10A or section 10B or" omitted by the Finance Act, 2007, w.e.f. 1-4-2008.

2. Inserted by the Finance Act, 2006, w.e.f. 1-4-2007.

3. Substituted by the Finance Act, 2002, w.r.e.f. 1-4-2001. Prior to their substitution, clause (*iii*) and the *Explanation* read as under :

"(*iii*) the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account.

Explanation.—For the purposes of this clause, the loss shall not include depreciation; or"

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Explanation.—For the purposes of this clause,—

(*a*) the loss shall not include depreciation;

(*b*) the provisions of this clause shall not apply if the amount of loss brought forward or unabsorbed depreciation is *nil;* or]

(*iv*) the amount of profits eligible for deduction under section 80HHC, computed under clause (*a*) or clause (*b*) or clause (*c*) of sub-section (3) or sub-section (3A), as the case may be, of that section, and subject to the conditions specified in that section; or

(*v*) the amount of profits eligible for deduction under section 80HHE computed under sub-section (3) or sub-section (3A), as the case may be, of that section, and subject to the conditions specified in that section; or

(*vi*) the amount of profits eligible for deduction under section 80HHF computed under sub-section (3) of that section, and subject to the conditions specified in that section; or

(*vii*) the amount of profits of sick industrial company for the assessment year commencing on and from the assessment year relevant to the previous year in which the said company has become a sick industrial company under sub-section (1) of section 17[4] of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and ending with the assessment year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses.

Explanation.—For the purposes of this clause, "net worth" shall have the meaning assigned to it in clause (*ga*) of sub-section (1) of section 3[5] of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986); or

[6][(*viii*) the amount of deferred tax, if any such amount is credited to the profit and loss account.]

[6][*Explanation 2*.— For the purposes of clause (*a*) of *Explanation 1*, the amount of income-tax shall include—

(*i*) any tax on distributed profits under section 115-O or on distributed income under section 115R;

(*ii*) any interest charged under this Act;

(*iii*) surcharge, if any, as levied by the Central Acts from time to time;

(*iv*) Education Cess on income-tax, if any, as levied by the Central Acts from time to time; and

(*v*) Secondary and Higher Education Cess on income-tax, if any, as levied by the Central Acts from time to time.]

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4. For text of section 17 of the Sick Industrial Companies (Special Provisions) Act, 1985, *see* **Appendix**.

5. Clause (*ga*) of section 3(1) of the Sick Industrial Companies (Special Provisions) Act, 1985, defines "net worth". For text of section 3(1)(*ga*), *see* **Appendix**.

6. Inserted by the Finance Act, 2008, w.r.e.f. 1-4-2001.

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(3) Nothing contained in sub-section (1) shall affect the determination of the amounts in relation to the relevant previous year to be carried forward to the subsequent year or years under the provisions of sub-section (2) of section 32 or sub-section (3) of section 32A or clause (*ii*) of sub-section (1) of section 72 or section 73 or section 74 or sub-section (3) of section 74A.

(4) Every company to which this section applies, shall furnish a report in the prescribed form[7] from an accountant as defined in the *Explanation* below sub-section (2) of section 288, certifying that the book profit has been computed in accordance with the provisions of this section along with the return of income filed under sub-section (1) of section 139 or along with the return of income furnished in response to a notice under clause (*i*) of sub-section (1) of section 142.

(5) Save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee, being a company, mentioned in this section.]

[8][(6) The provisions of this section shall not apply to the income accrued or arising on or after the 1st day of April, 2005 from any business carried on, or services rendered, by an entrepreneur or a Developer, in a Unit or Special Economic Zone, as the case may be.]

CHAPTER XII-C

SPECIAL PROVISIONS RELATING TO RETAIL TRADE, ETC.

[*Chapter XII-C, consisting of sections 115K to 115N, omitted by the Finance Act, 1997, w.e.f. 1-4-1998. Earlier Chapter XII-C was inserted by the Finance Act, 1992, w.e.f. 1-4-1993.*]

Special provision for computation of income in certain cases.

115K. [9][*Omitted by the Finance Act, 1997, w.e.f. 1-4-1998.*]

Return of income not to be filed in certain cases.

115L. [10][*Omitted by the Finance Act, 1997, w.e.f. 1-4-1998.*]

Special provision for disallowance of deductions and rebate of income-tax.

115M. [11][*Omitted by the Finance Act, 1997, w.e.f. 1-4-1998.*]

Bar of proceedings in certain cases.

115N. [12][*Omitted by the Finance Act, 1997, w.e.f. 1-4-1998.*]

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7. *See* rule 40B and Form No. 29B. Rule 12 provides that the return of income shall not be accompanied by any document or copy of any account or form or report of audit required to be attached with return of income under any of the provisions of the Act.
8. Inserted by the Special Economic Zones Act, 2005, w.e.f. 10-2-2006.
9. Prior to its omission, section 115K was inserted by the Finance Act, 1992, w.e.f. 1-4-1993, and later on amended by the Finance Act, 1993, w.e.f. 1-4-1993/1-4-1994, the Finance Act, 1994, w.e.f. 1-4-1995, the Finance Act, 1995, w.e.f. 1-4-1996 and the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997.
10. Prior to its omission, section 115L was inserted by the Finance Act, 1992, w.e.f. 1-4-1993.
11. Prior to its omission, section 115M was inserted, *ibid.*
12. Prior to its omission, section 115N was inserted, *ibid.*, and later on amended by the Finance Act, 1993, w.e.f. 1-4-1993 and the Finance Act, 1994, w.e.f. 1-4-1995.

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[13][*CHAPTER XII-D*

SPECIAL PROVISIONS RELATING TO TAX ON DISTRIBUTED PROFITS OF DOMESTIC COMPANIES

Tax on distributed profits of domestic companies.

115-O. [14][(1) Notwithstanding anything contained in any other provision of this Act and subject to the provisions of this section, in addition to the income-tax chargeable in respect of the total income of a domestic company for any assessment year, any amount declared, distributed or paid by such company by way of dividends (whether interim or otherwise) on or after the 1st day of April, 2003, whether out of current or accumulated profits shall be charged to additional income-tax (hereafter referred to as tax on distributed profits) at the rate of [15][fifteen] per cent.]

[16][(1A) The amount referred to in sub-section (1) shall be reduced by,—

(*i*) the amount of dividend, if any, received by the domestic company during the financial year, if—

(*a*) such dividend is received from its subsidiary;

(*b*) the subsidiary has paid tax under this section on such dividend; and

(*c*) the domestic company is not a subsidiary of any other company :

Provided that the same amount of dividend shall not be taken into account for reduction more than once;

(*ii*) the amount of dividend, if any, paid to any person for, or on behalf of, the New Pension System Trust referred to in clause (*44*) of section 10.

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13. Chapter XII-D, consisting of sections 115-O to 115Q, inserted by the Finance Act, 1997, w.e.f. 1-6-1997.

14. Substituted by the Finance Act, 2003, w.e.f. 1-4-2003. Prior to its substitution, sub-section (1), as amended by the Finance Act, 2000, w.e.f. 1-6-2000, Finance Act, 2001, w.e.f. 1-6-2001 and Finance Act, 2002, w.e.f. 1-4-2003, read as under :

"(1) Notwithstanding anything contained in any other provision of this Act and subject to the provisions of this section, in addition to the income-tax chargeable in respect of the total income of a domestic company for any assessment year, any amount declared, distributed or paid by such company by way of dividends (whether interim or otherwise) on or after the 1st day of June, 1997 but on or before the 31st day of March, 2002, whether out of current or accumulated profits shall be charged to additional income-tax (hereafter referred to as tax on distributed profits) at the rate of ten per cent."

15. Substituted for "twelve and one-half" by the Finance Act, 2007, w.e.f. 1-4-2007.

16. Substituted by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-2009. Prior to its substitution, sub-section (1A), as inserted by the Finance Act, 2008, w.e.f. 1-4-2008, read as under :

"(1A) The amount referred to in sub-section (1) shall be reduced by the amount of dividend, if any, received by the domestic company during the financial year, if—

(*a*) such dividend is received from its subsidiary;

(*b*) the subsidiary has paid tax under this section on such dividend; and

(*c*) the domestic company is not a subsidiary of any other company:

Provided that the same amount of dividend shall not be taken into account for reduction more than once.

Explanation.—For the purposes of this sub-section, a company shall be a subsidiary of another company, if such other company holds more than half in nominal value of the equity share capital of the company."

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Explanation.—For the purposes of this sub-section, a company shall be a subsidiary of another company, if such other company, holds more than half in nominal value of the equity share capital of the company.]

(2) Notwithstanding that no income-tax is payable by a domestic company on its total income computed in accordance with the provisions of this Act, the tax on distributed profits under sub-section (1) shall be payable by such company.

(3) The principal officer of the domestic company and the company shall be liable to pay the tax on distributed profits to the credit of the Central Government within fourteen days from the date of—

(*a*) declaration of any dividend; or

(*b*) distribution of any dividend; or

(*c*) payment of any dividend,

whichever is earliest.

(4) The tax on distributed profits so paid by the company shall be treated as the final payment of tax in respect of the amount declared, distributed or paid as dividends and no further credit therefor shall be claimed by the company or by any other person in respect of the amount of tax so paid.

(5) No deduction under any other provision of this Act shall be allowed to the company or a shareholder in respect of the amount which has been charged to tax under sub-section (1) or the tax thereon.

[17][(6) Notwithstanding anything contained in this section, no tax on distributed profits shall be chargeable in respect of the total income of an undertaking or enterprise engaged in developing or developing and operating or developing, operating and maintaining a Special Economic Zone for any assessment year on any amount declared, distributed or paid by such Developer or enterprise, by way of dividends (whether interim or otherwise) on or after the 1st day of April, 2005 out of its current income either in the hands of the Developer or enterprise or the person receiving such dividend [18][***]].

Interest payable for non-payment of tax by domestic companies.

115P. Where the principal officer of a domestic company and the company fails to pay the whole or any part of the tax on distributed profits referred to in sub-section (1) of section 115-O, within the time allowed under sub-section (3) of that section, he or it shall be liable to pay simple interest at the rate of [19][one] per cent for every month or part thereof on the amount of such tax for the period beginning on the date immediately after the last date on which such tax was payable and ending with the date on which the tax is actually paid.

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17. Inserted by the Special Economic Zones Act, 2005, w.e.f. 10-2-2006.

18. Words "not falling under clause (*23G*) of section 10" omitted by the Finance Act, 2006, w.e.f. 1-4-2007.

19. Substituted for "one and one-fourth" by the Taxation Laws (Amendment) Act, 2003, w.e.f. 8-9-2003. Earlier the quoted words were amended by the Finance Act, 2000, w.e.f. 1-6-2000 and Finance Act, 2001, w.e.f. 1-6-2001.

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When company is deemed to be in default.

115Q. If any principal officer of a domestic company and the company does not pay tax on distributed profits in accordance with the provisions of section 115-O, then, he or it shall be deemed to be an assessee in default in respect of the amount of tax payable by him or it and all the provisions of this Act for the collection and recovery of income-tax shall apply.

Explanation.—For the purposes of this Chapter, the expression "dividends" shall have the same meaning as is given to "dividend" in clause (*22*) of section 2 but shall not include sub-clause (*e*) thereof.]

[20][*CHAPTER XII-E*

SPECIAL PROVISIONS RELATING TO TAX ON DISTRIBUTED INCOME

Tax on distributed income to unit holders.

115R. (1) Notwithstanding anything contained in any other provisions of this Act and section 32 of the Unit Trust of India Act, 1963 (52 of 1963), [21][any amount of income distributed on or before the 31st day of March, 2002 by the Unit Trust of India to its unit holders] shall be chargeable to tax and the Unit Trust of India shall be liable to pay additional income-tax on such distributed income at the rate of [22][ten] per cent :

Provided that nothing contained in this sub-section shall apply in respect of any income distributed to a unit holder of open-ended equity oriented funds in respect of any distribution made from such fund for a period of three years commencing from the 1st day of April, 1999.

[23][(2) Notwithstanding anything contained in any other provision of this Act, any amount of income distributed by the specified company or a Mutual Fund to its unit holders shall be chargeable to tax and such specified company or Mutual

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20. Chapter XII-E, consisting of sections 115R to 115T, inserted by the Finance Act, 1999, w.e.f. 1-6-1999.

21. Substituted for "any amount of income distributed by the Unit Trust of India to its unit-holders" by the Finance Act, 2002, w.e.f. 1-4-2003.

22. Substituted for "twenty" by the Finance Act, 2001, w.e.f. 1-6-2001. Earlier "twenty" was substituted for "ten" by the Finance Act, 2000, w.e.f. 1-6-2000.

23. Substituted by the Finance Act, 2003, w.e.f. 1-4-2003. Prior to its substitution, sub-section (2), as amended by the Finance Act, 2002, w.e.f. 1-4-2003, the Finance Act, 2001, w.e.f. 1-6-2001 and the Finance Act, 2000, w.e.f. 1-6-2000, read as under :

"(2) Notwithstanding anything contained in any other provisions of this Act, any amount of income distributed on or before the 31st day of March, 2002 by a Mutual Fund to its unit-holders shall be chargeable to tax and such Mutual Fund shall be liable to pay additional income-tax at the rate of ten per cent :

Provided that nothing contained in this sub-section shall apply in respect of any income distributed to a unit holder of open-ended equity oriented funds in respect of any distribution made from such fund for a period of three years commencing from the 1st day of April, 1999."

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Fund shall be liable to pay additional income-tax on such distributed income [24][at the rate of—

[25][(*i*) twenty-five per cent on income distributed by a money market mutual fund or a liquid fund;

(*ii*) twelve and one-half per cent on income distributed to any person being an individual or a Hindu undivided family by a fund other than a money market mutual fund or a liquid fund; and

(*iii*) twenty per cent on income distributed to any other person by a fund other than a money market mutual fund or a liquid fund:]]

Provided that nothing contained in this sub-section shall apply in respect of any income distributed,—

(*a*) by the Administrator of the specified undertaking, to the unit holders; or

(*b*) to a unit holder of [26][***] equity oriented funds in respect of any distribution made from such funds [27][***].

Explanation.—For the purposes of this sub-section, "Administrator" and "specified company" shall have the meanings respectively assigned to them in the *Explanation* to clause (*35*) of section 10.]

(3) The person responsible for making payment of the income distributed by the Unit Trust of India or a Mutual Fund and the Unit Trust of India or the Mutual Fund, as the case may be, shall be liable to pay tax to the credit of the Central Government within fourteen days from the date of distribution or payment of such income, whichever is earlier.

[28][(3A) The person responsible for making payment of the income distributed by the Unit Trust of India or a Mutual Fund and the Unit Trust of India or the Mutual Fund, as the case may be, shall on or before the 15th day of September in each year, furnish to the prescribed income-tax authority[29], a statement in the prescribed form and verified in the prescribed manner, giving the details of the amount of income distributed to unit holders during the previous year, the tax paid thereon and such other relevant details as may be prescribed[29].]

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24. Substituted for "at the rate of twelve and one-half per cent" by the Finance (No. 2) Act, 2004, w.r.e.f. 9-7-2004.

25. Substituted for clauses (*i*) and (*ii*) by the Finance Act, 2007, w.e.f. 1-4-2007. Prior to their substitution, clauses (*i*) and (*ii*) read as under :

"(*i*) twelve and one-half per cent on income distributed to any person being an individual or a Hindu undivided family; and

(*ii*) twenty per cent on income distributed to any other person:"

26. Word "open-ended" omitted by the Finance Act, 2006, w.e.f. 1-6-2006.

27. Words "for a period of one year commencing from the 1st day of April, 2003" omitted by the Finance (No. 2) Act, 2004, w.r.e.f. 1-4-2004.

28. Inserted by the Finance Act, 2000, w.e.f. 1-6-2000.

29. *See* rule 12B and Form Nos. 63 & 63A.

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(4) No deduction under any other provision of this Act shall be allowed to the Unit Trust of India or to a Mutual Fund in respect of the income which has been charged to tax under sub-section (1) or sub-section (2).

Interest payable for non-payment of tax.

115S. Where the person responsible for making payment of the income distributed by the [30][specified company as referred to in clause (*h*) of section 2 of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002[31] (58 of 2002) or a Mutual Fund and the specified company] or the Mutual Fund, as the case may be, fails to pay the whole or any part of the tax referred to in sub-section (1) or sub-section (2) of section 115R, within the time allowed under sub-section (3) of that section, he or it shall be liable to pay simple interest at the rate of [32][one] per cent every month or part thereof on the amount of such tax for the period beginning on the date immediately after the last date on which such tax was payable and ending with the date on which the tax is actually paid.

Unit Trust of India or Mutual Fund to be an assessee in default.

115T. If any person responsible for making payment of the income distributed by the [33][specified company as referred to in clause (*h*) of section 2 of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002[34] (58 of 2002) or a Mutual Fund and the specified company] or the Mutual Fund, as the case may be, does not pay tax, as is referred to in sub-section (1) or sub-section (2) of section 115R, then, he or it shall be deemed to be an assessee in default in respect of the amount of tax payable by him or it and all the provisions of this Act for the collection and recovery of income-tax shall apply.

Explanation.— For the purposes of this Chapter,—

(*a*) "Mutual Fund" means a Mutual Fund specified under clause (*23D*) of section 10;

(*b*) "[35][***] equity oriented fund" means—

(*i*) the Unit Scheme, 1964 made by the Unit Trust of India; and

(*ii*) such fund where the investible funds are invested by way of equity shares in domestic companies to the extent of more than [36][sixty-five] per cent of the total proceeds of such fund :

Provided that the percentage of equity shareholding of the fund shall be computed with reference to the annual average of the monthly averages of the opening and closing figures;

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30. Substituted for "Unit Trust of India or a Mutual Fund and the Unit Trust of India" by the Finance Act, 2003, w.e.f. 1-4-2003.

31. For text of section 2(*h*) of the Unit Trust of India (Transfer of Undertaking & Repeal) Act, 2003, *see* Taxmann's Direct Taxes Manual, Vol. 3.

32. Substituted for "one and one-fourth" by the Taxation Laws (Amendment) Act, 2003, w.e.f. 8-9-2003. Earlier the quoted words were amended by the Finance Act, 2000, w.e.f. 1-6-2000 and Finance Act, 2001, w.e.f. 1-6-2001.

33. Substituted for "Unit Trust of India or a Mutual Fund and the Unit Trust of India" by the Finance Act, 2003, w.e.f. 1-4-2003.

34. For text of section 2(*h*) of the Unit Trust of India (Transfer of Undertaking & Repeal) Act, 2003, *see* Taxmann's Direct Taxes Manual, Vol. 3.

35. Word "open-ended" omitted by the Finance Act, 2006, w.e.f. 1-6-2006.

36. Substituted for "fifty", *ibid.*

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(*c*) "Unit Trust of India" means the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963);]

[37][(*d*) "money market mutual fund" means a money market mutual fund as defined in sub-clause (*p*) of clause (*2*) of the Securities and Exchange Board of India (Mutual Funds) Regulations[38], 1996;

(*e*) "liquid fund" means a scheme or plan of a mutual fund which is classified by the Securities and Exchange Board of India as a liquid fund in accordance with the guidelines issued by it in this behalf under the Securities and Exchange Board of India Act, 1992 (15 of 1992) or regulations made thereunder.]

[39][*CHAPTER XII-F*

SPECIAL PROVISIONS RELATING TO TAX ON INCOME RECEIVED FROM VENTURE CAPITAL COMPANIES AND VENTURE CAPITAL FUNDS

Tax on income in certain cases.

115U. (1) Notwithstanding anything contained in any other provisions of this Act, any income received by a person out of investments made in a venture capital company or venture capital fund shall be chargeable to income-tax in the same manner as if it were the income received by such person had he made investments directly in the venture capital undertaking.

(2) The person responsible for making payment of the income on behalf of a venture capital company or a venture capital fund and the venture capital company or venture capital fund shall furnish, within such time as may be prescribed, to the person receiving such income and to the prescribed income-tax authority[40], a statement in the prescribed form[40] and verified in the prescribed manner, giving details of the nature of the income paid during the previous year and such other relevant details as may be prescribed.

(3) The income paid by the venture capital company and the venture capital fund shall be deemed to be of the same nature and in the same proportion in the hands of the person receiving such income as it had been received by, or had accrued to, the venture capital company or the venture capital fund, as the case may be, during the previous year.

(4) The provisions of Chapter XII-D or Chapter XII-E or Chapter XVII-B shall not apply to the income paid by a venture capital company or venture capital fund under this Chapter.

Explanation.—For the purposes of this Chapter, "venture capital company", "venture capital fund" and "venture capital undertaking" shall have the meanings respectively assigned to them in clause (*23FB*) of section 10.]

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37. Inserted by the Finance Act, 2007, w.e.f. 1-4-2007.

38. For the meaning of the term "money market mutual fund", *see* **Appendix**.

39. Inserted by the Finance Act, 2000, w.e.f. 1-4-2001.

40. *See* rule 12C and Form No. 64.

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[41][*CHAPTER XII-G*

SPECIAL PROVISIONS RELATING TO INCOME OF SHIPPING COMPANIES

A.—Meaning of certain expressions

Definitions.

115V. In this Chapter, unless the context otherwise requires,—

(*a*) "bareboat charter" means hiring of a ship for a stipulated period on terms which give the charterer possession and control of the ship, including the right to appoint the master and crew;

(*b*) "bareboat charter-*cum*-demise" means a bareboat charter where the ownership of the ship is intended to be transferred after a specified period to the company to whom it has been chartered;

(*c*) "Director-General of Shipping" means the Director-General of Shipping appointed by the Central Government under sub-section (1) of section 7 of the Merchant Shipping Act, 1958 (44 of 1958);

(*d*) "factory ship" includes a vessel providing processing services in respect of processing of the fishing produce;

(*e*) "fishing vessel" shall have the meaning assigned to it in clause (*12*) of section 3[42] of the Merchant Shipping Act, 1958 (44 of 1958);

(*f*) "pleasure craft" means a ship of a kind whose primary use is for the purposes of sport or recreation;

(*g*) "qualifying company" means a company referred to in section 115VC;

(*h*) "qualifying ship" means a ship referred to in section 115VD;

(*i*) "seagoing ship" means a ship if it is certified as such by the competent authority of any country;

(*j*) "tonnage income" means the income of a tonnage tax company computed in accordance with the provisions of this Chapter;

(*k*) "tonnage tax activities" means the activities referred to in sub-sections (2) and (5) of section 115V-I;

(*l*) "tonnage tax company" means a qualifying company in relation to which tonnage tax option is in force;

(*m*) "tonnage tax scheme" means a scheme for computation of profits and gains of business of operating qualifying ships under the provisions of this Chapter.

B.—Computation of tonnage income from business of operating qualifying ships

Computation of profits and gains from the business of operating qualifying ships.

115VA. Notwithstanding anything to the contrary contained in sections 28 to 43C, in the case of a company, the income from the business of operating qualifying ships, may, at its option, be computed in accordance with

41. Chapter XII-G, consisting of sections 115V to 115VZC, inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005.

42. For text of section 3(*12*) of the Merchant Shipping Act, 1958, *see* **Appendix**.

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the provisions of this Chapter and such income shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession".

Operating ships.

115VB. For the purposes of this Chapter, a company shall be regarded as operating a ship if it operates any ship whether owned or chartered by it and includes a case where even a part of the ship has been chartered in by it in an arrangement such as slot charter, space charter or joint charter :

Provided that a company shall not be regarded as the operator of a ship which has been chartered out by it on bareboat charter-*cum*-demise terms or on bareboat charter terms for a period exceeding three years.

Qualifying company.

115VC. For the purposes of this Chapter, a company is a qualifying company if—

(*a*) it is an Indian company;

(*b*) the place of effective management of the company is in India;

(*c*) it owns at least one qualifying ship; and

(*d*) the main object of the company is to carry on the business of operating ships.

Explanation.—For the purposes of this section, "place of effective management of the company" means—

(*A*) the place where the board of directors of the company or its executive directors, as the case may be, make their decisions; or

(*B*) in a case where the board of directors routinely approve the commercial and strategic decisions made by the executive directors or officers of the company, the place where such executive directors or officers of the company perform their functions.

Qualifying ship.

115VD. For the purposes of this Chapter, a ship is a qualifying ship if—

(*a*) it is a sea going ship or vessel of fifteen net tonnage or more;

(*b*) it is a ship registered under the Merchant Shipping Act, 1958 (44 of 1958), or a ship registered outside India in respect of which a licence has been issued by the Director-General of Shipping under section 406 or section 407 of the Merchant Shipping Act, 1958 (44 of 1958); and

(*c*) a valid certificate in respect of such ship indicating its net tonnage is in force,

but does not include—

(*i*) a sea going ship or vessel if the main purpose for which it is used is the provision of goods or services of a kind normally provided on land;

(*ii*) fishing vessels;

(*iii*) factory ships;

(*iv*) pleasure crafts;

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(*v*) harbour and river ferries;

(*vi*) offshore installations;

(*vii*) [43][***]

(*viii*) a qualifying ship which is used as a fishing vessel for a period of more than thirty days during a previous year.

Manner of computation of income under tonnage tax scheme.

115VE. (1) A tonnage tax company engaged in the business of operating qualifying ships shall compute the profits from such business under the tonnage tax scheme.

(2) The business of operating qualifying ships giving rise to income referred to in sub-section (1) of section 115V-I shall be considered as a separate business (hereafter in this Chapter referred to as the tonnage tax business) distinct from all other activities or business carried on by the company.

(3) The profits referred to in sub-section (1) shall be computed separately from the profits and gains from any other business.

(4) The tonnage tax scheme shall apply only if an option to that effect is made in accordance with the provisions of section 115VP.

(5) Where a company engaged in the business of operating qualifying ships is not covered under the tonnage tax scheme or, has not made an option to that effect, as the case may be, the profits and gains of such company from such business shall be computed in accordance with the other provisions of this Act.

Tonnage income.

115VF. Subject to the other provisions of this Chapter, the tonnage income shall be computed in accordance with section 115VG and the income so computed shall be deemed to be the profits chargeable under the head "Profits and gains of business or profession" and the relevant shipping income referred to in sub-section (1) of section 115V-I shall not be chargeable to tax.

Computation of tonnage income.

115VG. (1) The tonnage income of a tonnage tax company for a previous year shall be the aggregate of the tonnage income of each qualifying ship computed in accordance with the provisions of sub-sections (2) and (3).

(2) For the purposes of sub-section (1), the tonnage income of each qualifying ship shall be the daily tonnage income of each such ship multiplied by—

(*a*) the number of days in the previous year; or

(*b*) the number of days in part of the previous year in case the ship is operated by the company as a qualifying ship for only part of the previous year, as the case may be.

(3) For the purposes of sub-section (2), the daily tonnage income of a qualifying ship having tonnage referred to in column (1) of the Table below shall be the amount specified in the corresponding entry in column (2) of the Table:

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43. Omitted by the Finance Act, 2005, w.e.f. 1-4-2006. Prior to its omission, clause (*vii*) read as under:

"(*vii*) dredgers;"

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TABLE

Qualifying ship having net tonnage	*Amount of daily tonnage income*
(1)	*(2)*
up to 1,000	Rs. 46 for each 100 tons
exceeding 1,000 but not more than 10,000	Rs. 460 *plus* Rs. 35 for each 100 tons exceeding 1,000 tons
exceeding 10,000 but not more than 25,000	Rs. 3,610 *plus* Rs. 28 for each 100 tons exceeding 10,000 tons
exceeding 25,000	Rs. 7,810 *plus* Rs. 19 for each 100 tons exceeding 25,000 tons.

(4) For the purposes of this Chapter, the tonnage shall mean the tonnage of a ship indicated in the certificate referred to in section 115VX and includes the deemed tonnage computed in the prescribed manner[44].

Explanation.—For the purposes of this sub-section, "deemed tonnage" shall be the tonnage in respect of an arrangement of purchase of slots, slot charter and an arrangement of sharing of break-bulk vessel.

(5) The tonnage shall be rounded off to the nearest multiple of hundred tons and for this purpose any tonnage consisting of kilograms shall be ignored and thereafter if such tonnage is not a multiple of hundred, then, if the last figure in that amount is fifty tons or more, the tonnage shall be increased to the next higher tonnage which is a multiple of hundred and if the last figure is less than fifty tons, the tonnage shall be reduced to the next lower tonnage which is a multiple of hundred; and the tonnage so rounded off shall be the tonnage of the ship for the purposes of this section.

(6) Notwithstanding anything contained in any other provision of this Act, no deduction or set off shall be allowed in computing the tonnage income under this Chapter.

Calculation in case of joint operation, etc.

115VH. (1) Where a qualifying ship is operated by two or more companies by way of joint interest in the ship or by way of an agreement for the use of the ship and their respective shares are definite and ascertainable, the tonnage income of each such company shall be an amount equal to a share of income proportionate to its share of that interest.

(2) Subject to the provisions of sub-section (1), where two or more companies are operators of a qualifying ship, the tonnage income of each company shall be computed as if each had been the only operator.

Relevant shipping income.

115V-I. (1) For the purposes of this Chapter, the relevant shipping income of a tonnage tax company means—

(*i*) its profits from core activities referred to in sub-section (2);

(*ii*) its profits from incidental activities referred to in sub-section (5):

44. See rule 11Q.

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Provided that where the aggregate of all such incomes specified in clause (*ii*) exceeds one-fourth per cent of the turnover from core activities referred to in sub-section (2), such excess shall not form part of the relevant shipping income for the purposes of this Chapter and shall be taxable under the other provisions of this Act.

(2) The core activities of a tonnage tax company shall be—

(*i*) its activities from operating qualifying ships; and

(*ii*) other ship-related activities mentioned as under :—

(*A*) shipping contracts in respect of—

(*i*) earning from pooling arrangements;

(*ii*) contracts of affreightment.

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

(*a*) "pooling arrangement" means an agreement between two or more persons for providing services through a pool or operating one or more ships and sharing earnings or operating profits on the basis of mutually agreed terms;

(*b*) "contract of affreightment" means a service contract under which a tonnage tax company agrees to transport a specified quantity of specified products at a specified rate, between designated loading and discharging ports over a specified period;

(*B*) specific shipping trades, being—

(*i*) on-board or on-shore activities of passenger ships comprising of fares and food and beverages consumed on board;

(*ii*) slot charters, space charters, joint charters, feeder services, container box leasing of container shipping.

(3) The Central Government, if it considers necessary or expedient so to do, may, by notification in the Official Gazette, exclude any activity referred to in clause (*ii*) of sub-section (2) or prescribe the limit up to which such activities shall be included in the core activities for the purposes of this section.

(4) Every notification issued under this Chapter shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification, or both Houses agree that the notification should not be issued, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.

(5) The incidental activities shall be the activities which are incidental to the core activities and which may be prescribed[45] for the purpose.

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45. See rule 11R.

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(6) Where a tonnage tax company operates any ship, which is not a qualifying ship, the income attributable to operating such non-qualifying ship shall be computed in accordance with the other provisions of this Act.

(7) Where any goods or services held for the purposes of tonnage tax business are transferred to any other business carried on by a tonnage tax company, or where any goods or services held for the purposes of any other business carried on by such tonnage tax company are transferred to the tonnage tax business and, in either case, the consideration, if any, for such transfer as recorded in the accounts of the tonnage tax business does not correspond to the market value of such goods or services as on the date of the transfer, then, the relevant shipping income under this section shall be computed as if the transfer, in either case, had been made at the market value of such goods or services as on that date:

Provided that where, in the opinion of the Assessing Officer, the computation of the relevant shipping income in the manner hereinbefore specified presents exceptional difficulties, the Assessing Officer may compute such income on such reasonable basis as he may deem fit.

Explanation.—For the purposes of this sub-section, "market value", in relation to any goods or services, means the price that such goods or services would ordinarily fetch on sale in the open market.

(8) Where it appears to the Assessing Officer that, owing to the close connection between the tonnage tax company 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 tonnage tax company more than the ordinary profits which might be expected to arise in the tonnage tax business, the Assessing Officer shall, in computing the relevant shipping income of the tonnage tax company for the purposes of this Chapter, take the amount of income as may reasonably be deemed to have been derived therefrom.

Explanation.—For the purposes of this Chapter, in case the relevant shipping income of a tonnage tax company is a loss, then, such loss shall be ignored for the purposes of computing tonnage income.

Treatment of common costs.

115VJ. (1) Where a tonnage tax company also carries on any business or activity other than the tonnage tax business, common costs attributable to the tonnage tax business shall be determined on a reasonable basis.

(2) Where any asset, other than a qualifying ship, is not exclusively used for the tonnage tax business by the tonnage tax company, depreciation on such asset shall be allocated between its tonnage tax business and other business on a fair proportion to be determined by the Assessing Officer, having regard to the use of such asset for the purpose of the tonnage tax business and for the other business.

Depreciation.

115VK. (1) For the purposes of computing depreciation under clause (*iv*) of section 115VL, the depreciation for the first previous year of the tonnage tax scheme (hereafter in this section referred to as the first previous year) shall be computed on the written down value of the qualifying ships as specified under sub-section (2).

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(2) The written down value of the block of assets, being ships, as on the first day of the first previous year, shall be divided in the ratio of the book written down value of the qualifying ships (hereafter in this section referred to as the qualifying assets) and the book written down value of the non-qualifying ships (hereafter in this section referred to as the other assets).

(3) The block of qualifying assets as determined under sub-section (2) shall constitute a separate block of assets for the purposes of this Chapter.

(4) For the purposes of sub-section (2), the book written down value of the block of qualifying assets and the block of other assets shall be computed in the following manner, namely:—

(*a*) the book written down value of each qualifying asset and each other asset as on the first day of the previous year and which form part of the block of assets to be divided shall be determined by taking the book written down value of each asset appearing in the books of account as on the last day of the preceding previous year:

Provided that any change in the value of the assets consequent to their revaluation after the date on which the Finance (No. 2) Act, 2004 receives the assent of the President shall be ignored;

(*b*) the book written down value of all the qualifying assets and other assets shall be aggregated; and

(*c*) the ratio of the aggregate book written down value of the qualifying assets to the aggregate book written down value of the other assets shall be determined.

(5) Where an asset forming part of a block of qualifying assets begins to be used for purposes other than the tonnage tax business, an appropriate portion of the written down value allocable to such asset shall be reduced from the written down value of that block and shall be added to the block of other assets.

Explanation.—For the purposes of this sub-section, appropriate portion of the written down value allocable to the asset, which begins to be used for purposes other than the tonnage tax business, shall be an amount which bears the same proportion to the written down value of the block of qualifying assets as on the first day of the previous year as the book written down value of the asset beginning to be used for purposes other than tonnage tax business bears to the book written down value of all the assets forming the block of qualifying asset.

(6) Where an asset forming part of a block of other assets begins to be used for tonnage tax business, an appropriate portion of the written down value allocable to such asset shall be reduced from the written down value of the block of other assets and shall be added to the block of qualifying asset.

Explanation.—For the purposes of this sub-section, appropriate portion of written down value allocable to the asset which begins to be used for the tonnage tax business shall be an amount which bears the same proportion to the written down value of the block of other assets as on the first day of the previous year as the book written down value of the asset beginning to be used for tonnage tax business bears to the total book written down value of all the assets forming the block of other assets.

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(7) For the purposes of computing depreciation under clause (*iv*) of section 115VL in respect of an asset mentioned in sub-sections (5) and (6), depreciation computed for the previous year shall be allocated in the ratio of the number of days for which the asset was used for the tonnage tax business and for purposes other than tonnage tax business.

Explanation 1.—For the removal of doubts, it is hereby declared that for the purposes of this Act, depreciation on the block of qualifying assets and block of other assets so created shall be allowed as if such written down value referred to in sub-section (2) had been brought forward from the preceding previous year.

Explanation 2.—For the purposes of this section, "book written down value" means the written down value as appearing in the books of account.

General exclusion of deduction and set off, etc.

115VL. Notwithstanding anything contained in any other provision of this Act, in computing the tonnage income of a tonnage tax company for any previous year (hereafter in this section referred to as the "relevant previous year") in which it is chargeable to tax in accordance with this Chapter—

(*i*) sections 30 to 43B shall apply as if every loss, allowance or deduction referred to therein and relating to or allowable for any of the relevant previous years, had been given full effect to for that previous year itself;

(*ii*) no loss referred to in sub-sections (1) and (3) of section 70 or sub-sections (1) and (2) of section 71 or sub-section (1) of section 72 or sub-section (1) of section 72A, in so far as such loss relates to the business of operating qualifying ships of the company, shall be carried forward or set off where such loss relates to any of the previous years when the company is under the tonnage tax scheme;

(*iii*) no deduction shall be allowed under Chapter VI-A in relation to the profits and gains from the business of operating qualifying ships; and

(*iv*) in computing the depreciation allowance under section 32, the written down value of any asset used for the purposes of the tonnage tax business shall be computed as if the company has claimed and has been actually allowed the deduction in respect of depreciation for the relevant previous years.

Exclusion of loss.

115VM. (1) Section 72 shall apply in respect of any losses that have accrued to a company before its option for tonnage tax scheme and which are attributable to its tonnage tax business, as if such losses had been set off against the relevant shipping income in any of the previous years when the company is under the tonnage tax scheme.

(2) The losses referred to in sub-section (1) shall not be available for set off against any income other than relevant shipping income in any previous year beginning on or after the company exercises its option under section 115VP.

(3) Any apportionment necessary to determine the losses referred to in sub-section (1) shall be made on a reasonable basis.

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Chargeable gains from transfer of tonnage tax assets.

115VN. Any profits or gains arising from the transfer of a capital asset being an asset forming part of the block of qualifying assets shall be chargeable to income-tax in accordance with the provisions of section 45, read with section 50, and the capital gains so arising shall be computed in accordance with the provisions of sections 45 to 51:

Provided that for the purpose of computing such profits or gains, the provisions of section 50 shall have effect as if for the words "written down value of the block of assets", the words "written down value of the block of qualifying assets" had been substituted.

Explanation.—For the purposes of this Chapter, "written down value of the block of qualifying assets" means the written down value computed in accordance with the provisions of sub-section (2) of section 115VK.

Exclusion from provisions of section 115JB.

115V-O. The book profit or loss derived from the activities of a tonnage tax company, referred to in sub-section (1) of section 115V-I, shall be excluded from the book profit of the company for the purposes of section 115JB.

C.—Procedure for option of tonnage tax scheme

Method and time of opting for tonnage tax scheme.

115VP. (1) A qualifying company may opt for the tonnage tax scheme by making an application to the Joint Commissioner having jurisdiction over the company in the form and manner as may be prescribed[46], for such scheme.

(2) The application under sub-section (1) may be made by any existing qualifying company at any time after the 30th day of September, 2004 but before the 1st day of January, 2005 (hereafter referred to as the "initial period"):

Provided that—

(*i*) a company incorporated after the initial period; or

(*ii*) a qualifying company incorporated before the initial period but which becomes a qualifying company for the first time after the initial period,

may make an application within three months of the date of its incorporation or the date on which it became a qualifying company, as the case may be.

(3) On receipt of an application for option for tonnage tax scheme under sub-section (1), the Joint Commissioner may call for such information or documents from the company as he thinks necessary in order to satisfy himself about the eligibility of the company and after satisfying himself about such eligibility of the company to make such option for tonnage tax scheme, he—

(*i*) shall pass an order in writing approving the option for tonnage tax scheme; or

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46. See rule 11P and Form No. 65.

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(*ii*) shall, if he is not so satisfied, pass an order in writing refusing to approve the option for tonnage tax scheme,

and a copy of such order shall be sent to the applicant:

Provided that no order under clause (*ii*) shall be passed unless the applicant has been given a reasonable opportunity of being heard.

(4) Every order granting or refusing the approval of the option for tonnage tax scheme under clause (*i*) or clause (*ii*), as the case may be, of sub-section (3) shall be passed before the expiry of one month from the end of the month in which the application was received under sub-section (1).

(5) Where an order granting approval is passed under sub-section (3), the provisions of this Chapter shall apply from the assessment year relevant to the previous year in which the option for tonnage tax scheme is exercised.

Period for which tonnage tax option to remain in force.

115VQ. (1) An option for tonnage tax scheme, after it has been approved under sub-section (3) of section 115VP, shall remain in force for a period of ten years from the date on which such option has been exercised and shall be taken into account from the assessment year relevant to the previous year in which such option is exercised.

(2) An option for tonnage tax scheme shall cease to have effect from the assessment year relevant to the previous year in which—

(*a*) the qualifying company ceases to be a qualifying company;

(*b*) a default is made in complying with the provisions contained in section 115VT or section 115VU or section 115VV;

(*c*) the tonnage tax company is excluded from the tonnage tax scheme under section 115VZC;

(*d*) the qualifying company furnishes to the Assessing Officer, a declaration in writing to the effect that the provisions of this Chapter may not be made applicable to it,

and the profits and gains of the company from the business of operating qualifying ships shall be computed in accordance with the other provisions of this Act.

Renewal of tonnage tax scheme.

115VR. (1) An option for tonnage tax scheme approved under sub-section (3) of section 115VP may be renewed within one year from the end of the previous year in which the option ceases to have effect.

(2) The provisions of sections 115VP and 115VQ shall apply in relation to a renewal of the option for tonnage tax scheme in the same manner as they apply in relation to the approval of option for tonnage tax scheme.

Prohibition to opt for tonnage tax scheme in certain cases.

115VS. A qualifying company, which, on its own, opts out of the tonnage tax scheme or makes a default in complying with the provisions of section 115VT or section 115VU or section 115VV or whose option has been excluded from tonnage tax scheme in pursuance of an order made under sub-section (1) of section 115VZC, shall not be eligible to opt for tonnage tax scheme for a period of ten years from the date of opting out or default or order, as the case may be.

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D.—Conditions for applicability of tonnage tax scheme

Transfer of profits to Tonnage Tax Reserve Account.

115VT. (1) A tonnage tax company shall, subject to and in accordance with the provisions of this section, be required to credit to a reserve account (hereafter in this section referred to as the Tonnage Tax Reserve Account) an amount not less than twenty per cent of the book profit derived from the activities referred to in clauses (*i*) and (*ii*) of sub-section (1) of section 115V-I in each previous year to be utilised in the manner laid down in sub-section (3):

Provided that a tonnage tax company may transfer a sum in excess of twenty per cent of the book profit and such excess sum transferred shall also be utilised in the manner laid down in sub-section (3).

Explanation.—For the purposes of this section, "book profit" shall have the same meaning as in the *Explanation* to sub-section (2) of section 115JB so far as it relates to the income derived from the activities referred to in clauses (*i*) and (*ii*) of sub-section (1) of section 115V-I.

(2) Where the company has book profit from the business of operating qualifying ships and book loss from any other sources, and consequently, the company is not in a position to create the full or any part of the reserves under sub-section (1), the company shall create the reserves to the extent possible in that previous year and the shortfall, if any, shall be added to the amount of the reserves required to be created for the following previous year and such shortfall shall be deemed to be part of the reserve requirement of that following previous year :

Provided that to the extent the shortfall in creation of reserves during a particular previous year is carried forward to the following previous year under this sub-section, the company shall be considered as having created sufficient reserves for the first mentioned previous year:

Provided further that nothing contained in the first proviso shall apply in respect of the second year in case the shortfall in creation of reserves continues for two consecutive previous years.

(3) The amount credited to the Tonnage Tax Reserve Account under sub-section (1) shall be utilised by the company before the expiry of a period of eight years next following the previous year in which the amount was credited—

(*a*) for acquiring a new ship for the purposes of the business of the company; and

(*b*) until the acquisition of a new ship, for the purposes of the business of operating qualifying ships other than for distribution by way of dividends or profits or for remittance outside India as profits or for the creation of any asset outside India.

(4) Where any amount credited to the Tonnage Tax Reserve Account under sub-section (1),—

(*a*) has been utilised for any purpose other than that referred to in clause (*a*) or clause (*b*) of sub-section (3); or

(*b*) has not been utilised for the purpose specified in clause (*a*) of sub-section (3); or

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(*c*) has been utilised for the purpose of acquiring a new ship as specified in clause (*a*) of sub-section (3), but such ship is sold or otherwise transferred, other than in any scheme of demerger by the company to any person at any time before the expiry of three years from the end of the previous year in which it was acquired,

an amount which bears the same proportion to the total relevant shipping income of the year in which such reserve was created, as the amount out of such reserve so utilised or not utilised bears to the total reserve created during that year under sub-section (1) shall be taxable under the other provisions of this Act—

(*i*) in a case referred to in clause (*a*), in the year in which the amount was so utilised; or

(*ii*) in a case referred to in clause (*b*), in the year immediately following the period of eight years specified in sub-section (3); or

(*iii*) in a case referred to in clause (*c*), in the year in which the sale or transfer took place:

Provided that the income so taxable under the other provisions of this Act shall be reduced by the proportionate tonnage income charged to tax in the year of creation of such reserves.

(5) Notwithstanding anything contained in any other provision of this Chapter, where the amount credited to the Tonnage Tax Reserve Account in accordance with sub-section (1) is less than the minimum amount required to be credited under sub-section (1), an amount which bears the same proportion to the total relevant shipping income, as the shortfall in credit to the reserves bears to the minimum reserve required to be credited under sub-section (1) shall not be taxable under the tonnage tax scheme and shall be taxable under the other provisions of this Act.

(6) If the reserve required to be created under sub-section (1) is not created for any two consecutive previous years, the option of the company for tonnage tax scheme shall cease to have effect from the beginning of the previous year following the second consecutive previous year in which the failure to create the reserve under sub-section (1) had occurred.

Explanation.—For the purposes of this section, "new ship" includes a qualifying ship which, before the date of acquisition by the qualifying company was used by any other person, if it was not at any time previous to the date of such acquisition owned by any person resident in India.

Minimum training requirement for tonnage tax company.

115VU. (1) A tonnage tax company, after its option has been approved under sub-section (3) of section 115VP, shall comply with the minimum training requirement in respect of trainee officers in accordance with the guidelines[47] framed by the Director-General of Shipping and notified in the Official Gazette by the Central Government.

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47. See Notification No. SO 1436(E), dated 31-12-2004. For text of Guidelines, *see* Taxmann's Income-tax Rules.

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(2) The tonnage tax company shall be required to furnish a copy of the certificate issued by the Director-General of Shipping along with the return of income[48] under section 139 to the effect that such company has complied with the minimum training requirement in accordance with the guidelines referred to in sub-section (1) for the previous year.

(3) If the minimum training requirement is not complied with for any five consecutive previous years, the option of the company for tonnage tax scheme shall cease to have effect from the beginning of the previous year following the fifth consecutive previous year in which the failure to comply with the minimum training requirement under sub-section (1) had occurred.

Limit for charter in of tonnage.[49]

115VV. (1) In the case of every company which has opted for tonnage tax scheme, not more than forty-nine per cent of the net tonnage of the qualifying ships operated by it during any previous year shall be chartered in.

(2) The proportion of net tonnage referred to in sub-section (1) in respect of a previous year shall be calculated based on the average of net tonnage during that previous year.

(3) For the purposes of sub-section (2), the average of net tonnage shall be computed in such manner as may be prescribed in consultation with the Director-General of Shipping.

(4) Where the net tonnage of ships chartered in exceeds the limit under sub-section (1) during any previous year, the total income of such company in relation to that previous year shall be computed as if the option for tonnage tax scheme does not have effect for that previous year.

(5) Where the limit under sub-section (1) had exceeded in any two consecutive previous years, the option for tonnage tax scheme shall cease to have effect from the beginning of the previous year following the second consecutive previous year in which the limit had exceeded.

Explanation.—For the purposes of this section, the term "chartered in" shall exclude a ship chartered in by the company on bareboat charter-*cum*-demise terms.

Maintenance and audit of accounts.

115VW. An option for tonnage tax scheme by a tonnage tax company shall not have effect in relation to a previous year unless such company—

(*i*) maintains separate books of account in respect of the business of operating qualifying ships; and

(*ii*) furnishes, along with the return of income for that previous year, the report of an accountant, in the prescribed form[50] duly signed and verified by such accountant.

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48. Rule 12 provides that the return of income shall not be accompanied by any document or copy of any account or form or report of audit required to be attached with return of income under any of the provisions of the Act.

49. *See* rule 11S.

50. *See* rule 11T and Form No. 66. Rule 12 provides that the return of income shall not be accompanied by any document or copy of any account or form or report of audit required to be attached with return of income under any of the provisions of the Act.

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Explanation.—For the purposes of this section, "accountant" shall have the same meaning as in the *Explanation* below sub-section (2) of section 288.

Determination of tonnage.

115VX. (1) For the purposes of this Chapter,—

(*a*) the tonnage of a ship shall be determined in accordance with the valid certificate indicating its tonnage;

(*b*) "valid certificate" means,—

(*i*) in case of ships registered in India—

(*a*) having a length of less than twenty-four metres, a certificate issued under the Merchant Shipping (Tonnage Measurement of Ship) Rules, 1987 made under the Merchant Shipping Act, 1958 (44 of 1958);

(*b*) having a length of twenty-four metres or more, an international tonnage certificate issued under the provisions of the Convention on Tonnage Measurement of Ships, 1969, as specified in the Merchant Shipping (Tonnage Measurement of Ship) Rules, 1987 made under the Merchant Shipping Act, 1958 (44 of 1958);

(*ii*) in case of ships registered outside India, a licence issued by the Director-General of Shipping under section 406 or section 407 of the Merchant Shipping Act, 1958 (44 of 1958) specifying the net tonnage on the basis of Tonnage Certificate issued by the Flag State Administration where the ship is registered or any other evidence acceptable to the Director-General of Shipping produced by the ship owner while seeking permission for chartering in the ship.

E.—Amalgamation and demerger of shipping companies

Amalgamation.

115VY. Where there has been an amalgamation of a company with another company or companies, then, subject to the other provisions of this section, the provisions relating to the tonnage tax scheme shall, as far as may be, apply to the amalgamated company if it is a qualifying company:

Provided that where the amalgamated company is not a tonnage tax company, it shall exercise an option for tonnage tax scheme under sub-section (1) of section 115VP within three months from the date of the approval of the scheme of amalgamation:

Provided further that where the amalgamating companies are tonnage tax companies, the provisions of this Chapter shall, as far as may be, apply to the amalgamated company for such period as the option for tonnage tax scheme which has the longest unexpired period continues to be in force:

Provided also that where one of the amalgamating companies is a qualifying company as on the 1st day of October, 2004 and which has not exercised the option for tonnage tax scheme within the initial period, the provisions of this Chapter shall not apply to the amalgamated company and the income of the

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amalgamated company from the business of operating qualifying ships shall be computed in accordance with the other provisions of this Act.

Demerger.

115VZ. Where in a scheme of demerger, the demerged company transfers its business to the resulting company before the expiry of the option for tonnage tax scheme, then, subject to the other provisions of this Chapter, the tonnage tax scheme shall, as far as may be, apply to the resulting company for the unexpired period if it is a qualifying company:

Provided that the option for tonnage tax scheme in respect of the demerged company shall remain in force for the unexpired period of the tonnage tax scheme if it continues to be a qualifying company.

F.—Miscellaneous

Effect of temporarily ceasing to operate qualifying ships.

115VZA. (1) A temporary cessation (as against permanent cessation) of operating any qualifying ship by a company shall not be considered as a cessation of operating of such qualifying ship and the company shall be deemed to be operating such qualifying ship for the purposes of this Chapter.

(2) Where a qualifying company continues to operate a ship, which temporarily ceases to be a qualifying ship, such ship shall not be considered as a qualifying ship for the purposes of this Chapter.

G.—Provisions of this Chapter not to apply in certain cases

Avoidance of tax.

115VZB. (1) Subject to the provisions of this Chapter, the tonnage tax scheme shall not apply where a tonnage tax company is a party to any transaction or arrangement which amounts to an abuse of the tonnage tax scheme.

(2) For the purposes of sub-section (1), a transaction or arrangement shall be considered an abuse if the entering into or the application of such transaction or arrangement results, or would but for this section have resulted, in a tax advantage being obtained for—

(*i*) a person other than a tonnage tax company; or

(*ii*) a tonnage tax company in respect of its non-tonnage tax activities.

Explanation.—For the purposes of this section, "tax advantage" include,—

(*i*) the determination of the allowance for any expense or interest, or the determination of any cost or expense allocated or apportioned, or, as the case may be, which has the effect of reducing the income or increasing the loss, as the case may be, from activities other than tonnage tax activities chargeable to tax, computed on the basis of entries made in the books of account in respect of the previous year in which the transaction was entered into; or

(*ii*) a transaction or arrangement which produces to the tonnage tax company more than ordinary profits which might be expected to arise from tonnage tax activities.

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Exclusion from tonnage tax scheme.

115VZC. (1) Where a tonnage tax company is a party to any transaction or arrangement referred to in sub-section (1) of section 115VZB, the Assessing Officer shall, by an order in writing, exclude such company from the tonnage tax scheme:

Provided that an opportunity shall be given by the Assessing Officer by serving a notice calling upon such company to show cause, on a date and time to be specified in the notice, why it should not be excluded from the tonnage tax scheme:

Provided further that no order under this sub-section shall be passed without the previous approval of the Chief Commissioner.

(2) The provisions of this section shall not apply where the company shows to the satisfaction of the Assessing Officer that the transaction or arrangement was a *bona fide* commercial transaction and had not been entered into for the purpose of obtaining tax advantage under this Chapter.

(3) Where an order has been passed under sub-section (1) by the Assessing Officer excluding the tonnage tax company from the tonnage tax scheme, the option for tonnage tax scheme shall cease to be in force from the first day of the previous year in which the transaction or arrangement was entered into.]

[51][*CHAPTER XII-H*[52]

INCOME-TAX ON FRINGE BENEFITS

A.—Meaning of certain expressions

Definitions.

115W. In this Chapter, unless the context otherwise requires,—

(*a*) "employer" means,—

(*i*) a company;

(*ii*) a firm;

[53][(*iii*) an association of persons or a body of individuals, whether incorporated or not;]

(*iv*) a local authority; and

(*v*) every artificial juridical person, not falling within any of the preceding sub-clauses:

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51. Chapter XII-H, consisting of sections 115W to 115WL, inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

52. *See* also Circular No. 8/2005, dated 29-8-2005, No. 3/2007, dated 25-5-2007, No. 9/2007, dated 20-12-2007 and Circular No. 2/2010, dated 29-1-2010. For details, *see* Taxmann's Master Guide to Income-tax Act.

53. Substituted by the Taxation Laws (Amendment) Act, 2005, w.e.f. 1-4-2006. Prior to its substitution, sub-clause (*iii*), as inserted by the Finance Act, 2005, w.e.f. 1-4-2006, read as under :

"(*iii*) an association of persons or a body of individuals, whether incorporated or not, but excluding any fund or trust or institution eligible for exemption under clause (*23C*) of section 10 or registered under section 12AA;"

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[54][**Provided** that any person eligible for exemption under clause (*23C*) of section 10 or registered under section 12AA or a political party registered under section 29A of the Representation of the People Act, 1951 (43 of 1951) shall not be deemed to be an employer for the purposes of this Chapter;]

(*b*) "fringe benefit tax" or "tax" means the tax chargeable under section 115WA.

B.—Basis of charge

Charge of fringe benefit tax.

115WA. (1) In addition to the income-tax charged under this Act, there shall be charged for every assessment year commencing on or after the 1st day of April, 2006, additional income-tax (in this Act referred to as fringe benefit tax) in respect of the fringe benefits provided or deemed to have been provided by an employer to his employees during the previous year at the rate of thirty per cent on the value of such fringe benefits.

(2) Notwithstanding that no income-tax is payable by an employer on his total income computed in accordance with the provisions of this Act, the tax on fringe benefits shall be payable by such employer.

Fringe benefits.

115WB. (1) For the purposes of this Chapter, "fringe benefits" means any consideration for employment provided by way of—

(*a*) any privilege, service, facility or amenity, directly or indirectly, provided by an employer, whether by way of reimbursement or otherwise, to his employees (including former employee or employees);

(*b*) any free or concessional ticket provided by the employer for private journeys of his employees or their family members; [55][***]

(*c*) any contribution by the employer to an approved superannuation fund for employees [56][; and]

[57][(*d*) any specified security or sweat equity shares allotted or transferred, directly or indirectly, by the employer free of cost or at concessional rate to his employees (including former employee or employees).

Explanation.—For the purposes of this clause,—

(*i*) "specified security" means the securities as defined in clause (*h*) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956)[58] [59][and, where employees' stock option has been granted under any plan or scheme therefor, includes the securities offered under such plan or scheme];

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54. Inserted by the Taxation Laws (Amendment) Act, 2005, w.e.f. 1-4-2006.

55. Word "and" omitted by the Finance Act, 2007, w.e.f. 1-4-2008.

56. Inserted, *ibid.*

57. Inserted, *ibid. See* also Circular No. 9/2007, dated 20-12-2007. For details, *see* Taxmann's Master Guide to Income-tax Act.

58. For clause (*h*) of section 2 of the Securities Contracts (Regulation) Act, 1956, *see* footnote No. 9 on page 1.27.

59. Substituted for "and includes employees' stock option" by the Finance Act, 2008, w.e.f. 1-4-2008.

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(*ii*) "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.]

(2) The fringe benefits shall be deemed to have been provided by the employer to his employees, if the employer has, in the course of his business or profession (including any activity whether or not such activity is carried on with the object of deriving income, profits or gains) incurred any expense on, or made any payment for, the following purposes, namely:—

(*A*) entertainment;

(*B*) provision of hospitality of every kind by the employer to any person, whether by way of provision of food or beverages or in any other manner whatsoever and whether or not such provision is made by reason of any express or implied contract or custom or usage of trade but does not include—

(*i*) any expenditure on, or payment for, food or beverages provided by the employer to his employees in office or factory;

(*ii*) any expenditure on or payment through paid vouchers which are not transferable and usable only at eating joints or outlets;

[60][(*iii*) any expenditure on or payment through non-transferable pre-paid electronic meal card usable only at eating joints or outlets and which fulfils such other conditions as may be prescribed [61];]

(*C*) conference (other than fee for participation by the employees in any conference).

Explanation.—For the purposes of this clause, any expenditure on conveyance, tour and travel (including foreign travel), on hotel, or boarding and lodging in connection with any conference shall be deemed to be expenditure incurred for the purposes of conference;

(*D*) sales promotion including publicity:

Provided that any expenditure on advertisement,—

(*i*) being the expenditure (including rental) on advertisement of any form in any print (including journals, catalogues or price lists) or electronic media or transport system;

(*ii*) being the expenditure on the holding of, or the participation in, any press conference or business convention, fair or exhibition;

(*iii*) being the expenditure on sponsorship of any sports event or any other event organised by any Government agency or trade association or body;

(*iv*) being the expenditure on the publication in any print or electronic media of any notice required to be published by or under any law or by an order of a court or tribunal;

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60. Inserted by the Finance Act, 2008, w.e.f. 1-4-2009.

61. *See* rules 40E and 40F.

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(*v*) being the expenditure on advertisement by way of signs, art work, painting, banners, awnings, direct mail, electric spectaculars, kiosks, hoardings, bill boards [62][, display of products] or by way of such other medium of advertisement; [63][***]

(*vi*) being the expenditure by way of payment to any advertising agency for the purposes of clauses (*i*) to (*v*) above;

[64][[65][(*vii*) being the expenditure on distribution of samples either free of cost or at concessional rate; and]

(*viii*) being the expenditure by way of payment to any person of repute for promoting the sale of goods or services of the business of the employer,]

shall not be considered as expenditure on sales promotion including publicity;

(*E*) employees' welfare.

[66][*Explanation*.—For the purposes of this clause, any expenditure incurred or payment made to—

(*i*) fulfil any statutory obligation; or

(*ii*) mitigate occupational hazards; or

(*iii*) provide first aid facilities in the hospital or dispensary run by the employer; or

(*iv*) provide creche facility for the children of the employee; or

(*v*) sponsor a sportsman, being an employee; or

(*vi*) organise sports events for employees,

shall not be considered as expenditure for employees' welfare;]

(*F*) conveyance [67][***];

(*G*) use of hotel, boarding and lodging facilities;

(*H*) repair, running (including fuel), maintenance of motor cars and the amount of depreciation thereon;

(*I*) repair, running (including fuel) and maintenance of aircrafts and the amount of depreciation thereon;

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62. Inserted by the Finance Act, 2007, w.e.f. 1-4-2008.

63. Word "and" omitted by the Finance Act, 2006, w.e.f. 1-4-2007.

64. Inserted, *ibid.*

65. Substituted by the Finance Act, 2007, w.e.f. 1-4-2008. Prior to its substitution, clause (*vii*) read as under:

"(*vii*) being the expenditure on distribution of free samples of medicines or of medical equipment, to doctors; and"

66. Substituted by the Finance Act, 2008, w.e.f. 1-4-2009. Prior to its substitution, the *Explanation* read as under :

"*Explanation*.—For the purposes of this clause, any expenditure incurred or payment made to fulfil any statutory obligation or mitigate occupational hazards or provide first aid facilities in the hospital or dispensary run by the employer shall not be considered as expenditure for employees' welfare;"

67. Words ", tour and travel (including foreign travel)" omitted by the Finance Act, 2006, w.e.f. 1-4-2007.

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(*J*) use of telephone (including mobile phone) other than expenditure on leased telephone lines;

(*K*) [68][***]

(*L*) festival celebrations;

(*M*) use of health club and similar facilities;

(*N*) use of any other club facilities;

(*O*) gifts; and*

(*P*) scholarships;

[69][(*Q*) tour and travel (including foreign travel).]

(3) For the purposes of sub-section (1), the privilege, service, facility or amenity does not include perquisites in respect of which tax is paid or payable by the employee [69][or any benefit or amenity in the nature of free or subsidised transport or any such allowance provided by the employer to his employees for journeys by the employees from their residence to the place of work or such place of work to the place of residence].

Value of fringe benefits.

115WC. (1) For the purposes of this Chapter, the value of fringe benefits shall be the aggregate of the following, namely:—

(*a*) cost at which the benefits referred to in clause (*b*) of sub-section (1) of section 115WB, is provided by the employer to the general public as reduced by the amount, if any, paid by, or recovered from, his employee or employees:

Provided that in a case where the expenses of the nature referred to in clause (*b*) of sub-section (1) of section 115WB are included in any other clause of sub-section (2) of the said section, the total expenses included under such other clause shall be reduced by the amount of expenditure referred to in the said clause (*b*) for computing the value of fringe benefits;

[70][(*b*) the amount of contribution, referred to in clause (*c*) of sub-section (1) of section 115WB, which exceeds one lakh rupees in respect of each employee;]

[71][(*ba*) the fair market value of the specified security or sweat equity shares referred to in clause (*d*) of sub-section (1) of section 115WB, on the date on which the option vests with the employee as reduced by the

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68. Omitted by the Finance Act, 2008, w.e.f. 1-4-2009. Prior to its omission, clause (*K*) read as under :

"(*K*) maintenance of any accommodation in the nature of guest house other than accommodation used for training purposes;"

69. Inserted by the Finance Act, 2006, w.e.f. 1-4-2007.

70. Substituted, *ibid.* Prior to its substitution, clause (*b*) read as under :

"(*b*) actual amount of the contribution referred to in clause (*c*) of sub-section (1) of section 115WB;"

71. Inserted by the Finance Act, 2007, w.e.f. 1-4-2008.

*With effect from 1-4-2007 the word 'and' should appear after end of clause (*P*).

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amount actually paid by, or recovered from, the employee in respect of such security or shares.

Explanation.—For the purposes of this clause,—

(*i*) "fair market value" means the value determined in accordance with the method as may be prescribed[72] by the Board;

(*ii*) "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;]

(*c*) twenty per cent of the expenses referred to in clauses [73][(*A*) to (*L*)] of sub-section (2) of section 115WB;

(*d*) fifty per cent of the expenses referred to in clauses [74][(*M*) to (*P*)] of sub-section (2) of section 115WB;

[75][(*e*) five per cent of the expenses referred to in clause (*Q*) of sub-section (2) of section 115WB.]

(2) Notwithstanding anything contained in sub-section (1),—

(*a*) in the case of an employer engaged in the business of hotel, the value of fringe benefits for the purposes referred to in clause (*B*) of sub-section (2) of section 115WB shall be "five per cent" instead of "twenty per cent" referred to in clause (*c*) of sub-section (1);

[75][(*aa*) in the case of an employer engaged in the business of carriage of passengers or goods by aircraft, the value of fringe benefits for the purposes referred to in clause (*B*) of sub-section (2) of section 115WB shall be "five per cent" instead of "twenty per cent" referred to in clause (*c*) of sub-section (1);

(*ab*) in the case of an employer engaged in the business of carriage of passengers or goods by ship, the value of fringe benefits for the purposes referred to in clause (*B*) of sub-section (2) of section 115WB shall be "five per cent" instead of "twenty per cent" referred to in clause (*c*) of sub-section (1);]

(*b*) in the case of an employer engaged in the business of construction, the value of fringe benefits for the purposes referred to in clause (*F*) of sub-section (2) of section 115WB shall be "five per cent" instead of "twenty per cent" referred to in clause (*c*) of sub-section (1);

(*c*) in the case of an employer engaged in the business of manufacture or production of pharmaceuticals, the value of fringe benefits for the purposes referred to in clauses (*F*) and (*G*) of sub-section (2) of section 115WB shall be "five per cent" instead of "twenty per cent" referred to in clause (*c*) of sub-section (1);

(*d*) in the case of an employer engaged in the business of manufacture or production of computer software, the value of fringe benefits for the purposes referred to in clauses (*F*) and (*G*) of sub-section (2) of

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72. *See* rules 40C, 40D and 40F.

73. Substituted for "(*A*) to (*K*)" by the Finance Act, 2008, w.e.f. 1-4-2009.

74. Substituted for "(*L*) to (*P*)", *ibid*.

75. Inserted by the Finance Act, 2006, w.e.f. 1-4-2007.

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section 115WB shall be "five per cent" instead of "twenty per cent" referred to in clause (*c*) of sub-section (1);

[76][(*da*) in the case of an employer engaged in the business of carriage of passengers or goods by aircraft, the value of fringe benefits for the purposes referred to in clause (*G*) of sub-section (2) of section 115WB shall be "five per cent" instead of "twenty per cent" referred to in clause (*c*) of sub-section (1);

(*db*) in the case of an employer engaged in the business of carriage of passengers or goods by ship, the value of fringe benefits for the purposes referred to in clause (*G*) of sub-section (2) of section 115WB shall be "five per cent" instead of "twenty per cent" referred to in clause (*c*) of sub-section (1);]

(*e*) in the case of an employer engaged in the business of carriage of passengers or goods by motor car, the value of fringe benefits for the purposes referred to in clause (*H*) of sub-section (2) of section 115WB shall be "five per cent" instead of "twenty per cent" referred to in clause (*c*) of sub-section (1);

(*f*) in the case of an employer engaged in the business of carriage of passengers or goods by aircraft, the value of fringe benefits for the purposes referred to in clause (*I*) of sub-section (2) of section 115WB shall be taken as *Nil.*

C.—Procedure for filing of return in respect of fringe benefits, assessment and payment of tax in respect thereof

Return of fringe benefits[77].

115WD. (1) Without prejudice to the provisions contained in section 139, every employer who during a previous year has paid or made provision for payment of fringe benefits to his employees, shall, on or before the due date, furnish or cause to be furnished a return of fringe benefits to the Assessing Officer in the prescribed form[78] and verified in the prescribed manner and setting forth such other particulars as may be prescribed, in respect of the previous year.

Explanation.—In this sub-section, "due date" means,—

(*a*) where the employer is—

(*i*) a company; or

(*ii*) a person (other than a company) whose accounts are required to be audited under this Act or under any other law for the time being in force,

the [79][30th day of September] of the assessment year;

(*b*) in the case of any other employer, the 31st day of July of the assessment year.

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76. Inserted by the Finance Act, 2006, w.e.f. 1-4-2007.

77. *See* Circular No. 3/2007, dated 25-5-2007. For details, *see* Taxmann's Master Guide to Income-tax Act.

78. *See* rule 12.

79. Substituted for "31st day of October" by the Finance Act, 2008, w.e.f. 1-4-2008.

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(2) In the case of any employer who, in the opinion of the Assessing Officer, is responsible for paying fringe benefit tax under this Act and who has not furnished a return under sub-section (1), the Assessing Officer may, after the due date, issue a notice to him and serve the same upon him, requiring him to furnish within thirty days from the date of service of the notice, the return in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed.

(3) Any employer responsible for paying fringe benefit tax who has not furnished a return within the time allowed under sub-section (1) or within the time allowed under a notice issued under sub-section (2), may furnish the return for any previous year, at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

(4) If any employer, having furnished a return under sub-section (1), or in pursuance of a notice issued under sub-section (2), discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

Assessment.

115WE. [80][(1) Where a return has been made under section 115WD, such return shall be processed in the following manner, namely:—

(*a*) the value of fringe benefits shall be computed after making the following adjustments, namely:—

(*i*) any arithmetical error in the return; or

(*ii*) an incorrect claim, if such incorrect claim is apparent from any information in the return;

(*b*) the tax and interest, if any, shall be computed on the basis of the value of fringe benefits computed under clause (*a*);

(*c*) the sum payable by, or the amount of refund due to, the assessee shall be determined after adjustment of the tax and interest, if any, computed under clause (*b*) by any advance tax paid, any tax paid

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80. Sub-sections (1) to (1C) substituted for sub-section (1) by the Finance Act, 2008, w.e.f. 1-4-2008. Prior to its substitution, sub-section (1) read as under :

"(1) Where a return has been made under section 115WD,—

(*i*) if any tax or interest is found due on the basis of such return, after adjustment of any advance tax paid, any tax paid on self-assessment and any amount paid otherwise by way of tax or interest, then, without prejudice to the provisions of sub-section (2), an intimation shall be sent to the assessee specifying the sum so payable, and such intimation shall be deemed to be a notice of demand issued under section 156 and all the provisions of this Act shall apply accordingly; and

(*ii*) if any refund is due on the basis of such return, it shall be granted to the assessee and an intimation to this effect shall be sent to the assessee:

Provided that except as otherwise provided in this sub-section, the acknowledgement of the return shall be deemed to be an intimation under this sub-section where either no sum is payable by the assessee or no refund is due to him:

Provided further that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the return is made."

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on self-assessment and any amount paid otherwise by way of tax or interest;

(*d*) an intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable by, or the amount of refund due to, the assessee under clause (*c*); and

(*e*) the amount of refund due to the assessee in pursuance of the determination under clause (*c*) shall be granted to the assessee:

Provided that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the return is made.

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

(*a*) "an incorrect claim apparent from any information in the return" shall mean a claim, on the basis of an entry, in the return,—

(*i*) of an item, which is inconsistent with another entry of the same or some other item in such return;

(*ii*) in respect of which the information required to be furnished to substantiate such entry has not been so furnished under this Act; or

(*iii*) in respect of a deduction or value of fringe benefits, where such deduction or value exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction;

(*b*) the acknowledgement of the return shall be deemed to be the intimation in a case where no sum is payable by, or refundable to, the assessee under clause (*c*), and where no adjustment has been made under clause (*a*).

(1A) For the purposes of processing of returns under sub-section (1), the Board may make a scheme for centralised processing of returns with a view to expeditiously determining the tax payable by, or the refund due to, the assessee as required under that sub-section.

(1B) Save as otherwise expressly provided, for the purpose of giving effect to the scheme made under sub-section (1A), the Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act relating to processing of returns shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in that notification; so, however, that no direction shall be issued after the 31st day of March, [81]**[***2011***]**.

(1C) Every notification issued under sub-section (1B), along with the scheme made under sub-section (1A), shall, as soon as may be after the notification is issued, be laid before each House of Parliament.]

(2) Where a return has been furnished under section 115WD, the Assessing Officer shall, if he considers it necessary or expedient to ensure that the assessee has not understated the value of fringe benefits or has not underpaid the tax in any manner, serve on the assessee a notice requiring him on a date to be specified therein, either to attend his office or to produce, or cause to be produced, any evidence on which the assessee may rely in support of the return:

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81. Substituted for "2010" by the Finance Act, 2010, w.e.f. **1-4-2010**. Earlier "2010" was substituted for "2009" by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-2009.

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Provided that no notice under this sub-section shall be served on the assessee after the expiry of [82][six months from the end of the financial year] in which the return is furnished.

(3) On the day specified in the notice issued under sub-section (2), or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the Assessing Officer may require on specified points, and after taking into account all relevant material which he has gathered, the Assessing Officer shall, by an order in writing, make an assessment of the value of the fringe benefits paid or payable by the assessee, and determine the sum payable by him or refund of any amount due to him on the basis of such assessment.

(4) Where a regular assessment under sub-section (3) or section 115WF is made,—

(*a*) any tax or interest paid by the assessee under sub-section (1) shall be deemed to have been paid towards such regular assessment;

(*b*) if no refund is due on regular assessment or the amount refunded under sub-section (1) exceeds the amount refundable on regular assessment, the whole or the excess amount so refunded shall be deemed to be tax payable by the assessee and the provisions of this Act shall apply accordingly.

Best judgment assessment.

115WF. If any person, being an employer—

(*a*) fails to make the return required under sub-section (1) of section 115WD and has not made a return under sub-section (3) or a revised return under sub-section (4) of that section, or

(*b*) fails to comply with all the terms of a notice issued under sub-section (2) of section 115WD or fails to comply with a direction issued under sub-section (2A) of section 142, or

(*c*) having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of section 115WE,

the Assessing Officer, after taking into account all relevant material which the Assessing Officer has gathered, shall, after giving the assessee an opportunity of being heard, make the assessment of the fringe benefits to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment:

Provided that such opportunity shall be given by the Assessing Officer by serving a notice calling upon the assessee to show cause, on a date and time to be specified in the notice as to why the assessment should not be completed to the best of his judgment:

Provided further that it shall not be necessary to give such opportunity in a case where a notice under sub-section (2) of section 115WD has been issued prior to the making of an assessment under this section.

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82. Substituted for "twelve months from the end of the month" by the Finance Act, 2008, w.e.f. 1-4-2008.

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Fringe benefits escaping assessment.

115WG. If the Assessing Officer has reason to believe that any fringe benefits chargeable to tax have escaped assessment for any assessment year, he may, subject to the provisions of sections 115WH, 150 and 153, assess or reassess such fringe benefits and also any other fringe benefits chargeable to tax which have escaped assessment and which come to his notice subsequently in the course of the proceedings under this section, for the assessment year concerned (hereafter referred to as the relevant assessment year).

Explanation.—For the purposes of this section, the following shall also be deemed to be cases where fringe benefits chargeable to tax have escaped assessment, namely:—

(*a*) where no return of fringe benefits has been furnished by the assessee;

(*b*) where a return of fringe benefits has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the value of fringe benefits in the return;

(*c*) where an assessment has been made, but the fringe benefits chargeable to tax have been under-assessed.

Issue of notice where fringe benefits have escaped assessment.

115WH. (1) Before making the assessment or reassessment under section 115WG, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period as may be specified in the notice, a return of the fringe benefits in respect of which he is assessable under this Chapter during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed, and the provisions of this Chapter shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 115WD.

(2) The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so.

(3) No notice under sub-section (1) shall be issued for the relevant assessment year after the expiry of six years from the end of the relevant assessment year.

Explanation.—In determining fringe benefits chargeable to tax which have escaped assessment for the purposes of this sub-section, the provisions of the *Explanation* to section 115WG shall apply as they apply for the purposes of that section.

(4) In a case where an assessment under sub-section (3) of section 115WE or section 115WG has been made for the relevant assessment year, no notice shall be issued under sub-section (1) by an Assessing Officer, after the expiry of four years from the end of the relevant assessment year, unless the Chief Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice.

Payment of fringe benefit tax.

115WI. Notwithstanding that the regular assessment in respect of any fringe benefits is to be made in a later assessment year, the tax on such fringe

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benefits shall be payable in advance during any financial year, in accordance with the provisions of section 115WJ, in respect of the fringe benefits which would be chargeable to tax for the assessment year immediately following that financial year, such fringe benefits being hereafter in this Chapter referred to as the "current fringe benefits".

Advance tax in respect of fringe benefits.[82a]

115WJ. (1) Every assessee who is liable to pay advance tax under section 115WI, shall on his own accord, pay advance tax on his current fringe benefits calculated in the manner laid down in sub-section (2).

[83][(2) Advance tax on the current fringe benefits shall be payable by—

(*a*) all the companies, who are liable to pay the same in four instalments during each financial year and the due date of each instalment and the amount of such instalment shall be as specified in Table I below :

TABLE I

Due date of instalment	*Amount payable*
On or before the 15th June	Not less than fifteen per cent of such advance tax.
On or before the 15th September	Not less than forty-five per cent of such advance tax as reduced by the amount, if any, paid in the earlier instalment.
On or before the 15th December	Not less than seventy-five per cent of such advance tax as reduced by the amount or amounts, if any, paid in the earlier instalment or instalments.
On or before the 15th March	The whole amount of such advance tax as reduced by the amount or amounts, if any, paid in the earlier instalment or instalments;

(*b*) all the assessees (other than companies), who are liable to pay the same in three instalments during each financial year and the due date of each instalment and the amount of such instalment shall be as specified in Table II below :

82a. See Circular No. 2/2010, dated 29-1-2010. For details *see* Taxmann's Master Guide to Income-tax Act.

83. Substituted for sub-sections (2) and (3) by the Finance Act, 2007, w.e.f. 1-6-2007. Prior to their substitution, sub-sections (2) and (3) read as under :

"(2) The amount of advance tax payable by an assessee in the financial year shall be thirty per cent of the value of the fringe benefits referred to in section 115WC, paid or payable in each quarter and shall be payable on or before the 15th day of the month following such quarter:

Provided that the advance tax payable for the quarter ending on the 31st day of March of the financial year shall be payable on or before the 15th day of March of the said financial year.

(3) Where an assessee, has failed to pay the advance tax for any quarter or where the advance tax paid by him is less than thirty per cent of the value of fringe benefits paid or payable in that quarter, he shall be liable to pay simple interest at the rate of one per cent on the amount by which the advance tax paid falls short of, thirty per cent of the value of fringe benefits for any quarter, for every month or part of the month for which the shortfall continues."

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TABLE II

Due date of instalment	*Amount payable*
On or before the 15th September	Not less than thirty per cent of such advance tax.
On or before the 15th December	Not less than sixty per cent of such advance tax as reduced by the amount, if any, paid in the earlier instalment.
On or before the 15th March	The whole amount of such advance tax as reduced by the amount or amounts, if any, paid in the earlier instalment or instalments.

(3) Where an assessee, being a company, has failed to pay the advance tax payable by him on or before the due date for any instalment or where the advance tax paid by him is less than the amount payable by the due date, he shall be liable to pay simple interest calculated at the rate of—

(*i*) one per cent per month, for three months on an amount by which the advance tax paid on or before the 15th June of the financial year falls short of fifteen per cent of the advance tax payable;

(*ii*) one per cent per month, for three months on an amount by which the advance tax paid on or before the 15th September of the financial year falls short of forty-five per cent of the advance tax payable;

(*iii*) one per cent per month, for three months on an amount by which the advance tax paid on or before the 15th December of the financial year falls short of seventy-five per cent of the advance tax payable; and

(*iv*) one per cent on an amount by which the advance tax paid on or before the 15th March of the financial year falls short of hundred per cent of the advance tax payable.

(4) Where an assessee, being a person other than a company, has failed to pay the advance tax payable by him on or before the due date for any instalment or where the advance tax paid by him is less than the amount payable by the due date, he shall be liable to pay simple interest calculated at the rate of—

(*i*) one per cent per month, for three months on an amount by which the advance tax paid on or before the 15th September of the financial year falls short of thirty per cent of the advance tax payable;

(*ii*) one per cent per month, for three months on an amount by which the advance tax paid on or before the 15th December of the financial year falls short of sixty per cent of the advance tax payable; and

(*iii*) one per cent on an amount by which the advance tax paid on or before the 15th March of the financial year falls short of hundred per cent of the advance tax payable.

(5) Where an assessee has failed to pay the advance tax payable by him during a financial year or where the advance tax paid by him is less than ninety per cent of the tax assessed under section 115WE or section 115WF or section 115WG, the assessee shall be liable to pay simple interest at the rate of one per cent per month, for every month or part of a month comprised in the period from the 1st day of April next following such financial year to the date of assessment of tax under section 115WE or section 115WF or section 115WG.]

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Interest for default in furnishing return of fringe benefits.

115WK. (1) Where the return of fringe benefits for any assessment year under sub-section (1) or sub-section (3) of section 115WD or in response to a notice under sub-section (2) of that section, is furnished after the due date, or is not furnished, the employer shall be liable to pay simple interest at the rate of one per cent for every month or part of a month comprised in the period commencing on the date immediately following the due date, and,—

(*a*) where the return is furnished after the due date, ending on the date of furnishing of the return; or

(*b*) where no return has been furnished, ending on the date of completion of the assessment under section 115WF,

on the amount of the tax on the value of fringe benefits as determined under sub-section (1) of section 115WE or regular assessment as reduced by the advance tax paid under section 115WJ.

Explanation 1.—In this section, "due date" means the date specified in the *Explanation* to sub-section (1) of section 115WD as applicable in the case of the employer.

Explanation 2.—Where, in relation to an assessment year, an assessment is made for the first time under section 115WG, the assessment so made shall be regarded as a regular assessment for the purposes of this section.

(2) The provisions contained in sub-sections (2) to (4) of section 234A shall, so far as may be, apply to this section.

[84][**Recovery of fringe benefit tax by the employer from the employee.**

115WKA. Notwithstanding anything contained in any agreement or scheme under which any specified security or sweat equity shares referred to in clause (*d*) of sub-section (1) of section 115WB has been allotted or transferred, directly or indirectly, by the employer on or after the 1st day of April, 2007, it shall be lawful for the employer to vary the agreement or scheme under which such specified security or sweat equity shares has been allotted or transferred so as to recover from the employee the fringe benefit tax to the extent to which such employer is liable to pay the fringe benefit tax in relation to the value of fringe benefits provided to the employee and determined under clause (*ba*) of sub-section (1) of section 115WC.]

[85][**Deemed payment of tax by employee.**

115WKB. (1) Where an employer has paid any fringe benefit tax with respect to allotment or transfer of specified security or sweat equity shares, referred to in clause (*d*) of sub-section (1) of section 115WB, and has recovered such tax subsequently from an employee, it shall be deemed that the fringe benefit tax so recovered is the tax paid by such employee in relation to the value of the fringe benefit provided to him only to the extent to which the amount thereof relates to the value of the fringe benefit provided to such employee, as determined under clause (*ba*) of sub-section (1) of section 115WC.

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84. Inserted by the Finance Act, 2007, w.e.f. 1-4-2007.

85. Inserted by the Finance Act, 2008, w.e.f. 1-4-2008.

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(2) Notwithstanding anything contained in any other provisions of this Act, where the fringe benefit tax recovered from the employee is deemed to be the tax paid by such employee under sub-section (1), such employee shall, under this Act, not be entitled to claim—

(*i*) any refund out of such payment of tax; or

(*ii*) any credit of such payment of tax against tax liability on other income or against any other tax liability.]

Application of other provisions of this Act.

115WL. Save as otherwise provided in this Chapter, all other provisions of this Act shall, as far as may be, apply in relation to fringe benefits also.]

[86][**Chapter XII-H not to apply after a certain date.**

115WM. Nothing contained in this Chapter shall apply, in respect of any assessment for the assessment year commencing on the 1st day of April, 2010 or any subsequent assessment year.]

CHAPTER XIII

INCOME-TAX AUTHORITIES

A.—Appointment and control

[87][**Income-tax authorities.**

116. There shall be the following classes of income-tax authorities for the purposes of this Act, namely :—

(*a*) the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963 (54 of 1963),

(*b*) Directors-General of Income-tax or Chief Commissioners of Income-tax,

(*c*) Directors of Income-tax or Commissioners of Income-tax or Commissioners of Income-tax (Appeals),

[88][(*cc*) Additional Directors of Income-tax or Additional Commissioners of Income-tax or Additional Commissioners of Income-tax (Appeals),]

[89][(*cca*) Joint Directors of Income-tax or Joint Commissioners of Income-tax,]

(*d*) Deputy Directors of Income-tax or Deputy Commissioners of Income-tax or Deputy Commissioners of Income-tax (Appeals),

(*e*) Assistant Directors of Income-tax or Assistant Commissioners of Income-tax,

(*f*) Income-tax Officers,

(*g*) Tax Recovery Officers,

(*h*) Inspectors of Income-tax.]

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86. Inserted by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-2009.

87. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988. Earlier, it was amended by the Central Boards of Revenue Act, 1963, w.e.f. 1-1-1964, the Finance Act, 1970, w.e.f. 1-4-1970 and the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

88. Inserted by the Finance Act, 1994, w.e.f. 1-6-1994.

89. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

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[90][**Appointment of income-tax authorities.**

[91]**117.** (1) The Central Government may appoint such persons as it thinks fit to be income-tax authorities.

(2) Without prejudice to the provisions of sub-section (1), and subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts, the Central Government may authorise the Board, or a Director-General, a Chief Commissioner or a Director or a Commissioner to appoint income-tax authorities below the rank of an Assistant Commissioner [92][or Deputy Commissioner].

(3) Subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts, an income-tax authority authorised in this behalf by the Board may appoint such executive or ministerial staff as may be necessary to assist it in the execution of its functions.]

[93][**Control of income-tax authorities.**

118. The Board may, by notification[94] in the Official Gazette, direct that any income-tax authority or authorities specified in the notification shall be subordinate to such other income-tax authority or authorities as may be specified in such notification.]

[95][**Instructions to subordinate authorities.**

[96]**119.** (1) The Board may, from time to time, issue such orders, instructions and directions to other income-tax authorities as it may deem fit for the proper administration of this Act, and such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board :

Provided that no such orders, instructions or directions shall be issued—

(*a*) so as to require any income-tax authority to make a particular assessment or to dispose of a particular case in a particular manner; or

(*b*) so as to interfere with the discretion of the [97][* * *] [98][Commissioner (Appeals)] in the exercise of his appellate functions.

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90. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988. Earlier, it was amended by the Finance Act, 1970, w.e.f. 1-4-1970 and the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

91. For notified authorities/officers, *see* Taxmann's Direct Taxes Circulars.

92. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

93. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

94. For notified subordinate officers, *see* Taxmann's Direct Taxes Circulars.

95. Substituted by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

96. *See* also Instruction No. 796, dated 22-11-1974. For details, *see* Taxmann's Master Guide to Income-tax Act.

For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

97. Words "Deputy Commissioner (Appeals) or the" omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier "Deputy Commissioner (Appeals)" was substituted for "Appellate Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

98. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

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(2) Without prejudice to the generality of the foregoing power,—

[99](*a*) the Board may, if it considers it necessary or expedient so to do, for the purpose of proper and efficient management of the work of assessment and collection of revenue, issue, from time to time (whether by way of relaxation of any of the provisions of sections [1][115P, 115S, 115WD, 115WE, 115WF, 115WG, 115WH, 115WJ, 115WK,] [2][139,] 143, 144, 147, 148, 154, 155 [3][, 158BFA], [4][sub-section (1A) of section 201, sections 210, 211, 234A, 234B, 234C], 271 and 273 or otherwise), general or special orders in respect of any class of incomes [5][or fringe benefits] or class of cases, setting forth directions or instructions (not being prejudicial to assessees) as to the guidelines, principles or procedures to be followed by other income-tax authorities in the work relating to assessment or collection of revenue or the initiation of proceedings for the imposition of penalties and any such order[6] may, if the Board is of opinion that it is necessary in the public interest so to do, be published and circulated in the prescribed manner for general information;

(*b*) the Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order, authorise [7][any income-tax authority, not being a [8][***] Commissioner (Appeals)] to admit an application or claim for any exemption, deduction, refund or any other relief under this Act after the expiry of the period specified by or under this Act for making such application or claim and deal with the same on merits in accordance with law;

[9][(*c*) the Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order for reasons to be specified therein, relax any requirement contained in any of the provisions of Chapter IV or Chapter VI-A, where the assessee has failed to comply with any requirement specified in such provision for claiming deduction thereunder, subject to the following conditions, namely:—

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99. *See* rule 111B.

1. Substituted for "115P, 115S," by the Finance Act, 2005, w.e.f. 1-4-2006. Earlier the quoted words were inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-10-2004.

2. Inserted by the Finance Act, 1990, w.e.f. 1-4-1990.

3. Inserted by the Finance Act, 2002, w.e.f. 1-6-2002.

4. Substituted for "210, 234A, 234B" by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1991. Earlier "234A, 234B" were inserted by the Finance Act, 1990, w.e.f. 1-4-1990.

5. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

6. For Board's instructions to subordinate authorities, from time to time, *see* Taxmann's Direct Taxes Circulars.

7. Substituted for "the Commissioner or the Income-tax Officer" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

8. Words "Deputy Commissioner (Appeals) or the" omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

9. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

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(*i*) the default in complying with such requirement was due to circumstances beyond the control of the assessee; and

(*ii*) the assessee has complied with such requirement before the completion of assessment in relation to the previous year in which such deduction is claimed :

Provided that the Central Government shall cause every order issued under this clause to be laid before each House of Parliament.]

(3) [10][***]

B.—Jurisdiction

[11][**Jurisdiction of income-tax authorities.**

[12]**120.** (1) Income-tax authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, as the case may be, assigned to such authorities by or under this Act in accordance with such directions as the Board may issue for the exercise of the powers and performance of the functions by all or any of those authorities.

[13][*Explanation.*—For the removal of doubts, it is hereby declared that any income-tax authority, being an authority higher in rank, may, if so directed by the Board, exercise the powers and perform the functions of the income-tax authority lower in rank and any such direction issued by the Board shall be deemed to be a direction issued under sub-section (1).]

(2) The directions of the Board under sub-section (1) may authorise any other income-tax authority to issue orders in writing for the exercise of the powers and performance of the functions by all or any of the other income-tax authorities who are subordinate to it.

(3) In issuing the directions or orders referred to in sub-sections (1) and (2), the Board or other income-tax authority authorised by it may have regard to any one or more of the following criteria, namely :—

(*a*) territorial area;

(*b*) persons or classes of persons;

(*c*) incomes or classes of income; and

(*d*) cases or classes of cases.

(4) Without prejudice to the provisions of sub-sections (1) and (2), the Board may, by general or special order, and subject to such conditions, restrictions or limitations as may be specified therein,—

(*a*) authorise any Director General or Director to perform such functions of any other income-tax authority as may be assigned to him by the Board;

(*b*) empower the Director General or Chief Commissioner or Commissioner to issue orders in writing that the powers and functions

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10. Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

11. Substituted, *ibid.*

12. For Board's directions issued for exercise of powers and jurisdiction of income-tax authorities from time to time, *see* Taxmann's Direct Taxes Circulars.

13. Inserted by the Finance Act, 2006, w.r.e.f. 1-4-1988.

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conferred on, or as the case may be, assigned to, the Assessing Officer by or under this Act in respect of any specified area or persons or classes of persons or incomes or classes of income or cases or classes of cases, shall be exercised or performed by [14][an Additional Commissioner or] [15][an Additional Director or] a [16][Joint] Commissioner [17][or a [16][Joint] Director], and, where any order is made under this clause, references in any other provision of this Act, or in any rule made thereunder to the Assessing Officer shall be deemed to be references to such [14][Additional Commissioner or] [15][Additional Director or] [16][Joint] Commissioner [17][or [16][Joint] Director] by whom the powers and functions are to be exercised or performed under such order, and any provision of this Act requiring approval or sanction of the [18][Joint] Commissioner shall not apply.

(5) The directions and orders referred to in sub-sections (1) and (2) may, wherever considered necessary or appropriate for the proper management of the work, require two or more Assessing Officers (whether or not of the same class) to exercise and perform, concurrently, the powers and functions in respect of any area or persons or classes of persons or incomes or classes of income or cases or classes of cases; and, where such powers and functions are exercised and performed concurrently by the Assessing Officers of different classes, any authority lower in rank amongst them shall exercise the powers and perform the functions as any higher authority amongst them may direct, and, further, references in any other provision of this Act or in any rule made thereunder to the Assessing Officer shall be deemed to be references to such higher authority and any provision of this Act requiring approval or sanction of any such authority shall not apply.

(6) Notwithstanding anything contained in any direction or order issued under this section, or in section 124, the Board may, by notification in the Official Gazette, direct that for the purpose of furnishing of the return of income or the doing of any other act or thing under this Act or any rule made thereunder by any person or class of persons, the income-tax authority exercising and performing the powers and functions in relation to the said person or class of persons shall be such authority as may be specified in the notification.]

Jurisdiction of Commissioners.

[19]**121.** [*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.*]

Jurisdiction of Commissioners (Appeals).

121A. [*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988. Original section was inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.*]

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14. Inserted by the Finance Act, 2007, w.r.e.f. 1-6-1994.

15. Inserted, *ibid.,* w.r.e.f. 1-10-1996.

16. Substituted for "Deputy" by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

17. Inserted by the Finance (No. 2) Act, 1996, w.e.f. 1-10-1996.

18. Substituted for "Deputy" by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

19. Prior to its omission, section 121 was amended by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

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Jurisdiction of Appellate Assistant Commissioners.

122. [*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.*]

Jurisdiction of Inspecting Assistant Commissioners.

123. [20][*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.*]

[21][**Jurisdiction of Assessing Officers.**

[22]**124.** (1) Where by virtue of any direction or order issued under sub-section (1) or sub-section (2) of section 120, the Assessing Officer has been vested with jurisdiction over any area, within the limits of such area, he shall have jurisdiction—

(*a*) in respect of any person carrying on a business or profession, if the place at which he carries on his business or profession is situate within the area, or where his business or profession is carried on in more places than one, if the principal place of his business or profession is situate within the area, and

(*b*) in respect of any other person residing within the area.

(2) Where a question arises under this section as to whether an Assessing Officer has jurisdiction to assess any person, the question shall be determined by the Director General or the Chief Commissioner or the Commissioner; or where the question is one relating to areas within the jurisdiction of different Directors General or Chief Commissioners or Commissioners, by the Directors General or Chief Commissioners or Commissioners concerned or, if they are not in agreement, by the Board or by such Director General or Chief Commissioner or Commissioner as the Board may, by notification in the Official Gazette, specify.

(3) No person shall be entitled to call in question the jurisdiction of an Assessing Officer—

(*a*) where he has made a return [23][under sub-section (1) of section 115WD or] under sub-section (1) of section 139, after the expiry of one month from the date on which he was served with a notice under sub-section (1) of section 142 or [23][sub-section (2) of section 115WE or] sub-section (2) of section 143 or after the completion of the assessment, whichever is earlier;

(*b*) where he has made no such return, after the expiry of the time allowed by the notice under [24][sub-section (2) of section 115WD or sub-section (1) of section 142 or under sub-section (1) of section 115WH or under section 148 for the making of the return or by the notice under the first proviso to section 115WF or under the first proviso to section 144] to show cause why the assessment should not

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20. Prior to its omission, section 123 was substituted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

21. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988. Prior to its substitution, section 124 was amended by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967 and the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

22. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

23. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

24. Substituted for "sub-section (1) of section 142 or under section 148 for the making of the return or by the notice under the first proviso to section 144", *ibid.*

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be completed to the best of the judgment of the Assessing Officer, whichever is earlier.

(4) Subject to the provisions of sub-section (3), where an assessee calls in question the jurisdiction of an Assessing Officer, then the Assessing Officer shall, if not satisfied with the correctness of the claim, refer the matter for determination under sub-section (2) before the assessment is made.

(5) Notwithstanding anything contained in this section or in any direction or order issued under section 120, every Assessing Officer shall have all the powers conferred by or under this Act on an Assessing Officer in respect of the income accruing or arising or received within the area, if any, over which he has been vested with jurisdiction by virtue of the directions or orders issued under sub-section (1) or sub-section (2) of section 120.]

Powers of Commissioner respecting specified areas, cases, persons, etc.

125. [25][*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.*]

Concurrent jurisdiction of Inspecting Assistant Commissioner and Income-tax Officer.

125A. [26][*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988. Original section was inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.*]

Powers of Board respecting specified area, classes of persons or incomes.

126. [27][*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.*]

[28][**Power to transfer cases.**[29]

[30]**127.** (1) The Director General or Chief Commissioner or Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case[31] from one or more Assessing Officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) also subordinate to him.

(2) Where the Assessing Officer or Assessing Officers from whom the case is to be transferred and the Assessing Officer or Assessing Officers to whom the case is to be transferred are not subordinate to the same Director General or Chief Commissioner or Commissioner,—

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25. Prior to its omission, section 125 was substituted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967 and later on amended by the Finance Act, 1972, w.e.f. 1-4-1972, the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975 and the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

26. Prior to its omission, section 125A was amended by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

27. Prior to its omission, section 126 was amended by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

28. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988. Prior to its substitution, section 127 was substituted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967 and amended by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

29. *See* also Circular No. 770, dated 16-9-1998. For details, *see* Taxmann's Master Guide to Income-tax Act.

30. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

31. For the meaning of the term "case", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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(*a*) where the Directors General or Chief Commissioners or Commissioners to whom such Assessing Officers are subordinate are in agreement, then the Director General or Chief Commissioner or Commissioner from whose jurisdiction the case is to be transferred may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, pass the order;

(*b*) where the Directors General or Chief Commissioners or Commissioners aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any such Director General or Chief Commissioner or Commissioner as the Board may, by notification in the Official Gazette, authorise in this behalf.

(3) Nothing in sub-section (1) or sub-section (2) shall be deemed to require any such opportunity to be given where the transfer is from any Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) and the offices of all such officers are situated in the same city, locality or place.

(4) The transfer of a case under sub-section (1) or sub-section (2) may be made at any stage[32] of the proceedings, and shall not render necessary the re-issue of any notice already issued by the Assessing Officer or Assessing Officers from whom the case is transferred.

Explanation.—In section 120 and this section, the word "case", in relation to any person whose name is specified in any order or direction issued thereunder, means all proceedings under this Act[32] in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order or direction in respect of any year.]

Functions of Inspectors of Income-tax.

128. [33][*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.*]

Change of incumbent of an office.

[34]**129.** Whenever in respect of any proceeding under this Act an income-tax authority ceases to exercise jurisdiction and is succeeded by another who has and exercises jurisdiction, the income-tax authority so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor :

Provided that the assessee concerned may demand that before the proceeding is so continued the previous proceeding or any part thereof be reopened or that before any order of assessment is passed against him, he be reheard.

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32. For the meaning of terms/expressions "stage" and "all proceedings under this Act", *see* Taxmann's Direct Taxes Manual, Vol. 3.

33. Prior to its omission, section 128 was substituted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

34. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

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Commissioner competent to perform any function or functions.

130. [35][*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.*]

Income-tax Officer competent to perform any function or functions.

130A. [36][*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988. Original section was inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.*]

C.—Powers

Power regarding discovery, production of evidence, etc.

[37]**131.** (1) The [38][Assessing] Officer, [39][Deputy Commissioner (Appeals)], [40][Joint Commissioner] [41][, Commissioner (Appeals)] [42][, Chief Commissioner or Commissioner and the Dispute Resolution Panel referred to in clause (*a*) of sub-section (15) of section 144C] shall, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely :—

(*a*) discovery and inspection;

(*b*) enforcing the attendance of any person, including any officer of a banking company and examining him on oath;

(*c*) compelling the production of books of account and other documents; and

(*d*) issuing commissions.

[43][(1A) [44][If the Director General or Director or [45][Joint] Director or Assistant Director [46][or Deputy Director], or the authorised officer referred to in sub-section (1) of section 132 before he takes action under clauses (*i*) to (*v*) of that sub-section[47],] has reason to suspect that any income has been concealed, or is likely

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35. Prior to its omission, section 130 was substituted by the Finance Act, 1970, w.e.f. 1-4-1970 and amended by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984.

36. Prior to its omission, section 130A was amended by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

37. *See* also Circular No. 8-D (LXXVI-22), dated 13-5-1958. For details, *see* Taxmann's Master Guide to Income-tax Act.
For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

38. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

39. Substituted for "Appellate Assistant Commissioner", *ibid.*

40. Substituted for "Deputy Commissioner" by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier "Deputy Commissioner" was substituted for "Inspecting Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

41. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

42. Substituted for "and Chief Commissioner or Commissioner" by the Finance (No. 2) Act, 2009, w.e.f. 1-10-2009. Earlier "Chief Commissioner or Commissioner" was substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

43. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

44. Substituted for "If the Assistant Director of Inspection" by the Finance Act, 1988, w.e.f. 1-6-1988.

45. Substituted for "Deputy" by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

46. Inserted, *ibid.*

47. For the meaning of the expression "referred to. . . sub-section", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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to be concealed, by any person or class of persons, within his jurisdiction, then, for the purposes of making any enquiry or investigation relating thereto, it shall be competent for him to exercise the powers conferred under sub-section (1) on the income-tax authorities referred to in that sub-section, notwithstanding that no proceedings with respect to such person or class of persons are pending[48] before him or any other income-tax authority.]

(2) [*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.*]

(3) Subject to any rules made in this behalf, any authority referred to in sub-section (1) [49][or sub-section (1A)] may impound and retain in its custody for such period as it thinks fit any books of account or other documents produced before it in any proceeding under this Act :

Provided that an [50][Assessing] Officer [49][or an [51][Assistant Director [52][or Deputy Director]]] shall not—

(*a*) impound any books of account or other documents without recording his reasons for so doing, or

(*b*) retain in his custody any such books or documents for a period exceeding fifteen days (exclusive of holidays) without obtaining the approval of the [53][[54][Chief Commissioner or Director General or Commissioner or Director therefor, as the case may be.]]

[55][**Search and seizure.**

[56]**132.** [57](1) Where the [58][Director General or Director] or the [59][Chief Commissioner or Commissioner] [60][or Additional Director or Additional Com-

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48. For the meaning of the expression "notwithstanding that....are pending", *see* Taxmann's Direct Taxes Manual, Vol. 3.

49. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

50. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

51. Substituted for "Assistant Director of Inspection" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

52. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

53. Substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

54. Substituted for "Chief Commissioner or Commissioner therefor" by the Finance Act, 1988, w.e.f. 1-6-1988.

55. Substituted by the Income-tax (Amendment) Act, 1965, w.e.f. 12-3-1965. Earlier, section 132 was substituted by the Finance Act, 1964, w.e.f. 1-4-1964. Section 6 of the Amendment Act, 1965 has made the following independent provision :

"*Validation of certain searches made.*—Any search of a building or place by an Inspecting Assistant Commissioner or Income-tax Officer purported to have been made in pursuance of sub-section (1) of section 132 of the principal Act before the commencement of this Act shall be deemed to have been made in accordance with the provisions of that sub-section as amended by this Act as if those provisions were in force on the day the search was made and shall not be called in question before any court of law or any other authority merely on the ground—

(*i*) that the Inspecting Assistant Commissioner or the Income-tax Officer made such search with the assistance of any other person; or

(Contd. on p. 1.619)

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missioner] [61][or Joint Director or Joint Commissioner] in consequence of information[62] in his possession, has reason to believe[62] that—

(*a*) any person to whom a summons under sub-section (1) of section 37 of the Indian Income-tax Act, 1922 (11 of 1922), or under sub-section (1) of section 131 of this Act, or a notice under sub-section (4) of section 22 of the Indian Income-tax Act, 1922, or under sub-section (1) of section 142 of this Act was issued to produce, or cause to be produced, any books of account or other documents has omitted or failed to produce, or cause to be produced, such books of account or other documents as required by such summons or notice, or

(*b*) any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any books of account or other documents which will be useful for, or relevant to, any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act, or

(*c*) any person is in possession of any money, bullion, jewellery or other valuable article or thing[63] and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property [64][which has not been, or would not be, disclosed[63]] for the purposes of the Indian Income-tax Act, 1922 (11 of 1922), or this Act (hereinafter in this section referred to as the undisclosed income or property),

[65][then,—

(Contd. from p. 1.618)

(*ii*) that no proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or the principal Act was pending against the person concerned when the search was authorised under the said sub-section."

56. *See* rule 112. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act. For charter of rights and duties of persons searched as well as Departmental Instructions, *see* Taxmann's Master Guide to Income-tax Act.
57. *See* rule 112(2)(*a*) and Form No. 45 for form of authorisation for search and seizure.
58. Substituted for "Director of Inspection" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.
59. Substituted for "Commissioner", *ibid.*
60. Substituted for "or any such Joint Director or Joint Commissioner as may be empowered in this behalf by the Board," by the Finance (No. 2) Act, 2009, w.r.e.f. 1-6-1994. Earlier, it was amended by Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975, Finance (No. 2) Act, 1998, w.e.f. 1-10-1998 and Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.
61. Inserted by the Finance (No. 2) Act, 2009, w.r.e.f. 1-10-1998.
62. For the meaning of the terms/expressions "information" and "reason to believe", *see* Taxmann's Direct Taxes Manual, Vol. 3.
63. For the meaning of the terms/expressions "other valuable article or thing" and "income which has not been, or would not be, disclosed", *see* Taxmann's Direct Taxes Manual, Vol. 3.
64. Substituted for "which has not been disclosed" by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.
65. Substituted for "he may authorise any Deputy Director of Inspection, Inspecting Assistant Commissioner, Assistant Director of Inspection or Income-tax Officer (hereinafter referred to as the authorised officer) to—", *ibid.*

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(*A*) the [66][Director General or Director] or the [67][Chief Commissioner or Commissioner], as the case may be, may authorise any [68][Additional Director or Additional Commissioner or] [69][Joint Director], [70][Joint Commissioner], [71][Assistant Director [72][or Deputy Director]], [73][Assistant Commissioner [72][or Deputy Commissioner] or Income-tax Officer], or

(*B*) such [68][Additional Director or Additional Commissioner or] [69][Joint Director], or [70][Joint Commissioner], as the case may be, may authorise any [71][Assistant Director [72][or Deputy Director]], [73][Assistant Commissioner [72][or Deputy Commissioner] or Income-tax Officer],

(the officer so authorised in all cases being hereinafter referred to as the authorised officer) to—]

(*i*) enter and search[74] any [75][building, place, vessel, vehicle or aircraft] where he has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept;

(*ii*) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (*i*) where the keys thereof are not available;

[76][(*iia*) search any person who has got out of, or is about to get into, or is in, the building, place, vessel, vehicle or aircraft, if the authorised officer has reason to suspect that such person has secreted about his person any such books of account, other documents, money, bullion, jewellery or other valuable article or thing;]

[77][(*iib*) require any person who is found to be in possession or control of any books of account or other documents maintained in the form of electronic record as defined in clause (*t*) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000)[78], to afford the

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66. Substituted for "Director of Inspection" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

67. Substituted for "Commissioner", *ibid.*

68. Inserted by the Finance (No. 2) Act, 2009, w.r.e.f. 1-6-1994.

69. Substituted for "Deputy Director" by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier "Deputy Director" was substituted for "Deputy Director of Inspection" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

70. Substituted for "Deputy Commissioner" by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier "Deputy Commissioner" was substituted for "Inspecting Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

71. Substituted for "Assistant Director of Inspection" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

72. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

73. Substituted for "or Income-tax Officer" by the Direct Tax Laws (Amendment) Act, 1987 (as amended by the Finance Act, 1988), w.e.f. 1-4-1988.

74. For the meaning of the term "search", *see* Taxmann's Direct Taxes Manual, Vol. 3.

75. Substituted for "building or place" by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

76. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

77. Inserted by the Finance Act, 2002, w.e.f. 1-6-2002.

78. For definition of "electronic record" as defined in section 2(1)(*t*) of the Information Technology Act, 2000, *see* **Appendix**.

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authorised officer the necessary facility to inspect such books of account or other documents;]

(*iii*) seize[79] any such[79] books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search:

[80][**Provided** that bullion, jewellery or other valuable article or thing, being stock-in-trade of the business, found as a result of such search shall not be seized but the authorised officer shall make a note or inventory of such stock-in-trade of the business;]

(*iv*) place marks of identification on any books of account or other documents or make or cause to be made extracts or copies therefrom;

(*v*) make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing :

[81][**Provided** that where any building, place, vessel, vehicle or aircraft referred to in clause (*i*) is within the area of jurisdiction of any [82][Chief Commissioner or Commissioner], but such [82][Chief Commissioner or Commissioner] has no jurisdiction over the person referred to in clause (*a*) or clause (*b*) or clause (*c*), then, notwithstanding anything contained in section [83][120], it shall be competent for him to exercise the powers under this sub-section in all cases where he has reason to believe that any delay in getting the authorisation from the [84][Chief Commissioner or Commissioner] having jurisdiction over such person may be prejudicial to the interests of the revenue :]

[85][**Provided further** that where it is not possible or practicable to take physical possession of any valuable article or thing and remove it to a safe place due to its volume, weight or other physical characteristics or due to its being of a dangerous nature, the authorised officer may serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it, except with the previous permission of such authorised officer and such action of the authorised officer shall be deemed to be seizure of such valuable article or thing under clause (*iii*) :]

[86][**Provided also** that nothing contained in the second proviso shall apply in case of any valuable article or thing, being stock-in-trade of the business:]

[87][**Provided also** that no authorisation shall be issued by the Additional Director or Additional Commissioner or Joint Director or Joint Commissioner on or after

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79. For the meaning of the terms "seize" and "such", *see* Taxmann's Direct Taxes Manual, Vol. 3.

80. Inserted by the Finance Act, 2003, w.e.f. 1-6-2003.

81. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975. *See* rule 112(2)(*b*) and Form No. 45A for form of authorisation for search and seizure.

82. Substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

83. Substituted for "121" by the Direct Tax Laws (Amendment) Act, 1987 (as amended by the Finance Act, 1988), w.e.f. 1-4-1988.

84. Substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987 (as amended by the Finance Act, 1988), w.e.f. 1-4-1988.

85. Inserted by the Finance Act, 1988, w.e.f. 1-4-1989.

86. Inserted by the Finance Act, 2003, w.e.f. 1-6-2003.

87. Inserted by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-2009.

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the 1st day of October, 2009 unless he has been empowered by the Board to do so[87a].]

[88][(1A) Where any [89][Chief Commissioner or Commissioner], in consequence of information in his possession, has reason to suspect that any books of account, other documents, money, bullion, jewellery or other valuable article or thing in respect of which an officer has been authorised by the [90][Director General or Director] or any other [91][Chief Commissioner or Commissioner] or [92][Additional Director or Additional Commissioner] [93][or Joint Director or Joint Commissioner] to take action under clauses (*i*) to (*v*) of sub-section (1) are or is kept in any building, place, vessel, vehicle or aircraft not mentioned in the authorisation under sub-section (1), such [94][Chief Commissioner or Commissioner] may, notwithstanding anything contained in section [95][120], authorise the said officer to take action under any of the clauses aforesaid in respect of such building, place, vessel, vehicle or aircraft.]

(2) The authorised officer may requisition the services of any police officer or of any officer of the Central Government, or of both, to assist him for all or any of the purposes specified in sub-section (1) [96][or sub-section (1A)] and it shall be the duty of every such officer to comply with such requisition.

(3) The authorised officer may, where it is not practicable[97] to seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing, [98][for reasons other than those mentioned in the second proviso to sub-section (1),] serve an order on the owner or the person who is in immediate possession[97] or control thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance with this sub-section.

[99][*Explanation.*—For the removal of doubts, it is hereby declared that serving of an order as aforesaid under this sub-section shall not be deemed to be seizure of such books of account, other documents, money, bullion, jewellery or other valuable article or thing under clause (*iii*) of sub-section (1).]

87a. For relevant Notifications, *see* Taxmann's Master Guide to Income-tax Act.

88. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975. *See* rule 112(2)(*c*) and Form No. 45B.

89. Substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

90. Substituted for "Director of Inspection", *ibid.*

91. Substituted for "Commissioner", *ibid.*

92. Substituted for "any such Joint Director or Joint Commissioner as may be empowered in this behalf by the Board" by the Finance (No. 2) Act, 2009, w.r.e.f. 1-6-1994. Earlier, it was amended by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988 and Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

93. Inserted by the Finance (No. 2) Act, 2009, w.r.e.f. 1-10-1998.

94. Substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

95. Substituted for "121" by the Direct Tax Laws (Amendment) Act, 1987 (as amended by the Finance Act, 1988), w.e.f. 1-4-1988.

96. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

97. For the meaning of the terms "practicable" and "possession", *see* Taxmann's Direct Taxes Manual, Vol. 3.

98. Inserted by the Finance Act, 1988, w.e.f. 1-4-1989.

99. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

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(4) The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act.

[1][*Explanation*.—For the removal of doubts, it is hereby declared that the examination of any person under this sub-section may be not merely in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act.]

[2][(4A) Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search, it may be presumed—

(*i*) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person ;

(*ii*) that the contents of such books of account and other documents are true ; and

(*iii*) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.]

(5) [3][***]

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1. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

2. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

3. Omitted by the Finance Act, 2002, w.e.f. 1-6-2002. Prior to its omission, sub-section (5), as amended by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975, Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984, Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988, Finance Act, 1995, w.e.f. 1-7-1995 and Finance (No. 2) Act, 1998, w.e.f. 1-10-1998, read as under :

"(5) Where any money, bullion, jewellery or other valuable article or thing (hereafter in this section and in sections 132A and 132B referred to as the assets) is seized under sub-section (1) or sub-section (1A), as a result of a search initiated or requisition made before the 1st day of July, 1995, the Income-tax Officer, after affording a reasonable opportunity to the person concerned of being heard and making such enquiry as may be prescribed†, shall, within one hundred and twenty days of the seizure, make an order, with the previous approval of the Joint Commissioner,—

(*i*) estimating the undisclosed income (including the income from the undisclosed property) in a summary manner to the best of his judgment on the basis of such materials as are available with him ;

(*ii*) calculating the amount of tax on the income so estimated in accordance with the provisions of the Indian Income-tax Act, 1922 (11 of 1922), or this Act ;

(Contd. on p. 1.624)

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(6) [4][***]

(7) [5][***]

(8) The books of account or other documents seized under sub-section (1) [6][or sub-section (1A)] shall not be retained by the authorised officer for a period exceeding [7][thirty days from the date of the order of assessment under [8][section 153A or] clause (*c*) of section 158BC] unless the reasons for retaining the same are recorded by him in writing and the approval of the [9][Chief Commissioner, Commissioner, Director General or Director] for such retention is obtained :

Provided that the [9][Chief Commissioner, Commissioner, Director General or Director] shall not authorise the retention of the books of account and other

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(Contd. from p. 1.623)

(*iia*) determining the amount of interest payable and the amount of penalty imposable in accordance with the provisions of the Indian Income-tax Act, 1922 (11 of 1922), or this Act, as if the order had been the order of regular assessment ;

(*iii*) specifying the amount that will be required to satisfy any existing liability under this Act and any one or more of the Acts specified in clause (*a*) of sub-section (1) of section 230A in respect of which such person is in default or is deemed to be in default,

and retain in his custody such assets/or part thereof as are in his opinion sufficient to satisfy the aggregate of the amounts referred to in clauses (*ii*), (*iia*) and (*iii*) and forthwith release the remaining portion, if any, of the assets to the person from whose custody they were seized :

Provided that if, after taking into account the materials available with him, the Income-tax Officer is of the view that it is not possible to ascertain to which particular previous year or years such income or any part thereof relates, he may calculate the tax on such income or part, as the case may be, as if such income or part were the total income chargeable to tax at the rates in force in the financial year in which the assets were seized and may also determine the interest or penalty, if any, payable or imposable accordingly :

Provided further that where a person has paid or made satisfactory arrangements for payment of all the amounts referred to in clauses (*ii*), (*iia*) and (*iii*) or any part thereof, the Income-tax Officer may, with the previous approval of the Chief Commissioner or Commissioner, release the assets or such part thereof as he may deem fit in the circumstances of the case."

†*See* rules 112A and 112B.

4. Omitted by the Finance Act, 2002, w.e.f. 1-6-2002. Prior to its omission, sub-section (6), as amended by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975, read as under :

"(6) The assets retained under sub-section (5) may be dealt with in accordance with the provisions of section 132B."

5. Omitted by the Finance Act, 2002, w.e.f. 1-6-2002. Prior to its omission, sub-section (7) read as under :

"(7) If the Income-tax Officer is satisfied that the seized assets or any part thereof were held by such person, for or on behalf of any other person, the Income-tax Officer may proceed under sub-section (5) against such other person and all the provisions of this section shall apply accordingly."

6. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

7. Substituted for "one hundred and eighty days from the date of the seizure" by the Finance Act, 2002, w.e.f. 1-6-2002.

8. Inserted by the Finance Act, 2003, w.e.f. 1-6-2003.

9. Substituted for "Chief Commissioner or Commissioner" by the Finance Act, 1997, w.r.e.f. 1-10-1996. Earlier "Chief Commissioner or Commissioner" was substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

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documents for a period exceeding thirty days after all the proceedings under the Indian Income-tax Act, 1922 (11 of 1922), or this Act in respect of the years for which the books of account or other documents are relevant are completed.

[10][(8A) An order under sub-section (3) shall not be in force for a period exceeding sixty days from the date of the order.]

(9) The person from whose custody any books of account or other documents are seized under sub-section (1) [11][or sub-section (1A)] may make copies thereof, or take extracts therefrom, in the presence of the authorised officer or any other person empowered by him in this behalf, at such place and time as the authorised officer may appoint in this behalf.

[12][(9A) Where the authorised officer has no jurisdiction over the person referred to in clause (*a*) or clause (*b*) or clause (*c*) of sub-section (1), the books of account or other documents, or any money, bullion, jewellery or other valuable article or thing (hereafter in this section and in sections 132A and 132B referred to as the assets) seized under that sub-section shall be handed over by the authorised officer to the Assessing Officer having jurisdiction over such person within a period of sixty days from the date on which the last of the authorisations for search was executed and thereupon the powers exercisable by the authorised officer under sub-section (8) or sub-section (9) shall be exercisable by such Assessing Officer.]

(10) If a person legally entitled to the books of account or other documents seized under sub-section (1) [13][or sub-section (1A)] objects for any reason to the approval given by the [14][Chief Commissioner, Commissioner, Director General

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10. Substituted by the Finance Act, 2002, w.e.f. 1-6-2002. Prior to its substitution, sub-section (8A), as inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989 and amended by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991, read as under :

"(8A) An order under sub-section (3) shall not be in force for a period exceeding sixty days from the date of the order, except where the authorised officer, for reasons to be recorded by him in writing, extends the period of operation of the order beyond sixty days, after obtaining the approval of the Director or, as the case may be, Commissioner for such extension :

Provided that the Director or, as the case may be, Commissioner shall not approve the extension of the period for any period beyond the expiry of thirty days after the completion of all the proceedings under this Act in respect of the years for which the books of account, other documents, money, bullion, jewellery or other valuable articles or things are relevant."

11. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

12. Substituted by the Finance Act, 2002, w.e.f. 1-6-2002. Prior to its substitution, sub-section (9A), as inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975, read as under :

"(9A) Where the authorised officer has no jurisdiction over the person referred to in clause (*a*) or clause (*b*) or clause (*c*) of sub-section (1), the books of account or other documents or assets seized under that sub-section shall be handed over by the authorised officer to the Income-tax Officer* having jurisdiction over such person within a period of fifteen days of such seizure and thereupon the powers exercisable by the authorised officer under sub-section (8) or sub-section (9) shall be exercisable by such Income-tax Officer*."

*Should be Assessing Officer.

13. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

14. Substituted for "Chief Commissioner or Commissioner" by the Finance Act, 1997, w.r.e.f. 1-10-1996. Earlier "Chief Commissioner or Commissioner" was substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

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or Director] under sub-section (8), he may make an application to the Board stating therein the reasons for such objection and requesting for the return of the books of account or other documents [15][and the Board may, after giving the applicant an opportunity of being heard, pass such orders as it thinks fit].

(11) [16][***]

(11A) [17][***]

(12) [18][***]

[19][(13) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to searches and seizure shall apply, so far as may be, to searches and seizure under sub-section (1) or sub-section (1A).]

[20](14) The Board may make rules in relation to any search or seizure under this section ; in particular, and without prejudice to the generality of the foregoing power, such rules may provide for the procedure to be followed by the authorised officer—

(*i*) for obtaining ingress into [21][any building, place, vessel, vehicle or aircraft] to be searched where free ingress thereto is not available ;

(*ii*) for ensuring safe custody of any books of account or other documents or assets seized.

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15. Inserted by the Finance Act, 2002, w.e.f. 1-6-2002.

16. Omitted, *ibid*. Prior to its omission, sub-section (11), as amended by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984 and Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988, read as under :

"(11) If any person objects for any reason to an order made under sub-section (5), he may, within thirty days of the date of such order, make an application to the Chief Commissioner or Commissioner, stating therein the reasons for such objection and requesting for appropriate relief in the matter."

17. Omitted by the Finance Act, 2002, w.e.f. 1-6-2002. Prior to its omission, sub-section (11A), as inserted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984 and amended by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988, read as under :

"(11A) Every application referred to in sub-section (11) which is pending immediately before the 1st day of October, 1984, before an authority notified under that sub-section as it stood immediately before that day shall stand transferred on that day to the Chief Commissioner or Commissioner, and the Chief Commissioner or Commissioner may proceed with such application from the stage at which it was on that day :

Provided that the applicant may demand that before proceeding further with the application, he be reheard."

18. Omitted by the Finance Act, 2002, w.e.f. 1-6-2002. Prior to its omission, sub-section (12), as amended by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984 and Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988, read as under :

"(12) On receipt of the application under sub-section (10) the Board, or on receipt of the application under sub-section (11) the Chief Commissioner or Commissioner, may, after giving the applicant an opportunity of being heard, pass such orders as it or he thinks fit."

19. Substituted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

20. *See* rule 112.

21. Substituted for "such building or place" by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

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[22][*Explanation 1.*—For the purposes of sub-section (9A), "execution of an authorisation for search" shall have the same meaning as assigned to it in *Explanation 2* to section 158BE.]

Explanation 2.—In this section, the word "proceeding" means any proceeding in respect of any year, whether under the Indian Income-tax Act, 1922 (11 of 1922), or this Act, which may be pending on the date on which a search is authorised under this section or which may have been completed on or before such date and includes also all proceedings under this Act which may be commenced after such date in respect of any year.]

[23][**Powers to requisition books of account, etc.**

[24]**132A.** [25](1) Where the [26][Director General or Director] or the [27][Chief Commissioner or Commissioner], in consequence of information in his possession, has reason to believe that—

(*a*) any person to whom a summons under sub-section (1) of section 37 of the Indian Income-tax Act, 1922 (11 of 1922), or under sub-section (1) of section 131 of this Act, or a notice under sub-section (4) of section 22 of the Indian Income-tax Act, 1922, or under sub-section (1) of section 142 of this Act was issued to produce, or cause to be produced, any books of account or other documents has omitted or failed to produce, or cause to be produced, such books of account or other documents, as required by such summons or notice and the said books of account or other documents have been taken into custody by any officer or authority[28] under any other law for the time being in force, or

(*b*) any books of account or other documents will be useful for, or relevant to, any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act and any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, such books of account or other documents on the return of such books of account or other documents by any officer or authority by whom or which such books of account or other documents have been taken into custody under any other law for the time being in force, or

(*c*) any assets represent either wholly or partly income or property which has not been, or would not have been, disclosed for the purposes of

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22. Substituted by the Finance Act, 2002, w.e.f. 1-6-2002. Prior to its substitution, *Explanation 1*, as amended by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984 and Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989, read as under :

"*Explanation 1.*—In computing the period referred to in sub-section (5) for the purposes of that sub-section, any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded."

23. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

24. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

25. *See* rule 112D and Form No. 45C for form of authorisation under section 132A(1).

26. Substituted for "Director of Inspection" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

27. Substituted for "Commissioner", *ibid.*

28. For the meaning of the term "authority", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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the Indian Income-tax Act, 1922 (11 of 1922), or this Act by any person from whose possession or control such assets have been taken into custody by any officer or authority under any other law for the time being in force,

then, the [29][Director General or Director] or the [30][Chief Commissioner or Commissioner] may authorise any [31][Additional Director, Additional Commissioner,] [32][Joint Director], [33][Joint Commissioner], [34][Assistant Director [35][or Deputy Director]], [36][Assistant Commissioner [35][or Deputy Commissioner] or Income-tax Officer] (hereafter in this section and in sub-section (2) of section 278D referred to as the requisitioning officer) to require the officer or authority referred to in clause (*a*) or clause (*b*) or clause (*c*), as the case may be, to deliver such books of account, other documents or assets to the requisitioning officer.

(2) On a requisition being made under sub-section (1), the officer or authority referred to in clause (*a*) or clause (*b*) or clause (*c*), as the case may be, of that sub-section shall deliver the books of account, other documents or assets to the requisitioning officer either forthwith or when such officer or authority is of the opinion that it is no longer necessary to retain the same in his or its custody.

(3) Where any books of account, other documents or assets have been delivered to the requisitioning officer, the provisions of sub-sections (4A) to (14) (both inclusive) of section 132 and section 132B shall, so far as may be, apply as if such books of account, other documents or assets had been seized under sub-section (1) of section 132 by the requisitioning officer from the custody of the person referred to in clause (*a*) or clause (*b*) or clause (*c*), as the case may be, of sub-section (1) of this section and as if for the words "the authorised officer" occurring in any of the aforesaid sub-sections (4A) to (14), the words "the requisitioning officer" were substituted.]

[37][**Application of seized or requisitioned assets**[38]**.**

132B. (1) The assets seized under section 132 or requisitioned under section 132A may be dealt with in the following manner, namely:—

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29. Substituted for "Director of Inspection" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

30. Substituted for "Commissioner", *ibid.*

31. Inserted by the Finance (No. 2) Act, 2009, w.r.e.f. 1-6-1994.

32. Substituted for "Deputy Director" by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier "Deputy Director" was substituted for "Deputy Director of Inspection" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

33. Substituted for "Deputy Commissioner" by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier "Deputy Commissioner" was substituted for "Inspecting Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

34. Substituted for "Assistant Director of Inspection" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

35. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

36. Substituted for "or Income-tax Officer" by the Direct Tax Laws (Amendment) Act, 1987 (as amended by the Finance Act, 1988), w.e.f. 1-4-1988.

37. Substituted by the Finance Act, 2002, w.e.f. 1-6-2002. *See* rule 112C. Prior to its substitution, section 132B, inserted as section 132A by the Income-tax (Amendment) Act, 1965, w.e.f. 12-3-1965 and renumbered as "132B" by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975, and later on amended by the Taxation Laws (Amendment) Act, 1967, w.e.f.

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(*i*) the amount of any existing liability under this Act, the Wealth-tax Act, 1957 (27 of 1957), the Expenditure-tax Act, 1987 (35 of 1987), the Gift-tax Act, 1958 (18 of 1958) and the Interest-tax Act, 1974 (45 of 1974), and the amount of the liability determined on completion of the assessment [39][under section 153A and the assessment of the year relevant to the previous year in which search is initiated or requisition is made, or the amount of liability determined on completion of the assessment under Chapter XIV-B for the block period, as the case may be] (including any penalty levied or interest payable in connec-

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(Contd. from p. 1.628)

1-10-1967, Finance Act, 1972, w.e.f. 1-4-1972, Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984 and Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988/1-4-1989, read as under:

"132B. *Application of retained assets.*—(1) The assets retained under sub-section (5) of section 132 may be dealt with in the following manner, namely :—

(*i*) The amount of the existing liability referred to in clause (*iii*) of the said sub-section and the amount of the liability determined on completion of the regular assessment or reassessment for all the assessment years relevant to the previous years to which the income referred to in clause (*i*) of that sub-section relates (including any penalty levied or interest payable in connection with such assessment or reassessment) and in respect of which he is in default or is deemed to be in default may be recovered out of such assets.

(*ii*) If the assets consist solely of money, or partly of money and partly of other assets, the Assessing Officer may apply such money in the discharge of the liabilities referred to in clause (*i*) and the assessee shall be discharged of such liability to the extent of the money so applied.

(*iii*) The assets other than money may also be applied for the discharge of any such liability referred to in clause (*i*) as remains undischarged and for this purpose such assets shall be deemed to be under distraint as if such distraint was effected by the Assessing Officer or, as the case may be, Tax Recovery Officer under authorisation from the Chief Commissioner or Commissioner under sub-section (5) of section 226 and the Assessing Officer or, as the case may be, Tax Recovery Officer may recover the amount of such liabilities by the sale of such assets and such sale shall be effected in the manner laid down in the Third Schedule.

(2) Nothing contained in sub-section (1) shall preclude the recovery of the amount of liabilities aforesaid by any other mode laid down in this Act.

(3) Any assets or proceeds thereof which remain after the liabilities referred to in clause (*i*) of sub-section (1) are discharged shall be forthwith made over or paid to the persons from whose custody the assets were seized.

(4) (*a*) The Central Government shall pay simple interest at the rate of fifteen per cent per annum on the amount by which the aggregate of money retained under section 132 and of the proceeds, if any, of the assets sold towards the discharge of the existing liability referred to in clause (*iii*) of sub-section (5) of that section exceeds the aggregate of the amounts required to meet the liabilities referred to in clause (*i*) of sub-section (1) of this section.

(*b*) Such interest shall run from the date immediately following the expiry of the period of six months from the date of the order under sub-section (5) of section 132 to the date of the regular assessment or reassessment referred to in clause (*i*) of sub-section (1) or, as the case may be, to the date of last of such assessments or reassessments."

38. *See* also Instruction No. 11/2006, dated 1-12-2006. For details, *see* Taxmann's Master Guide to Income-tax Act.

39. Substituted for "under Chapter XIV-B for the block period" by the Finance Act, 2003, w.e.f. 1-6-2003.

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tion with such assessment) and in respect of which such person is in default or is deemed to be in default, may be recovered out of such assets:

[40][**Provided** that where the person concerned makes an application to the Assessing Officer within thirty days from the end of the month in which the asset was seized, for release of asset and the nature and source of acquisition of any such asset is explained] to the satisfaction of the Assessing Officer, the amount of any existing liability referred to in this clause may be recovered out of such asset and the remaining portion, if any, of the asset may be released, with the prior approval of the Chief Commissioner or Commissioner, to the person from whose custody the assets were seized:

Provided further that such asset or any portion thereof as is referred to in the first proviso shall be released within a period of one hundred and twenty days from the date on which the last of the authorisations for search under section 132 or for requisition under section 132A, as the case may be, was executed;

(*ii*) if the assets consist solely of money, or partly of money and partly of other assets, the Assessing Officer may apply such money in the discharge of the liabilities referred to in clause (*i*) and the assessee shall be discharged of such liability to the extent of the money so applied;

(*iii*) the assets other than money may also be applied for the discharge of any such liability referred to in clause (*i*) as remains undischarged and for this purpose such assets shall be deemed to be under distraint as if such distraint was effected by the Assessing Officer or, as the case may be, the Tax Recovery Officer under authorisation from the Chief Commissioner or Commissioner under sub-section (5) of section 226 and the Assessing Officer or, as the case may be, the Tax Recovery Officer may recover the amount of such liabilities by the sale of such assets and such sale shall be effected in the manner laid down in the Third Schedule.

(2) Nothing contained in sub-section (1) shall preclude the recovery of the amount of liabilities aforesaid by any other mode laid down in this Act.

(3) Any assets or proceeds thereof which remain after the liabilities referred to in clause (*i*) of sub-section (1) are discharged shall be forthwith made over or paid to the persons from whose custody the assets were seized.

(4) (*a*) The Central Government shall pay simple interest at the rate of [41][one-half per cent for every month or part of a month] on the amount by which the aggregate amount of money seized under section 132 or requisitioned under section 132A, as reduced by the amount of money, if any, released under the first

40. Substituted for "Provided that where the nature and source of acquisition of any such asset is explained" by the Finance Act, 2003, w.e.f. 1-6-2003.

41. Substituted for "six per cent per annum" by the Finance Act, 2007, w.e.f. 1-4-2008. Earlier word "six" was substituted for "eight" by the Taxation Laws (Amendment) Act, 2003, w.e.f. 8-9-2003.

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proviso to clause (*i*) of sub-section (1), and of the proceeds, if any, of the assets sold towards the discharge of the existing liability referred to in clause (*i*) of sub-section (1), exceeds the aggregate of the amount required to meet the liabilities referred to in clause (*i*) of sub-section (1) of this section.

(*b*) Such interest shall run from the date immediately following the expiry of the period of one hundred and twenty days from the date on which the last of the authorisations for search under section 132 or requisition under section 132A was executed to the date of completion of the assessment [42][under section 153A or] under Chapter XIV-B.

Explanation.—In this section,—

(*i*) "block period" shall have the meaning assigned to it in clause (*a*) of section 158B;

(*ii*) "execution of an authorisation for search or requisition" shall have the same meaning as assigned to it in *Explanation 2* to section 158BE.]

Power to call for information.

[43]**133.** The [44][Assessing] Officer, the [45][Deputy Commissioner (Appeals),] [46][the [47][Joint Commissioner] or the Commissioner (Appeals)] may, for the purposes of this Act,—

(*1*) require any firm to furnish him with a return of the names and addresses of the partners of the firm and their respective shares ;

(*2*) require any Hindu undivided family to furnish him with a return of the names and addresses of the manager and the members of the family ;

(*3*) require any person whom he has reason to believe to be a trustee, guardian or agent, to furnish him with a return of the names of the persons for or of whom he is trustee, guardian or agent, and of their addresses ;

(*4*) require any assessee to furnish a statement of the names and addresses of all persons to whom he has paid in any previous year rent, interest, commission, royalty or brokerage, or any annuity, not being any annuity taxable under the head "Salaries" amounting to more than [48][one thousand rupees, or such higher amount as may be prescribed], together with particulars of all such payments made ;

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42. Inserted by the Finance Act, 2003, w.e.f. 1-6-2003.

43. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

44. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

45. Substituted for "Appellate Assistant Commissioner", *ibid.*

46. Substituted for "or the Inspecting Assistant Commissioner" by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

47. Substituted for "Deputy Commissioner" by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier "Deputy Commissioner" was substituted for "Inspecting Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

48. Substituted for "four hundred rupees" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

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(*5*) require any dealer, broker or agent or any person concerned in the management of a stock or commodity exchange to furnish a statement of the names and addresses of all persons to whom he or the exchange has paid any sum in connection with the transfer, whether by way of sale, exchange or otherwise, of assets, or on whose behalf or from whom he or the exchange has received any such sum, together with particulars of all such payments and receipts ;

(*6*) require any person, including a banking company or any officer thereof, to furnish information in relation to such points or matters, or to furnish statements of accounts and affairs verified in the manner specified by the [49][Assessing] Officer, the [50][Deputy Commissioner (Appeals)] [51][, the [52][Joint Commissioner] or the Commissioner (Appeals)], giving information in relation to such points or matters as, in the opinion of the [53][Assessing] Officer, the [54][Deputy Commissioner (Appeals)] [51][, the [52][Joint Commissioner] or the Commissioner (Appeals)], will be useful for, or relevant to, any [55][enquiry[56] or] proceeding[56] under this Act :

[57][**Provided** that the powers referred to in clause (*6*), may also be exercised by the Director-General, the Chief Commissioner, the Director and the Commissioner :]

[58][**Provided further** that the power in respect of an inquiry, in a case where no proceeding is pending, shall not be exercised by any income-tax authority below the rank of Director or Commissioner without the prior approval of the Director or, as the case may be, the Commissioner.]

[59][**Power of survey.**

[60]**133A.** (1) Notwithstanding anything contained in any other provision of this Act, an income-tax authority may enter—

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49. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

50. Substituted for "Appellate Assistant Commissioner", *ibid.*

51. Substituted for "or the Inspecting Assistant Commissioner" by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

52. Substituted for "Deputy Commissioner" by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier "Deputy Commissioner" was substituted for "Inspecting Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

53. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

54. Substituted for "Appellate Assistant Commissioner", *ibid.*

55. Inserted by the Finance Act, 1995, w.e.f. 1-7-1995.

56. For the meaning of the term "proceeding"/"enquiry", *see* Taxmann's Direct Taxes Manual, Vol. 3.

57. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

58. Inserted by the Finance Act, 1995, w.e.f. 1-7-1995.

59. Substituted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975. Original section was inserted by the Finance Act, 1964, w.e.f. 1-4-1964.

60. *See* also Circular No. 7-D(LXIII-7), dated 3-5-1967. For details, *see* Taxmann's Master Guide to Income-tax Act.

For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

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(*a*) any place within the limits of the area assigned to him, or

(*b*) any place occupied by any person in respect of whom he exercises jurisdiction, [61][or]

[61][(*c*) any place in respect of which he is authorised for the purposes of this section by such income-tax authority, who is assigned the area within which such place is situated or who exercises jurisdiction in respect of any person occupying such place,]

at which a business or profession is carried on, whether such place be the principal place or not of such business or profession, and require any proprietor, employee or any other person who may at that time and place be attending in any manner to, or helping in, the carrying on of such business or profession—

(*i*) to afford him the necessary facility to inspect such books of account or other documents as he may require and which may be available at such place,

(*ii*) to afford him the necessary facility to check or verify the cash, stock or other valuable article or thing which may be found therein, and

(*iii*) to furnish such information as he may require as to any matter which may be useful for, or relevant to, any proceeding under this Act.

Explanation.—For the purposes of this sub-section, a place where a business or profession is carried on shall also include any other place, whether any business or profession is carried on therein or not, in which the person carrying on the business or profession states that any of his books of account or other documents or any part of his cash or stock or other valuable article or thing relating to his business or profession are or is kept.

(2) An income-tax authority may enter any place of business or profession referred to in sub-section (1) only during the hours at which such place is open for the conduct of business or profession and, in the case of any other place, only after sunrise and before sunset.

(3) An income-tax authority acting under this section may,—

(*i*) if he so deems necessary, place marks of identification on the books of account or other documents inspected by him and make or cause to be made extracts or copies therefrom,

[62][(*ia*) impound and retain in his custody for such period as he thinks fit any books of account or other documents inspected by him:

Provided that such income-tax authority shall not—

(*a*) impound any books of account or other documents except after recording his reasons for so doing; or

[63][(*b*) retain in his custody any such books of account or other documents for a period exceeding ten days (exclusive of holidays) without obtaining the approval of the Chief

61. Inserted by the Finance Act, 1995, w.e.f. 1-7-1995.

62. Inserted by the Finance Act, 2002, w.e.f. 1-6-2002.

63. Substituted by the Finance Act, 2003, w.e.f. 1-6-2003. Prior to its substitution, clause (*b*) read as under :

(Contd. on p. 1.634)

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Commissioner or Director General therefor, as the case may be,]]

(*ii*) make an inventory of any cash, stock or other valuable article or thing checked or verified by him,

(*iii*) record the statement of any person which may be useful for, or relevant to, any proceeding under this Act.

(4) An income-tax authority acting under this section shall, on no account, remove or cause to be removed from the place wherein he has entered, [64][***] any cash, stock or other valuable article or thing.

(5) Where, having regard to the nature and scale of expenditure incurred by an assessee, in connection with any function, ceremony or event, the income-tax authority is of the opinion that it is necessary or expedient so to do, he may, at any time after such function, ceremony or event, require the assessee by whom such expenditure has been incurred or any person who, in the opinion of the income-tax authority, is likely to possess information as respects the expenditure incurred, to furnish such information as he may require as to any matter which may be useful for, or relevant to, any proceeding under this Act and may have the statements of the assessee or any other person recorded and any statement so recorded may thereafter be used in evidence in any proceeding under this Act.

(6) If a person under this section is required to afford facility to the income-tax authority to inspect books of account or other documents or to check or verify any cash, stock or other valuable article or thing or to furnish any information or to have his statement recorded either refuses or evades to do so, the income-tax authority shall have all the powers under [65][sub-section (1) of section 131] for enforcing compliance with the requirement made :

[66][**Provided** that no action under sub-section (1) shall be taken by an Assistant Director or a Deputy Director or an Assessing Officer or a Tax Recovery Officer or an Inspector of Income-tax without obtaining the approval of the Joint Director or the Joint Commissioner, as the case may be.]

Explanation.—In this section,—

[67][(*a*) "income-tax authority" means a Commissioner, a Joint Commissioner, a Director, a Joint Director, an Assistant Director or a Deputy

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(Contd. from p. 1.633)

"(*b*) retain in his custody any such books of account or other documents for a period exceeding fifteen days (exclusive of holidays) without obtaining the approval of the Chief Commissioner or Director General or Commissioner or Director therefor, as the case may be,"

64. Words "any books of account or other documents or" omitted by the Finance Act, 2002, w.e.f. 1-6-2002.

65. Substituted for "sub-sections (1) and (2) of section 131" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

66. Inserted by the Finance Act, 2003, w.e.f. 1-6-2003.

67. Substituted, *ibid*. Prior to its substitution, clause (*a*), as amended by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988/1-4-1989, Finance Act, 1995, w.e.f. 1-7-1995 and Finance (No. 2) Act, 1998, w.e.f. 1-10-1998, read as under :

(Contd. on p. 1.635)

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Director or an Assessing Officer, or a Tax Recovery Officer, and for the purposes of clause (*i*) of sub-section (1), clause (*i*) of sub-section (3) and sub-section (5), includes an Inspector of Income-tax;]

(*b*) "proceeding" means any proceeding under this Act in respect of any year which may be pending on the date on which the powers under this section are exercised or which may have been completed on or before such date and includes also all proceedings under this Act which may be commenced after such date in respect of any year.]

[68][**Power to collect certain information.**

133B. (1) Notwithstanding anything contained in any other provision of this Act, an income-tax authority may, for the purpose of collecting any information which may be useful for, or relevant to, the purposes of this Act, enter—

(*a*) any building or place within the limits of the area assigned to such authority ; or

(*b*) any building or place occupied by any person in respect of whom he exercises jurisdiction,

at which a business or profession is carried on, whether such place be the principal place or not of such business or profession, and require any proprietor, employee or any other person who may at that time and place be attending in any manner to, or helping in, the carrying on of such business or profession to furnish such information as may be prescribed[69].

(2) An income-tax authority may enter any place of business or profession referred to in sub-section (1) only during the hours at which such place is open for the conduct of business or profession.

(3) For the removal of doubts, it is hereby declared that an income-tax authority acting under this section shall, on no account, remove or cause to be removed from the building or place wherein he has entered, any books of account or other documents or any cash, stock or other valuable article or thing.

Explanation.—In this section, "income-tax authority" means a [70][Joint Commissioner], an [71][Assistant Director] [72][or Deputy Director] or an

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(Contd. from p. 1.634)

'(*a*) "income-tax authority" means a Commissioner, a Joint Commissioner, a Director, a Joint Director, an Assistant Director or Deputy Director or an Assessing Officer, and for the purposes of clause (*i*) of sub-section (1), clause (*i*) of sub-section (3) and sub-section (5), includes an Inspector of Income-tax, if so authorised by any such authority;'

68. Inserted by the Finance Act, 1986, w.e.f. 13-5-1986.

69. *See* rule 112E and Form No. 45D for form of information required to be furnished under section 133B(1).

70. Substituted for "Deputy Commissioner" by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier "Deputy Commissioner" was substituted for "Inspecting Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

71. Substituted for "Assistant Director of Inspection" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

72. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

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[73][Assessing] Officer, and includes an Inspector of Income-tax who has been authorised by the [73][Assessing] Officer to exercise the powers conferred under this section in relation to the area in respect of which the [73][Assessing] Officer exercises jurisdiction or part thereof.]

Power to inspect registers of companies.

134. The [73][Assessing] Officer, the [74][Deputy Commissioner (Appeals)], [75][the [76][Joint Commissioner] or the Commissioner (Appeals)], or any person subordinate to him authorised in writing in this behalf by the [73][Assessing] Officer, the [74][Deputy Commissioner (Appeals)], [75][the [76][Joint Commissioner] or the Commissioner (Appeals)], may inspect, and if necessary, take copies, or cause copies to be taken, of any register of the members, debenture holders or mortgagees of any company or of any entry in such register.

Power of [77][Director General or Director], [78][Chief Commissioner or Commissioner] and [79][Joint Commissioner].

135. The [77][Director General or Director], the [78][Chief Commissioner or Commissioner] and the [79][Joint Commissioner] shall be competent to make any enquiry under this Act, and for this purpose shall have all the powers that an [80][Assessing] Officer has under this Act in relation to the making of enquiries.

Proceedings before income-tax authorities to be judicial proceedings.

[81]**136.** Any proceeding under this Act before an income-tax authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code (45 of 1860) [82][and every income-tax authority shall be deemed to be a Civil Court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)].

D.—Disclosure of information

Disclosure of information prohibited.

137. [*Omitted by the Finance Act, 1964, w.e.f. 1-4-1964.*]

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73. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

74. Substituted for "Appellate Assistant Commissioner", *ibid.*

75. Substituted for "or the Inspecting Assistant Commissioner" by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

76. Substituted for "Deputy Commissioner" by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier "Deputy Commissioner" was substituted for "Inspecting Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

77. Substituted for "Director of Inspection" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

78. Substituted for "Commissioner", *ibid.*

79. Substituted for "Deputy Commissioner" by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier "Deputy Commissioner" was substituted for "Inspecting Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

80. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

81. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

82. Inserted by the Finance Act, 1985, w.r.e.f. 1-4-1974.

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[83][**Disclosure of information respecting assessees.**

[84]**138.** [85][(1)(*a*) The Board or any other income-tax authority specified by it by a general or special order in this behalf may furnish or cause to be furnished to—

(*i*) any officer, authority or body performing any functions under any law relating to the imposition of any tax, duty or cess, or to dealings in [86]foreign exchange as defined in section 2(*d*) of the Foreign Exchange Regulation Act, 1947 (7 of 1947)[87] ; or

(*ii*) such officer, authority or body performing functions under any other law as the Central Government may, if in its opinion it is necessary so to do in the public interest, specify by notification[88] in the Official Gazette in this behalf,

any such information [89][received or obtained by any income-tax authority in the performance of his functions under this Act], as may, in the opinion of the Board or other income-tax authority, be necessary for the purpose of enabling the officer, authority or body to perform his or its functions under that law.

(*b*) Where a person makes an application to the [90][Chief Commissioner or Commissioner] in the prescribed form[91] for any information relating to any assessee [92][received or obtained by any income-tax authority in the performance of his functions under this Act], the [93][Chief Commissioner or Commissioner] may, if he is satisfied that it is in the public interest so to do, furnish or cause to be furnished the information asked for [94][***] and his decision in this behalf shall be final and shall not be called in question in any court of law.]

(2) Notwithstanding anything contained in sub-section (1) or any other law for the time being in force, the Central Government may, having regard to the practices and usages customary or any other relevant factors, by order notified[95]

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83. Substituted by the Finance Act, 1964, w.e.f. 1-4-1964.

84. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

85. Substituted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

86. For definition of "foreign exchange", *see* footnote 31 on p. 1.437 *ante*.

87. Since repealed and now the Foreign Exchange Regulation Act, 1973 (46 of 1973)/Foreign Exchange Management Act, 1999 (42 of 1999).

88. For specified income-tax/other authorities, *see* Taxmann's Master Guide to Income-tax Act.

89. Substituted for "relating to any assessee in respect of any assessment made under this Act or the Indian Income-tax Act, 1922 (11 of 1922)" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

90. Substituted for "Commissioner", *ibid.,* w.e.f. 1-4-1988.

91. *See* rule 113 and Form Nos. 46 to 49 for form of application to Commissioner for disclosure of information, form of information furnished by Commissioner and form of refusal to furnish information, respectively.

92. Substituted for "in respect of any assessment made under this Act or the Indian Income-tax Act, 1922 (11 of 1922), on or after the 1st day of April, 1960" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

93. Substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

94. "in respect of that assessment only" omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

95. For order notified under sub-section (2), *see* Taxmann's Master Guide to Income-tax Act.

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in the Official Gazette, direct that no information or document shall be furnished or produced by a public servant in respect of such matters relating to such class of assessees or except to such authorities as may be specified in the order.]

CHAPTER XIV

PROCEDURE FOR ASSESSMENT[96]

Return of income.

[97]**139.** [98][(1) Every person[99],—

96. For the meaning of the term "assessment", *see* Taxmann's Direct Taxes Manual, Vol. 3.

97. *See* also Circular No. 307, dated 23-6-1981, Circular No. 412, dated 2-3-1985, Circular No. 639, dated 13-11-1992, Circular No. 792, dated 21-6-2000, Circular No. 795, dated 1-9-2000, Circular No. 10/2001, dated 19-7-2001, Circular No. 10/2003, dated 24-12-2003, Circular No. 9/2006, dated 10-10-2006, Circular No. 10/2006, dated 16-10-2006, Circular No. 12/2006, dated 27-11-2006, Circular No. 5/2007, dated 26-7-2007, Circular No. 5/2008, dated 14-7-2008, Circular No. 6/2008, dated 18-7-2008, Circular No. 8/2008, dated 22-9-2008, Instruction No. 14/2008, dated 1-10-2008 and Circular No. 3/2009, dated 21-5-2009. For details, *see* Taxmann's Master Guide to Income-tax Act.

For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

98. Substituted by the Finance Act, 2001, w.e.f. 1-4-2001. Prior to its substitution, sub-section (1), as amended by the Finance Act, 1963, w.r.e.f. 1-4-1962, Taxation Laws (Amendment) Act, 1967, w.e.f. 1-10-1967, Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971, Finance Act, 1972, w.e.f. 1-4-1972, Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989, Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-4-1989, Finance Act, 1990, w.e.f. 1-4-1991, Finance Act, 1992, w.e.f. 1-4-1993, Finance Act, 1994, w.e.f. 1-4-1994, Finance (No. 2) Act, 1996, w.e.f. 1-4-1997, Finance Act, 1997, w.e.f. 1-4-1997, Finance (No. 2) Act, 1998, w.e.f. 1-8-1998 and Finance Act, 1999, w.e.f. 1-6-1999, read as under :

'(1) Every person, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax, shall, on or before the due date, furnish a return of his income or the income of such other person during the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed:

Provided that a person, not furnishing return under this sub-section and residing in such area as may be specified by the Board in this behalf by a notification in the Official Gazette, and who at any time during the previous year fulfils any one of the following conditions, namely :—

(*i*) is in occupation of an immovable property exceeding a specified floor area, whether by way of ownership, tenancy or otherwise, as may be specified by the Board in this behalf; or

(*ii*) is the owner or the lessee of a motor vehicle other than a two-wheeled motor vehicle, whether having any detachable side car having extra wheel attached to such two-wheeled motor vehicle or not; or

(*iii*) is a subscriber to a telephone; or

(*iv*) has incurred expenditure for himself or any other person on travel to any foreign country; or

(*v*) is the holder of the credit card, not being an "add-on" card, issued by any bank or institution; or

(*vi*) is a member of a club where entrance fee charged is twenty-five thousand rupees or more,

shall furnish a return, of his income during the previous year, on or before the due date in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed:

(Contd. on p. 1.639)

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(*a*) being a company [1][or a firm]; or

(*b*) being a person other than a company [1][or a firm], if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax,

shall, on or before the due date, furnish a return of his income or the income of such other person during the previous year, in the prescribed[2] form and verified in the prescribed manner and setting forth such other particulars as may be prescribed :

(Contd. from p. 1.638)

Provided further that the Central Government may, by notification in the Official Gazette, specify the class or classes of persons to whom the provisions of the first proviso shall not apply.

Explanation 1.—In this sub-section, "due date" means—

(*a*) where the assessee is a company, the 30th day of November of the assessment year;

(*b*) where the assessee is a person, other than a company,—

(*i*) in a case where the accounts of the assessee are required under this Act or any other law to be audited or where the report of an accountant is required to be furnished under section 80HHC or section 80HHD or where the prescribed certificate is required to be furnished under section 80R or section 80RR or sub-section (1) of section 80RRA, or in the case of a co-operative society or in the case of a working partner of a firm whose accounts are required under this Act or any other law to be audited, the 31st day of October of the assessment year ;

(*ii*) in a case where the total income referred to in this sub-section includes any income from business or profession, not being a case falling under sub-clause (*i*), the 31st day of August of the assessment year;

(*iii*) in any other case, the 30th day of June of the assessment year.

Explanation 2.—For the purposes of sub-clause (*i*) of clause (*b*) of *Explanation 1,* the expression "working partner" shall have the meaning assigned to it in *Explanation 4* of clause (*b*) of section 40.

Explanation 3.—For the purposes of this sub-section, the expression "motor vehicle" shall have the meaning assigned to it in clause (*28*) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988).

Explanation 4.—For the purposes of this sub-section, the expression "travel to any foreign country" does not include travel to the neighbouring countries or to such places of pilgrimage as the Board may specify in this behalf by notification in the Official Gazette.'

99. For the meaning of the expression "every person", *see* Taxmann's Direct Taxes Manual, Vol. 3.

1. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

2. *See* rule 12. For assessment year 2009-10, following returns were prescribed :

ITR1	(*a*) in the case of a person being an individual where the total income includes income chargeable to income-tax under the head "Salaries" or income in the nature of family pension as defined in the *Explanation* to clause (*iia*) of section 57 but does not include any other income except income by way of interest chargeable to income-tax under the head "Income from other sources",
ITR2	(*b*) in the case of a person being an individual [not being an individual to whom (*a*) applies] or a Hindu undivided family where the total income does not include any income chargeable to income-tax under the head "Profits or gains of business or profession",

(Contd. on p. 1.640)

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Provided that a person referred to in clause (*b*), who is not required to furnish a return under this sub-section and residing in such area as may be specified by the Board in this behalf by notification[3] in the Official Gazette, and who [4][during the previous year incurs an expenditure of fifty thousand rupees or more towards consumption of electricity or] at any time during the previous year fulfils any one of the following conditions, namely :—

(Contd. from p. 1.639)

ITR3	(*c*) in the case of a person being an individual or a Hindu undivided family who is a partner in a firm and where income chargeable to income-tax under the head "Profits or gains of business or profession" does not include any income except the income by way of any interest, salary, bonus, commission or remuneration, by whatever name called, due to, or received by him from such firm,
ITR4	(*d*) in the case of a person being an individual or a Hindu undivided family other than the individual or Hindu undivided family referred to in (*a*) or (*b*) or (*c*) and deriving income from a proprietary business or profession,
ITR5	(*e*) in the case of a person not being an individual or a Hindu undivided family or a company or a person to which (*g*) applies,
ITR6	(*f*) in the case of a company not being a company to which (*g*) applies,
ITR7	(*g*) in the case of a person including a company whether or not registered under section 25 of the Companies Act, 1956, required to file a return under sub-section (4A) or sub-section (4B) or sub-section (4C) or sub-section (4D) of section 139,
ITR8	(*h*) in the case of a person who is not required to furnish the return of income but is required to furnish the return of fringe benefits.

Note 1. The return of income and return of fringe benefits required to be furnished in Form No. ITR-1 or Form No. ITR-2 or Form No. ITR-3 or Form No. ITR-4 or Form No. ITR-5 or Form No. ITR-6 or Form No. ITR-8 shall not be accompanied by a statement showing the computation of the tax payable on the basis of the return, or proof of the tax, if any, claimed to have been deducted or collected at source or the advance tax or tax on self-assessment, if any, claimed to have been paid or any document or copy of any account or Form or report of audit required to be attached with the return of income or the return of fringe benefits under any of the provisions of the Act.

2. The return of income or return of fringe benefits may be furnished in any of the following manners, namely:—

(*i*) furnishing the return in a paper form;

(*ii*) furnishing the return electronically under digital signature;

(*iii*) transmitting the data in the return electronically and thereafter submitting the verification of the return in Form ITR-V;

(*iv*) furnishing a bar-coded return in a paper form:

However,

(*a*) a firm required to furnish the return in Form ITR-5 and to whom provisions of section 44AB are applicable or a company required to furnish the return in Form ITR-6 shall furnish the return in the manner specified in (*ii*) or (*iii*) above

(*b*) a person required to furnish the return in Form ITR-7 shall furnish the return in the manner specified in (*i*) above.

3. For notified areas, *see* Taxmann's Direct Taxes Circulars. *See* also Circular No. 10/2001, dated 19-7-2001.

4. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

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(*i*) is in occupation of an immovable property exceeding a specified floor area, whether by way of ownership, tenancy or otherwise, as may be specified[5] by the Board in this behalf; or

(*ii*) is the owner or the lessee of a motor vehicle other than a two-wheeled motor vehicle, whether having any detachable side car having extra wheel attached to such two-wheeled motor vehicle or not; or

(*iii*) [6][***]

(*iv*) has incurred expenditure for himself or any other person on travel to any foreign country; or

(*v*) is the holder of a credit card[7], not being an "add-on" card, issued by any bank or institution; or

(*vi*) is a member of a club where entrance fee charged is twenty-five thousand rupees or more,

shall furnish a return, of his income [8][during any previous year ending before the 1st day of April, 2005], on or before the due date in the prescribed form[9] and verified in the prescribed manner and setting forth such other particulars as may be prescribed :

Provided further that the Central Government may, by notification[10] in the Official Gazette, specify the class or classes of persons to whom the provisions of the first proviso shall not apply:

Provided also that every company [11][or a firm] shall furnish on or before the due date the return in respect of its income or loss in every previous year :

[11][**Provided also** that every person, being an individual or a Hindu undivided family or an association of persons or a body of individuals, whether incorporated or not, or an artificial juridical person, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year, without giving effect to the provisions of section 10A or section 10B or section 10BA or Chapter VI-A exceeded the maximum amount which is not chargeable to income-tax, shall, on or before the due date, furnish a return of his income or the income of such other person during the previous year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed.]

Explanation 1.—For the purposes of this sub-section, the expression "motor vehicle" shall have the meaning assigned to it in clause (*28*) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988).

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5. For specified floor areas, *see* Taxmann's Direct Taxes Circulars.
6. Omitted by the Finance Act, 2005, w.e.f. 1-4-2006. Prior to its omission, clause (*iii*) was amended by the Finance Act, 2002, w.e.f. 1-4-2002.
7. *See* also Circular No. 795, dated 1-9-2000. For details, *see* Taxmann's Direct Taxes Circulars.
8. Substituted for "during the previous year" by the Finance Act, 2006, w.e.f. 1-4-2006.
9. *See* old rule 12 and Form No. 2C.
10. For notified persons, *see* Taxmann's Direct Taxes Circulars.
11. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

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Explanation 2.—In this sub-section, "due date" means,—

(*a*) where the assessee is—

(*i*) a company; or

(*ii*) a person (other than a company) whose accounts are required to be audited under this Act or under any other law for the time being in force; or

(*iii*) a working partner of a firm whose accounts are required to be audited under this Act or under any other law for the time being in force,

the [12][30th day of September] of the assessment year;

(*b*) in the case of a person other than a company, referred to in the first proviso to this sub-section, the 31st day of October of the assessment year;

(*c*) in the case of any other assessee, the 31st day of July of the assessment year.

Explanation 3.—For the purposes of this sub-section, the expression "travel to any foreign country" does not include travel to the neighbouring countries or to such places of pilgrimage as the Board may specify in this behalf by notification[13] in the Official Gazette.]

[14][(1A) Without prejudice to the provisions of sub-section (1), any person, being an individual who is in receipt of income chargeable under the head "Salaries"

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12. Substituted for "31st day of October" by the Finance Act, 2008, w.e.f. 1-4-2008.

13. For notified places of pilgrimage and neighbouring countries, *see* Taxmann's Direct Taxes Circulars.

14. Inserted by the Finance Act, 2002, w.e.f. 1-4-2002. Earlier sub-section (1A) was amended by the Finance Act, 1963, w.r.e.f. 1-4-1962, the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971, the Finance Act, 1974, w.e.f. 1-4-1975, the Finance Act, 1982, w.e.f. 1-4-1983, the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-4-1985 and the Finance Act, 1985, w.e.f. 1-4-1986 and later on omitted by the Finance Act, 1992, w.e.f. 1-4-1993. Prior to omission sub-section (1A) read as under :

'(1A) Notwithstanding anything contained in sub-section (1), no person need furnish under that sub-section a return of his income or the income of any other person in respect of whose total income he is assessable under this Act, if his income or, as the case may be, the income of such other person during the previous year consisted only of income chargeable under the head "Salaries" or of income chargeable under that head and also income of the nature referred to in any one or more of clauses (*i*) to (*ix*) of sub-section (1) of section 80L and the following conditions are fulfilled, namely :—

(*a*) where he or such other person was employed during the previous year by a company, he or such other person was at no time during the previous year a director of the company or a beneficial owner of shares in the company (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) carrying not less than twenty per cent of the voting power;

(*b*) his income or the income of such other person under the head "Salaries", exclusive of the value of all benefits or amenities not provided for by way of monetary payment, does not exceed twenty-four thousand rupees;

(*c*) the amount of income of the nature referred to in clauses (*i*) to (*ix*) of sub-section (1) of section 80L, if any, does not, in the aggregate, exceed the maximum amount allowable as deduction in his case under that section; and

(*d*) the tax deductible at source under section 192 from the income chargeable under the head "Salaries" has been deducted from that income.'

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may, at his option, furnish a return of his income for any previous year to his employer, in accordance with such scheme as may be specified by the Board in this behalf, by notification in the Official Gazette[15], and subject to such conditions as may be specified therein, and such employer shall furnish all returns of income received by him on or before the due date, in such form (including on a floppy, diskette, magnetic cartridge tape, CD-ROM or any other computer readable media) and manner as may be specified in that scheme, and in such case, any employee who has filed a return of his income to his employer shall be deemed to have furnished a return of income under sub-section (1), and the provisions of this Act shall apply accordingly.]

[16][***]]

[17][(1B) Without prejudice to the provisions of sub-section (1), any person, being a company or being a person other than a company, required to furnish a return of income under sub-section (1), may, at his option, on or before the due date, furnish a return of his income for any previous year in accordance with such scheme as may be specified by the Board in this behalf by notification in the Official Gazette[18] and subject to such conditions as may be specified therein, in such form (including on a floppy, diskette, magnetic cartridge tape, CD-ROM or any other computer readable media) and in the manner as may be specified in that scheme, and in such case, the return of income furnished under such scheme shall be deemed to be a return furnished under sub-section (1), and the provisions of this Act shall apply accordingly.]

[19][***]

(3) If any person who [20][***] has sustained a loss in any previous year under the head "Profits and gains of business or profession" or under the head "Capital gains" and claims that the loss or any part thereof should be carried forward under sub-section (1) of section 72, or sub-section (2) of section 73, or sub-section (1) [21][or sub-section (3)] of section 74, [22][or sub-section (3) of section 74A],

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15. *See* Scheme for Bulk Filing of Returns by Salaried Employees, 2002/Scheme for Filing of Returns by Salaried Employees' Through Employer, 2004. For details, *see* Taxmann's Income-tax Rules.

16. *Explanation* omitted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-4-1985. Omitted *Explanation* read as under :

'*Explanation*.— For the purposes of this sub-section, "salary" shall have the meaning assigned to it in clause (*1*) of section 17.'

17. Inserted by the Finance Act, 2003, w.e.f. 1-4-2003.

18. *See* Electronic Furnishing of Return of Income Scheme, 2007/Furnishing of Return of Income on Internet Scheme, 2004. For details, *see* Taxmann's Income-tax Rules.

19. Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Prior to its omission, sub-section (2) was amended by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971, Finance Act, 1972, w.e.f. 1-4-1972 and Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

20. "has not been served with a notice under sub-section (2)," omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

21. Inserted by the Finance Act, 1987, w.e.f. 1-4-1988.

22. Inserted by the Finance Act, 1974, w.e.f. 1-4-1975.

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he may furnish, within the time allowed under sub-section (1) [23][***], a return of loss in the prescribed form[24] and verified in the prescribed manner and containing such other particulars as may be prescribed, and all the provisions of this Act shall apply as if it were a return under sub-section (1).

[25][(4) Any person who has not furnished a return within the time allowed[26] to him under sub-section (1), or within the time allowed under a notice issued under sub-section (1) of section 142, may furnish the return for any previous year at any time[26] before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier :

Provided that where the return relates to a previous year relevant to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year, the reference to one year aforesaid shall be construed as a reference to two years from the end of the relevant assessment year.]

[27][[28][(4A) [29]Every person in receipt of income derived from property held under trust or other legal obligation wholly for charitable or religious purposes or in part only for such purposes, or of income being voluntary contributions referred to in sub-clause (*iia*) of clause (*24*) of section 2, shall, if the total income in respect of which he is assessable as a representative assessee (the total income for this purpose being computed under this Act without giving effect to the provisions of sections 11 and 12) exceeds the maximum amount which is not chargeable to income-tax, furnish a return of such income of the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under sub-section (1).]]

[30][(4B) [31]The chief executive officer (whether such chief executive officer is known as Secretary or by any other designation) of every political party shall, if the total income in respect of which the political party is assessable (the total

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23. "or by the thirty-first day of July of the assessment year relevant to the previous year during which the loss was sustained" omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Prior to its omission, the said expression was substituted for "within such further time which, on an application made in the prescribed manner, the Income-tax Officer may, in his discretion allow" by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1987. Original expression was inserted by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

24. *See* rules 12 and 12A.

25. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Prior to its substitution, sub-section (4) was substituted by the Finance Act, 1968, w.e.f. 1-4-1968 and amended by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

26. For the meaning of the expressions "time allowed" and "at any time", *see* Taxmann's Direct Taxes Manual, Vol. 3.

27. Restored to its original provision by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Earlier, it was substituted by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date.

28. Substituted by the Finance Act, 1972, w.e.f. 1-4-1973. Original sub-section was inserted by the Finance Act, 1970, w.e.f. 1-4-1971.

29. *See* rules 12 and 12A.

30. Inserted by the Taxation Laws (Amendment) Act, 1978, w.e.f. 1-4-1979.

31. *See* rules 12 and 12A.

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income for this purpose being computed under this Act without giving effect to the provisions of section 13A) exceeds the maximum amount which is not chargeable to income-tax, furnish a return of such income of the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and all the provisions of this Act, shall, so far as may be, apply as if it were a return required to be furnished under sub-section (1).]

[32][(4C) Every—

(*a*) [32a]**[***scientific research association***]** referred to in clause (*21*) of section 10;

(*b*) news agency referred to in clause (*22B*) of section 10;

(*c*) association or institution referred to in clause (*23A*) of section 10;

(*d*) institution referred to in clause (*23B*) of section 10;

(*e*) fund or institution referred to in sub-clause (*iv*) or trust or institution referred to in sub-clause (*v*) or any university or other educational institution referred to in [33][sub-clause (*iiiad*) or] sub-clause (*vi*) or any hospital or other medical institution referred to in [33][sub-clause (*iiiae*) or] sub-clause (*via*) of clause (*23C*) of section 10;

(*f*) trade union referred to in sub-clause (*a*) or association referred to in sub-clause (*b*) of clause (*24*) of section 10,

shall, if the total income in respect of which such [32a]**[***scientific research association***]**, news agency, association or institution, fund or trust or university or other educational institution or any hospital or other medical institution or trade union is assessable, without giving effect to the provisions of section 10, exceeds the maximum amount which is not chargeable to income-tax, furnish a return of such income of the previous year in the prescribed form[34] and verified in the prescribed manner and setting forth such other particulars as may be prescribed and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under sub-section (1).]

[35][(4D) Every university, college or other institution referred to in clause (*ii*) and clause (*iii*) of sub-section (1) of section 35, which is not required to furnish return of income or loss under any other provision of this section, shall furnish the return in respect of its income or loss in every previous year and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under sub-section (1).]

[36][(5) If any person, having furnished a return under sub-section (1), or in pursuance of a notice issued under sub-section (1) of section 142, discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier :

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32. Inserted by the Finance Act, 2002, w.e.f. 1-4-2003.

32a. Words "research association" shall be substituted for the words "scientific research association" by the Finance Act, 2010, w.e.f. **1-4-2011**.

33. Inserted by the Taxation Laws (Amendment) Act, 2006, w.r.e.f. 1-4-2006.

34. *See* rule 12(1)(*e*) and Form No. ITR-7.

35. Inserted by the Taxation Laws (Amendment) Act, 2006, w.r.e.f. 1-4-2006.

36. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

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Provided that where the return relates to the previous year relevant to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year, the reference to one year aforesaid shall be construed as a reference to two years from the end of the relevant assessment year.]

[37][(6) The prescribed form of the returns referred to [38][in sub-sections (1) and (3) of this section, and in clause (*i*) of sub-section (1) of section 142] shall, in such cases as may be prescribed, require the assessee to furnish the particulars of income exempt from tax, assets of the prescribed nature [39][, value and belonging to him, his bank account and credit card held by him], expenditure exceeding the prescribed limits incurred by him under prescribed heads and such other outgoings as may be prescribed.

(6A) Without prejudice to the provisions of sub-section (6), the prescribed form of the returns referred to [40][in [41][***] this section, and in clause (*i*) of sub-section (1) of section 142] shall, in the case of an assessee engaged in any business or profession, also require him to furnish [42][the report of any audit [43][referred to in section 44AB, or, where the report has been furnished prior to the furnishing of the return, a copy of such report together with proof of furnishing the report], the] particulars of the location and style of the principal place where he carries on the business or profession and all the branches thereof, the names and addresses of his partners, if any, in such business or profession and, if he is a member of an association or body of individuals, the names of the other members of the association or the body of individuals and the extent of the share of the assessee and the shares of all such partners or the members, as the case may be, in the profits of the business or profession and any branches thereof.]

(7) [44][***]

[45][[46](8)(*a*) [47][Where the return under sub-section (1) or sub-section (2) or sub-section (4) for an assessment year is furnished after the specified date, or is not furnished, then [whether or not the [48][Assessing] Officer has extended the date for furnishing the return under sub-section (1) or sub-section (2)], the assessee

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37. Substituted for sub-section (6) by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

38. Substituted for "in sub-sections (1), (2) and (3)" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

39. Substituted for "and value and belonging to him" by the Finance Act, 1999, w.e.f. 1-6-1999.

40. Substituted for "in sub-sections (1), (2) and (3)" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

41. Words "sub-sections (1) and (3) of" omitted by the Finance Act, 1995, w.e.f. 1-7-1995.

42. Inserted by the Finance Act, 1988, w.e.f. 1-4-1989.

43. Substituted for "obtained under section 44AB" by the Finance Act, 1995, w.e.f. 1-7-1995.

44. Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

45. Substituted by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971. Original sub-section was inserted by the Finance Act, 1963, w.e.f. 28-4-1963.

46. *See* rule 119A.

47. Substituted for portion beginning with "Where the return" and ending with "under this sub-section" by the Finance Act, 1972, w.e.f. 1-4-1972.

48. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

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shall be liable to pay simple interest at [49][fifteen] per cent per annum, reckoned from the day immediately following the specified date to the date of the furnishing of the return or, where no return has been furnished, the date of completion of the assessment under section 144, on the amount of the tax payable on the total income as determined on regular assessment, as reduced by the advance tax, if any, paid, and any tax deducted at source :

Provided that the [50][Assessing] Officer may, in such cases and under such circumstances as may be prescribed[51], reduce or waive the interest payable by any assessee under this sub-section.

Explanation 1.—For the purposes of this sub-section, "specified date", in relation to a return for an assessment year, means,—

(*a*) in the case of every assessee whose total income, or the total income of any person in respect of which he is assessable under this Act, includes any income from business or profession, the date of the expiry of four months from the end of the previous year or where there is more than one previous year, from the end of the previous year which expired last before the commencement of the assessment year or the 30th day of June of the assessment year, whichever is later;

(*b*) in the case of every other assessee, the 30th day of June of the assessment year.]

[52][*Explanation 2.*—Where, in relation to an assessment year, an assessment is made for the first time under section 147, the assessment so made shall be regarded as a regular assessment for the purposes of this sub-section.]

[53][(*b*) Where as a result of an order under section 147 or section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264 [54][or an order of the Settlement Commission under sub-section (4) of section 245D], the amount of tax on which interest was payable under this sub-section has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and—

(*i*) in a case where the interest is increased, the [55][Assessing] Officer shall serve on the assessee, a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall apply accordingly;

(*ii*) in a case where the interest is reduced, the excess interest paid, if any, shall be refunded.]]

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49. Substituted for "twelve" by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984. Section 84 of the Amendment Act has clarified that the increase in the rate of interest will apply in respect of any period falling after 30-9-1984, also in those cases where the interest became chargeable or payable from an earlier date.

50. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

51. *See* rule 117A.

52. Substituted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-4-1985. Earlier it was amended by the Finance Act, 1972, w.e.f. 1-4-1972.

53. Substituted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-4-1985.

54. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

55. Substituted for "Income-tax", *ibid.*, w.e.f. 1-4-1988.

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[56][(*c*) The provisions of this sub-section shall apply in respect of the assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year, and references therein to the other provisions of this Act shall be construed as references to the said provisions as they were applicable to the relevant assessment year.]

[57][(9) Where the [58][Assessing] Officer considers that the return of income furnished by the assessee is defective, he may intimate the defect to the assessee and give him an opportunity to rectify the defect within a period of fifteen days from the date of such intimation or within such further period which, on an application made in this behalf, the [58][Assessing] Officer may, in his discretion, allow; and if the defect is not rectified within the said period of fifteen days or, as the case may be, the further period so allowed, then, notwithstanding anything contained in any other provision of this Act, the return shall be treated as an invalid return and the provisions of this Act shall apply as if the assessee had failed to furnish the return :

Provided that where the assessee rectifies the defect after the expiry of the said period of fifteen days or the further period allowed, but before the assessment is made, the [58][Assessing] Officer may condone the delay and treat the return as a valid return.

Explanation.—For the purposes of this sub-section, a return of income shall be regarded as defective unless all the following conditions are fulfilled, namely :—

[58a](*a*) the annexures, statements and columns in the return of income relating to computation of income chargeable under each head of income, computation of gross total income and total income have been duly filled in;

[58a](*b*) the return is accompanied by a statement showing the computation of the tax payable on the basis of the return;

[59][(*bb*) [58a]the return is accompanied by the report of the audit referred to in section 44AB, or, where the report has been furnished prior to the furnishing of the return, by a copy of such report together with proof of furnishing the report;]

(*c*) [58a]the return is accompanied by proof of—

(*i*) the tax, if any, claimed to have been deducted [60][or collected] at source [61][***] and the advance tax and tax on self-assessment, if any, claimed to have been paid :

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56. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

57. Inserted by the Finance (No. 2) Act, 1980, w.e.f. 1-9-1980.

58. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

58a. *See* also section 139C. Rule 12 now provides that the return of income shall not be accompanied by any document or copy of any account or form or report of audit required to be attached with return of income under any of the provisions of the Act.

59. Substituted by the Finance Act, 1995, w.e.f. 1-7-1995. Prior to its substitution, clause (*bb*) was inserted by the Finance Act, 1988, w.e.f. 1-4-1989.

60. Inserted by the Finance Act, 2006, w.e.f. 1-4-2007.

61. Words "before the 1st day of April, 2008" omitted by the Finance Act, 2008, w.e.f. 1-4-2008. Earlier the quoted words were inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005 and amended by the Finance Act, 2006, w.e.f. 1-4-2006 and the Finance Act, 2005, w.e.f. 1-4-2005.

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[62][**Provided** that where the return is not accompanied by proof of the tax, if any, claimed to have been deducted [63][or collected] at source, the return of income shall not be regarded as defective if—

[64][(*a*) a certificate for tax deducted or collected was not furnished under section 203 or section 206C to the person furnishing his return of income;]

(*b*) such certificate is produced within a period of two years specified under sub-section (14) of section 155;]

(*ii*) the amount of compulsory deposit, if any, claimed to have been made under the Compulsory Deposit Scheme (Income-tax Payers) Act, 1974 (38 of 1974);

(*d*) where regular books of account are maintained by the assessee, the return is accompanied by copies of—

(*i*) manufacturing account, trading account, profit and loss account or, as the case may be, income and expenditure account or any other similar account and balance sheet;

(*ii*) in the case of a proprietary business or profession, the personal account of the proprietor; in the case of a firm, association of persons or body of individuals, personal accounts of the partners or members; and in the case of a partner or member of a firm, association of persons or body of individuals, also his personal account in the firm, association of persons or body of individuals;

(*e*) where the accounts of the assessee have been audited, the return is accompanied by copies of the audited profit and loss account and balance sheet and the auditor's report [65][and, where an audit of cost accounts of the assessee has been conducted, under section 233B[66] of the Companies Act, 1956 (1 of 1956), also the report under that section];

(*f*) where regular books of account are not maintained by the assessee, the return is accompanied by a statement indicating the amounts of turnover or, as the case may be, gross receipts, gross profit, expenses and net profit of the business or profession and the basis on which such amounts have been computed, and also disclosing the amounts of total sundry debtors, sundry creditors, stock-in-trade and cash balance as at the end of the previous year.]

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62. Inserted by the Finance Act, 2002, w.e.f. 1-6-2002.

63. Inserted by the Finance Act, 2006, w.e.f. 1-4-2007.

64. Substituted, *ibid.* Prior to its substitution, clause (*a*) read as under :

"(*a*) a certificate for tax deducted was not furnished under section 203 to the person furnishing his return of income;"

65. Inserted by the Finance Act, 1985, w.e.f. 1-4-1985.

66. For text of section 233B of the Companies Act, 1956, *see* **Appendix**.

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[67][***]

(10) [68][*Omitted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1991.*]

[69][**Permanent account number**[70].

139A. (1) Every person,—

(*i*) if his total income or the total income of any other person in respect of which he is assessable under this Act during any previous year exceeded the maximum amount which is not chargeable to income-tax; or

(*ii*) carrying on any business or profession whose total sales, turnover or gross receipts are or is likely to exceed [71][five lakh] rupees in any previous year; or

(*iii*) who is required to furnish a return of income under [72][sub-section (4A) of section 139; or

(*iv*) being an employer, who is required to furnish a return of fringe benefits under section 115WD,]

and who has not been allotted a permanent account number shall, within such time, as may be prescribed[73], apply to the Assessing Officer for the allotment of a permanent account number.

[74][(1A) Notwithstanding anything contained in sub-section (1), the Central Government may, by notification[75] in the Official Gazette, specify, any class or classes of persons by whom tax is payable under this Act or any tax or duty is payable under any other law for the time being in force including importers and exporters whether any tax is payable by them or not and such persons shall, within such time as mentioned in that notification, apply to the Assessing Officer for the allotment of a permanent account number.]

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67. Omitted by the Finance Act, 2007, w.r.e.f. 1-6-2006. Prior to its omission, the proviso, as inserted by the Finance Act, 2006, w.e.f. 1-6-2006, read as under :

"**Provided** that the Board may, by rules made by it,—

(*a*) dispense, for a class or classes of persons, with any of the conditions specified in clauses (*a*) to (*f*); or

(*b*) include any of the conditions specified in clauses (*a*) to (*f*) of this *Explanation* in the form of return prescribed under sub-section (1) or sub-section (6) of this section."

68. Prior to omission sub-section (10) was amended by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1986, Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989, Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989 and Finance Act, 1990, w.e.f. 1-4-1990.

69. Substituted by the Finance Act, 1995, w.e.f. 1-7-1995. Prior to its substitution, section 139A was inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976 and later amended by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988/1-4-1989 and the Finance Act, 1990, w.e.f. 1-4-1990.

70. *See* Press Release dated 19-5-1998, Circular No. 792, dated 21-6-2000, Notification No. SO 123(E), dated 11-2-1998 and PAN Circular No. 4, dated 11-10-2006. For details, *see* Taxmann's Master Guide to Income-tax Act.

71. Substituted for "fifty thousand" by the Finance (No. 2) Act, 1998, w.e.f. 1-8-1998**.**

72. Substituted for "sub-section (4A) of section 139" by the Finance Act, 2005, w.e.f. 1-4-2006.

73. *See* rule 114 and Form No. 49A for application for allotment of PAN.

74. Inserted by the Finance Act, 2000, w.e.f. 1-6-2000.

75. For specified class or classes of persons, *see* Taxmann's Master Guide to Income-tax Act.

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[76][(1B) Notwithstanding anything contained in sub-section (1), the Central Government may, for the purpose of collecting any information which may be useful for or relevant to the purposes of this Act, by notification in the Official Gazette, specify, any class or classes of persons who shall apply to the Assessing Officer for the allotment of the permanent account number and such persons shall, within such time as mentioned in that notification, apply to the Assessing Officer for the allotment of a permanent account number.]

[77][(2) The Assessing Officer, having regard to the nature of the transactions as may be prescribed, may also allot a permanent account number, to any other person (whether any tax is payable by him or not), in the manner and in accordance with the procedure as may be prescribed.]

(3) Any person, not falling under sub-section (1) or sub-section (2), may apply to the Assessing Officer for the allotment of a permanent account number and, thereupon, the Assessing Officer shall allot a permanent account number to such person forthwith.

(4) For the purpose of allotment of permanent account numbers under the new series, the Board may, by notification[78] in the Official Gazette, specify the date from which the persons referred to in sub-sections (1) and (2) and other persons who have been allotted permanent account numbers and residing in a place to be specified in such notification, shall, within such time as may be specified, apply to the Assessing Officer for the allotment of a permanent account number under the new series and upon allotment of such permanent account number to a person, the permanent account number, if any, allotted to him earlier shall cease to have effect :

Provided that the persons to whom permanent account number under the new series has already been allotted shall not apply for such number again.

(5) Every person shall—

(*a*) quote such number in all his returns to, or correspondence with, any income-tax authority;

(*b*) quote such number in all challans for the payment of any sum due under this Act;

(*c*) quote such number in all documents pertaining to such transactions as may be prescribed[79] by the Board in the interests of the revenue, and entered into by him:

Provided that the Board may prescribe different dates for different transactions or class of transactions or for different class of persons :

[80][**Provided further** that a person shall quote General Index Register Number till such time Permanent Account Number is allotted to such person;]

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76. Inserted by the Finance Act, 2006, w.e.f. 1-6-2006.

77. Substituted, *ibid.* Prior to its substitution, sub-section (2) read as under :
"(2) The Assessing Officer may also allot to any other person by whom tax is payable, a permanent account number."

78. For notified time limit, *see* Taxmann's Master Guide to Income-tax Act.

79. *See* rules 114B to 114D and Form Nos. 60 & 61.

80. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-8-1998.

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(*d*) intimate the Assessing Officer any change in his address or in the name and nature of his business on the basis of which the permanent account number was allotted to him.

[81][(5A) Every person receiving any sum or income or amount from which tax has been deducted under the provisions of Chapter XVIIB, shall intimate his permanent account number to the person responsible for deducting such tax under that Chapter :

[82][***]

Provided further that a person referred to in this sub-section shall intimate the General Index Register Number till such time permanent account number is allotted to such person.

(5B) Where any sum or income or amount has been paid after deducting tax under Chapter XVIIB, every person deducting tax under that Chapter shall quote the permanent account number of the person to whom such sum or income or amount has been paid by him—

(*i*) in the statement furnished in accordance with the provisions of sub-section (2C) of section 192;

(*ii*) in all certificates furnished in accordance with the provisions of section 203;

(*iii*) in all returns prepared and delivered or caused to be delivered in accordance with the provisions of section 206 to any income-tax authority;

[83][(*iv*) in all [84][***] statements prepared and delivered or caused to be delivered in accordance with the provisions of sub-section (3) of section 200:]

Provided that the Central Government may, by notification[85] in the Official Gazette, specify different dates from which the provisions of this sub-section shall apply in respect of any class or classes of persons:

Provided further that nothing contained in sub-sections (5A) and (5B) shall apply in case of a person whose total income is not chargeable to income-tax or who is not required to obtain permanent account number under any provision of this Act if such person furnishes to the person responsible for deducting tax, a declaration referred to in section 197A in the form and manner prescribed thereunder to the effect that the tax on his estimated total income of the previous year in which such income is to be included in computing his total income will be *nil*.

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81. Sub-sections (5A) to (5D) inserted by the Finance Act, 2001, w.e.f. 1-6-2001.

82. First proviso omitted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005. Prior to its omission, the first proviso read as under :

"**Provided** that nothing contained in this sub-section shall apply to a non-resident referred to in sub-section (4) of section 115AC, or sub-section (2) of section 115BBA, or to a non-resident Indian referred to in section 115G :"

83. Inserted by the Finance Act, 2006, w.e.f. 1-6-2006.

84. Word "quarterly" omitted by the Finance (No. 2) Act, 2009, w.e.f. 1-10-2009.

85. For notified dates, *see* Taxmann's Master Guide to Income-tax Act.

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(5C) Every buyer [86][or licensee or lessee] referred to in section 206C shall intimate his permanent account number to the [87][person responsible for collecting tax] referred to in that section.

(5D) Every [88][person] collecting tax in accordance with the provisions of section 206C shall quote the permanent account number of every buyer [86][or licensee or lessee] referred to in that section—

(*i*) in all certificates furnished in accordance with the provisions of sub-section (5) of section 206C;

(*ii*) in all returns prepared and delivered or caused to be delivered in accordance with the provisions of sub-section (5A) or sub-section (5B) of section 206C to an income-tax authority;]

[89][(*iii*) in all [90][***] statements prepared and delivered or caused to be delivered in accordance with the provisions of sub-section (3) of section 206C.]

(6) Every person receiving any document relating to a transaction prescribed under clause (*c*) of sub-section (5) shall ensure that the Permanent Account Number [91][or the General Index Register Number] has been duly quoted in the document.

(7) No person who has already been allotted a permanent account number under the new series shall apply, obtain or possess another permanent account number.

[92][*Explanation.*—For the removal of doubts, it is hereby declared that any person, who has been allotted a permanent account number under any clause other than clause (*iv*) of sub-section (1), shall not be required to obtain another permanent account number and the permanent account number already allotted to him shall be deemed to be the permanent account number in relation to fringe benefit tax.]

[93](8) The Board may make rules providing for—

(*a*) the form and the manner in which an application may be made for the allotment of a permanent account number and the particulars which such application shall contain;

(*b*) the categories of transactions in relation to which Permanent Account Numbers [94][or the General Index Register Number] shall be quoted by every person in the documents pertaining to such transactions;

(*c*) the categories of documents pertaining to business or profession in which such numbers shall be quoted by every person;

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86. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-10-2004.

87. Substituted for "seller" by the Finance Act, 2006, w.e.f. 1-4-2007.

88. Substituted for "seller", *ibid.*

89. Inserted, *ibid.*, w.e.f. 1-6-2006.

90. Word "quarterly" omitted by the Finance (No. 2) Act, 2009, w.e.f. 1-10-2009.

91. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-8-1998.

92. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

93. *See* rules 114 & 114B to 114D and Form Nos. 49A, 60 & 61.

94. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-8-1998.

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[95][(*d*) class or classes of persons to whom the provisions of this section shall not apply;

(*e*) the form and the manner in which the person who has not been allotted a Permanent Account Number or who does not have General Index Register Number shall make his declaration;

(*f*) the manner in which the Permanent Account Number or the General Index Register Number shall be quoted in respect of the categories of transactions referred to in clause (*c*)*;

(*g*) the time and the manner in which the transactions referred to in clause (*c*)* shall be intimated to the prescribed authority.]

Explanation.—For the purposes of this section,—

(*a*) "Assessing Officer" includes an income-tax authority who is assigned the duty of allotting permanent account numbers;

(*b*) "permanent account number" means a number which the Assessing Officer may allot to any person for the purpose of identification and includes a permanent account number allotted under the new series;

(*c*) "permanent account number under the new series" means a permanent account number having ten alphanumeric characters and issued in the form of a laminated card;]

[96][(*d*) "General Index Register Number" means a number given by an Assessing Officer to an assessee in the General Index Register maintained by him and containing the designation and particulars of the ward or circle or range of the Assessing Officer.]

[97][**Scheme for submission of returns through Tax Return Preparers.**

139B. (1) For the purpose of enabling any specified class or classes of persons in preparing and furnishing returns of income, the Board may, without prejudice to the provisions of section 139, frame a Scheme, by notification in the Official Gazette, providing that such persons may furnish their returns of income through a Tax Return Preparer authorised to act as such under the Scheme[98].

(2) Every Tax Return Preparer shall assist the persons furnishing the return of income in such manner as may be specified in the Scheme framed under this section and affix his signature on such return.

(3) For the purposes of this section,—

(*a*) "Tax Return Preparer" means any individual, [not being a person referred to in clause (*ii*) or clause (*iii*) or clause (*iv*) of sub-section (2) of section 288 or an employee of the "specified class or classes of persons"], who has been authorised to act as a Tax Return Preparer under the Scheme framed under this section;

(*b*) "specified class or classes of persons" means any person, other than a company or a person, whose accounts are required to be audited

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95. Clauses (*d*) to (*g*) inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-8-1998.

96. Inserted, *ibid.*

97. Inserted by the Finance Act, 2006, w.e.f. 1-6-2006.

98. *See* Tax Return Preparer Scheme, 2006. For details, *see* Taxmann's Income-tax Rules.

*Should be read as "clause (*b*)".

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under section 44AB or under any other law for the time being in force, who is required to furnish a return of income under this Act.

(4) The Scheme framed by the Board under this section may provide for the following, namely:—

(*a*) the manner in which and the period for which the Tax Return Preparers shall be authorised under sub-section (3);

(*b*) the educational and other qualifications to be possessed, and the training and other conditions required to be fulfilled, by a person to act as a Tax Return Preparer;

(*c*) the code of conduct for the Tax Return Preparers;

(*d*) the duties and obligations of the Tax Return Preparers;

(*e*) the circumstances under which the authorisation given to a Tax Return Preparer may be withdrawn;

(*f*) any other matter which is required to be, or may be, specified by the Scheme for the purposes of this section.

(5) The Scheme framed by the Board under this section shall be laid, as soon as may be after it is framed, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the Scheme or both Houses agree that the Scheme should not be framed, the Scheme shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that Scheme.]

[99][**Power of Board to dispense with furnishing documents, etc., with return.**

139C. (1) The Board may make rules providing for a class or classes of persons who may not be required to furnish documents, statements, receipts, certificates, reports of audit or any other documents, which are otherwise under any other provisions of this Act, except section 139D, required to be furnished, along with the return but on demand to be produced before the Assessing Officer.

(2) Any rule made under the proviso to sub-section (9) of section 139 as it stood immediately before its omission by the Finance Act, 2007 shall be deemed to have been made under the provisions of this section.

Filing of return in electronic form.

139D. The Board may make rules providing for—

(*a*) the class or classes of persons who shall be required to furnish the return in electronic form;

(*b*) the form and the manner in which the return in electronic form may be furnished;

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99. Inserted by the Finance Act, 2007, w.r.e.f. 1-6-2006.

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(*c*) the documents, statements, receipts, certificates or audited reports* which may not be furnished along with the return in electronic form but shall be produced before the Assessing Officer on demand;

(*d*) the computer resource or the electronic record to which the return in electronic form may be transmitted.]

Return by whom to be signed.

[1]**140.** The return under [2][section 115WD or] section 139 shall be signed and verified—

[3][(*a*) in the case of an individual,—

(*i*) by the individual himself;

(*ii*) where he is absent from India, by the individual himself or by some person duly authorised by him in this behalf;

(*iii*) where he is mentally incapacitated from attending to his affairs, by his guardian or any other person competent to act on his behalf; and

(*iv*) where, for any other reason, it is not possible for the individual to sign the return, by any person duly authorised by him in this behalf:

Provided that in a case referred to in sub-clause (*ii*) or sub-clause (*iv*), the person signing the return holds a valid power of attorney from the individual to do so, which shall be attached to the return[4];]

(*b*) in the case of a Hindu undivided family, by the karta, and, where the karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family;

[5][(*c*) in the case of a company, by the managing director thereof, or where for any unavoidable reason such managing director is not able to sign and verify the return, or where there is no managing director, by any director thereof :

[6][**Provided** that where the company is not resident in India, the return may be signed and verified by a person who holds a valid power of attorney from such company to do so, which shall be attached to the return[4] :

Provided further that,—

(*a*) where the company is being wound up, whether under the orders of a court or otherwise, or where any person has been appointed as the receiver of any assets of the company, the return shall be

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1. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.
2. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.
3. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.
4. Rule 12 provides that the return of income shall not be accompanied by any document or copy of any account or form or report of audit required to be attached with return of income under any of the provisions of the Act.
5. Substituted for clauses (*c*) and (*d*) by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.
6. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

*Words 'reports of audit' be read for words 'audited reports'.

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signed and verified by the liquidator referred to in sub-section (1) of section 178;

(*b*) where the management of the company has been taken over by the Central Government or any State Government under any law, the return of the company shall be signed and verified by the principal officer thereof;]

(*cc*) in the case of a firm, by the managing partner thereof, or where for any unavoidable reason such managing partner is not able to sign and verify the return, or where there is no managing partner as such, by any partner thereof, not being a minor;

[7][(cd) *in the case of a limited liability partnership, by the designated partner thereof, or where for any unavoidable reason such designated partner is not able to sign and verify the return, or where there is no designated partner as such, by any partner thereof;*]

(*d*) in the case of a local authority, by the principal officer thereof;]

[8][(*dd*) in the case of a political party referred to in sub-section (4B) of section 139, by the chief executive officer of such party (whether such chief executive officer is known as secretary or by any other designation);]

(*e*) in the case of any other association, by any member of the association or the principal officer thereof; and

(*f*) in the case of any other person, by that person or by some person competent to act on his behalf.

[9][**Self-assessment**[10]**.**

[11]**140A.** [12][(1) Where any tax is payable on the basis of any return required to be furnished under [13][[14][section 115WD or section 115WH or] section 139 or section 142 [15][or section 148 or [16][section 153A or], as the case may be, section 158BC]], [17][after taking into account,—

(*i*) the amount of tax, if any, already paid under any provision of this Act;

(*ii*) any tax deducted or collected at source;

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7. Inserted by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2010**.

8. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

9. Substituted by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971. Original section was inserted by the Finance Act, 1964, w.e.f. 1-4-1964.

10. *See* rule 125 for Electronic payment of tax.

11. *See* also Circular No. 20(LXXXVI)-D of 1964 (extracts), dated 7-7-1964. For details, *see* Taxmann's Master Guide to Income-tax Act.

12. Substituted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

13. Substituted for "section 139 or section 148" by the Finance (No. 2) Act, 1991, w.e.f. 27-9-1991.

14. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

15. Substituted for "or, as the case may be, section 148" by the Finance Act, 1999, w.e.f. 1-6-1999.

16. Inserted by the Finance Act, 2003, w.e.f. 1-6-2003.

17. Substituted for the words "after taking into account the amount of tax, if any, already paid under any provision of this Act," by the Finance Act, 2006, w.e.f. 1-4-2007.

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(*iii*) any relief of tax or deduction of tax claimed under section 90 or section 91 on account of tax paid in a country outside India;

(*iv*) any relief of tax claimed under section 90A on account of tax paid in any specified territory outside India referred to in that section; and

(*v*) any tax credit claimed to be set off in accordance with the provisions of section 115JAA,]

[18][the assessee shall be liable to pay such tax together with interest payable under any provision of this Act for any delay in furnishing the return or any default or delay in payment of advance tax, before furnishing the return and the return shall be accompanied by proof of payment of such tax and interest[19].]

[20][*Explanation*.—Where the amount paid by the assessee under this sub-section falls short of the aggregate of the tax and interest as aforesaid, the amount so paid shall first be adjusted towards the interest payable as aforesaid and the balance, if any, shall be adjusted towards the tax payable.]

[21][(1A) For the purposes of sub-section (1), interest payable,—

[22][(*i*) under section 234A shall be computed on the amount of the tax on the total income as declared in the return as reduced by the amount of,—

(*a*) advance tax, if any, paid;

(*b*) any tax deducted or collected at source;

(*c*) any relief of tax or deduction of tax claimed under section 90 or section 91 on account of tax paid in a country outside India;

(*d*) any relief of tax claimed under section 90A on account of tax paid in any specified territory outside India referred to in that section; and

(*e*) any tax credit claimed to be set off in accordance with the provisions of section 115JAA;]

(*ii*) under section 115WK shall be computed on the amount of tax on the value of the fringe benefits as declared in the return as reduced by the advance tax, paid, if any.]

[23][(1B) For the purposes of sub-section (1), interest payable under section 234B shall be computed on an amount equal to the assessed tax or, as the case may be, on the amount by which the advance tax paid falls short of the assessed tax.

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18. Substituted for "the assessee shall be liable to pay such tax before furnishing the return and the return shall be accompanied by proof of payment of such tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

19. *See* rule 12.

20. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

21. Substituted by the Finance Act, 2005, w.e.f. 1-4-2006. Prior to its substitution, sub-section (1A), as inserted by the Finance Act, 2001, w.r.e.f. 1-4-1989, read as under :

"(1A) For the purposes of sub-section (1), interest payable under section 234A shall be computed on the amount of the tax on the total income as declared in the return as reduced by the advance tax, if any, paid and any tax deducted or collected at source."

22. Substituted by the Finance Act, 2006, w.e.f. 1-4-2007. Prior to its substitution, clause (*i*) read as under :

"(*i*) under section 234A shall be computed on the amount of the tax on the total income as declared in the return as reduced by the advance tax, if any, paid and any tax deducted or collected at source;"

23. Inserted by the Finance Act, 2001, w.r.e.f. 1-4-1989.

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[24][*Explanation.*—For the purposes of this sub-section, "assessed tax" means the tax on the total income as declared in the return as reduced by the amount of,—

(*i*) tax deducted or collected at source, in accordance with the provisions of Chapter XVII, on any income which is subject to such deduction or collection and which is taken into account in computing such total income;

(*ii*) any relief of tax or deduction of tax claimed under section 90 or section 91 on account of tax paid in a country outside India;

(*iii*) any relief of tax claimed under section 90A on account of tax paid in any specified territory outside India referred to in that section; and

(*iv*) any tax credit claimed to be set off in accordance with the provisions of section 115JAA.]]

(2) After a regular assessment under [25][section 115WE or section 115WF or] section 143 or section 144 [26][or an assessment under [27][section 153A or] section 158BC] has been made, any amount paid under sub-section (1) shall be deemed to have been paid towards such regular assessment [26][or assessment, as the case may be].

[28][(3) If any assessee fails to pay the whole or any part of such tax or interest or both in accordance with the provisions of sub-section (1), he shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of the tax or interest or both remaining unpaid, and all the provisions of this Act shall apply accordingly.]

[29][(4) The provisions of this section as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1987 (4 of 1988), shall apply to and in relation to any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year and references in this section to the other provisions of this Act shall be construed as references to those provisions as for the time being in force and applicable to the relevant assessment year.]

Provisional assessment.

141. [*Omitted by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.*]

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24. Substituted by the Finance Act, 2006, w.e.f. 1-4-2007. Prior to its substitution, *Explanation* read as under :

'*Explanation.*—For the purposes of this sub-section, "assessed tax" means the tax on the total income as declared in the return as reduced by the amount of tax deducted or collected at source, in accordance with the provisions of Chapter XVII, on any income which is subject to such deduction or collection and which is taken into account in computing such total income.'

25. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

26. Inserted by the Finance Act, 1999, w.e.f. 1-6-1999.

27. Inserted by the Finance Act, 2003, w.e.f. 1-6-2003.

28. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Prior to its substitution, sub-section (3) was substituted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

29. Inserted by the Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-4-1989.

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Provisional assessment for refund.

141A. [30][*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Section 141A was inserted by the Finance Act, 1968, w.e.f. 1-4-1968. Original section was inserted by the Finance Act, 1963, w.e.f. 1-4-1963 and omitted by the Finance Act, 1964, w.e.f. 1-4-1964.*]

Inquiry before assessment.

[31]**142.** (1) For the purpose of making an assessment under this Act, the [32][Assessing] Officer may serve on any person who has made a return [33][under section 115WD or section 139 [34][or in whose case the time allowed under sub-section (1) of section 139] for furnishing the return has expired] a notice requiring him, on a date to be therein specified,—

[35][(*i*) where such person has not made a return [36][within the time allowed under sub-section (1) of section 139] [37][or before the end of the relevant assessment year], to furnish a return of his income or the income of any other person in respect of which he is assessable under this Act, in the prescribed form and verified in the prescribed manner[38] and setting forth such other particulars as may be prescribed, or :]

[39][**Provided** that where any notice has been served under this sub-section for the purposes of this clause after the end of the relevant assessment year commencing on or after the 1st day of April, 1990 to a person who has not made a return within the time allowed under sub-section (1) of section 139 or before the end of the relevant assessment year, any such notice issued to him shall be deemed to have been served in accordance with the provisions of this sub-section,]

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30. Prior to its omission, section 141A was amended by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971, Finance Act, 1974, w.e.f. 1-4-1975, Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976, Finance Act, 1976, w.e.f. 1-4-1976 and the Finance Act, 1988, w.e.f. 1-4-1988.

31. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

32. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

33. Substituted for "under section 139 or in whose case the time allowed under sub-section (1) of that section" by the Finance Act, 2005, w.e.f. 1-4-2006.

34. Substituted for "*or to whom a notice has been issued* under sub-section (2) of section 139 (whether a return has been made or not)" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Earlier, the italicised words were substituted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

35. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

36. Substituted for "before the end of the relevant assessment year" by the Finance Act, 1990, w.e.f. 1-4-1990.

37. Inserted by the Finance Act, 2006, w.e.f. 1-4-2006.

38. *See* rule 14 for form of verification which shall be in the following form : "I declare that to the best of my knowledge and belief, the information furnished in the statement/ statements is correct and complete and the other particulars shown therein are truly stated".

39. Inserted by the Finance Act, 2006, w.r.e.f. 1-4-1990.

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[40][(*ii*)] to produce, or cause to be produced, such accounts or documents as the [41][Assessing] Officer may require, or

[42][(*iii*)] [43]to furnish in writing and verified in the prescribed manner information in such form and on such points or matters (including a statement of all assets and liabilities of the assessee, whether included in the accounts or not) as the [44][Assessing] Officer may require :

Provided that—

(*a*) the previous approval of the [45][Joint Commissioner] shall be obtained before requiring the assessee to furnish a statement of all assets and liabilities not included in the accounts ;

(*b*) the [46][Assessing] Officer shall not require the production of any accounts relating to a period more than three years prior to the previous year.

(2) For the purpose of obtaining full information in respect of the income or loss of any person, the [46][Assessing] Officer may make such inquiry as he considers necessary.

[47][(2A) [48]If, at any stage of the proceedings before him, the [49][Assessing] Officer, having regard to the nature and complexity[50] of the [50]accounts of the assessee and the interests of the revenue, is of the opinion that it is necessary so to do, he may, with the previous approval of the [51][Chief Commissioner or Commissioner], direct the assessee to get the accounts audited by an accountant, as defined in the *Explanation* below sub-section (2) of section 288, nominated by the [51][Chief Commissioner or Commissioner] in this behalf and to furnish a report of such audit in the prescribed form[52] duly signed and verified by such accountant and setting forth such particulars as may be prescribed and such other particulars as the [53][Assessing] Officer may require :

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40. Renumbered by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

41. Substituted for "Income-tax", *ibid.*, w.e.f. 1-4-1988.

42. Renumbered, *ibid.*, w.e.f. 1-4-1989.

43. *See* rule 14.

44. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

45. Substituted for "Deputy Commissioner" by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier "Deputy Commissioner" was substituted for "Inspecting Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

46. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

47. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

48. *See* rule 14A and Form No. 6B for audit report under section 142(2A).

49. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

50. For the meaning of the terms "complexity" and "accounts of assessee", *see* Taxmann's Direct Taxes Manual, Vol. 3.

51. Substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

52. *See* rule 14A and Form No. 6B for audit report under section 142(2A).

53. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

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[54][**Provided** that the Assessing Officer shall not direct the assessee to get the accounts so audited unless the assessee has been given a reasonable opportunity of being heard.]

(2B) The provisions of sub-section (2A) shall have effect notwithstanding that the accounts of the assessee have been audited under any other law for the time being in force or otherwise.

(2C) Every report under sub-section (2A) shall be furnished by the assessee to the [55][Assessing] Officer within such period as may be specified by the [55][Assessing] Officer :

Provided that the [55][Assessing] Officer may, [56][*suo motu,* or] on an application made in this behalf by the assessee and for any good and sufficient reason, extend the said period by such further period or periods as he thinks fit ; so, however, that the aggregate of the period originally fixed and the period or periods so extended shall not, in any case, exceed one hundred and eighty days from the date on which the direction under sub-section (2A) is received by the assessee.

(2D) The expenses of, and incidental to, any audit under sub-section (2A) (including the remuneration of the accountant) shall be determined by the [57][Chief Commissioner or Commissioner] (which determination shall be final) and paid by the assessee and in default of such payment, shall be recoverable from the assessee in the manner provided in Chapter XVII-D for the recovery of arrears of tax :]

[58][**Provided** that where any direction for audit under sub-section (2A) is issued by the Assessing Officer on or after the 1st day of June, 2007, the expenses of, and incidental to, such audit (including the remuneration of the Accountant) shall be determined by the Chief Commissioner or Commissioner in accordance with such guidelines as may be prescribed[59] and the expenses so determined shall be paid by the Central Government.]

(3) The assessee shall, except where the assessment is made under section 144, be given an opportunity of being heard in respect of any material gathered on the basis of any inquiry under sub-section (2) [60][or any audit under sub-section (2A)] and proposed to be utilised for the purposes of the assessment.

[61][(4) The provisions of this section as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1987 (4 of 1988), shall apply to and in relation to any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year and references in this section to the other provisions of this Act shall be construed as references to those provisions as for the time being in force and applicable to the relevant assessment year.]

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54. Inserted by the Finance Act, 2007, w.e.f. 1-6-2007.

55. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

56. Inserted by the Finance Act, 2008, w.e.f. 1-4-2008.

57. Substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

58. Inserted by the Finance Act, 2007, w.e.f. 1-6-2007.

59. *See* rule 14B.

60. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

61. Inserted by the Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-4-1989.

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[62][**Estimate by Valuation Officer in certain cases.**

142A. (1) For the purposes of making an assessment or reassessment under this Act, where an estimate of the value of any investment referred to in section 69 or section 69B or the value of any bullion, jewellery or other valuable article referred to in section 69A or section 69B [62a]**[***or fair market value of any property referred to in sub-section (2) of section 56***]** is required to be made, the Assessing Officer may require the Valuation Officer to make an estimate of such value and report the same to him.

(2) The Valuation Officer to whom a reference is made under sub-section (1) shall, for the purposes of dealing with such reference, have all the powers that he has under section 38A of the Wealth-tax Act, 1957 (27 of 1957).

(3) On receipt of the report from the Valuation Officer, the Assessing Officer may, after giving the assessee an opportunity of being heard, take into account such report in making such assessment or reassessment:

Provided that nothing contained in this section shall apply in respect of an assessment made on or before the 30th day of September, 2004, and where such assessment has become final and conclusive on or before that date, except in cases where a reassessment is required to be made in accordance with the provisions of section 153A.

Explanation.—In this section, "Valuation Officer" has the same meaning as in clause (*r*) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).]

[63][**Assessment**[64].

[65]**143.** [66][(1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:—

62. Inserted by the Finance (No. 2) Act, 2004, w.r.e.f. 15-11-1972.

62a. Inserted by the Finance Act, 2010, w.e.f. **1-7-2010**.

63. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Section 143 was earlier amended by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971, Finance Act, 1974, w.e.f. 1-4-1975, Finance Act, 1976, w.e.f. 1-4-1976, Finance (No. 2) Act, 1980, w.e.f. 1-4-1980 and Finance Act, 1987, w.e.f. 1-4-1988.

64. The provisions of section 143 as they stood before the commencement of the Direct Tax Laws (Amendment) Act, 1987, shall apply in respect of assessments for the assessment year commencing on the 1st day of April, 1988 and any earlier assessment year—*vide* Income-tax (Removal of Difficulties) Order, 1989.

65. *See* also Circular No. 201, dated 5-7-1976, Instruction No. 1395, dated 15-5-1981 [Source : 114th Report [1982-83] of the Public Accounts Committee, pp. 16-17], Circular No. 230, dated 27-10-1977. Relevant extracts from minutes of 12th meeting of CDTAC held on 17-8-1967, Circular No. 18(XL-37), dated 28-4-1955, Circular No. 125, dated 26-11-1973, Circular No. 36(XL-52), dated 19-11-1958, Circular No. 50(XL-43), dated 28-12-1956, Letter [F.No. 91/41/67/ITJ(25)], dated 3-7-1967, Letter [F.No. 81/27/65-IT(B)], dated 18-5-1965, Circular No. 14(XL-35), dated 11-4-1955, Circular No. 3 of 1942, dated 16-1-1942, Circular No. 601, dated 4-6-1991, Instruction No. 574, dated 27-7-1993, Circular No. 4/2003, dated 14-5-2003, Instruction No. 1/2008, dated 9-1-2008, Instruction No. 2/2008, dated 22-2-2008, Instruction No. 6/2008, dated 18-6-2008, Instruction No. 11/2008, dated 5-9-2008, Instruction No. 12/2008, dated 5-9-2008, Instruction No. 17/2008, dated 26-11-2008. For details, *see* Taxmann's Master Guide to Income-tax Act.

For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

66. Sub-sections (1) to (1C) substituted for sub-section (1) by the Finance Act, 2008, w.e.f. 1-4-2008. Prior to its substitution, sub-section (1), as amended by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989, Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-4-1989, Finance Act, 1992, w.e.f. 1-4-1993, Finance Act, 1997, w.e.f. 1-4-1998, Finance Act, 1999, w.e.f. 1-6-1999 and Finance Act, 2001, w.e.f. 1-6-2001, read as under :

(Contd. on p. 1.664)

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(*a*) the total income or loss shall be computed after making the following adjustments, namely:—

(*i*) any arithmetical error in the return; or

(*ii*) an incorrect claim, if such incorrect claim is apparent from any information in the return;

(*b*) the tax and interest, if any, shall be computed on the basis of the total income computed under clause (*a*);

(*c*) the sum payable by, or the amount of refund due to, the assessee shall be determined after adjustment of the tax and interest, if any, computed under clause (*b*) by any tax deducted at source, any tax collected at source, any advance tax paid, any relief allowable under an agreement under section 90 or section 90A, or any relief allowable under section 91, any rebate allowable under Part A of Chapter VIII, any tax paid on self-assessment and any amount paid otherwise by way of tax or interest;

(*d*) an intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable by, or the amount of refund due to, the assessee under clause (*c*); and

(*e*) the amount of refund due to the assessee in pursuance of the determination under clause (*c*) shall be granted to the assessee:

Provided that an intimation shall also be sent to the assessee in a case where the loss declared in the return by the assessee is adjusted but no tax or interest is payable by, or no refund is due to, him:

(Contd. from p. 1.663)

"(1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142,—

(*i*) if any tax or interest is found due on the basis of such return, after adjustment of any tax deducted at source, any advance tax paid, any tax paid on self-assessment and any amount paid otherwise by way of tax or interest, then, without prejudice to the provisions of sub-section (2), an intimation shall be sent to the assessee specifying the sum so payable, and such intimation shall be deemed to be a notice of demand issued under section 156 and all the provisions of this Act shall apply accordingly; and

(*ii*) if any refund is due on the basis of such return, it shall be granted to the assessee and an intimation to this effect shall be sent to the assessee :

Provided that except as otherwise provided in this sub-section, the acknowledgement of the return shall be deemed to be an intimation under this sub-section where either no sum is payable by the assessee or no refund is due to him :

Provided further that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the return is made :

Provided also that where the return made is in respect of the income first assessable in the assessment year commencing on the 1st day of April, 1999, such intimation may be sent at any time up to the 31st day of March, 2002."

Earlier, sub-section (1A) was omitted by the Finance Act, 1999, w.e.f. 1-6-1999. Sub-section (1A) was inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989, and later on amended by the Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-4-1989, the Finance Act, 1992, w.r.e.f. 1-4-1989 and the Finance Act, 1993, w.r.e.f. 1-4-1989.

Earlier, sub-section (1B) was inserted by the Finance Act, 1990, w.r.e.f. 1-4-1989 and later on omitted by the Finance Act, 1999, w.e.f. 1-6-1999.

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Provided further that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the return is made.

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

(*a*) "an incorrect claim apparent from any information in the return" shall mean a claim, on the basis of an entry, in the return,—

(*i*) of an item, which is inconsistent with another entry of the same or some other item in such return;

(*ii*) in respect of which the information required to be furnished under this Act to substantiate such entry has not been so furnished; or

(*iii*) in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction;

(*b*) the acknowledgement of the return shall be deemed to be the intimation in a case where no sum is payable by, or refundable to, the assessee under clause (*c*), and where no adjustment has been made under clause (*a*).

(1A) For the purposes of processing of returns under sub-section (1), the Board may make a scheme for centralised processing of returns with a view to expeditiously determining the tax payable by, or the refund due to, the assessee as required under the said sub-section.

(1B) Save as otherwise expressly provided, for the purpose of giving effect to the scheme made under sub-section (1A), the Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act relating to processing of returns shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in that notification; so, however, that no direction shall be issued after the 31st day of March, [67]**[***2011***]**.

(1C) Every notification issued under sub-section (1B), along with the scheme made under sub-section (1A), shall, as soon as may be after the notification is issued, be laid before each House of Parliament.]

[68][(2) Where a return has been furnished under section 139, or in response to a notice under sub-section (1) of section 142, the Assessing Officer shall,—

(*i*) where he has reason to believe that any claim of loss, exemption, deduction, allowance or relief made in the return is inadmissible,

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67. Substituted for "2010" by the Finance Act, 2010, w.e.f. **1-4-2010**. Earlier "2010" was substituted for "2009" by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-2009.

68. Substituted by the Finance Act, 2002, w.e.f. 1-6-2002. Prior to its substitution, sub-section (2), as amended by the Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-4-1989 and the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991, read as under:

"(2) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, the Assessing Officer shall, if he considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, serve on the assessee a notice requiring him, on a date to be specified therein, either to attend his office or to produce, or cause to be produced there, any evidence on which the assessee may rely in support of the return :

Provided that no notice under this sub-section shall be served on the assessee after the expiry of twelve months from the end of the month in which the return is furnished."

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serve on the assessee a notice specifying particulars of such claim of loss, exemption, deduction, allowance or relief and require him, on a date to be specified therein to produce, or cause to be produced, any evidence or particulars specified therein or on which the assessee may rely, in support of such claim :

[69][**Provided** that no notice under this clause shall be served on the assessee on or after the 1st day of June, 2003;]

(*ii*) notwithstanding anything contained in clause (*i*), if he considers it necessary or expedient to ensure that the assessee has not under-stated the income or has not computed excessive loss or has not under-paid the tax in any manner, serve on the assessee a notice requiring him, on a date to be specified therein, either to attend his office or to produce, or cause to be produced, any evidence on which the assessee may rely in support of the return:

[70][**Provided** that no notice under clause (*ii*) shall be served on the assessee after the expiry of six months from the end of the financial year in which the return is furnished.]]

[71][(3) On the day specified in the notice,—

(*i*) issued under clause (*i*) of sub-section (2), or as soon afterwards as may be, after hearing such evidence and after taking into account such particulars as the assessee may produce, the Assessing Officer shall, by an order in writing, allow or reject the claim or claims specified in such notice and make an assessment determining the total income or loss accordingly, and determine the sum payable by the assessee on the basis of such assessment;

(*ii*) issued under clause (*ii*) of sub-section (2), or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the Assessing Officer may require on specified points, and after taking into account all relevant material which he has gathered, the Assessing Officer shall, by an order in writing, make an assessment of the total income or loss of the assessee, and determine the sum payable by him or refund of any amount due to him on the basis of such assessment:]

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69. Inserted by the Finance Act, 2003, w.e.f. 1-6-2003.

70. Substituted by the Finance Act, 2008, w.e.f. 1-4-2008. Prior to its substitution, proviso, as amended by the Finance Act, 2003, w.e.f. 1-6-2003, read as under :

"**Provided** that no notice under clause (*ii*) shall be served on the assessee after the expiry of twelve months from the end of the month in which the return is furnished."

71. Substituted by the Finance Act, 2002, w.e.f. 1-6-2002. Prior to its substitution, sub-section (3), as inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998, read as under:

"(3) On the day specified in the notice issued under sub-section (2), or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the Assessing Officer may require on specified points, and after taking into account all relevant material which he has gathered, the Assessing Officer shall, by an order in writing, make an assessment of the total income or loss of the assessee, and determine the sum payable by him or refund of any amount due to him on the basis of such assessment."

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[72][**Provided** that in the case of a—

(*a*) [72a]**[***scientific research association***]** referred to in clause (*21*) of section 10;

(*b*) news agency referred to in clause (*22B*) of section 10;

(*c*) association or institution referred to in clause (*23A*) of section 10;

(*d*) institution referred to in clause (*23B*) of section 10;

(*e*) fund or institution referred to in sub-clause (*iv*) or trust or institution referred to in sub-clause (*v*) or any university or other educational institution referred to in sub-clause (*vi*) or any hospital or other medical institution referred to in sub-clause (*via*) of clause (*23C*) of section 10,

which is required to furnish the return of income under sub-section (4C) of section 139, no order making an assessment of the total income or loss of such [72a]**[***scientific research association***]**, news agency, association or institution or fund or trust or university or other educational institution or any hospital or other medical institution, shall be made by the Assessing Officer, without giving effect to the provisions of section 10, unless—

(*i*) the Assessing Officer has intimated the Central Government or the prescribed authority the contravention of the provisions of clause (*21*) or clause (*22B*) or clause (*23A*) or clause (*23B*) or sub-clause (*iv*) or sub-clause (*v*) or sub-clause (*vi*) or sub-clause (*via*) of clause (*23C*) of section 10, as the case may be, by such [72a]**[***scientific research association***]**, news agency, association or institution or fund or trust or university or other educational institution or any hospital or other medical institution, where in his view such contravention has taken place; and

(*ii*) the approval granted to such [72a]**[***scientific research association***]** or other association [73][or fund or trust] or institution or university or other educational institution or hospital or other medical institution has been withdrawn or notification issued in respect of such news agency or fund or trust or institution has been rescinded :]

[74][**Provided further** that where the Assessing Officer is satisfied that the activities of the university, college or other institution referred to in clause (*ii*) and clause (*iii*) of sub-section (1) of section 35 are not being carried out in accordance with all or any of the conditions subject to which such university, college or other institution was approved, he may, after giving a reasonable opportunity of showing cause against the proposed withdrawal to the concerned university, college or other institution, recommend to the Central Government to withdraw the approval and that Government may by order, withdraw the approval and forward a copy of the order to the concerned university, college or other institution and the Assessing Officer.]

[75][(4) Where a regular assessment under sub-section (3) of this section or section 144 is made,—

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72. Inserted by the Finance Act, 2002, w.e.f. 1-4-2003.

72a. Words "research association" shall be substituted for "scientific research association" by the Finance Act, 2010, w.e.f. **1-4-2011**.

73. Inserted by the Finance Act, 2007, w.e.f. 1-6-2007.

74. Inserted by the Taxation Laws (Amendment) Act, 2006, w.r.e.f. 1-4-2006.

75. Inserted by the Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-4-1989.

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(*a*) any tax or interest paid by the assessee under sub-section (1) shall be deemed to have been paid towards such regular assessment ;

(*b*) if no refund is due on regular assessment or the amount refunded under sub-section (1) exceeds the amount refundable on regular assessment, the whole or the excess amount so refunded shall be deemed to be tax payable by the assessee and the provisions of this Act shall apply accordingly.

(5) [76][*Omitted by the Finance Act, 1999, w.e.f. 1-6-1999.*]]

[77][* * *]

Best judgment assessment.

[78]**144.** [79][(1)] If any person—

(*a*) fails to make the return required [80][under sub-section (1) of section 139] and has not made a return or a revised return under sub-section (4) or sub-section (5) of that section, or

(*b*) fails to comply with all the terms of a notice issued under sub-section (1) of section 142 [81][or fails to comply with a direction issued under sub-section (2A) of that section], or

(*c*) having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of section 143,

the [82][Assessing] Officer, after taking into account all relevant material which the [82][Assessing] Officer has gathered, [83][shall, after giving the assessee an opportunity of being heard, make the assessment[84]] of the total income or loss to the best of his judgment and determine the sum payable by the assessee [85][* * *] on the basis of such assessment :

[86][**Provided** that such opportunity shall be given by the Assessing Officer by serving a notice calling upon the assessee to show cause, on a date and time to be specified in the notice, why the assessment should not be completed to the best of his judgment :

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76. Prior to its omission, sub-section (5) was inserted by the Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-4-1989.

77. Omitted by the Finance Act, 1999, w.e.f. 1-6-1999. Prior to its omission, *Explanation* was inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991 and later on amended by the Finance Act, 1994, w.e.f. 1-6-1994.

78. For departmental instructions and relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

79. Renumbered by the Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-4-1989.

80. Substituted for "by any notice given under sub-section (2) of section 139" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

81. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

82. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

83. Substituted for "shall make the assessment", *ibid.,* w.e.f. 1-4-1989.

84. For the meaning of the expression "make the assessment", *see* Taxmann's Direct Taxes Manual, Vol. 3.

85. Words "or refundable to the assessee" omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

86. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

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Provided further that it shall not be necessary to give such opportunity in a case where a notice under sub-section (1) of section 142 has been issued prior to the making of an assessment under this section.]

[87][(2) The provisions of this section as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1987 (4 of 1988), shall apply to and in relation to any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year and references in this section to the other provisions of this Act shall be construed as references to those provisions as for the time being in force and applicable to the relevant assessment year.]

[88][**Power of** [89][**Joint Commissioner**] **to issue directions in certain cases.**

[90]**144A.** [91][***] A [89][Joint Commissioner] may, on his own motion or on a reference being made to him by the [92][Assessing] Officer or on the application of an assessee, call for and examine the record of any proceeding in which an assessment is pending and, if he considers that, having regard to the nature of the case or the amount involved or for any other reason, it is necessary or expedient so to do, he may issue such directions as he thinks fit for the guidance of the [92][Assessing] Officer to enable him to complete the assessment and such directions shall be binding on the [92][Assessing] Officer :

Provided that no directions which are prejudicial to the assessee shall be issued before an opportunity is given to the assessee to be heard.

Explanation.—For the purposes of this [93][section] no direction as to the lines on which an investigation connected with the assessment should be made[94], shall be deemed to be a direction prejudicial to the assessee.

[95][* * *]]

Reference to Deputy Commissioner in certain cases.

144B. [96][*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Original section 144B was inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.*]

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87. Inserted by the Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-4-1989.

88. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

89. Substituted for "Deputy Commissioner" by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998**.** Earlier "Deputy Commissioner" was substituted for "Inspecting Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

90. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

91. "(1)" omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

92. Substituted for "Income-tax", *ibid.,* w.e.f. 1-4-1988.

93. Substituted for "sub-section" by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

94. For the meaning of the expression "direction as to . . . should be made", *see* Taxmann's Direct Taxes Manual, Vol. 3.

95. Sub-section (2) omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

96. Prior to its omission, section 144B was amended by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984.

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[97]**[Reference to dispute resolution panel.**

144C. (1) The Assessing Officer shall, notwithstanding anything to the contrary contained in this Act, in the first instance, forward a draft of the proposed order of assessment (hereafter in this section referred to as the draft order) to the eligible assessee if he proposes to make, on or after the 1st day of October, 2009, any variation in the income or loss returned which is prejudicial to the interest of such assessee.

(2) On receipt of the draft order, the eligible assessee shall, within thirty days of the receipt by him of the draft order,—

(*a*) file his acceptance of the variations to the Assessing Officer; or

(*b*) file his objections, if any, to such variation with,—

(*i*) the Dispute Resolution Panel; and

(*ii*) the Assessing Officer.

(3) The Assessing Officer shall complete the assessment on the basis of the draft order, if—

(*a*) the assessee intimates to the Assessing Officer the acceptance of the variation; or

(*b*) no objections are received within the period specified in sub-section (2).

(4) The Assessing Officer shall, notwithstanding anything contained in section 153, pass the assessment order under sub-section (3) within one month from the end of the month in which,—

(*a*) the acceptance is received; or

(*b*) the period of filing of objections under sub-section (2) expires.

(5) The Dispute Resolution Panel shall, in a case where any objection is received under sub-section (2), issue such directions, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the assessment.

(6) The Dispute Resolution Panel shall issue the directions referred to in sub-section (5), after considering the following, namely:—

(*a*) draft order;

(*b*) objections filed by the assessee;

(*c*) evidence furnished by the assessee;

(*d*) report, if any, of the Assessing Officer, Valuation Officer or Transfer Pricing Officer or any other authority;

(*e*) records relating to the draft order;

(*f*) evidence collected by, or caused to be collected by, it; and

(*g*) result of any enquiry made by, or caused to be made by, it.

(7) The Dispute Resolution Panel may, before issuing any directions referred to in sub-section (5),—

(*a*) make such further enquiry, as it thinks fit; or

(*b*) cause any further enquiry to be made by any income-tax authority and report the result of the same to it.

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97. Inserted by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-2009.

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(8) The Dispute Resolution Panel may confirm, reduce or enhance the variations proposed in the draft order so, however, that it shall not set aside any proposed variation or issue any direction under sub-section (5) for further enquiry and passing of the assessment order.

(9) If the members of the Dispute Resolution Panel differ in opinion on any point, the point shall be decided according to the opinion of the majority of the members.

(10) Every direction issued by the Dispute Resolution Panel shall be binding on the Assessing Officer.

(11) No direction under sub-section (5) shall be issued unless an opportunity of being heard is given to the assessee and the Assessing Officer on such directions which are prejudicial to the interest of the assessee or the interest of the revenue, respectively.

(12) No direction under sub-section (5) shall be issued after nine months from the end of the month in which the draft order is forwarded to the eligible assessee.

(13) Upon receipt of the directions issued under sub-section (5), the Assessing Officer shall, in conformity with the directions, complete, notwithstanding anything to the contrary contained in section 153, the assessment without providing any further opportunity of being heard to the assessee, within one month from the end of the month in which such direction is received.

(14) The Board may make rules[97a] for the purposes of the efficient functioning of the Dispute Resolution Panel and expeditious disposal of the objections filed under sub-section (2) by the eligible assessee.

(15) For the purposes of this section,—

(*a*) "Dispute Resolution Panel" means a collegium comprising of three Commissioners of Income-tax constituted by the Board[97b] for this purpose;

(*b*) "eligible assessee" means,—

(*i*) any person in whose case the variation referred to in sub-section (1) arises as a consequence of the order of the Transfer Pricing Officer passed under sub-section (3) of section 92CA; and

(*ii*) any foreign company.]

[98][**Method of accounting.**[99]

145. (1) Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall, subject to the provisions of sub-section (2), be computed in accordance with either cash or mercantile system of accounting regularly[99] employed by the assessee.

97a. See Income-tax (Dispute Resolution Panel) Rules, 2009.

97b. For relevant Notifications, *see* Taxmann's Master Guide to Income-tax Act.

98. Substituted by the Finance Act, 1995, w.e.f. 1-4-1997. Prior to its substitution, section 145, was amended by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988/1-4-1989 and the Finance Act, 1990, w.r.e.f. 1-4-1989.

99. For Instruction No. 1310, dated 26-2-1980 and Circular No. 491, dated 30-6-1986, *see* Taxmann's Master Guide to Income-tax Act. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act. For the meaning of the term "regularly", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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(2) The Central Government may notify in the Official Gazette[1] from time to time accounting standards to be followed by any class of assessees or in respect of any class of income.

(3) Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) or accounting standards as notified under sub-section (2), have not been regularly followed by the assessee, the Assessing Officer may make an assessment in the manner provided in section 144.]

[2][**Method of accounting in certain cases.**

145A. *Notwithstanding anything to the contrary contained in section 145,—*

(a) the valuation of purchase and sale of goods and inventory for the purposes of determining the income chargeable under the head "Profits and gains of business or profession" shall be—

(i) in accordance with the method of accounting regularly employed by the assessee; and

(ii) further adjusted to include the amount of any tax, duty, cess or fee (by whatever name called) actually paid or incurred by the assessee to bring the goods to the place of its location and condition as on the date of valuation.

Explanation.—*For the purposes of this section*, any tax, duty, cess or fee (by whatever name called) under any law for the time being in force, shall include all such payment notwithstanding any right arising as a consequence to such payment;*

(b) interest received by an assessee on compensation or on enhanced compensation, as the case may be, shall be deemed to be the income of the year in which it is received.]

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1. *See* Notification No. SO 69(E), dated 25-1-1996 for Notified Accounting Standards. For details, *see* Taxmann's Income-tax Rules.

2. Substituted by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2010**. Prior to its substitution, section 145A, as inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999, read as under : '145A. *Method of accounting in certain cases*—Notwithstanding anything to the contrary contained in section 145, the valuation of purchase and sale of goods and inventory for the purposes of determining the income chargeable under the head "Profits and gains of business or profession" shall be—

(*a*) in accordance with the method of accounting regularly employed by the assessee; and

(*b*) further adjusted to include the amount of any tax, duty, cess or fee (by whatever name called) actually paid or incurred by the assessee to bring the goods to the place of its location and condition as on the date of valuation.

Explanation.— For the purposes of this section, any tax, duty, cess or fee (by whatever name called) under any law for the time being in force, shall include all such payment notwithstanding any right arising as a consequence to such payment.'

*Be read as 'this clause'.

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Reopening of assessment at the instance of the assessee.

146. [3][*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.*]

[4][**Income escaping assessment.**

[5]**147.** If the [6][Assessing] Officer [7][has reason to believe[8]] that any income chargeable to tax has escaped assessment[8] for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess[8] such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year) :

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure[9] on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts[9] necessary for his assessment, for that assessment year:

[10][**Provided further** that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.]

Explanation 1.—Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily[9] amount to disclosure within the meaning of the foregoing proviso.

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3. Prior to its omission, section 146 was amended by the Finance Act, 1963, w.e.f. 28-4-1963, Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976 and Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984.

4. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

5. *See* also Circular [F. No. 45A/180/52-IT], dated 6-12-1955. For details, *see* Taxmann's Master Guide to Income-tax Act.

For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

6. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

7. Substituted for ", for reasons to be recorded by him in writing, is of the opinion" by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

8. For the meaning of the terms/expressions "reason to believe", "assessment", "reassess" and "failure", *see* Taxmann's Direct Taxes Manual, Vol. 3.

9. For the meaning of the expressions "failure", "material facts" and "not necessarily", *see* Taxmann's Direct Taxes Manual, Vol. 3.

10. Inserted by the Finance Act, 2008, w.e.f. 1-4-2008.

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Explanation 2.—For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely :—

(*a*) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax ;

(*b*) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return ;

(*c*) where an assessment has been made, but—

(*i*) income chargeable to tax has been underassessed ; or

(*ii*) such income has been assessed at too low a rate ; or

(*iii*) such income has been made the subject of excessive relief under this Act ; or

(*iv*) excessive loss or depreciation allowance or any other allowance under this Act has been computed.]

[11][*Explanation 3.*—For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148.]

[12][**Issue of notice where income has escaped assessment.**

[13]**148.** [14][(1)] Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve[15] on the assessee a notice requiring him to furnish within such period, [16][* * *] as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be[17], apply accordingly as if such return were a return required to be furnished under section 139 :]

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11. Inserted by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-1989.

12. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

13. For Notification No. SO 1178, dated 11-2-1982, refer Taxmann's Direct Taxes Circulars.

14. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

15. For the meaning of the term "serve", *see* Taxmann's Direct Taxes Manual, Vol. 3.

16. Words "not being less than thirty days," omitted by the Finance (No. 2) Act, 1996, w.r.e.f. 1-4-1989.

17. For the meaning of the expression "so far as may be", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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[18][**Provided** that in a case—

(*a*) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005 in response to a notice served under this section, and

(*b*) subsequently a notice has been served under sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to sub-section (2) of section 143, as it stood immediately before the amendment of said sub-section by the Finance Act, 2002 (20 of 2002) but before the expiry of the time limit for making the assessment, re-assessment or recomputation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice:

Provided further that in a case—

(*a*) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005, in response to a notice served under this section, and

(*b*) subsequently a notice has been served under clause (*ii*) of sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to clause (*ii*) of sub-section (2) of section 143, but before the expiry of the time limit for making the assessment, reassessment or recomputation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice.]

[19][*Explanation.*—For the removal of doubts, it is hereby declared that nothing contained in the first proviso or the second proviso shall apply to any return which has been furnished on or after the 1st day of October, 2005 in response to a notice served under this section.]

[20][(2) The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so.]

Time limit for notice.

149. [21][(1) No notice under section 148 shall be issued[22] for the relevant assessment year,—

[23][(*a*) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (*b*);

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18. Inserted by the Finance Act, 2006, w.r.e.f. 1-10-1991.

19. Inserted*, ibid.,* w.r.e.f. 1-10-2005.

20. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

21. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

22. For the meaning of the term "issued", *see* Taxmann's Direct Taxes Manual, Vol. 3.

23. Clauses (*a*) and (*b*) substituted by the Finance Act, 2001, w.e.f. 1-6-2001. Prior to their substitution, clauses (*a*) and (*b*), as amended by the Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-4-1989, read as under :

"(*a*) in a case where an assessment under sub-section (3) of section 143 or section 147 has been made for such assessment year,—

(Contd. on p. 1.676)

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(*b*) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more[24] for that year.]

Explanation.—In determining income chargeable to tax which has escaped assessment for the purposes of this sub-section, the provisions of *Explanation 2* of section 147 shall apply as they apply for the purposes of that section.]

(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.

(3) If the person on whom a notice under section 148 is to be served is a person treated as the agent of a non-resident under section 163 and the assessment, reassessment or recomputation to be made in pursuance of the notice is to be made on him as the agent of such non-resident, the notice shall not be issued after the expiry of a period of two years from the end of the relevant assessment year.

Provision for cases where assessment is in pursuance of an order on appeal, etc.

150. (1) Notwithstanding anything contained in section 149, the notice under section 148 may be issued at any time for the purpose of making an assessment or reassessment or recomputation in consequence of or to give effect to any finding or direction contained in an order passed by any authority in any proceeding under this Act by way of appeal, reference or revision [25][or by a Court in any proceeding under any other law].

(2) The provisions of sub-section (1) shall not apply in any case where any such assessment, reassessment or recomputation as is referred to in that sub-section

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(Contd. from p. 1.675)

(*i*) if four years have elapsed from the end of the relevant assessment year, unless the case falls under sub-clause (*ii*) or sub-clause (*iii*) ;

(*ii*) if four years, but not more than seven years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees fifty thousand or more for that year ;

(*iii*) if seven years, but not more than ten years, have elapsed from the end of the relevant assessment year, unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees one lakh or more for that year ;

(*b*) in any other case,—

(*i*) if four years have elapsed from the end of the relevant assessment year, unless the case falls under sub-clause (*ii*) or sub-clause (*iii*) ;

(*ii*) if four years, but not more than seven years, have elapsed from the end of the relevant assessment year, unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees twenty-five thousand or more for that year ;

(*iii*) if seven years, but not more than ten years, have elapsed from the end of the relevant assessment year, unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees fifty thousand or more for that year."

24. For the meaning of the expression "likely to amount to one lakh rupees or more", *see* Taxmann's Direct Taxes Manual, Vol. 3.

25. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

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relates to an assessment year in respect of which an assessment, reassessment or recomputation could not have been made at the time the order which was the subject-matter of the appeal, reference or revision, as the case may be, was made by reason of any other provision limiting the time within which any action for assessment, reassessment or recomputation may be taken.

[26][**Sanction for issue of notice.**

151. (1) In a case where an assessment under sub-section (3) of section 143 or section 147 has been made for the relevant assessment year, no notice shall be issued under section 148 [27][by an Assessing Officer, who is below the rank of Assistant Commissioner [28][or Deputy Commissioner], unless the [29][Joint] Commissioner is satisfied on the reasons recorded by such Assessing Officer that it is a fit case for the issue of such notice] :

Provided that, after the expiry of four years from the end of the relevant assessment year, no such notice shall be issued unless the Chief Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer aforesaid, that it is a fit case for the issue of such notice.

(2) In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of [29][Joint] Commissioner, after the expiry of four years from the end of the relevant assessment year, unless the [29][Joint] Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.]

[30][*Explanation.*—For the removal of doubts, it is hereby declared that the Joint Commissioner, the Commissioner or the Chief Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under section 148, need not issue such notice himself.]

Other provisions.

152. (1) In an assessment, reassessment or recomputation made under section 147, the tax shall be chargeable at the rate or rates at which it would have been charged had the income not escaped assessment.

(2) Where an assessment is reopened [31][under section 147], the assessee may, if he has not impugned any part of the original assessment order for that year either under sections 246 to 248 or under section 264, claim that the proceedings under section 147 shall be dropped on his showing that he had been assessed on an amount or to a sum not lower than what he would be rightly liable for even if the income alleged to have escaped assessment had been taken into account, or the assessment or computation had been properly made :

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26. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

27. Substituted for "except by an Assessing Officer of the rank of Assistant Commissioner or Deputy Commissioner" by the Finance Act, 1990, w.e.f. 1-4-1990.

28. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998**.**

29. Substituted for "Deputy", *ibid.*

30. Inserted by the Finance Act, 2008, w.r.e.f. 1-10-1998.

31. Substituted for "in circumstances falling under clause (*b*) of section 147" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

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Provided that in so doing he shall not be entitled to reopen matters concluded by an order under section 154, 155, 260, 262, or 263.

Time limit for completion of assessments and reassessments.

153. [32][(1) No order of assessment[33] shall be made under section 143 or section 144 at any time after the expiry of—

(*a*) two years from the end of the assessment year in which the income was first assessable ; or

(*b*) one year from the end of the financial year in which a return or a revised return relating to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year, is filed under sub-section (4) or sub-section (5) of section 139,

whichever is later :]

[34][**Provided** that in case the assessment year in which the income was first assessable is the assessment year commencing on the 1st day of April, 2004 or any subsequent assessment year, the provisions of clause (*a*) shall have effect as if for the words "two years", the words "twenty-one months" had been substituted :]

[35][**Provided further** that in case the assessment year in which the income was first assessable is the assessment year commencing on the 1st day of April, 2005 or any subsequent assessment year and during the course of the proceeding for the assessment of total income, a reference under sub-section (1) of section 92CA—

(*i*) was made before the 1st day of June, 2007 but an order under sub-section (3) of that section has not been made before such date; or

(*ii*) is made on or after the 1st day of June, 2007,

the provisions of clause (*a*) shall, notwithstanding anything contained in the first proviso, have effect as if for the words "two years", the words "thirty-three months" had been substituted.]

[36][(1A) No order of assessment shall be made under section 115WE or section 115WF at any time after the expiry of [37][twenty-one months] from the end of the assessment year in which the fringe benefits were first assessable.

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32. Substituted by the Finance Act, 1989, w.e.f. 1-4-1989. Earlier sub-section (1) was substituted by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date. Prior to its substitution, sub-section (1) [as it stood before its substitution by the Direct Tax Laws (Amendment) Act, 1987] was substituted by the Finance Act, 1968, w.e.f. 1-4-1968 and later on amended by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984.

33. For the meaning of the expression "order of assessment", *see* Taxmann's Direct Taxes Manual, Vol. 3.

34. Inserted by the Finance Act, 2006, w.e.f. 1-6-2006.

35. Inserted by the Finance Act, 2007, w.e.f. 1-6-2007.

36. Sub-sections (1A) and (1B) inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

37. Substituted for "two years" by the Finance Act, 2006, w.e.f. 1-6-2006.

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(1B) No order of assessment or reassessment shall be made under section 115WG after the expiry of [38][nine months] from the end of the financial year in which the notice under section 115WH was served.]

[39][(2) No order of assessment, reassessment or recomputation shall be made under section 147 after the expiry of [40][one year] from the end of the financial year in which the notice under section 148 was served :

[41][**Provided** that where the notice under section 148 was served on or after the 1st day of April, 1999 but before the 1st day of April, 2000, such assessment, reassessment or recomputation may be made at any time up to the 31st day of March, 2002 :]

[42][**Provided further** that where the notice under section 148 was served on or after the 1st day of April, 2005, the provisions of this sub-section shall have effect as if for the words "one year", the words "nine months" had been substituted :]

[43][**Provided also** that where the notice under section 148 was served on or after the 1st day of April, 2006 and during the course of the proceedings for the assessment or reassessment or recomputation of total income, a reference under sub-section (1) of section 92CA—

(*i*) was made before the 1st day of June, 2007 but an order under sub-section (3) of that section has not been made before such date; or

(*ii*) is made on or after the 1st day of June, 2007,

the provisions of this sub-section shall, notwithstanding anything contained in the second proviso, have effect as if for the words "one year", the words "twenty-one months" had been substituted.]

[44][(2A) Notwithstanding anything contained in sub-sections (1)[45][, (1A), (1B)] and (2), in relation to the assessment year commencing on the 1st day of April, 1971,

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38. Substituted for "one year" by the Finance Act, 2006, w.e.f. 1-6-2006.

39. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

40. Substituted for "two years" by the Finance Act, 2001, w.e.f. 1-6-2001.

41. Proviso substituted, *ibid*. Prior to its substitution, proviso read as under :
"**Provided** that where the notice under section 148 was served on or before the 31st day of March, 1987, such assessment, reassessment or recomputation may be made at any time up to the 31st day of March, 1990."

42. Inserted by the Finance Act, 2006, w.e.f. 1-6-2006.

43. Inserted by the Finance Act, 2007, w.e.f. 1-6-2007.

44. Substituted by the Finance Act, 2001, w.e.f. 1-6-2001. Prior to its substitution, sub-section (2A), as inserted by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971 and later on amended by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988, read as under :
"(2A) Notwithstanding anything contained in sub-sections (1) and (2), in relation to the assessment year commencing on the 1st day of April, 1971, and any subsequent assessment year, an order of fresh assessment under section 146 or in pursuance of an order, under section 250, section 254, section 263 or section 264, setting aside or cancelling an assessment, may be made at any time before the expiry of two years from the end of the financial year in which the order under section 146 cancelling the assessment is passed by the Assessing Officer or the order under section 250 or section 254 is received by the Chief Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Chief Commissioner or Commissioner."

45. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

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and any subsequent assessment year, an order of fresh assessment in pursuance of an order under section 250 or section 254 or section 263 or section 264, setting aside or cancelling an assessment, may be made at any time before the expiry of one year from the end of the financial year in which the order under section 250 or section 254 is received by the Chief Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Chief Commissioner or Commissioner:

Provided that where the order under section 250 or section 254 is received by the Chief Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Chief Commissioner or Commissioner, on or after the 1st day of April, 1999 but before the 1st day of April, 2000, such an order of fresh assessment may be made at any time up to the 31st day of March, 2002 :]

[46][**Provided further** that where the order under section 254 is received by the Chief Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Commissioner on or after the 1st day of April, 2005, the provisions of this sub-section shall have effect as if for the words "one year", the words "nine months" had been substituted:]

[47][**Provided also** that where the order under section 254 is received by the Chief Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Commissioner on or after the 1st day of April, 2006, and during the course of the proceedings for the fresh assessment of total income, a reference under sub-section (1) of section 92CA—

(*i*) was made before the 1st day of June, 2007 but an order under sub-section (3) of section 92CA has not been made before such date; or

(*ii*) is made on or after the 1st day of June, 2007,

the provisions of this sub-section shall, notwithstanding anything contained in the second proviso, have effect as if for the words "one year", the words "twenty-one months" had been substituted.]

(3) The provisions of sub-sections (1) [48][, (1A), (1B)] and (2) shall not apply to the following classes of assessments, reassessments and recomputations which may, [49][subject to the provisions of sub-section (2A),] be completed at any time—

(*i*) [50][***]

(*ii*) where the assessment, reassessment or recomputation is made on the assessee or any person[51] in consequence of or to give effect to[51] any

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46. Inserted by the Finance Act, 2006, w.e.f. 1-6-2006.

47. Inserted by the Finance Act, 2007, w.e.f. 1-6-2007.

48. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

49. Inserted by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

50. Omitted by the Finance Act, 2001, w.e.f. 1-6-2001. Prior to its omission, clause (*i*) read as under :

"(*i*) where a fresh assessment is made under section 146;"

51. For the meaning of expressions "any person" and "in consequence of or to give effect to", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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finding or direction[52] contained in an order under section 250, 254, 260, 262, 263, or 264 [53][or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act] ;

(*iii*) where, in the case of a firm, an assessment is made on a partner of the firm in consequence of an assessment made on the firm under section 147.

[54][(4) Notwithstanding anything contained in the foregoing provisions of this section, sub-section (2) of section 153A and sub-section (1) of section 153B, the order of assessment or reassessment, relating to any assessment year, which stands revived under sub-section (2) of section 153A, shall be made within one year from the end of the month of such revival or within the period specified in this section or sub-section (1) of section 153B, whichever is later.]

[55][*Explanation 1.*—In computing the period of limitation for the purposes of this section—

(*i*) the time taken in reopening the whole or any part of the proceeding or in giving an opportunity to the assessee to be re-heard under the proviso to section 129, or

(*ii*) the period during which the assessment proceeding[56] is stayed by an order or injunction of any court, or

[57][(*iia*) the period commencing from the date on which the Assessing Officer intimates the Central Government or the prescribed authority, the contravention of the provisions of clause (*21*) or clause (*22B*) or clause (*23A*) or clause (*23B*) or sub-clause (*iv*) or sub-clause (*v*) or sub-clause (*vi*) or sub-clause (*via*) of clause (*23C*) of section 10, under clause (*i*) of the proviso to sub-section (3) of section 143 and ending with the date on which the copy of the order withdrawing the approval or rescinding the notification, as the case may be, under those clauses is received by the Assessing Officer,] or*

(*iii*) the period commencing from the date on which the [58][Assessing] Officer directs the assessee to get his accounts audited under sub-section (2A) of section 142 and ending with [59][the last date on which the assessee is required to furnish] a report of such audit under that sub-section, or

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52. For the meaning of the term "finding or direction", *see* Taxmann's Direct Taxes Manual, Vol. 3.

53. Inserted by the Direct Taxes (Amendment) Act, 1964, w.e.f. 6-10-1964.

54. Inserted by the Finance Act, 2008, w.r.e.f. 1-6-2003.

55. Substituted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-1-1976 as regards clauses (*i*), (*ii*) and (*iv*) and w.e.f. 1-4-1976 as regards clauses (*iii*) and (*v*).

56. For the meaning of the expression "assessment proceeding", *see* Taxmann's Direct Taxes Manual, Vol. 3.

57. Inserted by the Finance Act, 2002, w.e.f. 1-4-2003.

58. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

59. Substituted for "the date on which the assessee furnishes" by the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997.

*'or' is added by Editors.

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(*iv*) [60][* * *]

[61][(*iva*) the period (not exceeding sixty days) commencing from the date on which the [62][Assessing] Officer received the declaration under sub-section (1) of section 158A and ending with the date on which the order under sub-section (3) of that section is made by him, or]

(*v*) in a case where an application made before the Income-tax Settlement Commission under section 245C is rejected by it or is not allowed to be proceeded with by it, the period commencing from the date on which such application is made and ending with the date on which the order under sub-section (1) of section 245D is received by the Commissioner under sub-section (2) of that section, [63][or]

[63][(*vi*) the period commencing from the date on which an application is made before the Authority for Advance Rulings under sub-section (1) of section 245Q and ending with the date on which the order rejecting the application is received by the Commissioner under sub-section (3) of section 245R, or

(*vii*) the period commencing from the date on which an application is made before the Authority for Advance Rulings under sub-section (1) of section 245Q and ending with the date on which the advance ruling pronounced by it is received by the Commissioner under sub-section (7) of section 245R,]

shall be excluded :

[64][**Provided** that where immediately after the exclusion of the aforesaid time or period, the period of limitation referred to in sub-sections (1), [65][(1A), (1B),] [66][(2), (2A) and (4)] available to the Assessing Officer for making an order of assessment, reassessment or recomputation, as the case may be, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly:]

[67][**Provided further** that where a proceeding before the Settlement Commission abates under section 245HA, the period of limitation available under this section to the Assessing Officer for making an order of assessment, reassessment or recomputation, as the case may be, shall, after the exclusion of the period under sub-section (4) of section 245HA, be not less than one year; and where such period of limitation is less than one year, it shall be deemed to have been extended to one year; and for the purposes of determining the period of limitation under sections 149, 153B, 154, 155, 158BE and 231 and for the purposes of payment of interest

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60. Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

61. Inserted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984.

62. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

63. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-10-2004.

64. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 27-9-1991.

65. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

66. Substituted for "(2) and (2A)" by the Finance Act, 2008, w.r.e.f. 1-6-2003.

67. Inserted, *ibid.*, w.r.e.f. 1-6-2007.

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under section 243 or section 244 or, as the case may be, section 244A, this proviso shall also apply accordingly.]

Explanation 2.—Where, by an order [68][referred to in clause (*ii*) of sub-section (3)], any income is excluded from the total income of the assessee for an assessment year, then, an assessment of such income for another assessment year shall, for the purposes of section 150 and this section, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order.

Explanation 3.—Where, by an order [68][referred to in clause (*ii*) of sub-section (3)], any income is excluded from the total income of one person and held to be the income of another person[69], then, an assessment of such income on such other person shall, for the purposes of section 150 and this section, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order, provided such other person was given an opportunity of being heard before the said order was passed.

[70][**Assessment in case of search or requisition.**

153A. [71][(1)] Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the Assessing Officer shall—

(*a*) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years referred to in clause (*b*), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;

(*b*) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made :

Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years:

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in this [72][sub-section] pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate.

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68. Substituted for "under section 250, 254, 260, 262, 263 or 264" by the Direct Taxes (Amendment) Act, 1964, w.e.f. 6-10-1964.

69. For the meaning of the expression "another person", *see* Taxmann's Direct Taxes Manual, Vol. 3.

70. Sections 153A, 153B and 153C inserted by the Finance Act, 2003, w.e.f. 1-6-2003.

71. Renumbered as sub-section (1) by the Finance Act, 2008, w.r.e.f. 1-6-2003.

72. Substituted for "section", *ibid.*

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[73][(2) If any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Commissioner:

Provided that such revival shall cease to have effect, if such order of annulment is set aside.]

Explanation.—For the removal of doubts, it is hereby declared that,—

(*i*) save as otherwise provided in this section, section 153B and section 153C, all other provisions of this Act shall apply to the assessment made under this section;

(*ii*) in an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year.

Time-limit for completion of assessment under section 153A.

153B. (1) Notwithstanding anything contained in section 153, the Assessing Officer shall make an order of assessment or reassessment,—

(*a*) in respect of each assessment year falling within six assessment years referred to in clause (*b*) of [73][sub-section (1) of] section 153A, within a period of two years from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed;

(*b*) in respect of the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A, within a period of two years from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed :

[74][**Provided** that in case of other person referred to in section 153C, the period of limitation for making the assessment or reassessment shall be the period as referred to in clause (*a*) or clause (*b*) of this sub-section or one year from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later:]

[75][**Provided further** that in the case where the last of the authorisations for search under section 132 or for requisition under section 132A was executed during the financial year commencing on the 1st day of April, 2004 or any subsequent financial year,—

(*i*) the provisions of clause (*a*) or clause (*b*) of this sub-section shall have effect as if for the words "two years" the words "twenty-one months" had been substituted;

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73. Inserted by the Finance Act, 2008, w.r.e.f. 1-6-2003.

74. Inserted by the Finance Act, 2005, w.r.e.f. 1-6-2003.

75. Inserted by the Finance Act, 2006, w.e.f. 1-6-2006.

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(*ii*) the period of limitation for making the assessment or reassessment in case of other person referred to in section 153C, shall be the period of twenty-one months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed or nine months from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later:]

[76][**Provided also** that in case where the last of the authorisations for search under section 132 or for requisition under section 132A was executed during the financial year commencing on the 1st day of April, 2005 or any subsequent financial year and during the course of the proceedings for the assessment or reassessment of total income, a reference under sub-section (1) of section 92CA—

(*i*) was made before the 1st day of June, 2007 but an order under sub-section (3) of section 92CA has not been made before such date; or

(*ii*) is made on or after the 1st day of June, 2007,

the provisions of clause (*a*) or clause (*b*) of this sub-section shall, notwithstanding anything contained in clause (*i*) of the second proviso, have effect as if for the words "two years", the words "thirty-three months" had been substituted:

Provided also that in case where the last of the authorisations for search under section 132 or for requisition under section 132A was executed during the financial year commencing on the 1st day of April, 2005 or any subsequent financial year and during the course of the proceedings for the assessment or reassessment of total income in case of other person referred to in section 153C, a reference under sub-section (1) of section 92CA—

(*i*) was made before the 1st day of June, 2007 but an order under sub-section (3) of section 92CA has not been made before such date; or

(*ii*) is made on or after the 1st day of June, 2007,

the period of limitation for making the assessment or reassessment in case of such other person shall, notwithstanding anything contained in clause (*ii*) of the second proviso, be the period of thirty-three months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed or twenty-one months from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later.]

Explanation.—In computing the period of limitation for the purposes of this section,—

(*i*) the period during which the assessment proceeding is stayed by an order or injunction of any court; or

(*ii*) the period commencing from the day on which the Assessing Officer directs the assessee to get his accounts audited under sub-section (2A) of section 142 and ending on the day on which the assessee is required to furnish a report of such audit under that sub-section; or

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76. Inserted by the Finance Act, 2007, w.e.f. 1-6-2007.

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(*iii*) the time taken in reopening the whole or any part of the proceeding or in giving an opportunity to the assessee of being re-heard under the proviso to section 129; or

(*iv*) in a case where an application made before the Settlement Commission under section 245C is rejected by it or is not allowed to be proceeded with by it, the period commencing from the date on which such application is made and ending with the date on which the order under sub-section (1) of section 245D is received by the Commissioner under sub-section (2) of that section; [77][or]

[77][(*v*) the period commencing from the date on which an application is made before the Authority for Advance Rulings under sub-section (1) of section 245Q and ending with the date on which the order rejecting the application is received by the Commissioner under sub-section (3) of section 245R; or

(*vi*) the period commencing from the date on which an application is made before the Authority for Advance Rulings under sub-section (1) of section 245Q and ending with the date on which the advance ruling pronounced by it is received by the Commissioner under sub-section (7) of section 245R; or]

[78][(*vii*) the period commencing from the date of annulment of a proceeding or order of assessment or reassessment referred to in sub-section (2) of section 153A till the date of the receipt of the order setting aside the order of such annulment, by the Commissioner,]

shall be excluded :

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation referred to in clause (*a*) or clause (*b*) of this [79][sub-section] available to the Assessing Officer for making an order of assessment or reassessment, as the case may be, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly.

(2) The authorisation referred to in clause (*a*) and clause (*b*) of sub-section (1) shall be deemed to have been executed,—

(*a*) in the case of search, on the conclusion of search as recorded in the last panchnama drawn in relation to any person in whose case the warrant of authorisation has been issued;

(*b*) in the case of requisition under section 132A, on the actual receipt of the books of account or other documents or assets by the Authorised Officer.

Assessment of income of any other person.

153C. [80][(1)] Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing

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77. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-10-2004.

78. Inserted by the Finance Act, 2008, w.r.e.f. 1-6-2003.

79. Substituted for "section", *ibid.*

80. Inserted by the Finance Act, 2005, w.r.e.f. 1-6-2003.

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Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A :]

[81][**Provided** that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to [82][sub-section (1) of] section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person.]

[83][(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A and in respect of such assessment year—

(*a*) no return of income has been furnished by such other person and no notice under sub-section (1) of section 142 has been issued to him, or

(*b*) a return of income has been furnished by such other person but no notice under sub-section (2) of section 143 has been served and limitation of serving the notice under sub-section (2) of section 143 has expired, or

(*c*) assessment or reassessment, if any, has been made,

before the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in section 153A.]

[84][**Prior approval necessary for assessment in cases of search or requisition.**

153D. No order of assessment or reassessment shall be passed by an Assessing Officer below the rank of Joint Commissioner in respect of each assessment year referred to in clause (*b*) of [85][sub-section (1) of] section 153A or the assessment year referred to in clause (*b*) of sub-section (1) of section 153B, except with the prior approval of the Joint Commissioner.]

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81. Inserted by the Finance Act, 2005, w.r.e.f. 1-6-2003.
82. Inserted by the Finance Act, 2008, w.r.e.f. 1-6-2003.
83. Inserted by the Finance Act, 2005, w.r.e.f. 1-6-2003.
84. Inserted by the Finance Act, 2007, w.e.f. 1-6-2007.
85. Inserted by the Finance Act, 2008, w.r.e.f. 1-6-2007.

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Rectification of mistake.

[86]**154.** [87][(1) With a view to rectifying any mistake apparent from the record[88] an income-tax authority referred to in section 116 may,—

(*a*) amend any order passed by it under the provisions of this Act ;

[89][(*b*) amend any intimation or deemed intimation under sub-section (1) of section 143.]]

[90][(1A) Where any matter[91] has been considered and decided in any proceeding by way of appeal or revision relating to an order referred to in sub-section (1), the authority passing such order may, notwithstanding anything contained in any law for the time being in force, amend the order under that sub-section in relation to any matter other than the matter which has been so considered and decided.]

(2) Subject to the other provisions of this section, the authority concerned—

(*a*) may make an amendment under sub-section (1) of its own motion, and

(*b*) shall make such amendment for rectifying any such mistake which has been brought to its notice by the assessee, and where the authority concerned is the [92][***] [93][Commissioner (Appeals)], by the [94][Assessing] Officer also.

[95][* * *]

(3) An amendment, which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this section unless the authority concerned has given notice to the assessee

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86. *See* also Circular No. 68, dated 17-11-1971, Circular No. 71, dated 20-12-1971, Circular No. 73, dated 7-1-1972, Circular No. 87, dated 19-6-1972 in supersession of Circular No. 81, dated 26-3-1972, Circular No. 581, dated 28-9-1990, Circular No. 669, dated 25-10-1993 and Circular No. 725, dated 16-10-1995. For details, *see* Taxmann's Master Guide to Income-tax Act.

For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

87. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Prior to its substitution, sub-section (1) was amended by the Direct Taxes (Amendment) Act, 1964, w.e.f. 6-10-1964, the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976 and the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978 and substituted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984.

88. For the meaning of the terms/expressions "mistake", "record", "mistakes apparent" and "mistake apparent from the record", *see* Taxmann's Direct Taxes Manual, Vol. 3.

89. Substituted by the Finance Act, 1999, w.e.f. 1-6-1999. Prior to its substitution, clause (*b*) was substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

90. Inserted by the Direct Taxes (Amendment) Act, 1964, w.e.f. 6-10-1964.

91. For the meaning of the term "any matter", *see* Taxmann's Direct Taxes Manual, Vol. 3.

92. Words "Deputy Commissioner (Appeals) or the" omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998**.** Earlier "Deputy Commissioner (Appeals)" was substituted for "Appellate Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

93. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

94. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

95. Proviso omitted by the Finance Act, 1994, w.e.f. 1-6-1994. Prior to its omission, proviso was inserted by the Finance Act, 1992, w.e.f. 14-5-1992.

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of its intention so to do and has allowed the assessee a reasonable opportunity of being heard.

(4) Where an amendment is made under this section, an order shall be passed in writing by the income-tax authority concerned.

(5) Subject to the provisions of section 241, where any such amendment has the effect of reducing the assessment, the [96][Assessing] Officer shall make any refund which may be due to such assessee.

(6) Where any such amendment has the effect of enhancing the assessment or reducing a refund already made, the [96][Assessing] Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable[97], and such notice of demand shall be deemed to be issued under section 156 and the provisions of this Act shall apply accordingly.

(7) Save as otherwise provided in section 155 or sub-section (4) of section 186 no amendment under this section shall be made after the expiry of four years [98][from the end of the financial year in which the order[99] sought to be amended was passed.]

[1][(8) Without prejudice to the provisions of sub-section (7), where an application for amendment under this section is made by the assessee on or after the 1st day of June, 2001 to an income-tax authority referred to in sub-section (1), the authority shall pass an order, within a period of six months from the end of the month in which the application is received by it,—

(*a*) making the amendment; or

(*b*) refusing to allow the claim.]

Other amendments.

155. (1) [2][Where, in respect of any completed assessment[3] of a partner in a firm for the assessment year commencing on the 1st day of April, 1992, or any earlier assessment year,] it is found—

(*a*) on the assessment or reassessment of the firm, or

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96. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

97. For the meaning of expression "the sum payable", *see* Taxmann's Direct Taxes Manual, Vol. 3.

98. Substituted for "from the date of the order sought to be amended" by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984.

99. For the meaning of the terms/expressions "order" and "completed assessment", *see* Taxmann's Direct Taxes Manual, Vol. 3.

1. Inserted by the Finance Act, 2001, w.e.f. 1-6-2001.

2. Substituted for "Where in respect of any completed assessment of a partner in a firm" by the Finance Act, 1992, w.e.f. 1-4-1993. Earlier, the expression was amended by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989 and the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date.

3. For the meaning of the terms/expressions "order" and "completed assessment", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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(*b*) on any reduction or enhancement made in the income of the firm under this section, section 154, section 250, section 254, section 260, section 262, section 263 or section 264, [4][or]

[4][(*c*) on any order passed under sub-section (4) of section 245D on the application made by the firm,]

that the share of the partner in the income of the firm has not been included in the assessment of the partner or, if included, is not correct, the [5][Assessing] Officer may amend the order of assessment of the partner with a view to the inclusion of the share in the assessment or the correction thereof, as the case may be; and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned [6][from the end of the financial year in which the final order was passed] in the case of the firm.

[7][(1A) Where in respect of any completed assessment of a firm it is found—

(*a*) on the assessment or reassessment of the firm, or

(*b*) on any reduction or enhancement made in the income of the firm under this section, section 154, section 250, section 254, section 260, section 262, section 263 or section 264, or

(*c*) on any order passed under sub-section (4) of section 245D on the application made by the firm,

that any remuneration to any partner is not deductible under clause (*b*) of section 40, the Assessing Officer may amend the order of assessment of the partner with a view to adjusting the income of the partner to the extent of the amount not so deductible ; and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the end of the financial year in which the final order was passed in the case of the firm.]

(2) Where in respect of any completed assessment of a member of an association of persons or of a body of individuals it is found—

(*a*) on the assessment or reassessment of the association or body, or

(*b*) on any reduction or enhancement made in the income of the association or body under this section, section 154, section 250, section 254, section 260, section 262, section 263 or section 264, [8][or]

[8][(*c*) on any order passed under sub-section (4) of section 245D on the application made by the association or body,]

that the share of the member in the income of the association or body, as the case may be, has not been included in the assessment of the member or, if included,

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4. Inserted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984.

5. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

6. Substituted for "from the date of the final order passed" by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984.

7. Inserted by the Finance Act, 1992, w.e.f. 1-4-1993.

8. Inserted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984.

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is not correct, the [9][Assessing] Officer may amend the order of assessment of the member with a view to the inclusion of the share in the assessment or the correction thereof, as the case may be ; and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned [10][from the end of the financial year in which the final order was passed] in the case of the association or body, as the case may be.

(3) [11][* * *]

(4) Where as a result of proceedings initiated under section 147, a loss or depreciation has been recomputed and in consequence thereof it is necessary to recompute the total income of the assessee for the succeeding year or years to which the loss or depreciation allowance has been carried forward and set off under the provisions of sub-section (1) of section 72, or sub-section (2) of section 73, or sub-section (1) [12][or sub-section (3)] of section 74, [13][or sub-section (3) of section 74A,] the [14][Assessing] Officer may proceed to recompute the total income in respect of such year or years and make the necessary amendment ; and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned [15][from the end of the financial year in which the order was passed] under section 147.

[16][(4A) Where an allowance by way of investment allowance has been made wholly or partly to an assessee[17] in respect of a ship or an aircraft or any machinery or plant in any assessment year under section 32A and subsequently—

(*a*) at any time before the expiry of eight years from the end of the previous year in which the ship or aircraft was acquired or the machinery or plant was installed, the ship, aircraft, machinery or plant is sold or otherwise transferred by the assessee to any person other than the Government, a local authority, a corporation established by a Central, State or Provincial Act or a [18]Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956), or in connection with any amalgamation or succession referred to in sub-section (6) or sub-section (7) of section 32A ; or

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9. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

10. Substituted for "from the date of the final order passed" by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984.

11. Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

12. Inserted by the Finance Act, 1987, w.e.f. 1-4-1988.

13. Inserted by the Finance Act, 1974, w.e.f. 1-4-1975.

14. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

15. Substituted for "from the date of the order passed" by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984.

16. Inserted by the Finance Act, 1976, w.e.f. 1-4-1976.

17. For the meaning of expression "assessee", *see* Taxmann's Direct Taxes Manual, Vol. 3.

18. For definition of "Government company", *see* footnote 71 on p. 1.23 *ante*.

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(*b*) at any time before the expiry of ten years from the end of the previous year in which the ship or aircraft was acquired or the machinery or plant was installed, the assessee does not utilise the amount credited to the reserve account under sub-section (4) of section 32A for the purposes of acquiring a new ship or a new aircraft or new machinery or plant (other than machinery or plant of the nature referred to in clauses (*a*), (*b*) and (*d*) of the [19][second] proviso to sub-section (1) of section 32A) for the purposes of the business of the undertaking ; or

(*c*) at any time before the expiry of ten years referred to in clause (*b*) the assessee utilises the amount credited to the reserve account under sub-section (4) of section 32A—

(*i*) for distribution by way of dividends or profits ; or

(*ii*) for remittance outside India as profits or for the creation of any asset outside India ; or

(*iii*) for any other purpose which is not a purpose of the business of the undertaking,

the investment allowance originally allowed shall be deemed to have been wrongly allowed, and the [20][Assessing] Officer may, notwithstanding anything contained in this Act, recompute the total income of the assessee for the relevant previous year and make the necessary amendment; and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned,—

(*i*) in a case referred to in clause (*a*), from the end of the previous year in which the sale or other transfer took place ;

(*ii*) in a case referred to in clause (*b*), from the end of the ten years referred to in that clause ;

(*iii*) in a case referred to in clause (*c*), from the end of the previous year in which the amount was utilised.

Explanation.—For the purposes of clause (*b*), "new ship" or "new aircraft" or "new machinery or plant" shall have the same meanings as in the [21][*Explanation* below sub-section (2) of section 32A].]

(5) Where an allowance by way of development rebate has been made wholly or partly to an assessee in respect of a ship, machinery or plant installed after the 31st day of December, 1957, in any assessment year under section 33 or under the corresponding provisions of the Indian Income-tax Act, 1922 (11 of 1922), and subsequently—

(*i*) at any time before the expiry of eight years from the end of the previous year in which the ship was acquired or the machinery or plant was installed, the ship, machinery or plant is sold or otherwise

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19. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

20. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

21. Substituted for "*Explanation* to clause (*vi*) of sub-section (1) of section 32" by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988.

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transferred[22] by the assessee to any person other than the Government, a local authority, a corporation established by a Central, State or Provincial Act or a [23]Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956), or in connection with any amalgamation or succession referred to in sub-section (3) or sub-section (4) of section 33 ; or

(*ii*) at any time before the expiry of the eight years referred to in sub-section (3) of section 34, the assessee utilises the amount credited to the reserve account under clause (*a*) of that sub-section—

(*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 business of the undertaking,

the development rebate originally allowed shall be deemed to have been wrongly allowed, and the [24][Assessing] Officer may, notwithstanding anything contained in this Act, recompute the total income of the assessee for the relevant previous year and make the necessary amendment; and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the end of the previous year in which the sale or transfer took place or the money was so utilised.

[25][(5A) Where an allowance by way of development allowance has been made wholly or partly to an assessee in respect of the cost of planting in any area in any assessment year under section 33A and subsequently—

(*i*) at any time before the expiry of eight years from the end of the previous year in which such allowance was made, the land is sold or otherwise transferred by the assessee to any person other than the Government, a local authority, a corporation established by a Central, State or Provincial Act or a Government company[26] as defined in section 617 of the Companies Act, 1956 (1 of 1956), or in connection with any amalgamation or succession referred to in sub-section (5) or sub-section (6) of section 33A ; or

(*ii*) at any time before the expiry of the eight years referred to in sub-section (3) of section 33A, the assessee utilises the amount credited to the reserve account under clause (*ii*) of that sub-section—

(*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

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22. For the meaning of the expression "otherwise transferred", *see* Taxmann's Direct Taxes Manual, Vol. 3.

23. For definition of "Government company", *see* footnote 71 on p. 1.23 *ante.*

24. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

25. Inserted by the Finance Act, 1965, w.e.f. 1-4-1965.

26. For definition of "Government company", *see* footnote 71 on p. 1.23 *ante.*

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(*c*) for any other purpose which is not a purpose of the business of the undertaking ;

the development allowance originally allowed shall be deemed to have been wrongly allowed, and the [27][Assessing] Officer may, notwithstanding anything contained in this Act, recompute the total income of the assessee for the relevant previous year and make the necessary amendment ; and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the end of the previous year in which the sale or transfer took place or the money was so utilised.]

[28][*Explanation.*—For the purposes of this sub-section, where an assessee having any leasehold or other right of occupancy in any land transfers such right, he shall be deemed to have sold or otherwise transferred such land.]

[29][(5B) Where any deduction in respect of any expenditure on scientific research has been made in any assessment year under sub-section (2B) of section 35 and the assessee fails to furnish a certificate of completion of the programme obtained from the prescribed authority within one year of the period allowed for its completion by such authority, the deduction originally made in excess of the expenditure actually incurred shall be deemed to have been wrongly made, and the [30][Assessing] Officer may, notwithstanding anything contained in this Act, recompute the total income of the assessee for the relevant previous year and make the necessary amendment; and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the end of the previous year in which the period allowed for the completion of the programme by the prescribed authority expired.]

(6) [31][*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1992.*]

(7) Where as a result of any proceeding under this Act, in the assessment for any year of a company in whose case an order under section 104 has been made for that year, it is necessary to recompute the distributable income of that company, the [32][Assessing] Officer may proceed to recompute the distributable income and determine the [33][tax] payable on the basis of such recomputation and make the necessary amendment ; and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section

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27. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

28. Inserted by the Finance Act, 1975, w.r.e.f. 1-4-1965.

29. Reintroduced by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Earlier, it was omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1992. Original sub-section (5) was inserted by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1981.

30. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

31. Prior to omission, sub-section (6) was amended by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

32. Substituted for "Income-tax", *ibid.*

33. Substituted for "super-tax" by the Finance Act, 1965, w.e.f. 1-4-1965.

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being reckoned [34][from the end of the financial year in which the final order was passed] in the case of the company in respect of that proceeding.

(7A) [35][*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1992.*]

[36][(7B) Where in the assessment for any year, the capital gain arising from the transfer of a capital asset is not charged under section 45 by virtue of the provisions of clause (*iv*) or, as the case may be, clause (*v*) of section 47, but is deemed under section 47A to be income chargeable under the head "Capital gains" of the previous year in which the transfer took place by reason of—

(*i*) such capital asset being converted by the transferee company into, or being treated by it, as stock-in-trade of its business ; or

(*ii*) the parent company or its nominees or, as the case may be, the holding company ceasing to hold the whole of the share capital of the subsidiary company,

at any time before the expiry of the period of eight years from the date of such transfer, the [37][Assessing] Officer may, notwithstanding anything contained in this Act, recompute the total income of the transferor company for the relevant previous year and make the necessary amendment ; and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the end of the previous year in which the capital asset was so converted or treated or in which the parent company or its nominees or, as the case may be, the holding company ceased to hold the whole of the share capital of the subsidiary company.]

(8) [38][*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1992.*]

(8A) [39][*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1992.*]

(9) [40][*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1992.*]

(9A) [41][*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1992.*]

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34. Substituted for "from the date of the final order passed" by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984.

35. Prior to omission, sub-section (7A) was inserted by the Finance Act, 1978, w.r.e.f. 1-4-1974 and amended by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

36. Inserted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-4-1985.

37. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

38. Prior to omission, sub-section (8) was inserted by the Finance Act, 1978, w.r.e.f. 1-4-1974 and amended by the Finance Act, 1982, w.e.f. 1-4-1983, Finance Act, 1984, w.e.f. 1-10-1984, Finance Act, 1986, w.e.f. 1-4-1987 and the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

39. Prior to omission, sub-section (8A) was inserted by the Finance Act, 1978, w.r.e.f. 1-4-1974 and amended by the Finance Act, 1982, w.e.f. 1-4-1983, Finance Act, 1986, w.e.f. 1-4-1987 and the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

40. Prior to omission, sub-section (9) was inserted by the Finance Act, 1973, w.e.f. 1-4-1974 and amended by the Finance Act, 1978, w.r.e.f. 1-4-1974, Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984 and Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

41. Prior to omission, sub-section (9A) was inserted by the Finance Act, 1978, w.r.e.f. 1-4-1974 and amended by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

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(10) [42][*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1992.*]

[43][(10A) Where in the assessment for any year, a capital gain arising from the transfer of a [44][long-term capital asset], is charged to tax and within a period of six months after the date of such transfer, the assessee has made any investment or deposit in any specified asset within the meaning of *Explanation 1* to sub-section (1) of section 54E, the [45][Assessing] Officer shall amend the order of assessment so as to exclude the amount of the capital gain not chargeable to tax under the provisions of [46][sub-section (1) of] section 54E ; and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being [47][reckoned from the end of the financial year in which the assessment was made.]

(10B) [48][*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1992.*]

(10C) [49][*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1992.*]

[50][(11) Where in the assessment for any year, a capital gain arising from the transfer of any original asset as is referred to in section 54H is charged to tax and within the period extended under that section the assessee acquires the new asset referred to in that section or, as the case may be, deposits or invests the amount of such capital gain within the period so extended, the Assessing Officer shall amend the order of assessment so as to exclude the amount of the capital gain not chargeable to tax under any of the sections referred to in section 54H; and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of section 154 being reckoned from the end of the previous year in which the compensation was received by the assessee.]

[51][(11A) Where in the assessment for any year, the deduction under section 10A or section 10B or section 10BA has not been allowed on the ground that such income has not been received in convertible foreign exchange in India, or having been received in convertible foreign exchange outside India, or having been

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42. Prior to omission, sub-section (10) was inserted by the Finance Act, 1973, w.e.f. 1-4-1974 and amended by the Finance Act, 1978, w.r.e.f. 1-4-1974, Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984 and Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

43. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 1-4-1978.

44. Substituted for "capital asset, not being a short-term capital asset" by the Finance Act, 1987, w.e.f. 1-4-1988.

45. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

46. Inserted by the Finance Act, 1978, w.r.e.f. 1-4-1974.

47. Substituted for "reckoned from the date of the assessment" by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984.

48. Prior to omission, sub-section (10B) was inserted by the Finance Act, 1978, w.e.f. 1-4-1978 and amended by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

49. Prior to omission, sub-section (10C) was inserted by the Finance Act, 1982, w.e.f. 1-4-1983 and amended by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984 and the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1987.

50. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991. Earlier sub-section (11) was omitted by the Finance Act, 1985, w.e.f. 1-4-1986. Original sub-section was inserted by the Finance Act, 1974, w.e.f. 1-4-1974.

51. Inserted by the Taxation Laws (Amendment) Act, 2006, w.e.f. 13-7-2006.

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converted into convertible foreign exchange outside India, has not been brought into India, by or on behalf of the assessee with the approval of the Reserve Bank of India or such other authority as is authorised under any law for the time being in force for regulating payments and dealings in foreign exchange and subsequently such income or part thereof has been or is received in, or brought into, India in the manner aforesaid, the Assessing Officer shall amend the order of assessment so as to allow deduction under section 10A or section 10B or section 10BA, as the case may be, in respect of such income or part thereof as is so received in, or brought into, India, and the provisions of section 154 shall, so far as may be, apply thereto, and the period of four years shall be reckoned from the end of the previous year in which such income is so received in, or brought into, India.]

[52][(12) Where in the assessment for any year commencing before the 1st day of April, 1988, the deduction under section 80-O in respect of any income, being the whole or any part of income by way of royalty, commission, fees or any similar payment as is referred to in that section, has not been allowed on the ground that such income has not been received in convertible foreign exchange in India, or having been received in convertible foreign exchange outside India, or having been converted into convertible foreign exchange outside India, has not been brought into India, by or on behalf of the assessee in accordance with any law for the time being in force for regulating payments and dealings in foreign exchange and subsequently such income or part thereof has been or is received in, or brought into, India in the manner aforesaid, the Assessing Officer shall amend the order of assessment so as to allow deduction under section 80-O in respect of such income or part thereof as is so received in, or brought into, India; and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the end of the previous year in which such income is so received in, or brought into, India; so, however, that the period from the 1st day of April, 1988 to the 30th day of September, 1991 shall be excluded in computing the period of four years.]

[53][(13) Where in the assessment for any year, the deduction under section 80HHB or section 80HHC or section 80HHD or section 80HHE or section 80-O or section 80R or section 80RR or section 80RRA has not been allowed on the ground that such income has not been received in convertible foreign exchange in India, or having been received in convertible foreign exchange outside India, or having been converted into convertible foreign exchange outside India, has not been brought into India, by or on behalf of the assessee with the approval of the Reserve Bank of India or such other authority as is authorised under any law for the time being in force for regulating payments and dealings in foreign exchange

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52. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991. Earlier sub-section (12) was omitted by the Finance Act, 1987, w.e.f. 1-4-1988. Original sub-section was inserted by the Finance Act, 1974, w.e.f. 1-4-1974.

53. Inserted by the Finance Act, 1999, w.e.f. 1-6-1999. Earlier original sub-section (13) was inserted by the Finance Act, 1975, w.e.f. 1-4-1975 and later on omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

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and subsequently such income or part thereof has been or is received in, or brought into, India in the manner aforesaid, the Assessing Officer shall amend the order of assessment so as to allow deduction under section 80HHB or section 80HHC or section 80HHD or section 80HHE or section 80-O or section 80R or section 80RR or section 80RRA, as the case may be, in respect of such income or part thereof as is so received in, or brought into, India; and the provisions of section 154 shall, so far as may be, apply thereto, and the period of four years shall be reckoned from the end of the previous year in which such income is so received in, or brought into, India.]

[54][(14) Where in the assessment for any previous year or in any intimation or deemed intimation under sub-section (1) of section 143 for any previous year, [55][credit for tax deducted or collected in accordance with the provisions of section 199 or, as the case may be, section 206C] has not been given on the ground that the certificate furnished under section 203 [56][or section 206C] was not filed with the return and subsequently such certificate is produced before the Assessing Officer within two years from the end of the assessment year in which such income is assessable, the Assessing Officer shall amend the order of assessment or any intimation or deemed intimation under sub-section (1) of section 143, as the case may be, and the provisions of section 154 shall, so far as may be, apply thereto :

Provided that nothing contained in this sub-section shall apply unless the income from which the tax has been deducted [56][or income on which the tax has been collected] has been disclosed in the return of income filed by the assessee for the relevant assessment year.

(15) Where in the assessment for any year, a capital gain arising from the transfer of a capital asset, being land or building or both, is computed by taking the full value of the consideration received or accruing as a result of the transfer to be the value adopted or assessed by any authority of a State Government for the purpose of payment of stamp duty in accordance with sub-section (1) of section 50C, and subsequently such value is revised in any appeal or revision or reference referred to in clause (*b*) of sub-section (2) of that section, the Assessing Officer shall amend the order of assessment so as to compute the capital gain by taking the full value of the consideration to be the value as so revised in such appeal or revision or reference; and the provisions of section 154 shall, so far as may be, apply thereto, and the period of four years shall be reckoned from the end of the previous year in which the order revising the value was passed in that appeal or revision or reference.]

[57][(16) Where in the assessment for any year, a capital gain arising from the transfer of a capital asset, being a transfer by way of compulsory acquisition

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54. Sub-sections (14) and (15) inserted by the Finance Act, 2002, w.e.f. 1-6-2002.

55. Substituted for "credit for tax deducted in accordance with the provisions of section 199" by the Finance Act, 2006, w.e.f. 1-4-2007.

56. Inserted, *ibid.*

57. Sub-sections (16) and (17) inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

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under any law, or a transfer, the consideration for which was determined or approved by the Central Government or the Reserve Bank of India, is computed by taking the compensation or consideration as referred to in clause (*a*) or, as the case may be, the compensation or consideration enhanced or further enhanced as referred to in clause (*b*) of sub-section (5) of section 45, to be the full value of consideration deemed to be received or accruing as a result of the transfer of the asset and subsequently such compensation or consideration is reduced by any court, Tribunal or other authority, the Assessing Officer shall amend the order of assessment so as to compute the capital gain by taking the compensation or consideration as so reduced by the court, Tribunal or any other authority to be the full value of consideration; and the provisions of section 154 shall, so far as may be, apply thereto, and the period of four years shall be reckoned from the end of the previous year in which the order reducing the compensation was passed by the court, Tribunal or other authority.

(17) Where a deduction has been allowed to an assessee in any assessment year under section 80RRB in respect of any patent, and subsequently by an order of the Controller or the High Court under the Patents Act, 1970 (39 of 1970),—

(*i*) the patent was revoked, or

(*ii*) the name of the assessee was excluded from the patents register as patentee in respect of that patent,

the deduction from the income by way of royalty attributable to the period during which the patent had been revoked or the period for which the assessee's name was excluded as patentee in respect of that patent, shall be deemed to have been wrongly allowed and the Assessing Officer may, notwithstanding anything contained in this Act, recompute the total income of the assessee for the relevant previous year and make necessary amendment; and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the end of the previous year in which such order of the Controller referred to in clause (*b*) of sub-section (1), or the High Court referred to in clause (*i*) of sub-section (1) of section 2, of the Patents Act, 1970 (39 of 1970), as the case may be, was passed.]

[58][*Explanation*.—For the purposes of this section,—

(*a*) "additional compensation" shall have the meaning assigned to it in clause (*1*) of the *Explanation* to sub-section (2) of section 54;

(*b*) "additional consideration", in relation to the transfer of any capital asset the consideration for which was determined or approved by the Central Government or the Reserve Bank of India, means the difference between the amount of consideration for such transfer as enhanced by any court, tribunal or other authority and the amount of consideration which would have been payable if such enhancement had not been made.]

58. Inserted by the Finance Act, 1978, w.r.e.f. 1-4-1974.

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Notice of demand[59].

156. When any tax, interest, penalty, fine or any other sum [60][***] is payable in consequence of any order passed under this Act, the [61][Assessing] Officer shall[62] serve upon the assessee a notice of demand in the prescribed form[63] specifying the sum so payable :

[64][**Provided** that where any sum is determined to be payable by the assessee under sub-section (1) of section 143, the intimation under that sub-section shall be deemed to be a notice of demand for the purposes of this section.]

Intimation of loss.

157. When, in the course of the assessment of the total income of any assessee, it is established that a loss has taken place which the assessee is entitled to have carried forward and set off under the provisions of sub-section (1) of section 72, sub-section (2) of section 73, [65][sub-section (1) [66][or sub-section (3)] of section 74 or sub-section (3) of section 74A], the [67][Assessing] Officer shall notify to the assessee by an order in writing the amount of the loss as computed by him for the purposes of sub-section (1) of section 72, sub-section (2) of section 73, [68][sub-section (1) [69][or sub-section (3)] of section 74 or sub-section (3) of section 74A].

Intimation of assessment of firm.

158. [70][Whenever, in respect of the assessment year commencing on the 1st day of April, 1992, or any earlier assessment year, a registered firm is assessed], or an unregistered firm is assessed under the provisions of clause (*b*) of section 183, the [71][Assessing] Officer shall notify to the firm by an order in writing the amount of its total income assessed and the apportionment thereof between the several partners.

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59. *See* rule 125 for Electronic payment of tax. For departmental instructions, *see* Taxmann's Master Guide to Income-tax Act.

60. "(including annuity deposit referred to in Chapter XXII-A)" omitted by the Finance Act, 1966, w.e.f. 1-4-1967. Originally, the said expression was inserted by the Finance Act, 1964, w.e.f. 1-4-1964.

61. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

62. For the meaning of the word "shall", *see* Taxmann's Direct Taxes Manual, Vol. 3.

63. *See* rule 15 and Form No. 7 for notice of demand. *See* rule 38 and Form No. 28 for notice of demand of advance tax.

64. Inserted by the Finance Act, 2008, w.e.f. 1-4-2008.

65. Substituted for "or sub-section (1) of section 74" by the Finance Act, 1974, w.e.f. 1-4-1975.

66. Inserted by the Finance Act, 1987, w.e.f. 1-4-1988.

67. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

68. Substituted for "or sub-section (1) of section 74" by the Finance Act, 1974, w.e.f. 1-4-1975.

69. Inserted by the Finance Act, 1987, w.e.f. 1-4-1988.

70. Substituted for "Whenever a registered firm is assessed" by the Finance Act, 1992, w.e.f. 1-4-1993. Earlier the expression was amended by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989 and by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date.

71. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

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[72][*CHAPTER XIV-A*]

SPECIAL PROVISION FOR AVOIDING REPETITIVE APPEALS

Procedure when assessee claims identical question of law is pending before High Court or Supreme Court.

158A. [73](1) Notwithstanding anything contained in this Act, where an assessee claims that any question of law arising in his case for an assessment year which is pending before the [74][Assessing] Officer or any appellate authority (such case being hereafter in this section referred to as the relevant case) is identical with a question of law arising in his case for another assessment year which is pending before the High Court on a reference under section 256 or [75][before the Supreme Court on a reference under section 257 or in appeal under section 260A before the High Court or in appeal under section 261 before the Supreme Court] (such case being hereafter in this section referred to as the other case), he may furnish to the [76][Assessing] Officer or the appellate authority, as the case may be, a declaration in the prescribed form and verified[77] in the prescribed manner, that if the [78][Assessing] Officer or the appellate authority, as the case may be, agrees to apply in the relevant case the final decision on the question of law in the other case, he shall not raise such question of law in the relevant case in appeal before any appellate authority or [79][in appeal before the High Court under section 260A or in appeal before the Supreme Court under section 261].

(2) Where a declaration under sub-section (1) is furnished to any appellate authority, the appellate authority shall call for a report from the [78][Assessing] Officer on the correctness of the claim made by the assessee and, where the [78][Assessing] Officer makes a request to the appellate authority to give him an opportunity of being heard in the matter, the appellate authority shall allow him such opportunity.

(3) The [78][Assessing] Officer or the appellate authority, as the case may be, may, by order in writing,—

(*i*) admit the claim of the assessee if he or it is satisfied that the question of law arising in the relevant case is identical with the question of law in the other case; or

(*ii*) reject the claim if he or it is not so satisfied.

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72. Inserted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984.

73. *See* rule 16 and Form No. 8 for declaration under section 158A(1) (duplicate [when furnished to Commissioner (Appeals)], triplicate [when furnished to Appellate Tribunal]).

74. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

75. Substituted for "before the Supreme Court on a reference under section 257 or in appeal under section 261" by the Finance Act, 2002, w.e.f. 1-6-2002.

76. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

77. *See* rule 16 and Form No. 8 for declaration under section 158A(1) (duplicate [when furnished to Commissioner (Appeals)], triplicate [when furnished to Appellate Tribunal]).

78. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

79. Substituted for "for a reference before the High Court under section 256 or the Supreme Court under section 257 or in appeal before the Supreme Court under section 261" by the Finance Act, 2002, w.e.f. 1-6-2002.

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(4) Where a claim is admitted under sub-section (3),—

(*a*) the [80][Assessing] Officer or, as the case may be, the appellate authority may make an order disposing of the relevant case without awaiting the final decision on the question of law in the other case; and

(*b*) the assessee shall not be entitled to raise, in relation to the relevant case, such question of law in appeal before any appellate authority or [81][in appeal before the High Court under section 260A or the Supreme Court under section 261]].

(5) When the decision on the question of law in the other case becomes final, it shall be applied to the relevant case and the [80][Assessing] Officer or the appellate authority, as the case may be, shall, if necessary, amend the order referred to in clause (*a*) of sub-section (4) conformably to such decision.

(6) An order under sub-section (3) shall be final and shall not be called in question in any proceeding by way of appeal, reference or revision under this Act.

Explanation.— In this section,—

(*a*) "appellate authority" means the [82][Deputy Commissioner (Appeals)], the Commissioner (Appeals) or the Appellate Tribunal;

(*b*) "case", in relation to an assessee, means any proceeding under this Act for the assessment of the total income of the assessee or for the imposition of any penalty or fine on him.]

[83][*CHAPTER XIV-B**

SPECIAL PROCEDURE FOR ASSESSMENT OF SEARCH CASES

Definitions.

158B. In this Chapter, unless the context otherwise requires,—

[84][(*a*) "block period" means the period comprising previous years relevant to six assessment years preceding the previous year in which the

80. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

81. Substituted for "for a reference before the High Court under section 256 or the Supreme Court under section 257 or in appeal before the Supreme Court under section 261" by the Finance Act, 2002, w.e.f. 1-6-2002.

82. Substituted for "Appellate Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

83. Chapter XIV-B, consisting of sections 158B to 158BH, inserted by the Finance Act, 1995, w.e.f. 1-7-1995. Earlier Chapter XIV-B, dealing with "Charge of additional income-tax in certain cases" was inserted along with section 158B by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989 and later on omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

84. Substituted by the Finance Act, 2001, w.e.f. 1-6-2001. Prior to its substitution, clause (*a*), as amended by the Finance (No. 2) Act, 1996, w.r.e.f. 1-7-1995, read as under :

'(*a*) "block period" means the previous years relevant to ten assessment years preceding the previous year in which the search was conducted under section 132 or any requisition was made under section 132A, and includes, in the previous year in which such search was conducted or requisition made, the period up to the date of the commencement of such search or, as the case may be, the date of such requisition;'

*Non-operative *qua* search, etc., made after 31-5-2003, *see* section 158BH.

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search was conducted under section 132 or any requisition was made under section 132A and also includes the period up to the date of the commencement of such search or date of such requisition in the previous year in which the said search was conducted or requisition was made :

Provided that where the search is initiated or the requisition is made before the 1st day of June, 2001, the provisions of this clause shall have effect as if for the words "six assessment years", the words "ten assessment years" had been substituted;]

(*b*) "undisclosed income" includes any money, bullion, jewellery or other valuable article or thing or any income based on any entry in the books of account or other documents or transactions, where such money, bullion, jewellery, valuable article, thing, entry in the books of account or other document or transaction represents wholly or partly income or property which has not been or would not have been disclosed for the purposes of this Act[85][, or any expense, deduction or allowance claimed under this Act which is found to be false].

Assessment of undisclosed income as a result of search.

158BA. (1) Notwithstanding anything contained in any other provisions of this Act, where after the 30th day of June, 1995 a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A in the case of any person, then, the Assessing Officer shall proceed to assess the undisclosed income in accordance with the provisions of this Chapter.

(2) The total undisclosed income relating to the block period shall be charged to tax, at the rate specified in section 113, as income of the block period irrespective of the previous year or years to which such income relates and irrespective of the fact whether regular assessment for any one or more of the relevant assessment years is pending or not.

[86][*Explanation*.—For the removal of doubts, it is hereby declared that—

(*a*) the assessment made under this Chapter shall be in addition to the regular assessment in respect of each previous year included in the block period;

(*b*) the total undisclosed income relating to the block period shall not include the income assessed in any regular assessment as income of such block period;

(*c*) the income assessed in this Chapter shall not be included in the regular assessment of any previous year included in the block period.]

(3) Where the assessee proves to the satisfaction of the Assessing Officer that any part of income referred to in sub-section (1) relates to an assessment year for which the previous year has not ended or the date of filing the return of income

85. Inserted by the Finance Act, 2002, w.r.e.f. 1-7-1995.

86. Inserted by the Finance (No. 2) Act, 1998, w.r.e.f. 1-7-1995.

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under sub-section (1) of section 139 for any previous year has not expired, and such income or the transactions relating to such income are recorded on or before the date of the search or requisition in the books of account or other documents maintained in the normal course relating to such previous years, the said income shall not be included in the block period.

Computation of undisclosed income of the block period.

158BB. (1) The undisclosed income of the block period shall be the aggregate of the total income of the previous years falling within the block period computed, [87][in accordance with the provisions of this Act, on the basis of evidence found as a result of search or requisition of books of account or other documents and such other materials or information as are available with the Assessing Officer and relatable to such evidence], as reduced by the aggregate of the total income, or as the case may be, as increased by the aggregate of the losses of such previous years, determined,—

(*a*) where assessments under section 143 or section 144 or section 147 have been concluded [88][prior to the date of commencement of the search or the date of requisition], on the basis of such assessments;

(*b*) where returns of income have been filed under section 139 [89][or in response to a notice issued under sub-section (1) of section 142 or section 148] but assessments have not been made till the date of search or requisition, on the basis of the income disclosed in such returns;

[90][(*c*) where the due date for filing a return of income has expired, but no return of income has been filed,—

(*A*) on the basis of entries as recorded in the books of account and other documents maintained in the normal course on or before the date of the search or requisition where such entries result in computation of loss for any previous year falling in the block period; or

(*B*) on the basis of entries as recorded in the books of account and other documents maintained in the normal course on or before the date of the search or requisition where such income does not exceed the maximum amount not chargeable to tax for any previous year falling in the block period;

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87. Substituted for "in accordance with the provisions of Chapter IV, on the basis of evidence found as a result of search or requisition of books of account or documents and such other materials or information as are available with the Assessing Officer" by the Finance Act, 2002, w.r.e.f. 1-7-1995.

88. Inserted, *ibid.*

89. Substituted for "or section 147", *ibid.*

90. Clauses (*c*) and (*ca*) substituted for clause (*c*), *ibid.* Prior to its substitution, clause (*c*) read as under :

"(*c*) where the due date for filing a return of income has expired but no return of income has been filed, as *nil*"

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(*ca*) where the due date for filing a return of income has expired, but no return of income has been filed, as *nil*, in cases not falling under clause (*c*);]

(*d*) where the previous year has not ended or the date of filing the return of income under sub-section (1) of section 139 has not expired, on the basis of entries relating to such income or transactions as recorded in the books of account and other documents maintained in the normal course on or before the date of the search or requisition relating to such previous years;

(*e*) where any order of settlement has been made under sub-section (4) of section 245D, on the basis of such order;

(*f*) where an assessment of undisclosed income had been made earlier under clause (*c*) of section 158BC, on the basis of such assessment.

Explanation.—For the purposes of determination of undisclosed income,—

(*a*) the total income or loss of each previous year shall, for the purpose of aggregation, be taken as the total income or loss computed in accordance with the provisions of [91][this Act] without giving effect to set off of brought forward losses under Chapter VI or unabsorbed depreciation under sub-section (2) of section 32:

[92][**Provided** that in computing deductions under Chapter VI-A for the purposes of the said aggregation, effect shall be given to set off of brought forward losses under Chapter VI or unabsorbed depreciation under sub-section (2) of section 32;]

[93][(*b*) of a firm, returned income and total income assessed for each of the previous years falling within the block period shall be the income determined before allowing deduction of salary, interest, commission, bonus or remuneration by whatever name called [94][to any partner not being a working partner] :

Provided that undisclosed income of the firm so determined shall not be chargeable to tax in the hands of the partners, whether on allocation or on account of enhancement;]

(*c*) assessment under section 143 includes determination of income under sub-section (1) or sub-section (1B) of section 143.

(2) In computing the undisclosed income of the block period, the provisions of sections 68, 69, 69A, 69B and 69C shall, so far as may be, apply and references to "financial year" in those sections shall be construed as references to the relevant previous year falling in the block period including the previous year ending with the date of search or of the requisition.

(3) The burden of proving to the satisfaction of the Assessing Officer that any undisclosed income had already been disclosed in any return of income filed by

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91. Substituted for "Chapter IV" by the Finance Act, 2002, w.r.e.f. 1-7-1995.

92. Inserted, *ibid.*

93. Substituted by the Finance (No. 2) Act, 1996, w.r.e.f. 1-7-1995.

94. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999.

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the assessee before the commencement of search or of the requisition, as the case may be, shall be on the assessee.

(4) For the purpose of assessment under this Chapter, losses brought forward from the previous year under Chapter VI or unabsorbed depreciation under sub-section (2) of section 32 shall not be set off against the undisclosed income determined in the block assessment under this Chapter, but may be carried forward for being set off in the regular assessments.

Procedure for block assessment.

158BC. Where any search has been conducted under section 132 or books of account, other documents or assets are requisitioned under section 132A, in the case of any person, then,—

[95][(*a*) the Assessing Officer shall—

(*i*) in respect of search initiated or books of account or other documents or any assets requisitioned after the 30th day of June, 1995, but before the 1st day of January, 1997, serve a notice to such person requiring him to furnish within such time not being less than fifteen days;

(*ii*) in respect of search initiated or books of account or other documents or any assets requisitioned on or after the 1st day of January, 1997, serve a notice to such person requiring him to furnish within such time not being less than fifteen days but not more than forty-five days,

as may be specified in the notice a return in the prescribed form[96] and verified in the same manner as a return under clause (*i*) of sub-section (1) of section 142, setting forth his total income including the undisclosed income for the block period :

Provided that no notice under section 148 is required to be issued for the purpose of proceeding under this Chapter :

Provided further that a person who has furnished a return under this clause shall not be entitled to file a revised return;]

(*b*) the Assessing Officer shall proceed to determine the undisclosed income of the block period in the manner laid down in section 158BB and the provisions of section 142, sub-sections (2) and (3) of section 143 [97][, section 144 and section 145] shall, so far as may be, apply;

(*c*) the Assessing Officer, on determination of the undisclosed income of the block period in accordance with this Chapter, shall pass an order of assessment and determine the tax payable by him on the basis of such assessment;

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95. Substituted by the Income-tax (Amendment) Act, 1997, w.e.f. 1-1-1997.

96. See rule 12(1A) (as it stood at the relevant date) and Form No. 2B.

97. Substituted for "and section 144" by the Finance Act, 2002, w.r.e.f. 1-7-1995.

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[98][(*d*) the assets seized under section 132 or requisitioned under section 132A shall be dealt with in accordance with the provisions of section 132B.]

Undisclosed income of any other person.

158BD. Where the Assessing Officer is satisfied that any undisclosed income belongs to any person, other than the person with respect to whom search was made under section 132 or whose books of account or other documents or any assets were requisitioned under section 132A, then, the books of account, other documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed [99][under section 158BC] against such other person and the provisions of this Chapter shall apply accordingly.

Time limit for completion of block assessment.

158BE. [1][(1) The order under section 158BC shall be passed—

(*a*) within one year from the end of the month in which the last of the authorisations for search under section 132 or for requisition under section 132A, as the case may be, was executed in cases where a search is initiated or books of account or other documents or any assets are requisitioned after the 30th day of June, 1995, but before the 1st day of January, 1997;

(*b*) within two years from the end of the month in which the last of the authorisations for search under section 132 or for requisition under section 132A, as the case may be, was executed in cases where a search is initiated or books of account or other documents or any assets are requisitioned on or after the 1st day of January, 1997.

(2) The period of limitation for completion of block assessment in the case of the other person referred to in section 158BD shall be—

(*a*) one year from the end of the month in which the notice under this Chapter was served on such other person in respect of search initiated or books of account or other documents or any assets requisitioned after the 30th day of June, 1995, but before the 1st day of January, 1997; and

(*b*) two years from the end of the month in which the notice under this Chapter was served on such other person in respect of search initiated or books of account or other documents or any assets are requisitioned on or after the 1st day of January, 1997.]

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98. Substituted by the Finance Act, 2002, w.e.f. 1-6-2002. Prior to its substitution, clause (*d*) read as under :

'(*d*) the assets seized under section 132 or requisitioned under section 132A shall be retained to the extent necessary and the provisions of section 132B shall apply subject to such modifications as may be necessary and the references to "regular assessment" or "reassessment" in section 132B shall be construed as references to "block assessment".'

99. Inserted, *ibid.*

1. Substituted by the Income-tax (Amendment) Act, 1997, w.e.f. 1-1-1997.

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[2][*Explanation 1.*—In computing the period of limitation for the purposes of this section,—

(*i*) the period during which the assessment proceeding is stayed by an order or injunction of any court; or

(*ii*) the period commencing from the day on which the Assessing Officer directs the assessee to get his accounts audited under sub-section (2A) of section 142 and ending on the day on which the assessee is required to furnish a report of such audit under that sub-section; or

(*iii*) the time taken in reopening the whole or any part of the proceeding or giving an opportunity to the assessee to be re-heard under the proviso to section 129; or

(*iv*) in a case where an application made before the Settlement Commission under section 245C is rejected by it or is not allowed to be proceeded with by it, the period commencing on the date on which such application is made and ending with the date on which the order under sub-section (1) of section 245D is received by the Commissioner under sub-section (2) of that section,

shall be excluded:

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation referred to in sub-section (1) or sub-section (2) available to the Assessing Officer for making an order under clause (*c*) of section 158BC is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly.]

[3][*Explanation 2.*—For the removal of doubts, it is hereby declared that the authorisation referred to in sub-section (1) shall be deemed to have been executed,—

(*a*) in the case of search, on the conclusion of search as recorded in the last panchnama drawn in relation to any person in whose case the warrant of authorisation has been issued;

(*b*) in the case of requisition under section 132A, on the actual receipt of the books of account or other documents or assets by the Authorised Officer.]

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2. Substituted by the Finance Act, 2002, w.e.f. 1-6-2002. Prior to its substitution, *Explanation 1,* as inserted by the Finance (No. 2) Act, 1996, w.r.e.f. 1-7-1995 and amended by the Finance (No. 2) Act, 1998, w.r.e.f. 1-7-1995, read as under :

"*Explanation 1.*—In computing the period of limitation for the purposes of this section, the period—

(*i*) during which the assessment proceeding is stayed by an order or injunction of any court, or

(*ii*) commencing from the day on which the Assessing Officer directs the assessee to get his accounts audited under sub-section (2A) of section 142 and ending on the day on which the assessee is required to furnish a report of such audit under that sub-section,

shall be excluded."

3. Inserted by the Finance (No. 2) Act, 1998, w.r.e.f. 1-7-1995.

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Certain interests and penalties not to be levied or imposed.

158BF. No interest under the provisions of section 234A, 234B or 234C or penalty under the provisions of clause (*c*) of sub-section (1) of section 271 or section 271A or section 271B shall be levied or imposed upon the assessee in respect of the undisclosed income determined in the block assessment.

[4][**Levy of interest and penalty in certain cases.**

158BFA. (1) Where the return of total income including undisclosed income for the block period, in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A on or after the 1st day of January, 1997, as required by a notice under clause (*a*) of section 158BC, is furnished after the expiry of the period specified in such notice, or is not furnished, the assessee shall be liable to pay simple interest at the rate of [5][one] per cent of the tax on undisclosed income, determined under clause (*c*) of section 158BC, for every month or part of a month comprised in the period commencing on the day immediately following the expiry of the time specified in the notice, and—

(*a*) where the return is furnished after the expiry of the time aforesaid, ending on the date of furnishing the return; or

(*b*) where no return has been furnished, on the date of completion of assessment under clause (*c*) of section 158BC.

(2) The Assessing Officer or the Commissioner (Appeals) in the course of any proceedings under this Chapter, may direct that a person shall pay by way of penalty a sum which shall not be less than the amount of tax leviable but which shall not exceed three times the amount of tax so leviable in respect of the undisclosed income determined by the Assessing Officer under clause (*c*) of section 158BC :

Provided that no order imposing penalty shall be made in respect of a person if—

(*i*) such person has furnished a return under clause (*a*) of section 158BC;

(*ii*) the tax payable on the basis of such return has been paid or, if the assets seized consist of money, the assessee offers the money so seized to be adjusted against the tax payable;

(*iii*) evidence of tax paid is furnished along with the return; and

(*iv*) an appeal is not filed against the assessment of that part of income which is shown in the return :

Provided further that the provisions of the preceding proviso shall not apply where the undisclosed income determined by the Assessing Officer is in excess of the income shown in the return and in such cases the penalty shall be imposed on that portion of undisclosed income determined which is in excess of the amount of undisclosed income shown in the return.

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4. Inserted by the Income-tax (Amendment) Act, 1997, w.e.f. 1-1-1997.

5. Substituted for “one and one-fourth” by the Taxation Laws (Amendment) Act, 2003, w.e.f. 8-9-2003. Earlier the quoted words were substituted for “two” by the Finance Act, 2001, w.e.f. 1-6-2001.

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(3) No order imposing a penalty under sub-section (2) shall be made,—

(*a*) unless an assessee has been given a reasonable opportunity of being heard;

(*b*) by the Assistant Commissioner [6][or Deputy Commissioner] or the Assistant Director [6][or Deputy Director], as the case may be, where the amount of penalty exceeds twenty thousand rupees except with the previous approval of the [7][Joint] Commissioner or the [7][Joint] Director, as the case may be;

(*c*) in a case where the assessment is the subject-matter of an appeal to the Commissioner (Appeals) under section 246 [8][or section 246A] or an appeal to the Appellate Tribunal under section 253, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which the order of the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal is received by the Chief Commissioner or the Commissioner, whichever period expires later;

(*d*) in a case where the assessment is the subject-matter of revision under section 263, after the expiry of six months from the end of the month in which such order of revision is passed;

(*e*) in any case other than those mentioned in clauses (*c*) and (*d*), after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later;

(*f*) in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, after the 30th day of June, 1995 but before the 1st day of January, 1997.

Explanation.—In computing the period of limitation for the purpose of this section,—

(*i*) the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129;

(*ii*) the period during which the immunity granted under section 245H remained in force; and

(*iii*) the period during which the proceedings under sub-section (2) are stayed by an order or injunction of any court,

shall be excluded.

(4) An income-tax authority on making an order under sub-section (2) imposing a penalty, unless he is himself an Assessing Officer, shall forthwith send a copy of such order to the Assessing Officer.]

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6. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

7. Substituted for "Deputy", *ibid.*

8. Inserted by the Finance Act, 2000, w.e.f. 1-6-2000.

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[9][**Authority competent to make the block assessment.**

158BG. The order of assessment for the block period shall be passed by an Assessing Officer not below the rank of an Assistant Commissioner [10][or Deputy Commissioner] or an Assistant Director [10][or Deputy Director], as the case may be :

Provided that no such order shall be passed without the previous approval of—

(*a*) the Commissioner or Director, as the case may be, in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, after the 30th day of June, 1995 but before the 1st day of January, 1997;

(*b*) the [11][Joint] Commissioner or the [11][Joint] Director, as the case may be, in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, on or after the 1st day of January, 1997.]

Application of other provisions of this Act.

158BH. Save as otherwise provided in this Chapter, all other provisions of this Act shall apply to assessment made under this Chapter.]

[12][**Chapter not to apply after certain date.**

158BI. The provisions of this Chapter shall not apply where a search is initiated under section 132, or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003.]

CHAPTER XV

LIABILITY IN SPECIAL CASES

A.—Legal representatives

Legal representatives.[13]

159. (1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased.

(2) For the purpose of making an assessment (including an assessment, reassessment or recomputation under section 147) of the income of the deceased and for the purpose of levying any sum in the hands of the legal representative in accordance with the provisions of sub-section (1),—

(*a*) any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased;

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9. Substituted by the Income-tax (Amendment) Act, 1997, w.e.f. 1-1-1997. Earlier section 158BG was amended by the Finance (No. 2) Act, 1996, w.e.f. 1-10-1996.

10. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

11. Substituted for "Deputy", *ibid*.

12. Inserted by the Finance Act, 2003, w.e.f. 1-6-2003.

13. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

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(*b*) any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative; and

(*c*) all the provisions of this Act shall apply accordingly.

(3) The legal representative of the deceased shall, for the purposes of this Act, be deemed to be an assessee.

(4) Every legal representative shall be personally liable for any tax payable by him in his capacity as legal representative if, while his liability for tax remains undischarged, he creates a charge on or disposes of or parts with any assets[14] of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with.

(5) The provisions of sub-section (2) of section 161, section 162, and section 167, shall, so far as may be and to the extent to which they are not inconsistent with the provisions of this section, apply in relation to a legal representative.

(6) The liability of a legal representative under this section shall, subject to the provisions of sub-section (4) and sub-section (5), be limited to the extent to which the estate is capable of meeting the liability.

B.—Representative assessees - General provisions

Representative assessee.[15]

160. (1) For the purposes of this Act, "representative assessee" means—

(*i*) in respect of the income of a non-resident specified in [16][***] sub-section (1) of section 9, the agent of the non-resident, including a person who is treated as an agent under section 163;

(*ii*) in respect of the income of a minor, lunatic or idiot, the guardian or manager who is entitled to receive or is in receipt of such income on behalf of such minor, lunatic or idiot;

(*iii*) in respect of income which the Court of Wards, the Administrator-General, the Official Trustee or any receiver or manager (including any person, whatever his designation, who in fact manages property on behalf of another) appointed by or under any order of a court, receives or is entitled to receive, on behalf or for the benefit of any person, such Court of Wards, Administrator-General, Official Trustee, receiver or manager;

(*iv*) in respect of income which a trustee[17] appointed under a trust declared by a duly executed instrument in writing whether testamentary or otherwise [including any wakf[17] deed which is valid under the Mussalman Wakf Validating Act, 1913 (6 of 1913),] receives or is entitled to receive on behalf or for the benefit of any person, such trustee or trustees;

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14. For the meaning of the term "assets", *see* Taxmann's Direct Taxes Manual, Vol. 3.

15. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

16. "clause (*i*) of" omitted by the Finance Act, 1976, w.e.f. 1-6-1976.

17. For the meaning of the terms "trustee" and "wakf", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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[18][(*v*) in respect of income which a trustee appointed under an oral trust receives or is entitled to receive on behalf or for the benefit of any person, such trustee or trustees.

Explanation 1.—A trust which is not declared by a duly executed instrument in writing [including any wakf deed which is valid under the Mussalman Wakf Validating Act, 1913 (6 of 1913),] shall be deemed, for the purposes of clause (*iv*), to be a trust declared by a duly executed instrument in writing if a statement in writing, signed by the trustee or trustees, setting out the purpose or purposes of the trust, particulars as to the trustee or trustees, the beneficiary or beneficiaries and the trust property, is forwarded to the [19][Assessing] Officer,—

(*i*) where the trust has been declared before the 1st day of June, 1981, within a period of three months from that day; and

(*ii*) in any other case, within three months from the date of declaration of the trust.

Explanation 2.—For the purposes of clause (*v*), "oral trust" means a trust which is not declared by a duly executed instrument in writing [including any wakf deed which is valid under the Mussalman Wakf Validating Act, 1913 (6 of 1913),] and which is not deemed under *Explanation 1* to be a trust declared by a duly executed instrument in writing.]

(2) Every representative assessee shall be deemed to be an assessee for the purposes of this Act.

Liability of representative assessee.

161. (1) Every representative assessee, as regards the income in respect of which he is a representative assessee, shall be subject to the same duties, responsibilities and liabilities as if the income were income received by or accruing to or in favour of him beneficially, and shall be liable to assessment in his own name in respect of that income; but any such assessment shall be deemed to be made upon him in his representative capacity only, and the tax shall, subject to the other provisions contained in this Chapter, be levied upon and recovered from him in like manner and to the same extent as it would be leviable upon and recoverable from the person represented by him.

[20][(1A) Notwithstanding anything contained in sub-section (1), where any income in respect of which the person mentioned in clause (*iv*) of sub-section (1) of section 160 is liable as representative assessee consists of, or includes, profits and gains of business, tax shall be charged on the whole of the income in respect of which such person is so liable at the maximum marginal rate :

Provided that the provisions of this sub-section shall not apply where such profits and gains are receivable under a trust declared by any person by will exclusively for the benefit of any relative dependent on him for support and maintenance, and such trust is the only trust so declared by him.

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18. Inserted by the Finance Act, 1981, w.e.f. 1-4-1981.

19. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

20. Inserted by the Finance Act, 1984, w.e.f. 1-4-1985.

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[21][***]

(2) Where any person is, in respect of any income, assessable under this Chapter in the capacity of a representative assessee, he shall not, in respect of that income, be assessed under any other provision of this Act.

Right of representative assessee to recover tax paid.

162. (1) Every representative assessee who, as such, pays any sum under this Act, shall be entitled to recover the sum so paid from the person on whose behalf it is paid, or to retain out of any moneys that may be in his possession or may come to him in his representative capacity, an amount equal to the sum so paid.

(2) Any representative assessee, or any person who apprehends that he may be assessed as a representative assessee, may retain out of any money payable by him to the person on whose behalf he is liable to pay tax (hereinafter in this section referred to as the principal), a sum equal to his estimated liability under this Chapter, and in the event of any disagreement between the principal and such representative assessee or person as to the amount to be so retained, such representative assessee or person may secure from the [22][Assessing] Officer a certificate stating the amount to be so retained pending final settlement of the liability, and the certificate so obtained shall be his warrant for retaining that amount.

(3) The amount recoverable from such representative assessee or person at the time of final settlement shall not exceed the amount specified in such certificate, except to the extent to which such representative assessee or person may at such time have in his hands additional assets of the principal.

C.—Representative assessees—Special cases

Who may be regarded as agent.[23]

163. (1) For the purposes of this Act, "agent", in relation to a non-resident, includes any person in India—

(*a*) who is employed by or on behalf of the non-resident; or

(*b*) who has any business connection with the non-resident; or

(*c*) from or through whom the non-resident is in receipt of any income, whether directly or indirectly; or

(*d*) who is the trustee of the non-resident;

and includes also any other person who, whether a resident or non-resident, has acquired by means of a transfer, a capital asset in India :

Provided that a broker in India who, in respect of any transactions, does not deal directly with or on behalf of a non-resident principal but deals with or through a non-resident broker shall not be deemed to be an agent under this

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21. Omitted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1991.

22. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

23. *See* Circular No. 707, dated 11-7-1995. For relevant case laws, *see* Taxmann's Master Guide to Income-tax Act.

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section in respect of such transactions, if the following conditions are fulfilled, namely:—

(*i*) the transactions are carried on in the ordinary course of business through the first-mentioned broker; and

(*ii*) the non-resident broker is carrying on such transactions in the ordinary course of his business and not as a principal.

[24][*Explanation*.—For the purposes of this sub-section, the expression "business connection" shall have the meaning assigned to it in *Explanation 2* to clause (*i*) of sub-section (1) of section 9 of this Act.]

(2) No person shall be treated as the agent of a non-resident unless he has had an opportunity of being heard by the [25][Assessing] Officer as to his liability to be treated as such.

[26][**Charge of tax where share of beneficiaries unknown.**

164. (1) [27][Subject to the provisions of sub-sections (2) and (3), where] any income in respect of which the persons mentioned in clauses (*iii*) and (*iv*) of sub-section (1) of section 160 are liable as representative assessees or any part thereof is not specifically receivable on behalf or for the benefit of[28] any one person or where the individual shares of the persons on whose behalf or for whose benefit such income or such part thereof is receivable are indeterminate or unknown (such income, such part of the income and such persons being hereafter in this section referred to as "relevant income", "part of relevant income" and "beneficiaries", respectively),[29][tax shall be charged on the relevant income or part of relevant income at the maximum marginal rate[30] :]

Provided that in a case where—

[31][(*i*) none of the beneficiaries has any other income chargeable under this Act exceeding the maximum amount not chargeable to tax in the case of an [32][association of persons] or is a beneficiary under any other trust; or]

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24. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

25. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

26. Substituted by the Finance Act, 1970, w.e.f. 1-4-1971.

27. Restored to its original expression by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Earlier, it was substituted by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date.

28. For the meaning of the term/expression "for the benefit of", *see* Taxmann's Direct Taxes Manual, Vol. 3.

29. Substituted for the portion beginning with "tax shall be charged" and ending with "more beneficial to the revenue" by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1980.

30. For the meaning of the term/expression "maximum marginal rate", *see* Taxmann's Direct Taxes Manual, Vol. 3.

31. Substituted for "(*i*) none of the beneficiaries has any other income chargeable under this Act; or" by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1980.

32. Restored to its original expression by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Earlier, it was substituted by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date.

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(*ii*) the relevant income or part of relevant income is receivable under [33][a trust declared by any person by will and such trust is the only trust so declared by him]; or

(*iii*) the relevant income or part of relevant income is receivable under a trust created before the 1st day of March, 1970, by a non-testamentary instrument and the [34][Assessing] Officer is satisfied, having regard to all the circumstances existing at the relevant time, that the trust was created *bona fide* exclusively for the benefit of the relatives of the settlor, or where the settlor is a Hindu undivided family, exclusively for the benefit of the members of such family, in circumstances where such relatives or members were mainly dependent on the settlor for their support and maintenance; or

(*iv*) the relevant income is receivable by the trustees on behalf of a provident fund, superannuation fund, gratuity fund, pension fund or any other fund created *bona fide* by a person carrying on a business or profession exclusively for the benefit of persons employed in such business or profession,

tax shall be charged [35][on the relevant income or part of relevant income as if it] were the total income of an [36][association of persons] :

[37][**Provided further** that where any income in respect of which the person mentioned in clause (*iv*) of sub-section (1) of section 160 is liable as representative assessee consists of, or includes, profits and gains of business, the preceding proviso shall apply only if such profits and gains are receivable under a trust declared by any person by will exclusively for the benefit of any relative dependent on him for support and maintenance, and such trust is the only trust so declared by him.]

[38][(2) In the case of relevant income which is derived from property held under trust wholly for charitable or religious purposes, [39][or which is of the nature referred to in sub-clause (*iia*) of clause (*24*) of section 2,] [40][or which is of the nature referred to in sub-section (4A) of section 11,] tax shall be charged on so much of the relevant income as is not exempt under section 11 [41][or section 12],

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33. Substituted for "a trust declared by will" by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1980.

34. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

35. Substituted for "as if the relevant income or part of relevant income" by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1980.

36. Restored to its original expression by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Earlier, it was substituted by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date.

37. Inserted by the Finance Act, 1984, w.e.f. 1-4-1985.

38. Reintroduced by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Earlier, it was omitted by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date.

39. Inserted by the Finance Act, 1972, w.e.f. 1-4-1973.

40. Inserted by the Finance Act, 1983, w.e.f. 1-4-1984.

41. Inserted by the Finance Act, 1972, w.e.f. 1-4-1973.

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as if the relevant income not so exempt were the income of an association of persons :

[42][**Provided** that in a case where the whole or any part of the relevant income is not exempt under section 11 or section 12 by virtue of the provisions contained in clause (*c*) or clause (*d*) of sub-section (1) of section 13, tax shall be charged on the relevant income or part of relevant income at the maximum marginal rate.]]

[43][(3) In a case where the relevant income is derived from property held under trust in part only for charitable or religious purposes [44][or is of the nature referred to in sub-clause (*iia*) of clause (*24*) of section 2] [45][or is of the nature referred to in sub-section (4A) of section 11,] and either the relevant income applicable to purposes other than charitable or religious purposes (or any part thereof) [46][is not specifically receivable on behalf or for the benefit of any one person or the individual shares of the beneficiaries in the income so applicable are indeterminate or unknown, the tax chargeable on the relevant income shall be the aggregate of—

(*a*) the tax which would be chargeable on that part of the relevant income which is applicable to charitable or religious purposes (as reduced by the income, if any, which is exempt under section 11) as if such part (or such part as so reduced) were the total income of an association of persons; and

(*b*) the tax on that part of the relevant income which is applicable to purposes other than charitable or religious purposes, and which is either not specifically receivable on behalf or for the benefit of any one person or in respect of which the shares of the beneficiaries are indeterminate or unknown, at the maximum marginal rate :]

Provided that in a case where—

[47][(*i*) none of the beneficiaries in respect of the part of the relevant income which is not applicable to charitable or religious purposes has any other income chargeable under this Act exceeding the maximum amount not chargeable to tax in the case of an association of persons or is a beneficiary under any other trust; or]

(*ii*) the relevant income is receivable under [48][a trust declared by any person by will and such trust is the only trust so declared by him]; or

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42. Inserted by the Finance Act, 1984, w.e.f. 1-4-1985.

43. Reintroduced by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Earlier, it was omitted by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date.

44. Inserted by the Finance Act, 1972, w.e.f. 1-4-1973.

45. Inserted by the Finance Act, 1983, w.e.f. 6-10-1984.

46. Substituted for the portion beginning with "is not specifically receivable" and ending with "whichever course would be more beneficial to the revenue:" by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1980.

47. Substituted for "(*i*) none of the beneficiaries in respect of the part of the relevant income which is not applicable to charitable or religious purposes has any other income chargeable under this Act; or", *ibid.*

48. Substituted for "a trust declared by will", *ibid.*

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(*iii*) the relevant income is receivable under a trust created before the 1st day of March, 1970, by a non-testamentary instrument and the [49][Assessing] Officer is satisfied, having regard to all the circumstances existing at the relevant time, that the trust, to the extent it is not for charitable or religious purposes, was created *bona fide* exclusively for the benefit of the relatives of the settlor, or where the settlor is a Hindu undivided family, exclusively for the benefit of the members of such family, in circumstances where such relatives or members were mainly dependent on the settlor for their support and maintenance,

tax shall be charged [50][on the relevant income] as if the relevant income (as reduced by the income, if any, which is exempt under section 11) were the total income of an association of persons :]

[51][**Provided further** that where the relevant income consists of, or includes, profits and gains of business, the preceding proviso shall apply only if the income is receivable under a trust declared by any person by will exclusively for the benefit of any relative dependent on him for support and maintenance, and such trust is the only trust so declared by him :

Provided also that in a case where the whole or any part of the relevant income is not exempt under section 11 or section 12 by virtue of the provisions contained in clause (*c*) or clause (*d*) of sub-section (1) of section 13, tax shall be charged on the relevant income or part of relevant income at the maximum marginal rate.]]

[52][*Explanation 1.*—For the purposes of this section,—

(*i*) any income in respect of which the persons mentioned in clause (*iii*) and clause (*iv*) of sub-section (1) of section 160 are liable as representative assessee or any part thereof shall be deemed as being not specifically receivable on behalf or for the benefit of any one person unless the person on whose behalf or for whose benefit such income or such part thereof is receivable during the previous year is expressly stated in the order of the court or the instrument of trust or wakf deed, as the case may be, and is identifiable as such on the date of such order, instrument or deed ;

(*ii*) the individual shares of the persons on whose behalf or for whose benefit such income or such part thereof is received shall be deemed to be indeterminate or unknown unless the individual shares of the persons on whose behalf or for whose benefit such income or such part thereof is receivable, are expressly stated in the order of the court or the instrument of trust or wakf deed, as the case may be, and are ascertainable as such on the date of such order, instrument or deed.

Explanation 2.—[*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.*]

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49. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

50. Inserted by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1980.

51. Inserted by the Finance Act, 1984, w.e.f. 1-4-1985.

52. Inserted by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1980.

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[53][**Charge of tax in case of oral trust.**

164A. Where a trustee receives or is entitled to receive any income on behalf or for the benefit of any person under an oral trust, then, notwithstanding anything contained in any other provision of this Act, tax shall be charged on such income at the maximum marginal rate.

Explanation.—For the purposes of this section,—

(*i*) [54][***]

(*ii*) "oral trust" shall have the meaning assigned to it in *Explanation 2* below sub-section (1) of section 160.]

Case where part of trust income is chargeable.

165. Where part only of the income of a trust is chargeable under this Act, that proportion only of the income receivable by a beneficiary from the trust which the part so chargeable bears to the whole income of the trust shall be deemed to have been derived from that part.

D.—Representative assessees - Miscellaneous provisions

Direct assessment or recovery not barred.

[55]**166.** Nothing in the foregoing sections in this Chapter shall prevent either the direct assessment of the person on whose behalf or for whose benefit income therein referred to is receivable, or the recovery from such person of the tax payable in respect of such income.

Remedies against property in cases of representative assessees.

167. The [56][Assessing] Officer shall have the same remedies against all property of any kind vested in or under the control or management of any representative assessee as he would have against the property of any person liable to pay any tax, and in as full and ample a manner, whether the demand is raised against the representative assessee or against the beneficiary direct.

[57][*DD.—Firms, association of persons and body of individuals*]

[58][**Charge of tax in the case of a firm.**[59]

167A. In the case of a firm which is assessable as a firm, tax shall be charged on its total income at the [60][rate as specified in the Finance Act of the relevant year].]

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53. Inserted by the Finance Act, 1981, w.e.f. 1-4-1981.

54. Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

55. *See* also Letter [F. No. 45/78/66-ITJ (5)], dated 24-2-1967. For details, *see* Taxmann's Master Guide to Income-tax Act.

56. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

57. Substituted for the existing sub-heading 'DD' by the Finance Act, 1992, w.e.f. 1-4-1993. Prior to substitution, sub-heading 'DD' was inserted by the Finance Act, 1981, w.e.f. 1-4-1981 and later amended by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989 and the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

58. Inserted by the Finance Act, 1992, w.e.f. 1-4-1993. Earlier section 167A was omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Prior to omission, section 167A was substituted by the Finance Act, 1985, w.e.f. 1-4-1985.

59. *See* also Circular No. 320, dated 11-1-1982. For details, *see* Taxmann's Master Guide to Income-tax Act.

60. Substituted for "maximum marginal rate" by the Finance Act, 1997, w.e.f. 1-4-1998.

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[61][**Charge of tax where shares of members in association of persons or body of individuals unknown, etc.**

[62]**167B.** (1) Where the individual shares of the members of an association of persons or body of individuals (other than a company or a co-operative society or a society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India) in the whole or any part of the income of such association or body are indeterminate or unknown, tax shall be charged on the total income of the association or body at the maximum marginal rate :

Provided that, where the total income of any member of such association or body is chargeable to tax at a rate which is higher than the maximum marginal rate, tax shall be charged on the total income of the association or body at such higher rate.

(2) Where, in the case of an association of persons or body of individuals as aforesaid [not being a case falling under sub-section (1)],—

(*i*) the total income of any member thereof for the previous year (excluding his share from such association or body) exceeds the maximum amount which is not chargeable to tax in the case of that member under the Finance Act of the relevant year, tax shall be charged on the total income of the association or body at the maximum marginal rate;

(*ii*) any member or members thereof is or are chargeable to tax at a rate or rates which is or are higher than the maximum marginal rate, tax shall be charged on that portion or portions of the total income of the association or body which is or are relatable to the share or shares of such member or members at such higher rate or rates, as the case may be, and the balance of the total income of the association or body shall be taxed at the maximum marginal rate.

Explanation.—For the purposes of this section, the individual shares of the members of an association of persons or body of individuals in the whole or any part of the income of such association or body shall be deemed to be indeterminate or unknown if such shares (in relation to the whole or any part of such income) are indeterminate or unknown on the date of formation of such association or body or at any time thereafter.]

[63][**Liability of partners of limited liability partnership in liquidation.**

167C. *Notwithstanding anything contained in the Limited Liability Partnership Act, 2008 (6 of 2009), where any tax due from a limited liability partnership in respect of any income of any previous year or from any other person in respect of any income of any previous year during which such other person was a limited*

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61. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

62. *See* also Circular No. 577, dated 4-9-1990. For details, *see* Taxmann's Master Guide to Income-tax Act.

63. Inserted by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2010**.

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liability partnership cannot be recovered, in such case, every person who was a partner of the limited liability partnership at any time during the relevant previous year, shall be jointly and severally liable for the payment of such tax unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the limited liability partnership.]

E.—Executors

Executors.

168. (1) Subject as hereinafter provided, the income of the estate of a deceased person shall be chargeable to tax in the hands of the executor,—

(*a*) if there is only one executor, then, as if the executor[64] were an individual; or

(*b*) if there are more executors than one, then, as if the executors were an association of persons;

and for the purposes of this Act, the executor shall be deemed to be resident or non-resident according as the deceased person was a resident or non-resident during the previous year in which his death took place.

(2) The assessment of an executor under this section shall be made separately from any assessment that may be made on him in respect of his own income.

(3) Separate assessments shall be made under this section on the total income of each completed previous year or part thereof as is included in the period from the date of the death to the date of complete distribution to the beneficiaries of the estate according to their several interests[65].

(4) In computing the total income of any previous year under this section, any income of the estate of that previous year distributed to, or applied to the benefit of, any specific legatee of the estate during that previous year shall be excluded; but the income so excluded shall be included in the total income of the previous year of such specific legatee.

Explanation.—In this section, "executor" includes an administrator or other person administering the estate of a deceased person[66].

Right of executor to recover tax paid.

169. The provisions of section 162 shall, so far as may be, apply in the case of an executor in respect of tax paid or payable by him as they apply in the case of a representative assessee.

F.—Succession to business or profession

Succession to business otherwise than on death.

170. (1) Where a person carrying on any business or profession (such person hereinafter in this section being referred to as the predecessor) has been

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64. For the meaning of the term "executor", *see* Taxmann's Direct Taxes Manual, Vol. 3.

65. For the meaning of expression "according to their several interests", *see* Taxmann's Direct Taxes Manual, Vol. 3.

66. For the meaning of expression "other person . . . deceased person", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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succeeded therein by any other person (hereinafter in this section referred to as the successor) who continues to carry on that business or profession,—

(*a*) the predecessor shall be assessed in respect of the income of the previous year in which the succession took place up to the date of succession;

(*b*) the successor shall be assessed in respect of the income of the previous year after the date of succession.

(2) Notwithstanding anything contained in sub-section (1), when the predecessor cannot be found, the assessment of the income of the previous year in which the succession took place up to the date of succession and of the previous year preceding that year shall be made on the successor in like manner and to the same extent as it would have been made on the predecessor, and all the provisions of this Act shall, so far as may be, apply accordingly.

(3) When any sum payable under this section in respect of the income of such business or profession for the previous year in which the succession took place up to the date of succession or for the previous year preceding that year, assessed on the predecessor, cannot be recovered from him, the [67][Assessing] Officer shall record a finding to that effect and the sum payable by the predecessor shall thereafter be payable by and recoverable from the successor, and the successor shall be entitled to recover from the predecessor any sum so paid.

(4) Where any business or profession carried on by a Hindu undivided family is succeeded to, and simultaneously with the succession or after the succession there has been a partition of the joint family property between the members or groups of members, the tax due in respect of the income of the business or profession succeeded to, up to the date of succession, shall be assessed and recovered in the manner provided in section 171, but without prejudice to the provisions of this section.

Explanation.—For the purposes of this section, "income" includes any gain accruing from the transfer, in any manner whatsoever, of the business or profession as a result of the succession.

G.—Partition

Assessment after partition of a Hindu undivided family.

171. (1) A Hindu family hitherto assessed as undivided shall be deemed for the purposes of this Act to continue to be a Hindu undivided family, except where and in so far as a finding of partition has been given under this section in respect of the Hindu undivided family.

(2) Where, at the time of making an assessment under section 143 or section 144, it is claimed by or on behalf of any member of a Hindu family assessed as undivided that a partition, whether total or partial, has taken place among the

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67. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

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members of such family, the [68][Assessing] Officer shall make an inquiry thereinto after giving notice of the inquiry to all the members of the family.

(3) On the completion of the inquiry, the [68][Assessing] Officer shall record a finding as to whether there has been a total or partial partition of the joint family property, and, if there has been such a partition, the date on which it has taken place.

(4) Where a finding of total or partial partition has been recorded by the [68][Assessing] Officer under this section, and the partition took place during the previous year,—

(*a*) the total income of the joint family in respect of the period up to the date of partition shall be assessed as if no partition had taken place; and

(*b*) each member or group of members[69] shall, in addition to any tax for which he or it may be separately liable and notwithstanding anything contained in clause (*2*) of section 10, be jointly and severally liable for the tax on the income so assessed.

(5) Where a finding of total or partial partition has been recorded by the [70][Assessing] Officer under this section, and the partition took place after the expiry of the previous year, the total income of the previous year of the joint family shall be assessed as if no partition had taken place; and the provisions of clause (*b*) of sub-section (4) shall, so far as may be, apply to the case.

(6) Notwithstanding anything contained in this section, if the [71][Assessing] Officer finds after completion of the assessment of a Hindu undivided family that the family has already effected a partition, whether total or partial, the [71][Assessing] Officer shall proceed to recover the tax from every person who was a member of the family before the partition, and every such person shall be jointly and severally liable for the tax on the income so assessed.

(7) For the purposes of this section, the several liability of any member or group of members thereunder shall be computed according to the portion of the joint family property allotted to him or it at the partition, whether total or partial.

(8) The provisions of this section shall, so far as may be, apply in relation to the levy and collection of any penalty, interest, fine or other sum in respect of any period up to date of the partition, whether total or partial, of a Hindu undivided family as they apply in relation to the levy and collection of tax in respect of any such period.

[72][(9) Notwithstanding anything contained in the foregoing provisions of this section, where a partial partition has taken place after the 31st day of December,

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68. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

69. For the meaning of the expression "group of members", *see* Taxmann's Direct Taxes Manual, Vol. 3.

70. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

71. Substituted for "Income-tax", *ibid.*

72. Inserted by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1980.

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1978, among the members of a Hindu undivided family hitherto [73]assessed as undivided,—

(*a*) no claim that such partial partition has taken place shall be inquired into under sub-section (2) and no finding shall be recorded under sub-section (3) that such partial partition had taken place and any finding recorded under sub-section (3) to that effect whether before or after the 18th day of June, 1980, being the date of introduction of the Finance (No. 2) Bill, 1980, shall be null and void;

(*b*) such family shall continue to be liable to be assessed under this Act as if no such partial partition had taken place;

(*c*) each member or group of members of such family immediately before such partial partition and the family shall be jointly and severally liable for any tax, penalty, interest, fine or other sum payable under this Act by the family in respect of any period, whether before or after such partial partition;

(*d*) the several liability of any member or group of members aforesaid shall be computed according to the portion of the joint family property allotted to him or it at such partial partition,

and the provisions of this Act shall apply accordingly.]

Explanation.—In this section,—

(*a*) "partition" means—

(*i*) where the property admits of a physical division, a physical division of the property, but a physical division of the income without a physical division of the property producing the income shall not be deemed to be a partition; or

(*ii*) where the property does not admit of a physical division, then such division as the property admits of, but a mere severance of status shall not be deemed to be a partition;

(*b*) "partial partition" means a partition which is partial as regards the persons constituting the Hindu undivided family, or the properties belonging to the Hindu undivided family, or both.

H.—Profits of non-residents from occasional shipping business

Shipping business of non-residents.

[74]**172.** (1) The provisions of this section shall, notwithstanding anything contained in the other provisions of this Act, apply for the purpose of the levy and recovery of tax in the case of any ship, belonging to or chartered by a

73. For the meaning of the term "assessed", *see* Taxmann's Direct Taxes Manual, Vol. 3.

74. *See* also Circular No. 723, dated 19-9-1995; Circular No. 730, dated 14-12-1995; Circular No. 732, dated 20-12-1995 and Circular No. 9/2001, dated 9-7-2001. For details, *see* Taxmann's Master Guide to Income-tax Act.

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non-resident, which carries passengers, livestock, mail or goods shipped at a port in India [75][***].

(2) Where such a ship carries passengers, livestock, mail or goods shipped at a port in India, [76][seven and a half] per cent of the amount paid or payable on account of such carriage to the owner or the charterer or to any person on his behalf, whether that amount is paid or payable in or out of India, shall be deemed to be income accruing in India to the owner or charterer on account of such carriage.

(3) Before the departure from any port in India of any such ship, the master of the ship shall prepare and furnish to the [77][Assessing] Officer a return of the full amount paid or payable to the owner or charterer or any person on his behalf, on account of the carriage of all passengers, livestock, mail or goods shipped at that port since the last arrival of the ship thereat:

Provided that where the [77][Assessing] Officer is satisfied that it is not possible for the master of the ship to furnish the return required by this sub-section before the departure of the ship from the port and provided the master of the ship has made satisfactory arrangements for the filing of the return and payment of the tax by any other person on his behalf, the [77][Assessing] Officer may, if the return is filed within thirty days of the departure of the ship, deem the filing of the return by the person so authorised by the master as sufficient compliance with this sub-section.

(4) On receipt of the return, the [77][Assessing] Officer shall assess the income referred to in sub-section (2) and determine the sum payable as tax thereon at the rate or rates [78][in force] applicable to the total income of a company which has not made the arrangements referred to in section 194 and such sum shall be payable by the master of the ship.

[79][(4A) No order assessing the income and determining the sum of tax payable thereon shall be made under sub-section (4) after the expiry of nine months from the end of the financial year in which the return under sub-section (3) is furnished:

Provided that where the return under sub-section (3) has been furnished before the 1st day of April, 2007, such order shall be made on or before the 31st day of December, 2008.]

(5) For the purpose of determining the tax payable under sub-section (4), the [80][Assessing] Officer may call for such accounts or documents as he may require.

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75. "unless the Income-tax Officer is satisfied that there is an agent of the non-resident from whom the tax will be recoverable under the other provisions of this Act" omitted by the Finance Act, 1975, w.e.f. 1-6-1975.

76. Substituted for "one-sixth", *ibid.*

77. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

78. Substituted for "for the time being" by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

79. Inserted by the Finance Act, 2007, w.e.f. 1-4-2007.

80. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

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(6) A port clearance shall not be granted to the ship until the Collector of Customs, or other officer duly authorised to grant the same, is satisfied that the tax assessable under this section has been duly paid or that satisfactory arrangements have been made for the payment thereof.

(7) Nothing in this section shall be deemed to prevent the owner or charterer of a ship from claiming before the expiry of the assessment year relevant to the previous year in which the date of departure of the ship from the Indian port falls, that an assessment be made of his total income of the previous year and the tax payable on the basis thereof be determined in accordance with the other provisions of this Act, and if he so claims, any payment made under this section in respect of the passengers, livestock, mail or goods shipped at Indian ports during that previous year shall be treated as a payment in advance of the tax[81] leviable for that assessment year, and the difference between the sum so paid and the amount of tax found payable by him on such assessment shall be paid by him or refunded to him, as the case may be.

[82][(8) For the purposes of this section, the amount referred to in sub-section (2) shall include the amount paid or payable by way of demurrage charge or handling charge or any other amount of similar nature.]

I.—Recovery of tax in respect of non-residents

Recovery of tax in respect of non-resident from his assets.

173. Without prejudice to the provisions of sub-section (1) of section 161 or of section 167, where the person entitled to the income referred to in clause (*i*) of sub-section (1) of section 9 is a non-resident, the tax chargeable thereon, whether in his name or in the name of his agent who is liable as a representative assessee, may be recovered by deduction under any of the provisions of Chapter XVII-B and any arrears of tax may be recovered also in accordance with the provisions of this Act from any assets of the non-resident which are, or may at any time come, within India.

J.—Persons leaving India

Assessment of persons leaving India.

174. (1) Notwithstanding anything contained in section 4, when it appears to the [83][Assessing] Officer that any individual may leave India during the current assessment year or shortly after its expiry and that he has no present intention of returning to India, the total income of such individual for the period from the expiry of the previous year for that assessment year up to the probable date of his departure from India shall be chargeable to tax in that assessment year.

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81. For the meaning of the expression "payment in advance of the tax", *see* Taxmann's Direct Taxes Manual, Vol. 3.

82. Inserted by the Finance Act, 1997, w.r.e.f. 1-4-1976.

83. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

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(2) The total income of each completed previous year or part of any previous year included in such period shall be chargeable to tax at the rate or rates in force in that assessment year, and separate assessments shall be made in respect of each such completed previous year or part of any previous year.

(3) The [84][Assessing] Officer may estimate the income of such individual for such period or any part thereof, where it cannot be readily determined in the manner provided in this Act.

(4) For the purpose of making an assessment under sub-section (1), the [84][Assessing] Officer may serve a notice upon such individual requiring him to furnish within such time, not being less than seven days, as may be specified in the notice, a return in the same form and verified in the same manner [85][as a return under clause (*i*) of sub-section (1) of section 142], setting forth his total income for each completed previous year comprised in the period referred to in sub-section (1) and his estimated total income for any part of the previous year comprised in that period; and the provisions of this Act shall, so far as may be, and subject to the provisions of this section, apply as if the notice were a [86][notice issued under clause (*i*) of sub-section (1) of section 142].

(5) The tax chargeable under this section shall be in addition to the tax, if any, chargeable under any other provision of this Act.

(6) Where the provisions of sub-section (1) are applicable, any notice issued by the [87][Assessing] Officer under [88][clause (*i*) of sub-section (1) of section 142 or] section 148 in respect of any tax chargeable under any other provision of this Act may, notwithstanding anything contained in [88][clause (*i*) of sub-section (1) of section 142 or] section 148, as the case may be, require the furnishing of the return by such individual within such period, not being less than seven days, as the [89][Assessing] Officer may think proper.

[90][*JA.—Association of persons or body of individuals or artificial juridical person formed for a particular event or purpose*

Assessment of association of persons or body of individuals or artificial juridical person formed for a particular event or purpose.

174A. Notwithstanding anything contained in section 4, where it appears to the Assessing Officer that any association of persons or a body of individuals or an artificial juridical person, formed or established or incorporated for a particular event or purpose is likely to be dissolved in the assessment year in which such association of persons or a body of individuals or an artificial

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84. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

85. Substituted for "as a return under sub-section (2) of section 139", *ibid*., w.e.f. 1-4-1989.

86. Substituted for "notice issued under sub-section (2) of section 139", *ibid*.

87. Substituted for "Income-tax", *ibid*., w.e.f. 1-4-1988.

88. Substituted for "sub-section (2) of section 139 or sub-section (1) of", *ibid*.

89. Substituted for "Income-tax", *ibid*.

90. Sub-heading JA, consisting of section 174A, inserted by the Finance Act, 2002, w.e.f. 1-4-2002.

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juridical person was formed or established or incorporated or immediately after such assessment year, the total income of such association or body or juridical person for the period from the expiry of the previous year for that assessment year up to the date of its dissolution shall be chargeable to tax in that assessment year, and the provisions of sub-sections (2) to (6) of section 174 shall, so far as may be, apply to any proceedings in the case of any such person as they apply in the case of persons leaving India.]

K.—Persons trying to alienate their assets

Assessment of persons likely to transfer property to avoid tax.

175. Notwithstanding anything contained in section 4, if it appears to the [91][Assessing] Officer during any current assessment year that any person is likely to charge, sell, transfer, dispose of or otherwise part with any of his assets with a view to avoiding payment of any liability under the provisions of this Act, the total income of such person for the period from the expiry of the previous year for that assessment year to the date when the [91][Assessing] Officer commences proceedings under this section shall be chargeable to tax in that assessment year, and the provisions of sub-sections (2), (3), (4), (5) and (6) of section 174 shall, so far as may be, apply to any proceedings in the case of any such person as they apply in the case of persons leaving India.

L.—Discontinuance of business, or dissolution

Discontinued business.

[92]**176.** (1) Notwithstanding anything contained in section 4, where any business or profession is discontinued in any assessment year, the income of the period from the expiry of the previous year for that assessment year up to the date of such discontinuance may, at the discretion of the [91][Assessing] Officer, be charged to tax in that assessment year.

(2) The total income of each completed previous year or part of any previous year included in such period shall be chargeable to tax at the rate or rates in force in that assessment year, and separate assessments shall be made in respect of each such completed previous year or part of any previous year.

(3) Any person discontinuing any business or profession shall give to the [93][Assessing] Officer notice of such discontinuance within fifteen days thereof.

[94][(3A) Where any business is discontinued in any year, any sum received after the discontinuance shall be deemed to be the income of the recipient and charged to tax accordingly in the year of receipt, if such sum would have been included in the total income of the person who carried on the business had such sum been received before such discontinuance.]

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91. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

92. *See* also Instruction No. 703, dated 12-6-1974. For details, *see* Taxmann's Master Guide to Income-tax Act.

93. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

94. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

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(4) Where any profession is discontinued in any year on account of the cessation of the profession by, or the retirement or death of, the person carrying on the profession, any sum received after the discontinuance shall be deemed to be the income of the recipient and charged to tax accordingly in the year of receipt, if such sum would have been included in the total income of the aforesaid person had it been received before such discontinuance.

(5) Where an assessment is to be made under the provisions of this section, the [95][Assessing] Officer may serve on the person whose income is to be assessed or, in the case of a firm, on any person who was a partner of such firm at the time of its discontinuance or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under [96][clause (*i*) of sub-section (1) of section 142] and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under [96][clause (*i*) of sub-section (1) of section 142].

(6) The tax chargeable under this section shall be in addition to the tax, if any, chargeable under any other provision of this Act.

(7) Where the provisions of sub-section (1) are applicable, any notice issued by the [97][Assessing] Officer under [98][clause (*i*) of sub-section (1) of section 142 or] section 148 in respect of any tax chargeable under any other provisions of this Act may, notwithstanding anything contained in [99][clause (*i*) of sub-section (1) of section 142 or] section 148, as the case may be, require the furnishing of the return by the person to whom the aforesaid notices are issued within such period, not being less than seven days, as the [1][Assessing] Officer may think proper.

Association dissolved or business discontinued.

177. (1) Where any business or profession carried on by an association of persons has been discontinued or where an association of persons is dissolved, the [1][Assessing] Officer shall make an assessment of the total income of the association of persons as if no such discontinuance or dissolution had taken place, and all the provisions of this Act, including the provisions relating to the levy of a penalty or any other sum chargeable under any provision of this Act shall apply, so far as may be, to such assessment.

(2) Without prejudice to the generality of the foregoing sub-section, if the [2][Assessing] Officer or the [3][* * *] [4][Commissioner (Appeals)] in the course of any proceeding under this Act in respect of any such association of persons as is

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95. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

96. Substituted for "sub-section (2) of section 139", *ibid.,* w.e.f. 1-4-1989.

97. Substituted for "Income-tax", *ibid.*, w.e.f. 1-4-1988.

98. Substituted for "sub-section (2) of section 139", *ibid.*, w.e.f. 1-4-1989.

99. Substituted for "sub-section (2) of section 139 or sub-section (1) of", *ibid.*

1. Substituted for "Income-tax", *ibid.*, w.e.f. 1-4-1988.

2. Substituted for "Income-tax", *ibid.*

3. Words "Deputy Commissioner (Appeals) or the" omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier "Deputy Commissioner (Appeals)" was substituted for "Appellate Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

4. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

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referred to in that sub-section is satisfied that the association of persons was guilty of any of the acts specified in Chapter XXI, he may impose or direct the imposition of a penalty in accordance with the provisions of that Chapter.

(3) Every person who was at the time of such discontinuance or dissolution a member of the association of persons, and the legal representative of any such person who is deceased, shall be jointly and severally liable for the amount of tax, penalty or other sum payable, and all the provisions of this Act, so far as may be, shall apply to any such assessment or imposition of penalty or other sum.

(4) Where such discontinuance or dissolution takes place after any proceedings in respect of an assessment year have commenced, the proceedings may be continued against the persons referred to in sub-section (3) from the stage at which the proceedings stood at the time of such discontinuance or dissolution, and all the provisions of this Act shall, so far as may be, apply accordingly.

(5) Nothing in this section shall affect the provisions of sub-section (6) of section 159.

Company in liquidation.

178. (1) Every person—

(*a*) who is the liquidator of any company which is being wound up, whether under the orders of a court or otherwise ; or

(*b*) who has been appointed the receiver of any assets of a company,

(hereinafter referred to as the liquidator) shall, within thirty days after he has become such liquidator, give notice of his appointment as such to the [5][Assessing] Officer who is entitled to assess the income of the company.

(2) The [6][Assessing] Officer shall, after making such inquiries or calling for such information as he may deem fit, notify to the liquidator within three months from the date on which he receives notice of the appointment of the liquidator the amount which, in the opinion of the [6][Assessing] Officer, would be sufficient to provide for any tax which is then, or is likely thereafter to become, payable by the company.

[7][(3) The liquidator—

(*a*) shall not, without the leave of the [8][Chief Commissioner or Commissioner], part with any of the assets of the company or the properties in his hands until he has been notified by the [9][Assessing] Officer under sub-section (2) ; and

(*b*) on being so notified, shall set aside an amount, equal to the amount notified and, until he so sets aside such amount, shall not part with any of the assets of the company or the properties in his hands :

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5. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

6. Substituted for "Income-tax", *ibid.*

7. Substituted by the Finance Act, 1965, w.e.f. 1-4-1965.

8. Substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

9. Substituted for "Income-tax", *ibid.*

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Provided that nothing contained in this sub-section shall debar the liquidator from parting with such assets or properties for the purpose of the payment of the tax payable by the company or for making any payment to secured creditors whose debts are entitled under law to priority of payment over debts due to Government on the date of liquidation or for meeting such costs and expenses of the winding up of the company as are in the opinion of the [10][Chief Commissioner or Commissioner] reasonable.

(4) If the liquidator fails to give the notice in accordance with sub-section (1) or fails to set aside the amount as required by sub-section (3) or parts with any of the assets of the company or the properties in his hands in contravention of the provisions of that sub-section, he shall be personally liable for the payment of the tax which the company would be liable to pay :

Provided that if the amount of any tax payable by the company is notified under sub-section (2), the personal liability of the liquidator under this sub-section shall be to the extent of such amount.]

(5) Where there are more liquidators than one, the obligations and liabilities attached to the liquidator under this section shall attach to all the liquidators jointly and severally.

(6) The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.

[11][*M.—Private companies*]

Liability of directors of private company in liquidation.

179. [12][(1)] Notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), [13][where any tax due from a private company in respect of any income of any previous year or from any other company in respect of any income of any previous year during which such other company was a private company] cannot be recovered, then, every person who was a director of the private company at any time during the relevant previous year shall be jointly and severally liable for the payment of such tax unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

[14][(2) Where a private company is converted into a public company and the tax assessed in respect of any income of any previous year during which such company was a private company cannot be recovered, then, nothing contained in sub-section (1) shall apply to any person who was a director of such private company in relation to any tax due in respect of any income of such private company assessable for any assessment year commencing before the 1st day of April, 1962.]

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10. Substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

11. Substituted for "*M.—Private company in liquidation*" by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

12. Inserted, *ibid.*

13. Substituted for "when any private company is wound up after the commencement of this Act, and any tax assessed on the company, whether before or in the course of or after its liquidation, in respect of any income of any previous year", *ibid.*

14. Inserted, *ibid.*

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N.—Special provisions for certain kinds of income

[15]**Royalties or copyright fees for literary or artistic work.**

180. Where the time taken by the author of a literary or artistic work in the making thereof is more than twelve months, the amount received or receivable by him during any previous year on account of any lump sum consideration for the assignment or grant of any of his interests in the copyright of that work or of royalties or copyright fees (whether receivable in lump sum or otherwise), in respect of that work, shall, if he so claims, be allocated for purposes of assessment in such manner and to such period as may be prescribed :

[16][**Provided** that nothing contained in this section shall apply in relation to the previous year relevant to the assessment year commencing on or after the 1st day of April, 2000.]

Explanation.—For the purposes of this section, the expression "author" includes a joint author, and the expression "lump sum", in regard to royalties or copyright fees, includes an advance payment on account of such royalties or copyright fees which is not returnable.

[17][**Consideration for know-how.**

180A. Where the time taken by an individual, who is resident in India, for developing any know-how is more than twelve months, he may elect that the gross amount of any lump sum consideration received or receivable by him during the previous year [18][relevant to the assessment year commencing on the 1st day of April, 2000 or earlier assessment years] for allowing use of such know-how shall be treated for the purposes of charging income-tax for that year and for each of the two immediately preceding previous years as if one-third thereof were included in his income chargeable to tax for each of those years respectively and if he so elects, notwithstanding anything contained in any other provision of this Act,—

(*a*) such gross amount shall be so treated, and

(*b*) the assessments for each of the two preceding previous years shall, if made, be accordingly rectified under section 154, the period of four years specified in sub-section (7) of that section being reckoned from the end of the financial year in which the assessment relating to the previous year in which the amount was received or receivable by such individual is made.

Explanation.—For the purposes of this section, the expression "know-how" has the meaning assigned to it in section 35AB.]

[19][***]

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15. *See* rule 9(2) for manner of computation of tax on royalty, etc., in certain cases.

16. Inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

17. Inserted by the Finance Act, 1985, w.e.f. 1-4-1986.

18. Inserted by the Finance Act, 1999, w.e.f. 1-4-2000.

19. Section 181 and sub-heading *"O.—Liability of State Governments*" omitted by the Finance Act, 1988, w.e.f. 1-4-1989. Prior to its omission, section 181 was amended by the Finance Act, 1965, w.e.f. 1-4-1965.

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CHAPTER XVI

SPECIAL PROVISIONS APPLICABLE TO FIRMS

[20][*A.—Assessment of firms*]

Assessment of registered firms.

182. [21][*Omitted by the Finance Act, 1992, w.e.f. 1-4-1993.*]

Assessment of unregistered firms.

183. [22][*Omitted by the Finance Act, 1992, w.e.f. 1-4-1993.*]

[23][**Assessment as a firm.**

184. (1) A firm shall be assessed as a firm for the purposes of this Act, if—

(*i*) the partnership is evidenced by an instrument[24]; and

(*ii*) the individual shares of the partners are specified[25] in that instrument[24].

(2) A certified copy of the instrument of partnership referred to in sub-section (1) shall accompany the return of income of the firm of the previous year relevant to the assessment year commencing on or after the 1st day of April, 1993 in respect of which assessment as a firm is first sought.

Explanation.—For the purposes of this sub-section, the copy of the instrument of partnership shall be certified in writing by all the partners (not being minors) or, where the return is made after the dissolution of the firm, by all persons (not being minors) who were partners in the firm immediately before its dissolution and by the legal representative of any such partner who is deceased.

(3) Where a firm is assessed as such for any assessment year, it shall be assessed in the same capacity for every subsequent year if there is no change in the constitution of the firm or the shares of the partners as evidenced by the instrument of partnership on the basis of which the assessment as a firm was first sought.

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20. Reintroduced by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Earlier, it was omitted by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date.

21. Prior to omission, section 182 was omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989 and later reintroduced by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

22. Prior to omission, section 183, as amended by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971 and the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988 was omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989 and later reintroduced by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

23. Substituted for sub-heading "B" and sections 184, 185 and 186 by the Finance Act, 1992, w.e.f. 1-4-1993. Prior to substitution, sub-heading "B" and sections 184, 185 and 186 were amended by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971, the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976, the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984, the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988/1-4-1989, the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989 and the Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-4-1989.

24. For the meaning of term "instrument", *see* Taxmann's Direct Taxes Manual, Vol. 3.

25. For the meaning of term "specified", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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(4) Where any such change had taken place in the previous year, the firm shall furnish a certified copy of the revised instrument of partnership along with the return of income[26] for the assessment year relevant to such previous year and all the provisions of this section shall apply accordingly.

[27][(5) Notwithstanding anything contained in any other provision of this Act, where, in respect of any assessment year, there is on the part of a firm any such failure as is mentioned in section 144, the firm shall be so assessed that no deduction by way of any payment of interest, salary, bonus, commission or remuneration, by whatever name called, made by such firm to any partner of such firm shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession" and such interest, salary, bonus, commission or remuneration shall not be chargeable to income-tax under clause (*v*) of section 28.]

[28][**Assessment when section 184 not complied with.**

185. Notwithstanding anything contained in any other provision of this Act, where a firm does not comply with the provisions of section 184 for any assessment year, the firm shall be so assessed that no deduction by way of any payment of interest, salary, bonus, commission or remuneration, by whatever name called, made by such firm to any partner of such firm shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession" and such interest, salary, bonus, commission or remuneration shall not be chargeable to income-tax under clause (*v*) of section 28.]

C.—Changes in constitution, succession and dissolution[29]

Change in constitution of a firm.

187. (1) Where at the time of making an assessment under section 143 or section 144 it is found that a change has occurred in the constitution of a firm, the assessment shall be made on the firm as constituted at the time of making the assessment.

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26. Rule 12 provides that the return of income shall not be accompanied by any document or copy of any account or form or report of audit required to be attached with return of income under any of the provisions of the Act.

27. Substituted by the Finance Act, 2003, w.e.f. 1-4-2004. Prior to its substitution, sub-section (5) read as under:

"(5) Notwithstanding anything contained in the foregoing provisions of this section, where, in respect of any assessment year, there is on the part of a firm any such failure as is mentioned in section 144, the firm shall not be assessed as such for the said assessment year and, thereupon, the firm shall be assessed in the same manner as an association of persons, and all the provisions of this Act shall apply accordingly."

28. Substituted by the Finance Act, 2003, w.e.f. 1-4-2004. Prior to its substitution, section 185 read as under:

"185. *Assessment when section 184 not complied with.*—Where a firm does not comply with the provisions of section 184 for any assessment year, the firm shall be assessed for that assessment year in the same manner as an association of persons, and all the provisions of this Act shall apply accordingly."

29. In view of substitution of sections 184, 185 & 186 by sections 184 & 185 by the Finance Act, 1992, w.e.f. 1-4-1993, there is no section with number '186'.

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[30][***]

(2) For the purposes of this section, there is a change in the constitution of the firm—

(*a*) if one or more of the partners cease to be partners[31] or one or more new partners are admitted, in such circumstances that one or more of the persons who were partners of the firm before the change continue as partner or partners after the change ; or[31]

(*b*) where all the partners continue with a change in their respective shares or in the shares of some of them :

[32][**Provided** that nothing contained in clause (*a*) shall apply to a case where the firm is dissolved on the death of any of its partners.]

Succession of one firm by another firm.

188. Where a firm carrying on a business or profession is succeeded by another firm, and the case is not one covered by section 187, separate assessments shall be made on the predecessor firm and the successor firm in accordance with the provisions of section 170.

[33][**Joint and several liability of partners for tax payable by firm.**

188A. Every person who was, during the previous year, a partner of a firm, and the legal representative of any such person who is deceased, shall be jointly and severally liable along with the firm for the amount of tax, penalty or other sum payable by the firm for the assessment year to which such previous year is relevant, and all the provisions of this Act, so far as may be, shall apply to the assessment of such tax or imposition or levy of such penalty or other sum.]

Firm dissolved or business discontinued.

189. (1) Where any business or profession carried on by a firm has been discontinued or where a firm is dissolved, the [34][Assessing] Officer shall make an assessment of the total income of the firm as if no such discontinuance or dissolution had taken place, and all the provisions of this Act, including the provisions relating to the levy of a penalty or any other sum chargeable under any provision of this Act, shall apply, so far as may be, to such assessment.

(2) Without prejudice to the generality of the foregoing sub-section, if the [35][Assessing] Officer or the [36][***] [37][Commissioner (Appeals)] in the course of any

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30. Omitted by the Finance Act, 1992, w.e.f. 1-4-1993. Prior to omission, the proviso was omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989 and later reintroduced by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

31. For the meaning of the terms/expressions "cease to be partners" and "or", *see* Taxmann's Direct Taxes Manual, Vol. 3.

32. Inserted by the Taxation Laws (Amendment) Act, 1984, w.r.e.f. 1-4-1975.

33. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

34. Substituted for "Income-tax", *ibid.,* w.e.f. 1-4-1988.

35. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

36. Words "Deputy Commissioner (Appeals) or the" omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier "Deputy Commissioner (Appeals)" was substituted for "Appellate Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

37. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

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proceeding under this Act in respect of any such firm as is referred to in that sub-section is satisfied that the firm was guilty of any of the acts specified in Chapter XXI, he may impose or direct the imposition of a penalty in accordance with the provisions of that Chapter.

(3) Every person who was at the time of such discontinuance or dissolution a partner of the firm, and the legal representative of any such person who is deceased, shall be jointly and severally liable for the amount of tax, penalty or other sum payable, and all the provisions of this Act, so far as may be, shall apply to any such assessment or imposition of penalty or other sum.

Explanation.—[38][*Omitted by the Finance Act, 1992, w.e.f. 1-4-1993.*]

(4) Where such discontinuance or dissolution takes place after any proceedings in respect of an assessment year have commenced, the proceedings may be continued against the person referred to in sub-section (3) from the stage at which the proceedings stood at the time of such discontinuance or dissolution, and all the provisions of this Act shall, so far as may be, apply accordingly.

(5) Nothing in this section shall affect the provisions of sub-section (6) of section 159.

[39][**Provisions applicable to past assessments of firms.**

189A. In relation to the assessment of any firm and its partners for the assessment year commencing on the 1st day of April, 1992, or any earlier assessment year, the provisions of this Chapter as they stood immediately before the 1st day of April, 1993, shall continue to apply.]

CHAPTER XVII[40]

COLLECTION AND RECOVERY OF TAX

A.—General

Deduction at source and advance payment.

[41]**190.** (1) Notwithstanding that the regular assessment in respect of any income is to be made in a later assessment year, the tax on such income shall be payable by deduction [42][or collection] at source or by advance payment

38. Prior to omission, *Explanation,* as inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975 was omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989 and later reintroduced by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

39. Inserted by the Finance Act, 1992, w.e.f. 1-4-1993. Earlier section 189A, which made provisions applicable to past assessments of firms and inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989, was omitted by the Direct Tax Laws (Amendment) Act, 1989, with effect from the same date.

40. For electronic payment of tax, *see* rule 125.

41. For clarification regarding tax deduction at source under Chapter XVII clarifying that payment of any sum shall be liable for deduction of tax only under one section, *see* Circular No. 720, dated 30-8-1995. For details, *see* Taxmann's Master Guide to Income-tax Act.

42. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.r.e.f. 1-6-1988.

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[43][or by payment under sub-section (1A) of section 192], as the case may be, in accordance with the provisions of this Chapter.

(2) Nothing in this section shall prejudice the charge of tax on such income under the provisions of sub-section (1) of section 4.

Direct payment.

[44]**191.** [45][***] In the case of income in respect of which provision is not made under this Chapter for deducting income-tax at the time of payment, and in any case where income-tax has not been deducted in accordance with the provisions of this Chapter, income-tax shall be payable by the assessee direct.

[46][***]

[47][*Explanation.*—For the removal of doubts, it is hereby declared that if any person including the principal officer of a company,—

(*a*) who is required to deduct any sum in accordance with the provisions of this Act; or

(*b*) referred to in sub-section (1A) of section 192, being an employer,

does not deduct, or after so deducting fails to pay, or does not pay, the whole or any part of the tax, as required by or under this Act, and where the assessee has also failed to pay such tax directly, then, such person shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default within the meaning of sub-section (1) of section 201, in respect of such tax.]

B.—Deduction at source

Salary.

[48]**192.** [49](1) Any person responsible for paying any income chargeable under the head "Salaries" shall, at the time of payment, deduct income-tax

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43. Inserted by the Finance Act, 2002, w.e.f. 1-6-2002.

44. *See* also Circular No. 306, dated 19-6-1981 and Circular No. 141, dated 23-7-1974. For details, *see* Taxmann's Master Guide to Income-tax Act.

45. "(1)" omitted by the Finance Act, 1965, w.e.f. 1-4-1965.

46. Sub-section (2) omitted, *ibid.*

47. Substituted by the Finance Act, 2008, w.r.e.f. 1-6-2003. Prior to its substitution, *Explanation,* as inserted by the Finance Act, 2003, w.e.f. 1-6-2003, read as under :

"*Explanation.*—For the removal of doubts, it is hereby declared that if any person referred to in section 200 and in the cases referred to in section 194, the principal officer and the company of which he is the principal officer does not deduct the whole or any part of the tax and such tax has not been paid by the assessee direct, then, such person, the principal officer and the company shall, without prejudice to any other consequences which he or it may incur, be deemed to be an assessee in default as referred to in sub-section (1) of section 201 in respect of such tax."

48. *See* also Letter [F. No. 12/71/65-IT(B)(Extract)], dated 5-3-1966, Circular No. 504, dated 8-2-1988, Circular No. 483, dated 4-3-1987, Circular No. 147, dated 28-10-1974, Letter [F.No. 237/4/75-A & PAC], dated 23-11-1976, Circular No. 285, dated 21-10-1980, Circular No. 586, dated 28-11-1990, Circular No. 707, dated 11-7-1995, Circular No. 756, dated 10-10-1997, Circular No. 758, dated 7-11-1997, Circular No. 761, dated 13-1-1998, Circular No. 8/2007, dated 5-12-2007 and Circular No. 6/2009, dated 31-8-2009 read with Circular No. 9/2008, dated 29-9-2008. For details, *see* Taxmann's Master Guide to Income-tax Act.

49. *See* rules 26A, 26B, 28(1), 28AA, 28AB, 30, 31, 31A, 31AB, 33, 36, 37 and 37BA and Form Nos. 12B, 12BA, 13, 16, 16AA, 24Q and 26AS.

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[50][***] on the amount payable at the average rate of income-tax [51][***] computed on the basis of the [52][rates in force] for the financial year in which the payment is made, on the estimated income of the assessee under this head for that financial year.

[53][(1A) Without prejudice to the provisions contained in sub-section (1), the person responsible for paying any income in the nature of a perquisite which is not provided for by way of monetary payment, referred to in clause (*2*) of section 17, may pay, at his option, tax on the whole or part of such income without making any deduction therefrom at the time when such tax was otherwise deductible under the provisions of sub-section (1).

(1B) For the purpose of paying tax under sub-section (1A), tax shall be determined at the average of income-tax computed on the basis of the rates in force for the financial year, on the income chargeable under the head "Salaries" including the income referred to in sub-section (1A), and the tax so payable shall be construed as if it were, a tax deductible at source, from the income under the head "Salaries" as per the provisions of sub-section (1), and shall be subject to the provisions of this Chapter.]

[54][(2) Where, during the financial year, an assessee is employed simultaneously under more than one employer, or where he has held successively employment under more than one employer, he may furnish to the person responsible for making the payment referred to in sub-section (1) (being one of the said employers as the assessee may, having regard to the circumstances of his case, choose), such details of the income under the head "Salaries" due or received by him from the other employer or employers, the tax deducted at source therefrom and such other particulars, in such form and verified in such manner as may be prescribed[55], and thereupon the person responsible for making the payment referred to above shall take into account the details so furnished for the purposes of making the deduction under sub-section (1).]

[56][(2A) Where the assessee, being a Government servant or an employee in a [57][company, co-operative society, local authority, university, institution, association or body] is entitled to the relief under sub-section (1) of section 89, he may furnish to the person responsible for making the payment referred to in sub-section (1), such particulars, in such form and verified in such manner as may be prescribed, and thereupon the person responsible as aforesaid shall compute the relief on the basis of such particulars and take it into account in making the deduction under sub-section (1).]

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50. "and super-tax" omitted by the Finance Act, 1965, w.e.f. 1-4-1965.

51. "and average rate of super-tax respectively" omitted, *ibid.*

52. Substituted for "rates of tax in force" by the Finance Act, 1968, w.e.f. 1-4-1968.

53. Sub-sections (1A) and (1B) inserted by the Finance Act, 2002, w.e.f. 1-6-2002.

54. Inserted by the Finance Act, 1987, w.e.f. 1-6-1987. Original sub-section was omitted by the Finance Act, 1965, w.e.f. 1-4-1965.

55. *See* rule 26A and Form No. 12B.

56. Inserted by the Finance Act, 1987, w.e.f. 1-6-1987. *See* rule 21AA and Form No. 10E.

57. Substituted for "public sector undertaking" by the Finance Act, 1989, w.e.f. 1-6-1989.

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[58][*Explanation.*—For the purposes of this sub-section, "University" means a University established or incorporated by or under a Central, State or Provincial Act, and includes an institution declared under section 3 of the University Grants Commission Act, 1956 (3 of 1956), to be a University for the purposes of that Act.]

[59][(2B) Where an assessee who receives any income chargeable under the head "Salaries" has, in addition, any income chargeable under any other head of income (not being a loss under any such head other than the loss under the head "Income from house property") for the same financial year, he may send to the person responsible for making the payment referred to in sub-section (1) the particulars of—

(*a*) such other income and of any tax deducted thereon under any other provision of this Chapter;

(*b*) the loss, if any, under the head "Income from house property",

in such form and verified in such manner as may be prescribed[60], and thereupon the person responsible as aforesaid shall take—

(*i*) such other income and tax, if any, deducted thereon; and

(*ii*) the loss, if any, under the head "Income from house property",

also into account for the purposes of making the deduction under sub-section (1) :

Provided that this sub-section shall not in any case have the effect of reducing the tax deductible except where the loss under the head "Income from house property" has been taken into account, from income under the head "Salaries" below the amount that would be so deductible if the other income and the tax deducted thereon had not been taken into account.]

[61][(2C) A person responsible for paying any income chargeable under the head "Salaries" shall furnish to the person to whom such payment is made a statement giving correct and complete particulars of perquisites or profits in lieu of salary provided to him and the value thereof in such form and manner as may be prescribed[62].]

(3) The person responsible for making the payment referred to in sub-section (1) [63][or sub-section (1A)] [64][or sub-section (2) or sub-section (2A) or sub-section (2B)] may, at the time of making any deduction, increase or reduce the amount to be deducted under this section for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct during the financial year.

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58. Inserted by the Finance Act, 1989, w.e.f. 1-6-1989.

59. Substituted by the Finance (No. 2) Act, 1998, w.e.f. 1-8-1998. Prior to its substitution, sub-section (2B) was inserted by the Finance Act, 1987, w.e.f. 1-6-1987.

60. *See* rule 26B.

61. Inserted by the Finance Act, 2001, w.e.f. 1-6-2001.

62. *See* rule 26A and Form Nos. 12BA and 16.

63. Inserted by the Finance Act, 2002, w.e.f. 1-6-2002.

64. Inserted by the Finance Act, 1987, w.e.f. 1-6-1987. Earlier "or sub-section (2)" was omitted by the Finance Act, 1965, w.e.f. 1-4-1965.

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(4) The trustees of a recognised provident fund, or any person authorised by the regulations of the fund to make payment of accumulated balances due to employees, shall, in cases where sub-rule (1) of rule 9 of Part A of the Fourth Schedule applies, at the time an accumulated balance due to an employee is paid, make therefrom the deduction provided in rule 10 of Part A of the Fourth Schedule.

[65](5) Where any contribution made by an employer, including interest on such contributions, if any, in an approved superannuation fund is paid to the employee, [66][tax] on the amount so paid shall be deducted by the trustees of the fund to the extent provided in rule 6 of Part B of the Fourth Schedule.

[67](6) For the purposes of deduction of tax on salary payable in foreign currency, the value in rupees of such salary shall be calculated at the prescribed rate of exchange.

[68][***]

[69]**Interest on securities.**

[70]**193.** The person responsible for paying [71][to a resident] any income [72][by way of interest on securities] shall, [73][at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier], deduct income-tax [74][***] at the rates in force on the amount of the interest payable :

[75][***]

[76][**Provided** [77][***] that no tax shall be deducted from—

(*i*) any interest payable on 4¼ per cent National Defence Bonds, 1972, where the bonds are held by an individual, not being a non-resident; or

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65. *See* rule 33.

66. Substituted for "income-tax and super-tax" by the Finance Act, 1965, w.e.f. 1-4-1965.

67. *See* rules 26 and 115.

68. *Explanation* omitted by the Finance Act, 1965, w.e.f. 1-4-1965.

69. *See* rules 28(1), 28AA, 28AB, 29C, 30, 31, 31A, 31AB, 37, 37A and 37BA and Form Nos. 13, 15G, 15H, 16A, 26Q, 26AS and 27Q.

70. *See* also Circular No. 2, dated 6-2-1969, Circular No. 28P (XXXIV-4), dated 16-5-1966, Circular No. 735, dated 30-1-1996, Circular No. 741, dated 18-4-1996, Circular No. 745, dated 19-7-1996, Circular No. 3/2002, dated 28-6-2002, Circular No. 11/2002, dated 22-11-2002, Circular No. 2/2003, dated 11-3-2003, Circular No. 3/2003, dated 11-3-2003 and Circular No. 4/2004, dated 13-5-2004. For details, *see* Taxmann's Master Guide to Income-tax Act.

71. Inserted by the Finance Act, 2003, w.e.f. 1-6-2003.

72. Substituted for 'chargeable under the head "Interest on securities" ' by the Finance Act, 1988, w.e.f. 1-4-1989.

73. Substituted for "at the time of payment" by the Finance Act, 1989, w.e.f. 1-6-1989.

74. "and super-tax" omitted by the Finance Act, 1965, w.e.f. 1-4-1965.

75. Omitted by the Finance Act, 1992, w.e.f. 1-6-1992. Prior to omission, first proviso was inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

76. Substituted by the Finance (No. 2) Act, 1965, w.e.f. 11-9-1965. Original proviso was inserted by the Taxation Laws (Amendment) Act, 1962, w.e.f. 13-12-1962.

77. Word "further" omitted by the Finance Act, 1992, w.e.f. 1-6-1992. Earlier, "further" was inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

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[78][(*ia*) any interest payable to an individual on 4¼ per cent National Defence Loan, 1968, or 4¾ per cent National Defence Loan, 1972; or]

[79][(*ib*) any interest payable on National Development Bonds; or]

(*ii*) [80][***]

[81][(*iia*) any interest payable on 7-Year National Savings Certificates (IV Issue); or]

[82][(*iib*) any interest payable on such debentures, issued by any institution or authority, or any public sector company, or any co-operative society (including a co-operative land mortgage bank or a co-operative land development bank), as the Central Government may, by notification[83] in the Official Gazette, specify in this behalf;]

[84][***]]

(*iii*) any interest payable on 6½ per cent Gold Bonds, 1977, or 7 per cent Gold Bonds, 1980, where the Bonds are held by an individual not being a non-resident, and the holder thereof makes a declaration in writing before the person responsible for paying the interest that the total nominal value of the 6½ per cent Gold Bonds, 1977, or, as the case may be, the 7 per cent Gold Bonds, 1980, held by him (including such bonds, if any, held on his behalf by any other person) did not in either case exceed ten thousand rupees at any time during the period to which the interest relates;

(*iiia*) [85][* * *]

[86][(*iv*) any interest payable on any security of the Central Government or a State Government:]

[87][**Provided** that nothing contained in this clause shall apply to the interest exceeding rupees ten thousand payable on 8% Savings (Taxable) Bonds, 2003 during the financial year;]

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78. Inserted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1965, w.e.f. 4-12-1965.

79. Inserted by the Finance Act, 1978, w.e.f. 1-4-1978.

80. Omitted by the Finance Act, 1988, w.e.f. 1-4-1989.

81. Inserted by the Finance Act, 1970, w.e.f. 1-4-1970.

82. Substituted by the Finance Act, 1986, w.e.f. 1-6-1986. Earlier, it was inserted by the Finance Act, 1970, w.e.f. 1-4-1970.

83. For specified debentures/bonds, *see* Taxmann's Direct Taxes Circulars and Taxmann's Yearly Tax Digest & Referencer.

84. *Explanation* omitted by the Finance Act, 1987, w.e.f. 1-4-1987. Omitted *Explanation* was inserted by the Finance Act, 1986, w.e.f. 1-4-1986.

85. Omitted by the Finance Act, 1997, w.e.f. 1-6-1997. Prior to its omission, clause (*iiia*) was inserted by the Finance Act, 1982, w.e.f. 1-6-1982.

86. Substituted, *ibid.* Prior to its substitution, clause (*iv*) was inserted by the Finance Act, 1966, w.e.f. 1-4-1966.

87. Inserted by the Finance Act, 2007, w.e.f. 1-6-2007. *See* also Notification F-4(10)-W&M/2003, dated 31-5-2007. For details, *see* Taxmann's Master Guide to Income-tax Act.

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[88][(*v*) any interest payable to an individual, who is resident in India, on debentures issued by a company in which the public are substantially interested, being debentures listed on a recognised stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 (42 of 1956), and any rules made thereunder, if—

(*a*) the interest is paid by the company by an account payee cheque; and

(*b*) the amount of such interest or, as the case may be, the aggregate of the amounts of such interest paid or likely to be paid during the financial year by the company to such individual does not exceed [89][two thousand and five hundred rupees];]

[90][(*vi*) any interest payable to the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (31 of 1956), in respect of any securities owned by it or in which it has full beneficial interest; or

(*vii*) any interest payable to the General Insurance Corporation of India (hereafter in this clause referred to as the Corporation) or to any of the four companies (hereafter in this clause referred to as such company), formed by virtue of the schemes framed under sub-section (1) of section 16 of the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972), in respect of any securities owned by the Corporation or such company or in which the Corporation or such company has full beneficial interest; or

(*viii*) any interest payable to any other insurer in respect of any securities owned by it or in which it has full beneficial interest;]

[91][(*ix*) any interest payable on any security issued by a company, where such security is in dematerialised form and is listed on a recognised stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and the rules made thereunder.]

[92][*Explanation* [93][***].—For the purposes of this section, where any income by way of interest on securities is credited to any account, whether called "Interest payable account" or "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.]

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88. Inserted by the Finance Act, 1984, w.e.f. 1-6-1984.

89. Substituted for "one thousand rupees" by the Finance Act, 1989, w.e.f. 1-6-1989.

90. Clauses (*vi*), (*vii*) and (*viii*) inserted by the Finance Act, 2002, w.e.f. 1-6-2002.

91. Inserted by the Finance Act, 2008, w.e.f. 1-6-2008.

92. Inserted by the Finance Act, 1989, w.e.f. 1-6-1989. Original *Explanation,* which was inserted by the Finance Act, 1965, w.e.f. 1-4-1965, was omitted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

93. Figure "1" omitted by the Finance Act, 1992, w.e.f. 1-6-1992. Earlier, *Explanation* was renumbered as *Explanation 1* by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

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Explanation 2.—[94][*Omitted by the Finance Act, 1992, w.e.f. 1-6-1992.*]

Dividends.

[95]**194.** [96]The principal officer of an Indian company or a company which has made the prescribed arrangements for the declaration and payment of dividends (including dividends on preference shares) within India, shall, before making any payment in cash or before issuing any cheque or warrant in respect of any dividend or before making any distribution or payment to a shareholder, [97][who is resident in India,] of any dividend within the meaning of sub-clause (*a*) or sub-clause (*b*) or sub-clause (*c*) or sub-clause (*d*) or sub-clause (*e*) of clause (*22*) of section 2, deduct from the amount of such dividend, income-tax [98][***] at the rates in force :

[99][**Provided** that no such deduction shall be made in the case of a shareholder, being an individual, if—

(*a*) the dividend is paid by the company by an account payee cheque; and

(*b*) the amount of such dividend or, as the case may be, the aggregate of the amounts of such dividend distributed or paid or likely to be distributed or paid during the financial year by the company to the shareholder, does not exceed [1][two thousand five hundred] rupees:

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94. Prior to omission, *Explanation 2,* as inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991, read as under :

'*Explanation 2.*—For the purposes of this section, the expression "scheduled bank" shall have the meaning assigned to it in clause (*ii*) of the *Explanation* to clause (*viia*) of sub-section (1) of section 36.'

95. *See* also Circular No. P(XXI-16), dated 8-1-1965, Circular No. 3P(XXI-19), dated 1-5-1966 and Circular No. 2/2003, dated 11-3-2003. For details, *see* Taxmann's Master Guide to Income-tax Act.

96. *See* rules 27, 28(1), 28AA, 28AB, 29, 29C, 30, 31, 31A, 31AB, 37, 37A and 37BA and Form Nos. 13, 15G, 15H, 16A, 26AS, 26Q and 27Q.

97. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

98. "and super-tax" omitted by the Finance Act, 1965, w.e.f. 1-4-1965.

99. Substituted for the first and second provisos by the Finance Act, 2002, w.e.f. 1-6-2002. Prior to their substitution, the first proviso, as inserted by the Finance (No. 2) Act, 1977, w.e.f. 1-10-1977, later on substituted by the Finance Act, 1984, w.e.f. 1-6-1984 and amended by the Finance Act, 1987, w.e.f. 1-6-1987 and Finance (No. 2) Act, 1991, w.e.f. 1-10-1991, and the second proviso, as inserted by the Finance Act, 1997, w.e.f. 1-6-1997, read as under :

"**Provided** that no such deduction shall be made in the case of a shareholder, being an individual, of a company in which the public are substantially interested, if—

(*a*) the dividend is paid by such company by an account payee cheque; and

(*b*) the amount of such dividend or, as the case may be, the aggregate of the amounts of such dividend distributed or paid or likely to be distributed or paid during the financial year by the company to the shareholder, does not exceed two thousand five hundred rupees :

Provided further that no such deduction shall be made in respect of any dividends referred to in section 115-O."

Prior to its omission by the Finance Act, 1993, w.e.f. 1-6-1993, second proviso was amended by the Finance Act, 1965, w.e.f. 1-4-1965, the Finance (No. 2) Act, 1977, w.e.f. 1-10-1977 and the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

1. Substituted for "one thousand" by the Finance Act, 2003, w.r.e.f. 1-8-2002.

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Provided further that the provisions of this section shall not apply to such income credited or paid to—

(*a*) the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (31 of 1956), in respect of any shares owned by it or in which it has full beneficial interest;

(*b*) the General Insurance Corporation of India (hereafter in this proviso referred to as the Corporation) or to any of the four companies (hereafter in this proviso referred to as such company), formed by virtue of the schemes framed under sub-section (1) of section 16 of the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972), in respect of any shares owned by the Corporation or such company or in which the Corporation or such company has full beneficial interest;

(*c*) any other insurer in respect of any shares owned by it or in which it has full beneficial interest :]

[2][**Provided also** that no such deduction shall be made in respect of any dividends referred to in section 115-O.]

[3][**Interest other than "Interest on securities".**

[4]**194A.** [5](1) Any person[6], not being an individual or a Hindu undivided family, who is responsible for paying[6] to a resident any income by way of interest other than income [7][by way of interest on securities], shall, at the time of credit of such income to the account of the payee[8] or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force :

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2. Inserted by the Finance Act, 2003, w.r.e.f. 1-4-2003.
3. Inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.
4. *See* also Circular No. 288, dated 22-12-1980, Circular No. 256, dated 29-5-1979, Circular No. 22/68-IT(B), dated 28-3-1968/13-5-1968 as modified by Letter [F. No. 12/23/68-IT(B)], dated 7-11-1968, Circular No. 65, dated 2-9-1971, Letter [F. No. 12/12/68-IT(A-II)], dated 23-9-1968, Letter [F. No. 12/113/68-IT(A-II)], dated 28-10-1968, Letter [F. No. 275/109/92-IT(B)], dated 21-9-1994, Circular No. 526, dated 5-12-1988, Circular No. 626, dated 12-2-1992, Circular No. 643, dated 23-1-1993, Circular No. 647, dated 22-3-1993, Circular No. 715, dated 8-8-1995, Circular No. 716, dated 9-8-1995, Circular No. 9/2002, dated 11-9-2002, Circular No. 3/2002, dated 28-6-2002, Circular No. 11/2002, dated 22-11-2002, Circular No. 12/2002, dated 22-11-2002, Circular No. 2/2003, dated 11-3-2003, Circular No. 3/2003, dated 11-3-2003 and Circular No. 3/2010, dated 2-3-2010. For details, *see* Taxmann's Master Guide to Income-tax Act.
5. *See* rules 28(1), 28AA, 28AB, 29C, 30, 31, 31A, 31AB, 31AC, 31ACA, 37 and 37BA and Form Nos. 13, 15G, 15H, 16A, 26AS, 26Q, 26QA and 26QAA.
6. For the meaning of the expressions "any person" and "responsible for paying", *see* Taxmann's Direct Taxes Manual, Vol. 3.
7. Substituted for 'chargeable under the head "Interest on securities" ' by the Finance Act, 1988, w.e.f. 1-4-1989.
8. For the meaning of the expression "at the time of credit . . . account of the payee", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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[9][**Provided** that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (*a*) or clause (*b*) of section 44AB during the financial year immediately preceding the financial year in which such interest is credited or paid, shall be liable to deduct income-tax under this section.]

[10][*Explanation.*—For the purposes of this section, where any income by way of interest as aforesaid is credited to any account, whether called "Interest payable account" or "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.]

(2) [11][*Omitted by the Finance Act, 1992, w.e.f. 1-6-1992.*]

(3) The provisions of sub-section (1) shall not apply—

[12][(*i*) where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year by the person referred to in sub-section (1) to the account of, or to, the payee, [13][does not exceed—

(*a*) ten thousand rupees, where the payer is a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution, referred to in section 51 of that Act);

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9. Inserted by the Finance Act, 2002, w.e.f. 1-6-2002. Earlier the proviso was omitted by the Finance Act, 1992, w.e.f. 1-6-1992 and prior to omission, it read as under :

"**Provided** that no such deduction shall be made in a case where the person (not being a company or a registered firm) entitled to receive such income furnishes to the person responsible for making the payment—

(*a*) an affidavit, or

(*b*) a statement in writing,

declaring that his estimated total income assessable for the assessment year next following the financial year in which the income is credited or paid will be less than the minimum liable to income-tax."

10. Inserted by the Finance Act, 1987, w.e.f. 1-6-1987.

11. Prior to omission, sub-section (2) was amended by the Finance Act, 1968, w.e.f. 1-4-1968.

12. Substituted by the Finance Act, 1975, w.e.f. 1-4-1975. Section 20(2) of the Finance Act, 1975 makes an independent provision relating to substitution of clause (*i*). Sub-section (2) of section 20 read as under :

'(2) Notwithstanding the substitution of clause (*i*) of sub-section (3) of section 194A of the Income-tax Act, by sub-section (1) of this section nothing in section 201 or section 276B of that Act shall apply to, or in relation to, any failure to deduct income-tax under sub-section (1) of the said section 194A on any income by way of interest other than income chargeable under the head "Interest on securities" credited or paid on or after the 1st day of April, 1975, but before the 1st day of June, 1975, where the income so credited or paid at any one time does not exceed four hundred rupees.'

13. Substituted for "does not exceed *five thousand rupees*" by the Finance Act, 2007, w.e.f. 1-6-2007. Earlier the italicised words were amended by the Finance Act, 1987, w.e.f. 1-6-1987 and Finance Act, 2000, w.e.f. 1-6-2000.

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(*b*) ten thousand rupees, where the payer is a co-operative society engaged in carrying on the business of banking;

(*c*) ten thousand rupees, on any deposit with post office under any scheme framed by the Central Government and notified[14] by it in this behalf; and

(*d*) five thousand rupees in any other case]:]

[15][**Provided** that in respect of the income credited or paid in respect of—

(*a*) time deposits with a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act); or

(*b*) time deposits with a co-operative society engaged in carrying on the business of banking;

(*c*) deposits with a public company which is formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes [16][and which is eligible for deduction under clause (*viii*) of sub-section (1) of section 36] [17][***],

[18][* * *] the aforesaid amount shall be computed with reference to the income credited or paid by a branch of the banking company or the co-operative society or the public company, as the case may be;]

(*ii*) [19][***]

(*iii*) to such income credited or paid to—

(*a*) any banking company to which the Banking Regulation Act, 1949 (10 of 1949), applies, or any co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank), or

(*b*) any financial corporation established by or under a Central, State or Provincial Act, or

(*c*) the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (31 of 1956), or

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14. Notified scheme is Senior Citizens Savings Scheme Rules, 2004. For details, *see* Taxmann's Master Guide to Income-tax Act & Taxmann's Income-tax Rules.

15. Substituted by the Finance (No. 2) Act, 1996, w.e.f. 1-10-1996. Prior to its substitution, proviso was inserted by the Finance Act, 1995, w.e.f. 1-7-1995.

16. Inserted by the Finance Act, 2000, w.e.f. 1-4-2000.

17. Words "and which is for the time being approved by the Central Government for the purpose of clause (*viii*) of sub-section (1) of section 36" omitted by the Finance Act, 1999, w.e.f. 1-4-2000.

18. The following portion in the proviso omitted by the Finance Act, 2001, w.e.f. 1-6-2001 : 'the provisions of this clause shall have effect as if for the words "two thousand five hundred rupees", the words "ten thousand rupees" had been substituted and'

19. Clause (*ii*) omitted by the Finance Act, 1999, w.e.f. 1-4-2000.

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(*d*) the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963), or

(*e*) any company or co-operative society carrying on the business of insurance, or

(*f*) such other institution, association or body [20][or class of institutions, associations or bodies] which the Central Government may, for reasons to be recorded in writing, notify[21] in this behalf in the Official Gazette;

[22][(*iv*) to such income credited or paid by a firm to a partner of the firm;]

(*v*) to such income credited or paid by a co-operative society [23][to a member thereof or] to any other co-operative society;]

[24][(*vi*) to such income credited or paid in respect of deposits under any scheme framed by the Central Government and notified[25] by it in this behalf in the Official Gazette;

[26][(*vii*) to such income credited or paid in respect of deposits (other than time deposits made on or after the 1st day of July, 1995) with a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act);

(*viia*) to such income credited or paid in respect of,—

(*a*) deposits with a primary agricultural credit society or a primary credit society or a co-operative land mortgage bank or a co-operative land development bank;

(*b*) deposits (other than time deposits made on or after the 1st day of July, 1995) with a co-operative society, other than a co-operative society or bank referred to in sub-clause (*a*), engaged in carrying on the business of banking;]

[27][(*viii*) to such income credited or paid by the Central Government under any provision of this Act or the Indian Income-tax Act, 1922 (11 of 1922), or the Estate Duty Act, 1953 (34 of 1953), or the Wealth-tax Act, 1957 (27 of 1957), or the Gift-tax Act, 1958 (18 of 1958), or the Super

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20. Inserted by the Finance Act, 1968, w.e.f. 1-4-1968.

21. For complete list of notified institutions, *see* Taxmann's Master Guide to Income-tax Act.

22. Reintroduced by the Direct Tax Laws (Amendment) Act, 1989, with retrospective effect from 1-4-1988. Earlier, it was omitted by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date. Original clause (*iv*) was inserted by the Finance Act, 1968, w.e.f. 1-4-1968.

23. Inserted by the Finance (No. 2) Act, 1971, w.e.f. 1-4-1971.

24. Inserted by the Finance Act, 1970, w.e.f. 1-4-1971.

25. For specified certificates/deposit scheme, *see* Taxmann's Master Guide to Income-tax Act.

26. Substituted for clause (*vii*) by the Finance Act, 1995, w.e.f. 1-7-1995. Prior to its substitution, clause (*vii*) was amended by the Finance Act, 1992, w.e.f. 1-6-1992, and the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

27. Inserted by the Finance Act, 1975, w.e.f. 1-4-1975.

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Profits Tax Act, 1963 (14 of 1963), or the Companies (Profits) Surtax Act, 1964 (7 of 1964), or the Interest-tax Act, 1974 (45 of 1974);]

[28][(*ix*) to such income credited or paid by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid during the financial year does not exceed fifty thousand rupees;]

[29][(*x*) to such income which is paid or payable by an infrastructure capital company or infrastructure capital fund or a public sector company [30][or scheduled bank] in relation to a zero coupon bond issued on or after the 1st day of June, 2005 by such company or fund or public sector company [30][or scheduled bank].]

[31][*Explanation 1*.—For the purposes of clauses (*i*), (*vii*) and (*viia*), "time deposits" means deposits (excluding recurring deposits) repayable on the expiry of fixed periods.

Explanation 2.—[32][***]]

[33][(4) The person responsible for making the payment referred to in sub-section (1) may, at the time of making any deduction, increase or reduce the amount to be deducted under this section for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct during the financial year.]

Explanation.—[*Omitted by the Finance Act, 1992, w.e.f. 1-6-1992.*]

[34][**Winnings from lottery or crossword puzzle.**

[35]**194B.** [36]The person responsible for paying to any person any income by way of winnings from any lottery or crossword puzzle [37][or card game and other game of any sort] in an amount exceeding [38]**[***ten thousand rupees***]**

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28. Inserted by the Finance Act, 2003, w.e.f. 1-6-2003.

29. Inserted by the Finance Act, 2005, w.e.f. 1-6-2005.

30. Inserted by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-2009.

31. *Explanation 1* and *Explanation 2* substituted for *Explanation* by the Finance Act, 2005, w.e.f. 1-6-2005. Prior to its substitution, *Explanation*, as inserted by the Finance Act, 1995, w.e.f. 1-7-1995, read as under :

'*Explanation*.—For the purposes of clauses (*i*), (*vii*) and (*viia*), "time deposits" means deposits (excluding recurring deposits) repayable on the expiry of fixed periods.'

32. Omitted by the Finance Act, 2006, w.e.f. 1-4-2006. Prior to its omission, *Explanation 2* read as under:

'*Explanation 2*.—For the purposes of clause (*x*), "infrastructure capital company" and "infrastructure capital fund" shall have the meanings respectively assigned to them in clauses (*a*) and (*b*) of *Explanation 1* to clause (*23G*) of section 10.'

33. Inserted by the Finance Act, 1975, w.e.f. 1-4-1975.

34. Inserted by the Finance Act, 1972, w.e.f. 1-4-1972.

35. *See* also Circular No. 264, dated 11-2-1980. For details, *see* Taxmann's Master Guide to Income-tax Act.

36. *See* rules 30, 31, 31A, 31AB, 37 and 37BA and Form Nos. 16A, 26AS and 26Q.

37. Inserted by the Finance Act, 2001, w.e.f. 1-6-2001.

38. Substituted for "five thousand rupees" by the Finance Act, 2010, w.e.f. **1-7-2010**. Earlier "five thousand rupees" were substituted for "one thousand rupees" by the Finance Act, 1986, w.e.f. 1-6-1986.

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shall, at the time of payment thereof, deduct income-tax thereon at the rates in force :

[39][***]]

[40][**Provided** [41][***] that in a case where the winnings are wholly in kind or partly in cash and partly in kind but the part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of the winnings, the person responsible for paying shall, before releasing the winnings, ensure that tax has been paid in respect of the winnings.]

[42][**Winnings from horse race.**

194BB. [43]Any person, being a bookmaker or a person to whom a licence has been granted by the Government under any law for the time being in force for horse racing in any race course or for arranging for wagering or betting in any race course, who is responsible for paying to any person any income by way of winnings from any horse race in an amount exceeding [44]**[***five thousand rupees***]** shall, at the time of payment thereof, deduct income-tax thereon at the rates in force.

[45][***]]

[46][**Payments to contractors.**

[47]**194C.** (1) Any person responsible for paying any sum to any resident (hereafter in this section referred to as the contractor [48]) for carrying out any work [48] (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and a specified person shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash

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39. The first proviso omitted by the Finance Act, 1999, w.e.f. 1-4-2000. Prior to its omission, the first proviso read as under :

"**Provided** that no deduction shall be made under this section from any payment made before the 1st day of June, 1972:"

40. Inserted by the Finance Act, 1997, w.e.f. 1-6-1997.

41. Word "further" omitted by the Finance Act, 1999, w.e.f. 1-4-2000.

42. Inserted by the Finance Act, 1978, w.e.f. 1-4-1978.

43. *See* rules 30, 31, 31A, 31AB, 37 and 37BA and Form Nos. 16A, 26AS and 26Q.

44. Substituted for "two thousand five hundred rupees" by the Finance Act, 2010, w.e.f. **1-7-2010**. Earlier the quoted words were amended by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991 and Finance Act, 1986, w.e.f. 1-6-1986.

45. Proviso omitted by the Finance Act, 1999, w.e.f. 1-4-2000.

46. Substituted by the Finance (No. 2) Act, 2009, w.e.f. 1-10-2009. Prior to its substitution, section 194C, as amended by the Finance Act, 1972, w.e.f. 1-4-1972, Finance Act, 1973, w.e.f. 1-4-1973, Finance Act, 1982, w.e.f. 1-6-1982, Direct Tax Laws (Amdt.) Act, 1987, w.e.f. 1-4-1988, Finance Act, 1988, w.e.f. 1-6-1988, Finance Act, 1992, w.e.f. 1-6-1992, Finance Act, 1994, w.e.f. 1-6-1994, Finance Act, 1995, w.e.f. 1-7-1995, Finance Act, 2002, w.e.f. 1-6-2002, Finance Act, 2003, w.e.f. 1-6-2003, Finance (No. 2) Act, 2004, w.e.f. 1-10-2004, Finance Act, 2005, w.e.f. 1-6-2005, Finance Act, 2007, w.e.f. 1-6-2007 and Finance Act, 2008, w.e.f. 1-6-2008, read as under :

'194C. *Payments to contractors and sub-contractors.*—(1) Any person responsible for paying any sum to any resident (hereinafter in this section referred to as the contractor) for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and—

(*a*) the Central Government or any State Government; or

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(Contd. from p. 1.749)

(*b*) any local authority; or

(*c*) any corporation established by or under a Central, State or Provincial Act; or

(*d*) any company; or

(*e*) any co-operative society; or

(*f*) any authority, constituted in India by or under any law, engaged either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both; or

(*g*) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India; or

(*h*) any trust; or

(*i*) any university established or incorporated by or under a Central, State or Provincial Act and an institution declared to be a university under section 3 of the University Grants Commission Act, 1956 (3 of 1956) ; or

(*j*) any firm; or

(*k*) any individual or a Hindu undivided family or an association of persons or a body of individuals, whether incorporated or not, other than those falling under any of the preceding clauses, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (*a*) or clause (*b*) of section 44AB during the financial year immediately preceding the financial year in which such sum is credited or paid to the account of the contractor,

shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to—

(*i*) one per cent in case of advertising,

(*ii*) in any other case two per cent,

of such sum as income-tax on income comprised therein:

Provided that no individual or a Hindu undivided family shall be liable to deduct income-tax on the sum credited or paid to the account of the contractor where such sum is credited or paid exclusively for personal purposes of such individual or any member of Hindu undivided family.

(2) Any person (being a contractor and not being an individual or a Hindu undivided family) responsible for paying any sum to any resident (hereafter in this section referred to as the sub-contractor) in pursuance of a contract with the sub-contractor for carrying out, or for the supply of labour for carrying out, the whole or any part of the work undertaken by the contractor or for supplying whether wholly or partly any labour which the contractor has undertaken to supply shall, at the time of credit of such sum to the account of the sub-contractor or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to one per cent of such sum as income-tax on income comprised therein:

Provided that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (*a*) or clause (*b*) of section 44AB during the financial year immediately preceding the financial year in which such sum is credited or paid to the account of the sub-contractor, shall be liable to deduct income-tax under this sub-section.

Explanation I.—For the purposes of sub-section (2), the expression "contractor" shall also include a contractor who is carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and the Government of a foreign State or a foreign enterprise or any association or body established outside India.

Explanation II.—For the purposes of this section, where any sum referred to in sub-section (1) or sub-section (2) is credited to any account, whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such

(Contd. on p. 1.751)

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or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to—

(*i*) one per cent where the payment is being made or credit is being given to an individual or a Hindu undivided family;

(Contd. from p. 1.750)

crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

Explanation III.—For the purposes of this section, the expression "work" shall also include—

(*a*) advertising;

(*b*) broadcasting and telecasting including production of programmes for such broadcasting or telecasting;

(*c*) carriage of goods and passengers by any mode of transport other than by railways;

(*d*) catering.

(3) No deduction shall be made under sub-section (1) or sub-section (2) from—

(*i*) the amount of any sum credited or paid or likely to be credited or paid to the account of, or to, the contractor or sub-contractor, if such sum does not exceed twenty thousand rupees:

Provided that where the aggregate of the amounts of such sums credited or paid or likely to be credited or paid during the financial year exceeds fifty thousand rupees, the person responsible for paying such sums referred to in sub-section (1) or, as the case may be, sub-section (2) shall be liable to deduct income-tax under this section:

Provided further that no deduction shall be made under sub-section (2), from the amount of any sum credited or paid or likely to be credited or paid during the previous year to the account of the sub-contractor during the course of business of plying, hiring or leasing goods carriages, on production of a declaration to the person concerned paying or crediting such sum, in the prescribed form and verified in the prescribed manner and within such time as may be prescribed, if such sub-contractor is an individual who has not owned more than two goods carriages at any time during the previous year:

Provided also that the person responsible for paying any sum as aforesaid to the sub-contractor referred to in the second proviso shall furnish to the prescribed income-tax authority or the person authorised by it such particulars as may be prescribed in such form and within such time as may be prescribed; or

(*ii*) any sum credited or paid before the 1st day of June, 1972; or

(*iii*) any sum credited or paid before the 1st day of June, 1973, in pursuance of a contract between the contractor and a co-operative society or in pursuance of a contract between such contractor and the sub-contractor in relation to any work (including supply of labour for carrying out any work) undertaken by the contractor for the co-operative society.

Explanation.—For the purposes of clause (*i*), "goods carriage" shall have the same meaning as in the *Explanation* to sub-section (7) of section 44AE.

(4) [***]

(5) [***].'

47. *See* also Circular No. 433, dated 25-9-1985, Circular No. 487, dated 8-6-1987, Circular No. 502, dated 27-1-1988, Circular No. 558, dated 28-3-1990, Circular No. 681, dated 8-3-1994, Circular No. 713, dated 2-8-1995, Circular No. 714, dated 3-8-1995, Circular No. 715, dated 8-8-1995, Circular No. 723, dated 19-9-1995 and Circular No. 13/2006, dated 13-12-2006. For details, *see* Taxmann's Master Guide to Income-tax Act.

See rules 28, 28AA, 28AB, 30, 31, 31A, 31AB, 37 and 37BA and Form Nos. 13, 16A, 26AS and 26Q.

48. For the meaning of the terms/expressions "carrying out any work" and "contractor", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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(*ii*) two per cent where the payment is being made or credit is being given to a person other than an individual or a Hindu undivided family,

of such sum as income-tax on income comprised therein.

(2) Where any sum referred to in sub-section (1) is credited to any account, whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

(3) Where any sum is paid or credited for carrying out any work mentioned in sub-clause (*e*) of clause (*iv*) of the *Explanation,* tax shall be deducted at source—

(*i*) on the invoice value excluding the value of material, if such value is mentioned separately in the invoice; or

(*ii*) on the whole of the invoice value, if the value of material is not mentioned separately in the invoice.

(4) No individual or Hindu undivided family shall be liable to deduct income-tax on the sum credited or paid to the account of the contractor where such sum is credited or paid exclusively for personal purposes of such individual or any member of Hindu undivided family.

(5) No deduction shall be made from the amount of any sum credited or paid or likely to be credited or paid to the account of, or to, the contractor, if such sum does not exceed [48a]**[***thirty***]** thousand rupees :

Provided that where the aggregate of the amounts of such sums credited or paid or likely to be credited or paid during the financial year exceeds [48b]**[***seventy-five***]** thousand rupees, the person responsible for paying such sums referred to in sub-section (1) shall be liable to deduct income-tax under this section.

(6) No deduction shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of a contractor during the course of business of plying, hiring or leasing goods carriages, on furnishing of his Permanent Account Number, to the person paying or crediting such sum.

(7) The person responsible for paying or crediting any sum to the person referred to in sub-section (6) shall furnish, to the prescribed income-tax authority or the person authorised by it, such particulars, in such form and within such time as may be prescribed.

Explanation.—For the purposes of this section,—

(*i*) "specified person" shall mean,—

(*a*) the Central Government or any State Government; or

(*b*) any local authority; or

(*c*) any corporation established by or under a Central, State or Provincial Act; or

(*d*) any company; or

(*e*) any co-operative society; or

(*f*) any authority, constituted in India by or under any law, engaged either for the purpose of dealing with and satisfying the need for

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48a. Substituted for "twenty" by the Finance Act, 2010, w.e.f. **1-7-2010**.

48b. Substituted for "fifty", *ibid.*

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housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both; or

(*g*) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India; or

(*h*) any trust; or

(*i*) any university established or incorporated by or under a Central, State or Provincial Act and an institution declared to be a university under section 3 of the University Grants Commission Act, 1956 (3 of 1956); or

(*j*) any Government of a foreign State or a foreign enterprise or any association or body established outside India; or

(*k*) any firm; or

(*l*) any person, being an individual or a Hindu undivided family or an association of persons or a body of individuals, if such person,—

(*A*) does not fall under any of the preceding sub-clauses; and

(*B*) is liable to audit of accounts under clause (*a*) or clause (*b*) of section 44AB during the financial year immediately preceding the financial year in which such sum is credited or paid to the account of the contractor;

(*ii*) "goods carriage" shall have the meaning assigned to it in the *Explanation* to sub-section (7) of section 44AE;

(*iii*) "contract" shall include sub-contract;

(*iv*) "work" shall include—

(*a*) advertising;

(*b*) broadcasting and telecasting including production of programmes for such broadcasting or telecasting;

(*c*) carriage of goods or passengers by any mode of transport other than by railways;

(*d*) catering;

(*e*) manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer,

but does not include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from a person, other than such customer.]

[49][**Insurance commission.**

[50]**194D.** [51]Any person responsible for paying to a resident any income by way of remuneration or reward, whether by way of commission or otherwise,

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49. Inserted by the Finance Act, 1973, w.e.f. 1-4-1973.

50. *See* also Circular No. 120, dated 8-10-1973. For details, *see* Taxmann's Master Guide to Income-tax Act.

51. *See* rules 28(1), 28AA, 28AB, 30, 31, 31A, 31AB, 37 and 37BA and Form Nos. 13, 16A, 26AS and 26Q.

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for soliciting or procuring insurance business (including business relating to the continuance, renewal or revival of policies of insurance) shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force :

Provided that no deduction shall be made under this section from any such income credited or paid before the 1st day of June, 1973:]

[52][**Provided further** that no deduction shall be made under this section in a case where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year to the account of, or to, the payee, does not exceed [52a]**[***twenty***]** thousand rupees.]

[53][**Payments to non-resident sportsmen or sports associations.**[54]

194E. Where any income referred to in section 115BBA is payable to a non-resident sportsman (including an athlete) who is not a citizen of India or a non-resident sports association or institution, the person responsible for making the payment shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of ten per cent.]

[55][**Payments in respect of deposits under National Savings Scheme, etc.**[56]

194EE. The person responsible for paying to any person any amount referred to in clause (*a*) of sub-section (2) of section 80CCA shall, at the time of payment thereof, deduct income-tax thereon at the rate of twenty per cent :

Provided that no deduction shall be made under this section where the amount of such payment or, as the case may be, the aggregate amount of such payments to the payee during the financial year is less than two thousand five hundred rupees :

Provided further that nothing contained in this section shall apply to the payment of the said amount to the heirs of the assessee.]

[57][**Payments on account of repurchase of units by Mutual Fund or Unit Trust of India.**[58]

194F. The person responsible for paying to any person any amount referred to in sub-section (2) of section 80CCB shall, at the time of payment thereof, deduct income-tax thereon at the rate of twenty per cent.]

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52. Inserted by the Finance Act, 1987, w.e.f. 1-6-1987.

52a. Substituted for "five" by the Finance Act, 2010, w.e.f. **1-7-2010**.

53. Inserted by the Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-11-1989. Earlier section 194E, as inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988, was omitted by the Direct Tax Laws (Amendment) Act, 1989, with retrospective effect from the same date.

54. *See* rules 30, 31, 31A, 31AB, 37A and 37BA and Form Nos. 16A, 26AS and 27Q.

55. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

56. *See* rules 29C, 30, 31, 31A, 31AB, 37 and 37BA and Form Nos. 15G, 15H, 16A, 26AS and 26Q.

57. Inserted by the Finance Act, 1990, w.e.f. 1-4-1991.

58. *See* rules 30, 31, 31A, 31AB, 37 and 37BA and Form Nos. 16A, 26AS and 26Q.

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[59][**Commission, etc., on the sale of lottery tickets.**[60]

194G. [61][(1)] Any person who is responsible for paying, on or after the 1st day of October, 1991 to any person, who is or has been stocking, distributing, purchasing or selling lottery tickets, any income by way of commission, remuneration or prize (by whatever name called) on such tickets in an amount exceeding one thousand rupees shall, at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of ten per cent.

(2) [62][***]

(3) [62][***]

Explanation.—For the purposes of this section, where any income is credited to any account, whether called "Suspense Account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.]

[63][**Commission or brokerage**[64]**.**

194H. Any person, not being an individual or a Hindu undivided family, who is responsible for paying, on or after the 1st day of June, 2001, to a resident, any income by way of commission (not being insurance commission referred to in section 194D) or brokerage, shall, at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the

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59. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

60. *See* rules 28, 28AA, 28AB, 30, 31, 31A, 31AB, 37 and 37BA and Form Nos. 13, 16A, 26AS and 26Q.

61. Renumbered by the Finance Act, 1992, w.e.f. 1-6-1992.

62. Omitted by the Finance Act, 2003, w.e.f. 1-6-2003. Prior to their omission, sub-sections (2) and (3), as inserted by the Finance Act, 1992, w.e.f. 1-6-1992, read as under :

"(2) Where the Assessing Officer is satisfied that the total income of any person who is or has been stocking, distributing, purchasing or selling lottery tickets justifies the deduction of income-tax at any lower rate or no deduction of income-tax, as the case may be, the Assessing Officer shall, on an application made by such person in this behalf, give to him such certificate as may be appropriate.

(3) Where any such certificate is given, the person responsible for paying the income referred to in sub-section (1) shall, until such certificate is cancelled by the Assessing Officer, deduct income-tax at the rates specified in such certificate or deduct no tax, as the case may be."

63. Reintroduced by the Finance Act, 2001, w.e.f. 1-6-2001. Earlier section 194H was omitted by the Finance Act, 1999, w.e.f. 1-4-2000. Prior to its omission, section 194H, was inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991 and later on amended by the Finance Act, 1992, w.e.f. 1-6-1992.

64. *See* rules 28, 28AA, 28AB, 30, 31, 31A, 31AB, 37 and 37BA and Form Nos. 13, 16A, 26AS and 26Q. *See* also Circular No. 6/2003, dated 3-9-2003, Instruction No. 3/2009, dated 8-5-2009 and Letter F. No. 275/70/2009-IT(B), dated 22-12-2009. For details, *see* Taxmann's Master Guide to Income-tax Act.

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issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of [65][ten] per cent :

Provided that no deduction shall be made under this section in a case where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year to the account of, or to, the payee, does not exceed [65a]**[***five thousand rupees***]** :

[66][**Provided further** that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (*a*) or clause (*b*) of section 44AB during the financial year immediately preceding the financial year in which such commission or brokerage is credited or paid, shall be liable to deduct income-tax under this section:]

[67][**Provided also** that no deduction shall be made under this section on any commission or brokerage payable by Bharat Sanchar Nigam Limited or Mahanagar Telephone Nigam Limited to their public call office franchisees.]

Explanation.—For the purposes of this section,—

(*i*) "commission or brokerage" includes any payment received or receivable, directly or indirectly, by a person acting on behalf of another person for services rendered (not being professional services) or for any services in the course of buying or selling of goods or in relation to any transaction relating to any asset, valuable article or thing, not being securities;

(*ii*) the expression "professional services" means services rendered by a person in the course of carrying on a legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or such other profession as is notified by the Board for the purposes of section 44AA;

(*iii*) the expression "securities" shall have the meaning assigned to it in clause (*h*) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956)[68] ;

(*iv*) where any income is credited to any account, whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.]

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65. Substituted for "five" by the Finance Act, 2007, w.e.f. 1-6-2007. Earlier "five" was substituted for "ten" by the Finance Act, 2002, w.e.f. 1-6-2002.

65a. Substituted for "two thousand five hundred rupees" by the Finance Act, 2010, w.e.f. **1-7-2010**.

66. Inserted by the Finance Act, 2002, w.e.f. 1-6-2002.

67. Inserted by the Finance Act, 2007, w.e.f. 1-6-2007.

68. For definition of the term "security", *see* footnote No. 15 on page 1.27.

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[69][**Rent.**

[70]**194-I.** Any person, not being an individual or a Hindu undivided family, who is responsible for paying to [71][a resident] any income by way of rent[72], shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, [73][deduct income-tax thereon at the rate of—

[74][(*a*) two per cent for the use of any machinery or plant or equipment; and

(*b*) ten per cent for the use of any land or building (including factory building) or land appurtenant to a building (including factory building) or furniture or fittings:]]

Provided that no deduction shall be made under this section where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year by the aforesaid person to the account of, or to, the payee, does not exceed [74a]**[***one hundred and eighty thousand rupees***]** :

[75][**Provided further** that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (*a*) or clause (*b*) of section 44AB during the financial year immediately preceding the financial year in which such income by way of rent is credited or paid, shall be liable to deduct income-tax under this section.]

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69. Inserted by the Finance Act, 1994, w.e.f. 1-6-1994.

70. *See* also Circular No. 699, dated 30-1-1995, Circular No. 715, dated 8-8-1995, Circular No. 718, dated 22-8-1995, Circular No. 735, dated 30-1-1996, Circular No. 736, dated 13-2-1996, Circular No. 5/2001, dated 2-3-2001, Circular No. 5/2002, dated 30-7-2002, Circular No. 12/2002, dated 22-11-2002, Circular No. 1/2008, dated 10-1-2008 and Circular No. 4/2008, dated 28-4-2008. For details, *see* Taxmann's Master Guide to Income-tax Act. *See* rules 28, 28AA, 28AB, 30, 31, 31A, 31AB, 37 and 37BA and Form Nos. 13, 16A, 26AS and 26Q.

71. Substituted for "any person" by the Finance Act, 2003, w.e.f. 1-6-2003.

72. For the meaning of the term "rent", *see* Taxmann's Direct Taxes Manual, Vol. 3.

73. Substituted for "deduct income-tax thereon at the rate of twenty per cent:" by the Finance Act, 1995, w.e.f. 1-7-1995.

74. Substituted by the Finance (No. 2) Act, 2009, w.e.f. 1-10-2009. Prior to its substitution, clauses (*a*), (*b*) and (*c*), as substituted by the Finance Act, 2007, w.e.f. 1-6-2007, read as under :

"(*a*) ten per cent for the use of any machinery or plant or equipment;

(*b*) fifteen per cent for the use of any land or building (including factory building) or land appurtenant to a building (including factory building) or furniture or fittings where the payee is an individual or a Hindu undivided family; and

(*c*) twenty per cent for the use of any land or building (including factory building) or land appurtenant to a building (including factory building) or furniture or fittings where the payee is a person other than an individual or a Hindu undivided family:"

74a. Substituted for "one hundred and twenty thousand rupees" by the Finance Act, 2010, w.e.f. **1-7-2010**.

75. Inserted by the Finance Act, 2002, w.e.f. 1-6-2002.

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Explanation.—For the purposes of this section,—

[76][(*i*) "rent" means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of (either separately or together) any,—

(*a*) land; or

(*b*) building (including factory building); or

(*c*) land appurtenant to a building (including factory building); or

(*d*) machinery; or

(*e*) plant; or

(*f*) equipment; or

(*g*) furniture; or

(*h*) fittings,

whether or not any or all of the above are owned by the payee;]

(*ii*) where any income is credited to any account, whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.]

[77][**Fees for professional or technical services.**[78]

[79]**194J.** (1) Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any sum by way of—

(*a*) fees for professional services, or

(*b*) fees for technical services, [80][or]

[80][(*c*) royalty, or

(*d*) any sum referred to in clause (*va*) of section 28,]

shall, at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to [81][ten] per cent of such sum as income-tax on income comprised therein :

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76. Substituted by the Taxation Laws (Amendment) Act, 2006, w.e.f. 13-7-2006. Prior to its substitution, clause (*i*) read as under :

'(*i*) "rent" means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any land or any building (including factory building), together with furniture, fittings and the land appurtenant thereto, whether or not such building is owned by the payee;'

77. Sections 194J and 194K inserted by the Finance Act, 1995, w.e.f. 1-7-1995.

78. *See* rules 28, 28AA, 28AB, 30, 31, 31A, 31AB, 37 and 37BA and Form Nos. 13, 16A, 26AS and 26Q.

79. *See* also Circular No. 714, dated 3-8-1995, Circular No. 715, dated 8-8-1995, Circular No. 716, dated 9-8-1995, Circular No. 720, dated 30-8-1995, Circular No. 726, dated 18-10-1995, Circular No. 766, dated 24-4-1998, Letter F.No. 275/73/2007-IT(B), dated 30-6-2008 and Circular No. 8/2009, dated 24-11-2009. For details, *see* Taxmann's Master Guide to Income-tax Act.

80. Inserted by the Taxation Laws (Amendment) Act, 2006, w.e.f. 13-7-2006.

81. Substituted for "five" by the Finance Act, 2007, w.e.f. 1-6-2007.

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Provided that no deduction shall be made under this section—

(*A*) from any sums as aforesaid credited or paid before the 1st day of July, 1995; or

(*B*) where the amount of such sum or, as the case may be, the aggregate of the amounts of such sums credited or paid or likely to be credited or paid during the financial year by the aforesaid person to the account of, or to, the payee, does not exceed—

(*i*) [82]**[***thirty thousand rupees***]**, in the case of fees for professional services referred to in clause (*a*), or

(*ii*) [82]**[***thirty thousand rupees***]**, in the case of fees for technical services referred to in [82a][clause (*b*), or]

[83][(*iii*) [82]**[***thirty thousand rupees***]**, in the case of royalty referred to in clause (*c*), or

(*iv*) [82]**[***thirty thousand rupees***]**, in the case of sum referred to in clause (*d*) :]

[84][**Provided further** that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (*a*) or clause (*b*) of section 44AB during the financial year immediately preceding the financial year in which such sum by way of fees for professional services or technical services is credited or paid, shall be liable to deduct income-tax under this section :]

[85][**Provided also** that no individual or a Hindu undivided family referred to in the second proviso shall be liable to deduct income-tax on the sum by way of fees for professional services in case such sum is credited or paid exclusively for personal purposes of such individual or any member of Hindu undivided family.]

(2) [86][***]

(3) [86][***]

Explanation.—For the purposes of this section,—

(*a*) "professional services" means services rendered by a person in the course of carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy

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82. Substituted for "twenty thousand rupees" by the Finance Act, 2010, w.e.f. **1-7-2010**.

82a. Substituted for "clause (*b*) :" by the Taxation Laws (Amendment) Act, 2006, w.e.f. 13-7-2006.

83. Inserted, *ibid.*

84. Inserted by the Finance Act, 2002, w.e.f. 1-6-2002.

85. Inserted by the Finance Act, 2003, w.e.f. 1-6-2003.

86. Omitted, *ibid.* Prior to their omission, sub-sections (2) and (3) read as under :

"(2) Where the Assessing Officer is satisfied that the total income of any person in receipt of the sum referred to in sub-section (1) justifies the deduction of income-tax at any lower rate or no deduction of income-tax, as the case may be, the Assessing Officer shall, on an application made by that person in this behalf, give to him such certificate as may be appropriate.

(3) Where any such certificate is given, the person responsible for paying the sum referred to in sub-section (1) shall, until such certificate is cancelled by the Assessing Officer, deduct income-tax at the rates specified in such certificate or deduct no tax, as the case may be."

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or interior decoration or advertising or such other profession as is notified[87] by the Board for the purposes of section 44AA or of this section;

(*b*) "fees for technical services" shall have the same meaning as in *Explanation 2* to clause (*vii*) of sub-section (1) of section 9;

[88][(*ba*) "royalty" shall have the same meaning as in *Explanation 2* to clause (*vi*) of sub-section (1) of section 9;]

(*c*) where any sum referred to in sub-section (1) is credited to any account, whether called "suspense account" or by any other name, in the books of account of the person liable to pay such sum, such crediting shall be deemed to be credit of such sum to the account of the payee and the provisions of this section shall apply accordingly.

[89][**Income in respect of units.**[90]

194K. Where any income is payable to a resident in respect of units of a Mutual Fund specified under clause (*23D*) of section 10 or of the Unit Trust of India, the person responsible for making the payment shall, at the time of credit of such income to the account of payee or at the time of payment thereof in cash

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87. For notified professional services, *see* Taxmann's Master Guide to Income-tax Act.

88. Inserted by the Taxation Laws (Amendment) Act, 2006, w.e.f. 13-7-2006.

89. Substituted by the Finance Act, 2002, w.e.f. 1-6-2002. Prior to its substitution, section 194K, as inserted by the Finance Act, 1995, w.e.f. 1-7-1995 and amended by the Finance Act, 1999, w.e.f. 1-6-1999, read as under :

'194K. *Income in respect of units.*—(1) Where any income is payable to a resident in respect of units of a Mutual Fund specified under clause (*23D*) of section 10 or of the Unit Trust of India the person responsible for making the payment shall, at the time of credit of such income to the account of payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of,—

(*a*) twenty per cent, if the payee is a company, and

(*b*) fifteen per cent in the case of other payees :

Provided that no deduction shall be made under this sub-section from any such income credited or paid on or after the 1st day of June, 1999.

(2) The provisions of sub-section (1) shall not apply—

(*i*) where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year by the person responsible for making the payment to the account of, or to, the payee does not exceed ten thousand rupees :

Provided that the amount of ten thousand rupees shall be computed with reference to the income credited or paid,—

(*a*) in respect of a branch office of the Mutual Fund or of the Unit Trust of India, as the case may be, and

(*b*) under a particular scheme under which the units have been issued;

(*ii*) to such income credited or paid before the 1st day of July, 1995;

(*iii*) to such income credited or paid in respect of units issued under such scheme already in operation of the Mutual Fund or of the Unit Trust of India, as the Central Government may, by notification in the Official Gazette, specify in this behalf having regard to the plan of payment of income thereunder to the unit-holders; and

(Contd. on p. 1.761)

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or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of ten per cent :

Provided that the provisions of this section shall not apply where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year by the person responsible for making the payment to the account of, or to, the payee does not exceed [91][two thousand five hundred] rupees :

Provided further that the amount of one thousand* rupees shall be computed with reference to the income credited or paid—

(*a*) in respect of a branch office of the Mutual Fund or of the Unit Trust of India, as the case may be, and

(*b*) under a particular scheme under which the units have been issued :

[92][**Provided also** that no deduction shall be made under this section from any such income credited or paid on or after the 1st day of April, 2003.]

Explanation.—For the purposes of this section,—

(*a*) "Unit Trust of India" means the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963);

(*b*) where any income as aforesaid is credited to any account, whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.]

[93][**Payment of compensation on acquisition of capital asset.**

194L. Any person responsible for paying to a resident any sum being in the nature of compensation or the enhanced compensation or the consideration or the enhanced consideration on account of compulsory acquisition, under any law for the time being in force, of any capital asset shall, at the time

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(Contd. from p. 1.760)

(*iv*) to such income credited or paid in respect of units issued under any scheme of the Unit Trust of India to any institution or fund where such income is not liable to inclusion in its total income under the provisions of sections 11 and 12 or clause (*22*) or clause (*22A*) or clause (*23*) or clause (*23AA*) or clause (*23C*) of section 10.

Explanation.—For the purposes of this section,—

(*a*) "Unit Trust of India" means the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963);

(*b*) where any income as aforesaid is credited to any account, whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.'

90. *See* rules 28(1), 28AA, 28AB, 29C, 30, 31, 31A, 31AB, 37 and 37BA and Form Nos. 13, 15G, 15H, 16A, 26AS and 26Q. *See* also Circular No. 715, dated 8-8-1995, Circular No. 3/2002, dated 28-6-2002, Circular No. 11, dated 22-11-2002, Circular No. 12, dated 22-11-2002, Circular No. 2/2003, dated 11-3-2003 and Circular No. 3/2003, dated 11-3-2003. For details, *see* Taxmann's Master Guide to Income-tax Act.

91. Substituted for "one thousand" by the Finance Act, 2003, w.r.e.f. 1-8-2002.

92. Inserted, *ibid.*, w.e.f. 1-4-2003.

93. Inserted by the Finance Act, 1999, w.e.f. 1-6-1999.

*Words "two thousand five hundred" should be substituted for the words "one thousand".

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of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to ten per cent of such sum as income-tax on income comprised therein :

Provided that no deduction shall be made under this section where the amount of such payment or, as the case may be, the aggregate amount of such payments to a resident during the financial year does not exceed one hundred thousand rupees:]

[94][**Provided further** that no deduction shall be made under this section from any payment made on or after the 1st day of June, 2000.]

[95][**Payment of compensation on acquisition of certain immovable property**[96].

194LA. Any person responsible for paying to a resident any sum, being in the nature of compensation or the enhanced compensation or the consideration or the enhanced consideration on account of compulsory acquisition, under any law for the time being in force, of any immovable property (other than agricultural land), shall, at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to ten per cent of such sum as income-tax thereon:

Provided that no deduction shall be made under this section where the amount of such payment or, as the case may be, the aggregate amount of such payments to a resident during the financial year does not exceed one hundred thousand rupees.

Explanation.—For the purposes of this section,—

(*i*) "agricultural land" means agricultural land in India including land situate in any area referred to in items (*a*) and (*b*) of sub-clause (*iii*) of clause (*14*) of section 2;

(*ii*) "immovable property" means any land (other than agricultural land) or any building or part of a building.]

Other sums.

[97]**195.** [98][(1) [99]Any person responsible for paying to a non-resident, not being a company, or to a foreign company, any interest [1][***] or any other sum

94. Inserted by the Finance Act, 2000, w.e.f. 1-6-2000.

95. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-10-2004.

96. *See* rules 30, 31, 31A, 31AB, 37 and 37BA and Form Nos. 16A, 26AS and 26Q.

97. *See* also Circular No. 370, dated 3-10-1983, Letter [F. No. 391/3/78-FTD], dated 9-7-1984, Circular No. 152, dated 27-11-1974, Letter [F. No. 12/29/6-IT(B)], dated 1-6-1965, Circular No. 43, dated 20-6-1970, Circular No. 20(II-4), dated 3-8-1961, Circular No. 588, dated 2-1-1991, Circular No. 695, dated 28-11-1994, Circular No. 723, dated 19-9-1995, Circular No. 728, dated 30-10-1995, Circular No. 734, dated 24-1-1996, Circular No. 740, dated 17-4-1996, Circular No. 759, dated 18-11-1997, Circular No. 767, dated 22-5-1998, Circular No. 769, dated 6-8-1998, Circular No. 790, dated 20-4-2000, Circular No. 10/2002, dated 9-10-2002, Circular No. 7/2007, dated 23-10-2007, Circular No. 4/2009, dated 29-6-2009, Circular No. 7/2009 (withdrawing Circular No. 23, dated 23-7-1969, Circular No. 163, dated 29-5-1975 and Circular No. 786, dated 7-2-2000) and Circular No. 9/2009, dated 30-11-2009. For details, *see* Taxmann's Master Guide to Income-tax Act.

98. Substituted by the Finance Act, 1987, w.e.f. 1-6-1987. Prior to substitution, sub-section (1) was amended by the Finance Act, 1965, w.e.f. 1-4-1965 and the Finance Act, 1975, w.e.f. 1-4-1975.

99. *See* rules 26, 28(1), 28AA, 28AB, 29B, 30, 31, 31A, 31AB, 37A, 37BA and 37BB and Form Nos. 13, 15C, 15CA, 15CB, 15D, 16A, 26AS and 27Q.

1. Words "(not being interest on securities)" omitted by the Finance Act, 2003, w.e.f. 1-6-2003.

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chargeable under the provisions of this Act (not being income chargeable under the head "Salaries" [2][***]) shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force :

[3][**Provided** that in the case of interest payable by the Government or a public sector bank within the meaning of clause (*23D*) of section 10 or a public financial institution within the meaning of that clause, deduction of tax shall be made only at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode :]

[4][**Provided further** that no such deduction shall be made in respect of any dividends referred to in section 115-O.]

Explanation.—For the purposes of this section, where any interest or other sum as aforesaid is credited to any account, whether called "Interest payable account" or "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.]

(2) Where the person responsible for paying any such sum chargeable under this Act (other than [5][***] [6][***] [7][***] [8][***] salary) to a non-resident considers that the whole of such sum would not be income chargeable in the case of the recipient, he may make an application to the [9][Assessing] Officer to determine, [10][by general or special order], the appropriate proportion of such sum so chargeable, and upon such determination, tax shall be deducted under sub-section (1) only on that proportion of the sum which is so chargeable.

[11][***]

[12][(3) Subject to rules[13] made under sub-section (5), any person entitled to receive any interest or other sum on which income-tax has to be deducted under sub-

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2. Words "or dividends" omitted by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.
3. Inserted by the Direct Tax Laws (Second Amendment) Act, 1989, w.r.e.f. 1-6-1987.
4. Inserted by the Finance Act, 2003, w.e.f. 1-4-2003. Earlier the second proviso was inserted by the Finance Act, 1997, w.e.f. 1-6-1997 and later on omitted by the Finance Act, 2002, w.e.f. 1-6-2002.
5. Words "interest including" omitted by the Finance Act, 1976, w.e.f. 1-6-1976.
6. Words "interest on securities" omitted by the Finance Act, 2003, w.e.f. 1-6-2003.
7. Word ", dividend" omitted by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.
8. Word "and" omitted by the Finance Act, 2003, w.e.f. 1-6-2003.
9. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.
10. Substituted for "in the prescribed manner" by the Finance Act, 1988, w.r.e.f. 1-3-1988. The expression "in the prescribed manner" was earlier substituted for "by general or special order" by the Finance Act, 1987, w.e.f. 1-6-1987.
11. Omitted by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991. Prior to omission, proviso was inserted by the Finance Act, 1987, w.e.f. 1-6-1987
12. Inserted by the Finance Act, 1970, w.e.f. 1-4-1970.
13. *See* rule 29B and Form Nos. 15C and 15D.

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section (1) may make an application in the prescribed form to the [14][Assessing] Officer for the grant of a certificate authorising him to receive such interest or other sum without deduction of tax under that sub-section, and where any such certificate is granted, every person responsible for paying such interest or other sum to the person to whom such certificate is granted shall, so long as the certificate is in force, make payment of such interest or other sum without deducting tax thereon under sub-section (1).

(4) A certificate granted under sub-section (3) shall remain in force till the expiry of the period specified therein or, if it is cancelled by the [14][Assessing] Officer before the expiry of such period, till such cancellation.

(5) The Board may, having regard to the convenience of assessees and the interests of revenue, by notification in the Official Gazette, make rules specifying the cases in which, and the circumstances under which, an application may be made for the grant of a certificate under sub-section (3) and the conditions subject to which such certificate may be granted and providing for all other matters connected therewith.]

[15][(6) The person referred to in sub-section (1) shall furnish the information relating to payment of any sum in such form and manner as may be prescribed[16] by the Board.]

[17][**Income payable "net of tax"**.[18]

195A. [19][In a case other than that referred to in sub-section (1A) of section 192, where under an agreement] or other arrangement, the tax chargeable on any income referred to in the foregoing provisions of this Chapter is to be borne by the person by whom the income is payable, then, for the purposes of deduction of tax under those provisions such income shall be increased to such amount as would, after deduction of tax thereon at the rates in force for the financial year in which such income is payable, be equal to the net amount payable under such agreement or arrangement.]

[20][**Interest or dividend or other sums payable to Government, Reserve Bank or certain corporations.**

196. Notwithstanding anything contained in the foregoing provisions of this Chapter, no deduction of tax shall be made by any person from any sums payable to—

(*i*) the Government, or

(*ii*) the Reserve Bank of India, or

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14. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

15. Inserted by the Finance Act, 2008, w.e.f. 1-4-2008.

16. *See* rule 37BB and Form Nos. 15CA & 15CB.

17. Inserted by the Finance Act, 1987, w.e.f. 1-6-1987.

18. *See* also Circular No. 785, dated 24-11-1999. For details, *see* Taxmann's Master Guide to Income-tax Act.

19. Substituted for "Where, under an agreement" by the Finance Act, 2002, w.e.f. 1-6-2002.

20. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988. Earlier, it was substituted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

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(*iii*) a corporation established by or under a Central Act which is, under any law for the time being in force, exempt from income-tax on its income, or

(*iv*) a Mutual Fund specified under clause (*23D*) of section 10,

where such sum is payable to it by way of interest or dividend in respect of any securities or shares owned by it or in which it has full beneficial interest, or any other income accruing or arising to it.]

[21][**Income in respect of units of non-residents.**[22]

196A. (1) Any person responsible for paying to a non-resident, not being a company, or to a foreign company, any income in respect of units of a Mutual Fund specified under clause (*23D*) of section 10 or of the Unit Trust of India shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of twenty per cent :

[23][**Provided** that no deduction shall be made under this section from any such income credited or paid on or after the 1st day of April, 2003.]

(2) Notwithstanding anything contained in sub-section (1), no deduction of tax shall be made from any income payable in respect of units of the Unit Trust of India to a non-resident Indian or a non-resident Hindu undivided family, where the units have been acquired from the Unit Trust of India out of the funds in a Non-resident (External) Account maintained with any bank in India or by remittance of funds in foreign currency, in accordance, in either case, with the provisions of the Foreign Exchange Regulation Act, 1973 (46 of 1973), and the rules made thereunder.

Explanation.—For the purposes of this section—

(*a*) [24]"foreign currency" shall have the meaning assigned to it in the Foreign Exchange Regulation Act, 1973 (46 of 1973);

(*b*) "non-resident Indian" shall have the meaning assigned to it in clause (*e*) of section 115C;

(*c*) "Unit Trust of India" means the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963);

(*d*) where any income as aforesaid is credited to any account, whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall

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21. Substituted by the Finance Act, 1995, w.e.f. 1-7-1995. Prior to its substitution, section 196A was substituted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 15-3-1989 and later amended by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991 and the Finance Act, 1994, w.e.f. 1-6-1994.

22. *See* rules 30, 31, 31A, 31AB, 37A and 37BA and Form Nos. 16A, 26AS and 27Q.

23. Inserted by the Finance Act, 2003, w.e.f. 1-4-2003. Earlier the proviso was inserted by the Finance Act, 1999, w.e.f. 1-6-1999 and later on omitted by the Finance Act, 2002, w.e.f. 1-6-2002.

24. For definition of "foreign currency", *see* **Appendix**.

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be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.]

[25][**Income from units.**[26]

196B. [27][Where any income in respect of units referred to in section 115AB or by way of long-term capital gains arising from the transfer of such units is payable to an Offshore Fund], the person responsible for making the payment shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of ten per cent.]

[28][**Income from foreign currency bonds or shares**[29] **of Indian company.**[30]

196C. [31][Where any income by way of interest or dividends in respect of [32][bonds or Global Depository Receipts] referred to in section 115AC or by way of long-term capital gains arising from the transfer of such [32][bonds or Global Depository Receipts] is payable to a non-resident], the person responsible for making the payment shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of ten per cent :

[33][**Provided** that no such deduction shall be made in respect of any dividends referred to in section 115-O.]

[34][**Income of Foreign Institutional Investors from securities.**[35]

196D. (1) Where any income in respect of securities referred to in clause (*a*) of sub-section (1) of section 115AD is payable to a Foreign Institutional Investor, the person responsible for making the payment shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of twenty per cent :

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25. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

26. *See* rules 30, 31, 31A, 31AB, 37A and 37BA and Form Nos. 16A, 26AS and 27Q.

27. Substituted for "Where any income is payable in respect of units referred to in section 115AB to an Offshore Fund" by the Finance Act, 1993, w.e.f. 1-6-1993.

28. Inserted by the Finance Act, 1992, w.e.f. 1-6-1992.

29. Should be read as 'bonds or global depository receipts'.

30. *See* rules 30, 31, 31A, 31AB, 37A and 37BA and Form Nos. 16A, 26AS and 27Q.

31. Substituted for "Where any income by way of interest or dividends is payable in respect of bonds or shares referred to in section 115AC to a non-resident" by the Finance Act, 1993, w.e.f. 1-6-1993.

32. Substituted for "bonds or shares" by the Finance Act, 2001, w.e.f. 1-4-2002.

33. Inserted by the Finance Act, 2003, w.e.f. 1-4-2003. Earlier the proviso was inserted by the Finance Act, 1997, w.e.f. 1-6-1997 and later on omitted by the Finance Act, 2002, w.e.f. 1-6-2002.

34. Inserted by the Finance Act, 1993, w.e.f. 1-6-1993.

35. *See* rules 30, 31, 31A, 31AB, 37A and 37BA and Form Nos. 16A, 26AS and 27Q.

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[36][**Provided** that no such deduction shall be made in respect of any dividends referred to in section 115-O.]

(2) No deduction of tax shall be made from any income, by way of capital gains arising from the transfer of securities referred to in section 115AD, payable to a Foreign Institutional Investor.]

Certificate for deduction at lower rate.

197. [37](1) [38][Subject to rules made under sub-section (2A), [39][where, in the case of any income of any person [40][or sum payable to any person], income-tax is required to be deducted at the time of credit or, as the case may be, at the time of payment at the rates in force under the provisions of sections 192, 193, [41][194,] 194A, [42][194C,] 194D, [42][194G] [43][, 194H] [44][, 194-I] [45][, 194J] [46][, 194K] [47][***] [48][, 194LA] and 195, the Assessing Officer is satisfied] that the total income [49][***] of the recipient justifies the deduction of income-tax [50][***] at any lower rates or no deduction of income-tax [50][***], as the case may be, the [51][Assessing] Officer shall, on an application made by the assessee in this behalf, give to him such certificate as may be appropriate.

(2) Where any such certificate is given, the person responsible for paying the income shall, until such certificate is cancelled by the [51][Assessing] Officer, deduct income-tax [52][***] at the rates specified in such certificate or deduct no tax, as the case may be.

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36. Inserted by the Finance Act, 2003, w.e.f. 1-4-2003. Earlier the proviso was inserted by the Finance Act, 1997, w.e.f. 1-6-1997 and later on omitted by the Finance Act, 2002, w.e.f. 1-6-2002.

37. *See* rules 28(1), 28AA, 28AB and 29 and Form No. 13.

See also Letter [F. No. 1(54)-63/TPL], dated 18-5-1963, Letter [F.No. 20/23/67-IT(A-I)], dated 28-7-1967, Circular No. 774, dated 17-3-1999, Instruction No. 8/2006, dated 31-10-2006, Circular No. 7/2008, dated 1-8-2008 and Instruction No. 7/2009, dated 22-12-2009. For details, *see* Taxmann's Master Guide to Income-tax Act.

38. Substituted for "Where, in the case of any income of any person other than a company" by the Finance Act, 1987, w.e.f. 1-6-1987.

39. Substituted by the Finance Act, 1992, w.e.f. 1-6-1992. Earlier, amendments were made by the Finance Act, 1965, w.e.f. 1-4-1965, Finance (No. 2) Act, 1967, w.e.f. 1-4-1967, Finance Act, 1972, w.e.f. 1-4-1972, Finance Act, 1973, w.e.f. 1-4-1973, Finance Act, 1978, w.e.f. 1-4-1978, Finance Act, 1986, w.e.f. 1-4-1987 and Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

40. Inserted by the Finance Act, 2003, w.e.f. 1-6-2003.

41. Inserted by the Finance Act, 1993, w.e.f. 1-6-1993.

42. Inserted by the Finance Act, 2003, w.e.f. 1-6-2003.

43. Inserted by the Finance Act, 2001, w.e.f. 1-6-2001.

44. Inserted by the Finance Act, 1994, w.e.f. 1-6-1994.

45. Inserted by the Finance Act, 2003, w.e.f. 1-6-2003.

46. Inserted by the Finance Act, 1995, w.e.f. 1-7-1995.

47. ", 194L" omitted by the Finance Act, 2003, w.e.f. 1-6-2003. Earlier, it was inserted by the Finance Act, 1999, w.e.f. 1-6-1999.

48. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-10-2004.

49. Words "or the total world income" omitted by the Finance Act, 1965, w.e.f. 1-4-1965.

50. Words "or super-tax" omitted, *ibid.*

51. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

52. Words "and super-tax" omitted by the Finance Act, 1965, w.e.f. 1-4-1965.

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[53][(2A) The Board may, having regard to the convenience of assessees and the interests of revenue, by notification in the Official Gazette, make rules specifying the cases in which, and the circumstances under which, an application may be made for the grant of a certificate under sub-section (1) and the conditions subject to which such certificate may be granted and providing for all other matters connected therewith.]

(3) [54][***]

[55][**No deduction to be made in certain cases.**

[56]**197A.** [57](1) Notwithstanding anything contained in [58][***] section 194 [59][***] [60][or section 194EE], no deduction of tax shall be made under any of the said sections in the case of an individual, who is resident in India, if such individual furnishes to the person responsible for paying any income of the nature referred to in [61][***] section 194 [62][[63][***] or, as the case may be, section 194EE], a declaration in writing in duplicate in the prescribed form and verified in the prescribed manner to the effect that [64][the tax on his estimated total income of the previous year in which such income is to be included in computing his total income will be *nil*.]

[65][(1A) Notwithstanding anything contained in [66][section 193 or] section 194A or section 194K, no deduction of tax shall be made under [67][any] of the said sections in the case of a person (not being a company or a firm), if such person furnishes to the person responsible for paying any income of the nature referred to in [66][section 193 or] section 194A or section 194K, as the case may be, a declaration in writing in duplicate in the prescribed form and verified in the prescribed manner to the effect that the tax on his estimated total income of the previous year in which such income is to be included in computing his total income will be *nil*.]

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53. Inserted by the Finance Act, 1987, w.e.f. 1-6-1987.

54. Sub-section (3) omitted by the Finance Act, 1986, w.e.f. 1-4-1987. Prior to its omission, sub-section (3) was substituted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968.

55. Inserted by the Finance Act, 1982, w.e.f. 1-6-1982.

56. *See* also Circular No. 351, dated 26-11-1982 and Circular No. 4/2002, dated 16-7-2002. For details, *see* Taxmann's Master Guide to Income-tax Act.

57. *See* rule 29C and Form Nos. 15G and 15H.

58. Words "section 193 or" omitted by the Finance Act, 1999, w.e.f. 1-6-1999.

59. Words "or section 194A" omitted by the Finance Act, 1992, w.e.f. 1-6-1992.

60. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

61. Words "or section 193 or" omitted by the Finance Act, 1999, w.e.f. 1-6-1999.

62. Substituted for "or, as the case may be, section 194A" by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

63. Words "or section 194A" omitted by the Finance Act, 1992, w.e.f. 1-6-1992.

64. Substituted for "his estimated total income of the previous year in which such income is to be included in computing his total income will be less than the minimum liable to income-tax" by the Finance Act, 1990, w.e.f. 1-4-1990.

65. Substituted by the Finance Act, 1995, w.e.f. 1-7-1995. Earlier sub-section (1A) was inserted by the Finance Act, 1992, w.e.f. 1-6-1992.

66. Inserted by the Finance Act, 1999, w.e.f. 1-6-1999.

67. Substituted for "either", *ibid.*

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[68][(1B) The provisions of this section shall not apply where the amount of any income of the nature referred to in sub-section (1) or sub-section (1A), as the case may be, or the aggregate of the amounts of such incomes credited or paid or likely to be credited or paid during the previous year in which such income is to be included exceeds the maximum amount which is not chargeable to income-tax.]

[69][(1C) Notwithstanding anything contained in section 193 or section 194 or section 194A or section 194EE or section 194K or sub-section (1B) of this section, no deduction of tax shall be made in the case of an individual resident in India, who is of the age of sixty-five years or more at any time during the previous year [70][***], if such individual furnishes to the person responsible for paying any income of the nature referred to in section 193 or section 194 or section 194A or section 194EE or section 194K, as the case may be, a declaration in writing in duplicate in the prescribed form[71] and verified in the prescribed manner to the effect that the tax on his estimated total income of the previous year in which such income is to be included in computing his total income will be *nil*.]

[72][(1D) Notwithstanding anything contained in this section, no deduction of tax shall be made by the Offshore Banking Unit from the interest paid—

(*a*) on deposit made on or after the 1st day of April, 2005, by a non-resident or a person not ordinarily resident in India; or

(*b*) on borrowing, on or after the 1st day of April, 2005, from a non-resident or a person not ordinarily resident in India.

Explanation.—For the purposes of this sub-section "Offshore Banking Unit" shall have the same meaning as assigned to it in clause (*u*) of section 2 of the Special Economic Zones Act, 2005[73].]

[74][(1E) Notwithstanding anything contained in this Chapter, no deduction of tax shall be made from any payment to any person for, or on behalf of, the New Pension System Trust referred to in clause (*44*) of section 10.]

(2) The person responsible for paying any income of the nature referred to in sub-section (1) [75][or sub-section (1A)] [76][or sub-section (1C)] shall deliver or cause to be delivered to the [77][Chief Commissioner or Commissioner] one copy of the

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68. Inserted by the Finance Act, 2002, w.e.f. 1-6-2002.

69. Inserted by the Finance Act, 2003, w.e.f. 1-6-2003.

70. Words "and is entitled to a deduction from the amount of income-tax on his total income referred to in section 88B" omitted by the Finance Act, 2007, w.r.e.f. 1-4-2006.

71. *See* rule 29C and Form No. 15H.

72. Inserted by the Special Economic Zones Act, 2005, w.e.f. 10-2-2006.

73. For text of section 2(*u*) of the Special Economic Zones Act, 2005, *see* **Appendix**.

74. Inserted by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-2009.

75. Inserted by the Finance Act, 1992, w.e.f. 1-6-1992.

76. Inserted by the Finance Act, 2003, w.e.f. 1-6-2003.

77. Substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

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declaration referred to in sub-section (1) [78][or sub-section (1A)] [79][or sub-section (1C)] on or before the seventh day of the month next following the month in which the declaration is furnished to him.]

Tax deducted is income received.

198. All sums deducted in accordance with [80][the foregoing provisions of this Chapter] shall, for the purpose of computing the income of an assessee, be deemed to be income received :

[81][**Provided** that the sum being the tax paid, under sub-section (1A) of section 192 for the purpose of computing the income of an assessee, shall not be deemed to be income received.]

[82][**Credit for tax deducted.**

199. (1) Any deduction made in accordance with the foregoing provisions of this Chapter and paid to the Central Government shall be treated as a payment of tax on behalf of the person from whose income the deduction was made, or of the owner of the security, or of the depositor or of the owner of property or of the unit-holder, or of the shareholder, as the case may be.

(2) Any sum referred to in sub-section (1A) of section 192 and paid to the Central Government shall be treated as the tax paid on behalf of the person in respect of whose income such payment of tax has been made.

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78. Inserted by the Finance Act, 1992, w.e.f. 1-6-1992.

79. Inserted by the Finance Act, 2003, w.e.f. 1-6-2003.

80. Substituted for the portion beginning with the words "the provisions of sections 192" and ending with "section 196D" by the Finance (No. 2) Act, 2004, w.e.f. 1-10-2004. Prior to its substitution, the quoted portion, as amended by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967, Finance Act, 1972, w.e.f. 1-4-1972, Finance Act, 1973, w.e.f. 1-4-1973, Finance Act, 1978, w.e.f. 1-4-1978, Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-11-1989, Finance (No. 2) Act, 1991, w.e.f. 1-10-1991, Finance Act, 1992, w.e.f. 1-6-1992, Finance Act, 1993, w.e.f. 1-6-1993, Finance Act, 1994, w.e.f. 1-6-1994, Finance Act, 1995, w.e.f. 1-7-1995 and Finance Act, 1999, w.e.f. 1-6-1999, read as under:

"the provisions of sections 192 to 194, section 194A, section 194B, section 194BB, section 194C, section 194D, section 194E, section 194EE, section 194F, section 194G, section 194H, section 194-I, section 194J, section 194K, section 194L, section 195, section 196A, section 196B, section 196C and section 196D".

81. Inserted by the Finance Act, 2002, w.e.f. 1-6-2002.

82. Substituted by the Finance Act, 2008, w.e.f. 1-4-2008. Prior to its substitution, section 199 as amended by the Finance Act, 2006, w.e.f. 1-4-2006, Finance Act, 2005, w.e.f. 1-4-2005, Finance (No. 2) Act, 2004, w.e.f. 1-4-2005/1-10-2004, Finance Act, 2002, w.e.f. 1-6-2002, Finance Act, 1999, w.e.f. 1-6-1999, Finance (No. 2) Act, 1996, w.e.f. 1-4-1997, Finance Act, 1995, w.e.f. 1-7-1995, Finance Act, 1994, w.e.f. 1-6-1994, Finance Act, 1993, w.e.f. 1-6-1993, Finance Act, 1992, w.e.f. 1-6-1992, Finance (No. 2) Act, 1991, w.e.f. 1-10-1991, Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-11-1989, Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989, Finance Act, 1987, w.e.f. 1-6-1987, Finance Act, 1978, w.e.f. 1-4-1978, Finance Act, 1973, w.e.f. 1-4-1973, Finance Act, 1972, w.e.f. 1-4-1972, Finance Act, 1968, w.e.f. 1-4-1968, Finance Act, 1968, w.r.e.f. 1-4-1962, Finance (No. 2) Act, 1967, w.e.f. 1-4-1967 and Finance Act, 1965, w.e.f. 1-4-1965, read as under :

"199. *Credit for tax deducted.*—(1) Any deduction made in accordance with the foregoing provisions of this Chapter and paid to the Central Government shall be treated as a payment of tax on behalf of the person from whose income the deduction was made, or of the owner of the security, or depositor or owner of property or of unit-holder or of the shareholder, as the case may be, and credit shall be given to him for the amount so deducted on the production of the certificate furnished under section 203 in the assessment made under this Act for the assessment year for which such income is assessable :

(Contd. on p. 1.771)

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(3) The Board may, for the purposes of giving credit in respect of tax deducted or tax paid in terms of the provisions of this Chapter, make such rules[83] as may be necessary, including the rules for the purposes of giving credit to a person other than those referred to in sub-section (1) and sub-section (2) and also the assessment year for which such credit may be given.]

Duty of person deducting tax.

200. [84][(1)] [85]Any person deducting any sum in accordance with [86][the foregoing provisions of this Chapter] shall pay within the prescribed time, the sum so deducted to the credit of the Central Government or as the Board directs.

(Contd. from p. 1.770)

Provided that—

(*i*) in a case where such person or owner or depositor or unit-holder or shareholder is a person, whose income is included under the provisions of section 60, section 61, section 64, section 93 or section 94 in the total income of another person, the payment shall be deemed to have been made on behalf of, and the credit shall be given to, such other person;

(*ii*) in any other case, where the dividend on any share is assessable as the income of a person other than the shareholder, the payment shall be deemed to have been made on behalf of, and the credit shall be given to, such other person in such circumstances as may be prescribed :

Provided further that where any property, deposit, security, unit or share is owned jointly by two or more persons not constituting a partnership, the payment shall be deemed to have been made on behalf of, and credit shall be given to, each such person in the same proportion in which rent, interest on deposit or on security or income in respect of unit or dividend on share is assessable as his income.

(2) Any sum referred to in sub-section (1A) of section 192 and paid to the Central Government shall be treated as the tax paid on behalf of the person in respect of whose income, such payment of tax has been made and credit shall be given to him for the amount so paid on production of the certificate furnished under section 203 in the assessment under this Act for the assessment year for which such income is assessable.

(3) Where any deduction is made in accordance with the foregoing provisions of this Chapter on or after the 1st day of April, 2008 and paid to the Central Government, the amount of tax deducted and specified in the statement referred to in section 203AA shall be treated as tax paid on behalf of the persons referred to in sub-section (1) or, as the case may be, sub-section (2) and credit shall be given to him for the amount so deducted in the assessment made under this Act for the assessment year for which such income is assessable without the production of certificate."

See also Circular No. 3-D (XXI-20), dated 30-3-1967. For details, *see* Taxmann's Master Guide to Income-tax Act.

83. *See* rule 37BA.

84. Section 200 renumbered as sub-section (1) thereof by the Finance Act, 2002, w.e.f. 1-6-2002.

85. *See* rule 30.

86. Substituted for the portion beginning with the words "the provisions of sections 192" and ending with "section 196D" by the Finance (No. 2) Act, 2004, w.e.f. 1-10-2004. Prior to its substitution, the quoted portion, as amended by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967, Finance Act, 1972, w.e.f. 1-4-1972, Finance Act, 1973, w.e.f. 1-4-1973, Finance Act, 1978, w.e.f. 1-4-1978, Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-11-1989, Finance (No. 2) Act, 1991, w.e.f. 1-10-1991, Finance Act, 1992, w.e.f. 1-6-1992, Finance Act, 1993, w.e.f. 1-6-1993, Finance Act, 1994, w.e.f. 1-6-1994, Finance Act, 1995, w.e.f. 1-7-1995 and Finance Act, 1999, w.e.f. 1-6-1999, read as under:

(Contd. on p. 1.772)

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[87][(2) Any person being an employer, referred to in sub-section (1A) of section 192 shall pay, within the prescribed time, the tax to the credit of the Central Government or as the Board directs.]

[88][(3) Any person deducting any sum on or after the 1st day of April, 2005 in accordance with the foregoing provisions of this Chapter or, as the case may be, any person being an employer referred to in sub-section (1A) of section 192 shall, after paying the tax deducted to the credit of the Central Government within the prescribed time, [89][prepare such statements for such period as may be prescribed] and deliver or cause to be delivered to the prescribed income-tax authority[90] or the person authorised by such authority such statement in such form[91] and verified in such manner and setting forth such particulars and within such time as may be prescribed.]

[92][**Processing of statements of tax deducted at source.**

200A. *(1) Where a statement of tax deduction at source has been made by a person deducting any sum (hereafter referred to in this section as deductor) under section 200, such statement shall be processed in the following manner, namely:—*

(a) the sums deductible under this Chapter shall be computed after making the following adjustments, namely:—

(i) any arithmetical error in the statement; or

(ii) an incorrect claim, apparent from any information in the statement;

(b) the interest, if any, shall be computed on the basis of the sums deductible as computed in the statement;

(c) the sum payable by, or the amount of refund due to, the deductor shall be determined after adjustment of amount computed under clause (b) against any amount paid under section 200 and section 201, and any amount paid otherwise by way of tax or interest;

(d) an intimation shall be prepared or generated and sent to the deductor specifying the sum determined to be payable by, or the amount of refund due to, him under clause (c); and

(e) the amount of refund due to the deductor in pursuance of the determination under clause (c) shall be granted to the deductor :

(Contd. from p. 1.771)

"the provisions of sections 192 to 194, section 194A, section 194B, section 194BB, section 194C, section 194D, section 194E, section 194EE, section 194F, section 194G, section 194H, section 194-I, section 194J, section 194K, section 194L, section 195, section 196A, section 196B, section 196C and section 196D".

87. Inserted by the Finance Act, 2002, w.e.f. 1-6-2002.

88. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005.

89. Substituted for "prepare quarterly statements for the period ending on the 30th June, the 30th September, the 31st December and the 31st March in each financial year" by the Finance (No. 2) Act, 2009, w.e.f. 1-10-2009.

90. Prescribed authority is Director General of Income-tax (Systems)/NSDL.

91. *See* rule 31A and Form Nos. 24Q and 26Q.

92. Inserted by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2010**.

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Provided *that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the statement is filed.*

Explanation.—*For the purposes of this sub-section, "an incorrect claim apparent from any information in the statement" shall mean a claim, on the basis of an entry, in the statement—*

*(*i*) of an item, which is inconsistent with another entry of the same or some other item in such statement;*

*(*ii*) in respect of rate of deduction of tax at source, where such rate is not in accordance with the provisions of this Act.*

(2) For the purposes of processing of statements under sub-section (1), the Board may make a scheme for centralised processing of statements of tax deducted at source to expeditiously determine the tax payable by, or the refund due to, the deductor as required under the said sub-section.]

Consequences of failure to deduct or pay.[92a]

201. [93][(1) Where any person, including the principal officer of a company,—

(*a*) who is required to deduct any sum in accordance with the provisions of this Act; or

(*b*) referred to in sub-section (1A) of section 192, being an employer,

does not deduct, or does not pay, or after so deducting fails to pay, the whole or any part of the tax, as required by or under this Act, then, such person, shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of such tax:

Provided that no penalty shall be charged under section 221 from such person, unless the Assessing Officer is satisfied that such person, without good and sufficient reasons, has failed to deduct and pay such tax.]

[94-99]**[***(1A) Without prejudice to the provisions of sub-section (1), if any such person, principal officer or company as is referred to in that sub-section does not deduct the whole or any part of the tax or after deducting fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest,—*

92a. *See* also Circular Nos. 685, 686 and 696, dated 17-6-1994, 12-8-1994 and 28-2-1995, respectively. For details, *see* Taxmann's Master Guide to Income-tax Act.

93. Substituted by the Finance Act, 2008, w.r.e.f. 1-6-2002. Prior to its substitution, sub-section (1), as amended by the Finance Act, 2002, w.e.f. 1-6-2002, Finance Act, 2001, w.r.e.f. 1-4-1962, Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988 and Finance Act, 1966, w.e.f. 1-4-1966, read as under :

"(1) If any such person referred to in section 200 and in the cases referred to in section 194, the principal officer and the company of which he is the principal officer does not deduct the whole or any part of the tax or after deducting fails to pay the tax as required by or under this Act, he or it shall, without prejudice to any other consequences which he or it may incur, be deemed to be an assessee in default in respect of the tax :

Provided that no penalty shall be charged under section 221 from such person, principal officer or company unless the Assessing Officer is satisfied that such person or principal officer or company, as the case may be, has without good and sufficient reasons failed to deduct and pay the tax."

94-99. Substituted by the Finance Act, 2010, w.e.f. **1-7-2010**. Prior to its substitution, sub-section (1A) as amended by the Finance (No. 2) Act, 2009, w.e.f. 1-10-2009, Finance Act, 2006, w.e.f. 1-6-2006, Finance Act, 2001, w.r.e.f. 1-4-1962 and Finance Act, 1966, w.e.f. 1-4-1966, read as under :

(Contd. on p. 1.774)

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(i) *at one per cent for every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is deducted; and*

(ii) *at one and one-half per cent for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid,*

*and such interest shall be paid before furnishing the statement in accordance with the provisions of sub-section (3) of section 200.***]**

(2) Where the tax has not been paid as aforesaid after it is deducted, [1][the amount of the tax together with the amount of simple interest thereon referred to in sub-section (1A)] shall be a charge upon all the assets of the person, or the company, as the case may be, referred to in sub-section (1).

[2][*(3) No order shall be made under sub-section (1) deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a person resident in India, at any time after the expiry of—*

(i) *two years from the end of the financial year in which the statement is filed in a case where the statement referred to in section 200 has been filed;*

(ii) *four years from the end of the financial year in which payment is made or credit is given, in any other case :*

Provided *that such order for a financial year commencing on or before the 1st day of April, 2007 may be passed at any time on or before the 31st day of March, 2011.*

*(4) The provisions of sub-clause (*ii*) of sub-section (3) of section 153 and of* Explanation 1 *to section 153 shall, so far as may, apply to the time limit prescribed in sub-section (3).*]

Deduction only one mode of recovery.

202. The power to [3][recover] tax by deduction under [4][the foregoing provisions of this Chapter] shall be without prejudice to any other mode of recovery.

(Contd. from p. 1.773)

'(1A) Without prejudice to the provisions of sub-section (1), if any such person, principal officer or company as is referred to in that sub-section does not deduct the whole or any part of the tax or after deducting fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest at *one per cent for every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is actually paid and such interest shall be paid before furnishing the statement in accordance with the provisions of sub-section (3) of section 200.'

*Provision relating to rate of interest was amended by the Finance Act, 2007, w.e.f. 1-4-2008, Taxation Laws (Amendment) Act, 2003, w.e.f. 8-9-2003, Finance Act, 2001, w.e.f. 1-6-2001, Finance Act, 1999, w.e.f. 1-6-1999, Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984, Finance Act, 1972, w.e.f. 1-4-1972 and Taxation Laws (Amendment) Act, 1967, w.e.f. 1-10-1967.

1. Substituted for "it" by the Finance Act, 1966, w.e.f. 1-4-1966.
2. Inserted by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2010.**
3. Substituted for "levy" by the Finance Act, 1987, w.e.f. 1-6-1987.
4. Substituted for the portion beginning with the words "sections 192" and ending with "section 196D" by the Finance (No. 2) Act, 2004, w.e.f. 1-10-2004. Prior to its substitution, the quoted portion, as amended by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967, Finance

(Contd. on p. 1.775)

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[5][**Certificate for tax deducted.**

[6]**203.** [7][(1)] [8]Every person deducting tax in accordance with [9][the foregoing provisions of this Chapter] [10][shall, within such period as may be prescribed from the time of credit or payment of the sum, or, as the case may be, from the time of issue of a cheque or warrant for payment of any dividend to a shareholder], furnish to the person to whose account such credit is given or to whom such payment is made or the cheque or warrant is issued, a certificate to the effect that tax has been deducted, and specifying the amount so deducted, the rate at which the tax has been deducted and such other particulars as may be prescribed.]

[11][(2) Every person, being an employer, referred to in sub-section (1A) of section 192 shall, within such period, as may be prescribed, furnish to the person in respect of whose income such payment of tax has been made, a certificate to the effect that tax has been paid to the Central Government, and specify the amount so paid, the rate at which the tax has been paid and such other particulars as may be prescribed.]

(Contd. from p. 1.774)

Act, 1972, w.e.f. 1-4-1972, Finance Act, 1973, w.e.f. 1-4-1973, Finance Act, 1978, w.e.f. 1-4-1978, Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-11-1989, Finance (No. 2) Act, 1991, w.e.f. 1-10-1991, Finance Act, 1992, w.e.f. 1-6-1992, Finance Act, 1993, w.e.f. 1-6-1993, Finance Act, 1994, w.e.f. 1-6-1994, Finance Act, 1995, w.e.f. 1-7-1995 and Finance Act, 1999, w.e.f. 1-6-1999, read as under:

"sections 192 to 194, section 194A, section 194B, section 194BB, section 194C, section 194D, section 194E, section 194EE, section 194F, section 194G, section 194H, section 194-I, section 194J, section 194K, section 194L, section 195, section 196A, section 196B, section 196C and section 196D".

5. Substituted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.
6. *See* also Circular No. 664, dated 29-9-1993, Circular No. 749, dated 27-12-1996, Circular No. 785, dated 24-11-1999, Circular No. 6/2006, dated 23-6-2006, Circular F.No. 142/44/2006-TPL, dated 25-4-2007 and Circular No. 2/2007, dated 21-5-2007. For details, *see* Taxmann's Master Guide to Income-tax Act.
7. Section 203 renumbered as sub-section (1) thereof by the Finance Act, 2002, w.e.f. 1-6-2002.
8. *See* rule 31 and Form Nos. 16, 16A and 16AA.
9. Substituted for the portion beginning with the words "the provisions of sections 192" and ending with "section 196D" by the Finance (No. 2) Act, 2004, w.e.f. 1-10-2004. Prior to its substitution, the quoted portion, as amended by the Finance Act, 1972, w.e.f. 1-4-1972, Finance Act, 1973, w.e.f. 1-4-1973, Finance Act, 1978, w.e.f. 1-4-1978, Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-11-1989, Finance (No. 2) Act, 1991, w.e.f. 1-10-1991, Finance Act, 1992, w.e.f. 1-6-1992, Finance Act, 1993, w.e.f. 1-6-1993, Finance Act, 1994, w.e.f. 1-6-1994, Finance Act, 1995, w.e.f. 1-7-1995 and Finance Act, 1999, w.e.f. 1-6-1999, read as under :

"the provisions of sections 192 to 194, section 194A, section 194B, section 194BB, section 194C, section 194D, section 194E, section 194EE, section 194F, section 194G, section 194H, section 194-I, section 194J, section 194K, section 194L, section 195, section 196A, section 196B, section 196C and section 196D,"

10. Substituted for "shall, at the time of credit of payment of the sum, or, as the case may be, at the time of issue of a cheque or warrant for payment of any dividend to a shareholder" by the Finance Act, 1987, w.e.f. 1-6-1987.
11. Inserted by the Finance Act, 2002, w.e.f. 1-6-2002.

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(3) [12-13]**[***]**

[14][**Tax deduction and collection account number.**

203A. (1) Every person, deducting tax or collecting tax in accordance with the provisions of this Chapter, who has not been allotted a tax deduction account number or, as the case may be, a tax collection account number, shall, within such time as may be prescribed[15], apply to the Assessing Officer for the allotment of a "tax deduction and collection account number".

(2) Where a "tax deduction account number" or, as the case may be, a "tax collection account number" or a "tax deduction and collection account number" has been allotted to a person, such person shall quote such number—

(*a*) in all challans for the payment of any sum in accordance with the provisions of section 200 or sub-section (3) of section 206C;

(*b*) in all certificates furnished under section 203 or sub-section (5) of section 206C;

[16][(*ba*) in all the [17][***] statements prepared and delivered or caused to be delivered in accordance with the provisions of sub-section (3) of section 200 or sub-section (3) of section 206C;]

12-13. Omitted by the Finance Act, 2010, w.e.f. **1-4-2010**. Prior to its omission, sub-section (3) as amended by the Finance Act, 2008, w.e.f. 1-4-2008, Finance Act, 2006, w.e.f. 1-4-2006, Finance Act, 2005, w.e.f. 1-4-2005 and Finance (No. 2) Act, 2004, w.e.f. 1-4-2005, read as under :

"(3) Where the tax has been deducted or paid in accordance with the foregoing provisions of this Chapter on or after the 1st day of April, 2010, there shall be no requirement to furnish a certificate referred to in sub-section (1) or, as the case may be, sub-section (2)."

14. Substituted by the Finance (No. 2) Act, 2004, w.e.f. 1-10-2004. Prior to its substitution, section 203A, as inserted by the Finance Act, 1987, w.e.f. 1-6-1987 and later on amended by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988, Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-11-1989, Finance (No. 2) Act, 1991, w.e.f. 1-10-1991, Finance Act, 1992, w.e.f. 1-6-1992, Finance Act, 1993, w.e.f. 1-6-1993, Finance Act, 1994, w.e.f. 1-6-1994, Finance Act, 1995, w.e.f. 1-7-1995 and Finance Act, 1999, w.e.f. 1-6-1999, read as under :

"203A. *Tax deduction account number.*—(1) Every person deducting tax in accordance with the provisions of sections 192 to 194, section 194A, section 194B, section 194BB, section 194C, section 194D, section 194E, section 194EE, section 194F, section 194G, section 194H, section 194-I, section 194J, section 194K, section 194L, section 195, section 196A, section 196B, section 196C and section 196D, if he has not been allotted any tax-deduction account number, shall, within such time as may be prescribed, apply to the Assessing Officer for the allotment of a tax deduction account number.

(2) Where a tax deduction account number has been allotted to a person, such person shall quote such number,—

(*a*) in all challans for the payment of any sum in accordance with the provisions of section 200;

(*b*) in all certificates issued in accordance with the provisions of section 203;

(*c*) in all the returns delivered in accordance with the provisions of sections 206, 206A and 206B to any income-tax authority; and

(*d*) in all other documents pertaining to such transactions as may be prescribed in the interests of revenue."

15. *See* rule 114A and Form No. 49B.

16. Inserted by the Finance Act, 2006, w.e.f. 1-6-2006.

17. Word "quarterly" omitted by the Finance (No. 2) Act, 2009, w.e.f. 1-10-2009.

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(*c*) in all the returns, delivered in accordance with the provisions of section 206 or sub-section (5A) or sub-section (5B) of section 206C to any income-tax authority; and

(*d*) in all other documents pertaining to such transactions as may be prescribed in the interests of revenue.]

[18][**Furnishing of statement of tax deducted.**

203AA. The prescribed income-tax authority or the person authorised by such authority referred to in sub-section (3) of section 200, shall, within the prescribed time after the end of each financial year beginning on or after the 1st day of April, [19][2008] prepare and deliver to every person from whose income the tax has been deducted or in respect of whose income the tax has been paid a statement in the prescribed form specifying the amount of tax deducted or paid and such other particulars as may be prescribed.[20]]

Meaning of "person responsible for paying".

204. For the purposes of [21][the foregoing provisions of this Chapter] and [22]section 285, the expression "person responsible for paying" means—

(*i*) in the case of payments of income chargeable under the head "Salaries", other than payments by the Central Government or the Government of a State, the employer himself or, if the employer is a company, the company itself, including the principal officer thereof;

(*ii*) in the case of payments of income chargeable under the head "Interest on securities", other than payments made by or on behalf of the Central Government or the Government of a State, the local authority, corporation or company, including the principal officer thereof;

[23][(*iia*) in the case of any sum payable to a non-resident Indian, being any sum representing consideration for the transfer by him of any foreign exchange asset, which is not a short-term capital asset, the authorised dealer responsible for remitting such sum to the non-resident Indian or for crediting such sum to his Non-resident (External) Account

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18. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005.

19. Substituted for "2005" by the Finance Act, 2006, w.e.f. 1-4-2006.

20. *See* rule 31AB and Form No. 26AS.

21. Substituted for the portion beginning with the words "sections 192 to 194" and ending with "sections 195 to 203" by the Finance (No. 2) Act, 2004, w.e.f. 1-10-2004. Prior to its substitution, the quoted portion, as amended by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967, Finance Act, 1972, w.e.f. 1-4-1972, Finance Act, 1973, w.e.f. 1-4-1973, Finance Act, 1978, w.e.f. 1-4-1978, Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-11-1989, Finance (No. 2) Act, 1991, w.e.f. 1-10-1991, Finance Act, 1994, w.e.f. 1-6-1994, Finance Act, 1995, w.e.f. 1-7-1995 and Finance Act, 1999, w.e.f. 1-6-1999, read as under:

"sections 192 to 194, section 194A, section 194B, section 194BB, section 194C, section 194D, section 194E, section 194EE, section 194F, section 194G, section 194H, section 194-I, section 194J, section 194K, section 194L, sections 195 to 203".

22. Section 285 has since been omitted by the Finance Act, 1987, w.e.f. 1-6-1987.

23. Inserted by the Finance Act, 1986, w.e.f. 1-6-1986.

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maintained in accordance with the Foreign Exchange Regulation Act, 1973 (46 of 1973), and any rules made thereunder;]

(*iii*) [24][in the case of credit, or, as the case may be, payment] of any other sum chargeable under the provisions of this Act, the payer himself, or, if the payer is a company, the company itself including the principal officer thereof.

[25][*Explanation.*—For the purposes of this section,—

(*a*) "non-resident Indian" and "foreign exchange asset" shall have the meanings assigned to them in Chapter XII-A;

(*b*) "authorised dealer"[26] shall have the meaning assigned to it in clause (*b*) of section 2 of the Foreign Exchange Regulation Act, 1973 (46 of 1973).]

Bar against direct demand on assessee.

205. Where tax is deductible at the source under [27][the foregoing provisions of this Chapter], the assessee shall not be called upon to pay the tax himself to the extent to which tax has been deducted from that income.

[28][**Persons deducting tax to furnish prescribed returns.**

[29]**206.** [30][(1)] The prescribed person[31] in the case of every office of Government, the principal officer in the case of every company, the prescribed person[31] in the case of every local authority or other public body or association, every private employer and every other person responsible for deducting tax [32][before the 1st day of April, 2005] under the foregoing provisions of this Chapter [33][shall,

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24. Substituted for "in the case of payments" by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

25. Inserted by the Finance Act, 1986, w.e.f. 1-6-1986.

26. For definition of "authorised dealer", *see* footnote 30 on p. 1.437 *ante*.

27. Substituted for the portion beginning with the words "sections 192 to 194" and ending with "section 196D" by the Finance (No. 2) Act, 2004, w.e.f. 1-10-2004. Prior to its substitution, the quoted portion, as amended by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967, Finance Act, 1972, w.e.f. 1-4-1972, Finance Act, 1973, w.e.f. 1-4-1973, Finance Act, 1978, w.e.f. 1-4-1978, Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-11-1989, Finance (No. 2) Act, 1991, w.e.f. 1-10-1991, Finance Act, 1992, w.e.f. 1-6-1992, Finance Act, 1993, w.e.f. 1-6-1993, Finance Act, 1994, w.e.f. 1-6-1994, Finance Act, 1995, w.e.f. 1-7-1995 and Finance Act, 1999, w.e.f. 1-6-1999, read as under:

"sections 192 to 194, section 194A, section 194B, section 194BB, section 194C, section 194D, section 194E, section 194EE, section 194F, section 194G, section 194H, section 194-I, section 194J, section 194K, section 194L, section 195, section 196A, section 196B, section 196C and section 196D".

28. Substituted by the Finance Act, 1987, w.e.f. 1-6-1987. Prior to its substitution, section 206 was amended by the Finance Act, 1965, w.e.f. 1-4-1965.

29. *See* also Circular No. 719, dated 22-8-1995, Circular No. 744, dated 6-5-1996, Circular No. 796, dated 10-10-2000, Circular No. 797, dated 10-10-2000, Circular No. 8/2003, dated 18-9-2003 and Circular No. 4/2005, dated 27-6-2005. For details, *see* Taxmann's Master Guide to Income-tax Act.

30. Section 206 renumbered as sub-section (1) by the Finance Act, 1997, w.e.f. 1-4-1997.

31. *See* rule 36 for prescribed persons.

32. Inserted by the Finance Act, 2006, w.e.f. 1-4-2006.

33. Substituted for "shall prepare, within the prescribed time after the end of each financial year, and deliver or cause to be delivered" by the Finance (No. 2) Act, 1991, w.e.f. 27-9-1991.

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within the prescribed time after the end of each financial year, prepare and deliver or cause to be delivered] to the prescribed income-tax authority[34] [35][or such other authority or agency as may be prescribed], such returns[36] in such form and verified in such manner and setting forth such particulars as may be prescribed:]

[37][**Provided** that the Board may, if it considers necessary or expedient so to do, frame a scheme[38] for the purposes of filing such returns with such other authority or agency referred to in this sub-section.]

[39][(2) Without prejudice to the provisions of sub-section (1), the person responsible for deducting tax under the foregoing provisions of this Chapter other than [40][the prescribed person in the case of every office of the Government and] the principal officer in the case of every company may, at his option, deliver or cause to be delivered such return to the prescribed income-tax authority in accordance with such scheme as may be specified by the Board in this behalf, by notification in the Official Gazette[41], and subject to such conditions as may be specified therein, on or before the prescribed time after the end of each financial year, on a floppy, diskette, magnetic cartridge tape, CD-ROM or any other computer readable media (hereinafter referred to as the computer media) and in the manner as may be specified in that scheme :

[42][**Provided** that the prescribed person in the case of every office of Government and the principal officer in the case of every company responsible for deducting

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34. *See* rule 36A. The prescribed authority under rule 36A is Director General of Income-tax (Systems)/NSDL.

35. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-10-2004.

36. *See* rules 36 and 37 and Form Nos. 24 and 26. Also *see* rule 37A and Form No. 27Q.

37. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-10-2004.

38. *See* Scheme for Furnishing of Paper Returns of Tax Deducted at Source, 2005.

39. Sub-sections (2), (3) and (4) substituted for sub-sections (2) and (3) by the Finance Act, 2003, w.e.f. 1-6-2003. Prior to their substitution, sub-sections (2) and (3), as inserted by the Finance Act, 1997, w.e.f. 1-4-1997, read as under :

"(2) Notwithstanding anything contained in any other law for the time being in force, a return filed on a floppy, diskette, magnetic cartridge tape, CD-ROM or any other computer readable media as may be specified by the Board (hereinafter referred to as the computer media) shall be deemed to be a return for the purposes of this section and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof of production of the original, as evidence of any contents of the original or of any fact stated therein.

(3) A return filed under sub-section (2) shall fulfil the following conditions, namely :—

(*a*) while receiving returns on computer media, necessary checks by scanning the documents filed on computer media will be carried out and the media will be duly authenticated by the Assessing Officer; and

(*b*) the Assessing Officer shall also take due care to preserve the computer media by duplicating, transferring, mastering or storage without loss of data."

40. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005.

41. *See* Electronic Filing of Returns of Tax Deducted at Source Scheme, 2003. *See* also rule 37B and Form No. 27A.

42. Substituted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005. Prior to its substitution, proviso read as under :

"**Provided** that the principal officer shall, in the case of every company responsible for deducting tax under the foregoing provisions of this Chapter, deliver or cause to be delivered, within the prescribed time after the end of each financial year, such returns on computer media under the said scheme."

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tax under the foregoing provisions of this Chapter shall, deliver or cause to be delivered, within the prescribed time after the end of each financial year, such returns on computer media under the said scheme.]

(3) Notwithstanding anything contained in any other law for the time being in force, a return filed on computer media shall be deemed to be a return for the purposes of this section and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof of production of the original, as evidence of any contents of the original or of any fact stated therein.

(4) Where the Assessing Officer considers that the return delivered or caused to be delivered under sub-section (2) is defective, he may intimate the defect to the person responsible for deducting tax or the principal officer in the case of a company, as the case may be, and give him an opportunity of rectifying the defect within a period of fifteen days from the date of such intimation or within such further period which, on an application made in this behalf, the Assessing Officer may, in his discretion, allow; and if the defect is not rectified within the said period of fifteen days or, as the case may be, the further period so allowed, then, notwithstanding anything contained in any other provision of this Act, such return shall be treated as an invalid return and the provisions of this Act shall apply as if such person had failed to deliver the return.]

[43][**Furnishing of quarterly* return in respect of payment of interest to residents without deduction of tax.**

206A. (1) Any banking company or co-operative society or public company referred to in the proviso to clause (*i*) of sub-section (3) of section 194A responsible for paying to a resident any income [44][not exceeding ten thousand rupees, where the payer is a banking company or a co-operative society, and five thousand rupees in any other case] by way of interest (other than interest on securities), shall prepare [45][such statements for such period as may be

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43. Inserted by the Finance Act, 2005, w.e.f. 1-6-2005. Earlier original section 206A was inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967 and thereafter amended by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988. Prior to its omission by the Finance (No. 2) Act, 1996, w.e.f. 1-10-1996, section 206A read as under :

"206A. *Person paying interest to residents without deduction of tax, to furnish prescribed return.*—Any person responsible for paying any income referred to in section 194A shall prepare, and within thirty days from the 31st day of March in each year, deliver or cause to be delivered to the Assessing Officer in the prescribed form and verified in the prescribed manner, a return in writing showing—

(*a*) the name and address of every person who has furnished to him an affidavit or a statement under the proviso to sub-section (1) of section 194A;

(*b*) the amount of the income credited or paid during the financial year to each such person and the time or times at which the same was credited or paid, as the case may be; and

(*c*) such other particulars as may be prescribed."

44. Substituted for "not exceeding five thousand rupees" by the Finance Act, 2007, w.e.f. 1-6-2007.

45. Substituted for "quarterly returns for the period ending on the 30th June, the 30th September, the 31st December and the 31st March in each financial year " by the Finance (No. 2) Act, 2009, w.e.f. 1-10-2009.

*Word 'quarterly' need be omitted.

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prescribed] and deliver or cause to be delivered to the prescribed income-tax authority[46] or the person authorised by such authority the quarterly returns as aforesaid, in the prescribed form[47], verified in such manner and within such time as may be prescribed, on a floppy, diskette, magnetic cartridge tape, CD-ROM or any other computer readable media.

(2) The Central Government may, by notification in the Official Gazette, require any person other than a person mentioned in sub-section (1) responsible for paying to a resident any income liable for deduction of tax at source under Chapter XVII, to prepare and deliver or cause to be delivered [48][such statements] in the prescribed form and verified in such manner and within such time as may be prescribed, to the prescribed income-tax authority or the person authorised by such authority on a floppy, diskette, magnetic cartridge tape, CD-ROM or any other computer readable media.]

[49][**Requirement to furnish Permanent Account Number.**

206AA. *(1) Notwithstanding anything contained in any other provisions of this Act, any person entitled to receive any sum or income or amount, on which tax is deductible under Chapter XVIIB (hereafter referred to as deductee) shall furnish his Permanent Account Number to the person responsible for deducting such tax (hereafter referred to as deductor), failing which tax shall be deducted at the higher of the following rates, namely:—*

*(*i*) at the rate specified in the relevant provision of this Act; or*

*(*ii*) at the rate or rates in force; or*

*(*iii*) at the rate of twenty per cent.*

(2) No declaration under sub-section (1) or sub-section (1A) or sub-section (1C) of section 197A shall be valid unless the person furnishes his Permanent Account Number in such declaration.

(3) In case any declaration becomes invalid under sub-section (2), the deductor shall deduct the tax at source in accordance with the provisions of sub-section (1).

(4) No certificate under section 197 shall be granted unless the application made under that section contains the Permanent Account Number of the applicant.

(5) The deductee shall furnish his Permanent Account Number to the deductor and both shall indicate the same in all the correspondence, bills, vouchers and other documents which are sent to each other.

(6) Where the Permanent Account Number provided to the deductor is invalid or does not belong to the deductee, it shall be deemed that the deductee has not furnished his Permanent Account Number to the deductor and the provisions of sub-section (1) shall apply accordingly.]

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46. Prescribed authority is Director General of Income-tax (Systems) or person authorised by him.

47. *See* rules 31AC and 31ACA and Form Nos. 26QA and 26QAA.

48. Substituted for "quarterly returns" by the Finance (No. 2) Act, 2009, w.e.f. 1-10-2009.

49. Inserted, *ibid.*, w.e.f. **1-4-2010.**

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Person paying dividend to certain residents without deduction of tax to furnish prescribed return.

206B. [50][*Omitted by the Finance (No. 2) Act, 1996, w.e.f. 1-10-1996.*]

[51][*BB.—Collection at source*

Profits and gains from the business of trading in alcoholic liquor, forest produce, scrap, etc.[52]

[53]**206C.** [54][[55](1) Every person, being a seller shall, at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount[56] from the said buyer in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the buyer of any goods of the nature specified in column (2) of the Table below, a sum equal to the percentage, specified in the corresponding entry in column (3) of the said Table, of such amount as income-tax:

[57][TABLE

Sl. No.	*Nature of goods*	*Percentage*
(1)	*(2)*	*(3)*
(*i*)	Alcoholic Liquor for human consumption	One per cent
(*ii*)	Tendu leaves	Five per cent
(*iii*)	Timber obtained under a forest lease	Two and one-half per cent
(*iv*)	Timber obtained by any mode other than under a forest lease	Two and one-half per cent

50. Prior to its omission, section 206B was inserted by the Finance (No. 2) Act, 1977, w.e.f. 1-10-1977 and later on amended by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

51. Inserted by the Finance Act, 1988, w.e.f. 1-6-1988.

52. *See* rule 125 for Electronic payment of tax.

53. *See* also Circular No. 585, dated 27-11-1990. For details, *see* Taxmann's Master Guide to Income-tax Act.

54. Substituted by the Finance Act, 1992, w.e.f. 1-4-1992. Prior to substitution, sub-section (1) was amended by the Direct Tax Laws (Amendment) Act, 1989, w.r.e.f. 1-6-1988.

55. *See* rules 31AA, 31AB, 37C to 37-I and Form Nos. 13, 26AS, 27A, 27B, 27C, 27D and 27EQ.

56. For the meaning of the expression "such amount", *see* Taxmann's Direct Taxes Manual, Vol. 3.

57. Substituted by the Taxation Laws (Amendment) Act, 2003, w.e.f. 8-9-2003. Prior to its substitution, the Table, as amended by the Finance Act, 1992, w.e.f. 1-4-1992, Finance (No. 2) Act, 1996, w.e.f. 1-10-1996 and Finance Act, 2003, w.e.f. 1-6-2003, read as under :

"TABLE

Sl. No.	*Nature of goods*	*Percentage*
(1)	*(2)*	*(3)*
(*i*)	Alcoholic liquor for human consumption and tendu leaves	Ten per cent
(*ii*)	Timber obtained under a forest lease	Fifteen per cent
(*iii*)	Timber obtained by any mode other than under a forest lease	Five per cent
(*iv*)	Any other forest produce not being timber or tendu leaves	Fifteen per cent
(*v*)	Scrap	Ten per cent :"

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Sl. No.	*Nature of goods*	*Percentage*
(1)	*(2)*	*(3)*
(*v*)	Any other forest produce not being timber or tendu leaves	Two and one-half per cent
(*vi*)	Scrap	One per cent:]

[58][**Provided** that every person, being a seller shall at the time, during the period beginning on the 1st day of June, 2003 and ending on the day immediately preceding the date on which the Taxation Laws (Amendment) Act, 2003 comes into force, of debiting of the amount payable by the buyer to the account of the buyer or of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the buyer of any goods of the nature specified in column (2) of the Table as it stood immediately before the 1st day of June, 2003, a sum equal to the percentage, specified in the corresponding entry in column (3) of the said Table, of such amount as income-tax in accordance with the provisions of this section as they stood immediately before the 1st day of June, 2003.]]

[59][(1A) Notwithstanding anything contained in sub-section (1), no collection of tax shall be made in the case of a buyer, who is resident in India, if such buyer furnishes to the person responsible for collecting tax, a declaration in writing in duplicate in the prescribed form[60] and verified in the prescribed manner to the effect that the goods referred to in column (2) of the aforesaid Table are to be utilised for the purposes of manufacturing, processing or producing articles or things and not for trading purposes.

(1B) The person responsible for collecting tax under this section shall deliver or cause to be delivered to the Chief Commissioner or Commissioner one copy of the declaration referred to in sub-section (1A) on or before the seventh day of the month next following the month in which the declaration is furnished to him.]

[61][(1C) Every person, who grants a lease or a licence or enters into a contract or otherwise transfers any right or interest either in whole or in part in any parking lot or toll plaza or mine or quarry, to another person, other than a public sector company (hereafter in this section referred to as "licensee or lessee") for the use of such parking lot or toll plaza or mine or quarry for the purpose of business shall, at the time of debiting of the amount payable by the licensee or lessee to

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58. Substituted by the Taxation Laws (Amendment) Act, 2003, w.e.f. 8-9-2003. Prior to its substitution, proviso read as under :
"**Provided** that where the Assessing Officer, on an application made by the buyer, gives a certificate in the prescribed form that to the best of his belief any of the goods referred to in the aforesaid Table are to be utilised for the purposes of manufacturing, processing or producing articles or things and not for trading purposes, the provisions of this sub-section shall not apply so long as the certificate is in force."

59. Inserted by the Taxation Laws (Amendment) Act, 2003, w.e.f. 8-9-2003.

60. *See* rule 37C and Form No. 27C.

61. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-10-2004.

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the account of the licensee or lessee or at the time of receipt of such amount from the licensee or lessee in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the licensee or lessee of any such licence, contract or lease of the nature specified in column (2) of the Table below, a sum equal to the percentage, specified in the corresponding entry in column (3) of the said Table, of such amount as income-tax:

TABLE

Sl. No.	*Nature of contract or licence or lease, etc.*	*Percentage*
(1)	*(2)*	*(3)*
(*i*)	Parking lot	Two per cent
(*ii*)	Toll plaza	Two per cent
(*iii*)	Mining and quarrying	Two per cent.]

[62][*Explanation 1.*—For the purposes of this sub-section, "mining and quarrying" shall not include mining and quarrying of mineral oil.

Explanation 2.—For the purposes of *Explanation 1*, "mineral oil" includes petroleum and natural gas.]

(2) The power to recover tax by collection under sub-section (1) [63][or sub-section (1C)] shall be without prejudice to any other mode of recovery.

(3) Any person collecting any amount under sub-section (1) [63][or sub-section (1C)] shall pay within [64][the prescribed time] the amount so collected to the credit of the Central Government or as the Board directs :

[65][**Provided** that the person collecting tax on or after the 1st day of April, 2005 in accordance with the foregoing provisions of this section shall, after paying the tax collected to the credit of the Central Government within the prescribed time, [66][prepare such statements for such period as may be prescribed] and deliver or cause to be delivered to the prescribed income-tax authority[67], or the person authorised by such authority, such statement in such form and verified in such manner and setting forth such particulars and within such time as may be prescribed.[68]]

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62. Inserted by the Finance Act, 2007, w.e.f. 1-6-2007.

63. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-10-2004.

64. Substituted for "seven days" by the Taxation Laws (Amendment) Act, 2003, w.e.f. 8-9-2003. *See* also rule 37CA.

65. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005.

66. Substituted for "prepare quarterly statements for the period ending on the 30th June, the 30th September, the 31st December and the 31st March in each financial year" by the Finance (No. 2) Act, 2009, w.e.f. 1-10-2009.

67. Director General of Income-tax (Systems)/NSDL.

68. *See* rule 31AA and Form No. 27EQ.

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[69][(4) Any amount collected in accordance with the provisions of this section and paid to the credit of the Central Government shall be deemed to be a payment of tax on behalf of the person from whom the amount has been collected and credit shall be given to such person for the amount so collected in a particular assessment year in accordance with the rules[70] as may be prescribed by the Board from time to time.]

(5) Every person collecting tax in accordance with the provisions of this section shall within [71][such period as may be prescribed[72] from the time of debit] or receipt of the amount furnish to the buyer [73][or licensee or lessee] to whose account such amount is debited or from whom such payment is received, a certificate to the effect that tax has been collected, and specifying the sum so collected, the rate at which the tax has been collected and such other particulars as may be prescribed[72] :

[74][[74a]**[***]**

Provided [75]**[***]** that the prescribed income-tax authority or the person authorised by such authority referred to in sub-section (3) shall, within the prescribed time after the end of each financial year [76][beginning on or after the 1st day of April, 2008], prepare and deliver to the buyer referred to in sub-section (1) or, as the case may be, to the licensee or lessee referred to in sub-section (1C), a statement in the prescribed form[77] specifying the amount of tax collected and such other particulars as may be prescribed.]

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69. Substituted by the Finance Act, 2008, w.e.f. 1-4-2008. Prior to its substitution, sub-section (4), as amended by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005, Finance Act, 2005, w.e.f. 1-4-2005 and Finance Act, 2006, w.e.f. 1-4-2006, read as under :

"(4) Any amount collected in accordance with the provisions of this section and paid under sub-section (3) shall be deemed as payment of tax on behalf of the person from whom the amount has been collected and credit shall be given to him for the amount so collected on the production of the certificate furnished under sub-section (5) in the assessment made under this Act for the assessment year for which such income is assessable :

Provided that where any amount is collected in accordance with the provisions of this section on or after the 1st day of April, 2008 and paid under sub-section (3) to the credit of the Central Government, the amount of tax collected and specified in the statement referred to in the second proviso to sub-section (5) shall be deemed as payment of tax on behalf of the person from whom the amount has been collected and credit shall be given to him for the amount so collected in the assessment made under this Act for the assessment year for which such income is assessable without the production of certificate."

70. *See* rule 37-I.

71. Substituted for "ten days from the date of debit" by the Taxation Laws (Amendment) Act, 2003, w.e.f. 8-9-2003.

72. *See* rule 37D and Form No. 27D.

73. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-10-2004.

74. Inserted, *ibid.*, w.e.f. 1-4-2005.

74a. First proviso omitted by the Finance Act, 2010, w.e.f. **1-4-2010**. Prior to its omission, first proviso as amended by the Finance Act, 2008, w.e.f. 1-4-2008, Finance Act, 2006, w.e.f. 1-4-2006 and Finance Act, 2005, w.e.f. 1-4-2005, read as under :

"**Provided** that no certificate may be furnished in a case where tax has been collected in accordance with the foregoing provisions of this section on or after the 1st day of April, 2010 :"

75. Word "further" omitted by the Finance Act, 2010, w.e.f. **1-4-2010**.

76. Inserted by the Finance Act, 2006, w.r.e.f. 1-4-2005.

77. *See* rule 31AB and Form No. 26AS.

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[78][(5A) Every person collecting tax [79][before the 1st day of April, 2005] in accordance with the provisions of this section shall [80][prepare within the prescribed time after the end of each financial year], and deliver or cause to be delivered to the prescribed income-tax authority[81] [82][or such other authority or agency as may be prescribed] such returns in such form and verified in such manner and setting forth such particulars and within such time as may be prescribed[83]:]

[84][**Provided** that the Board may, if it considers necessary or expedient so to do, frame a scheme[85] for the purposes of filing such returns with such other authority or agency referred to in this sub-section.]

[86][(5B) Without prejudice to the provisions of sub-section (5A), any person collecting tax, other than in a case where the seller is a company, the Central Government or a State Government, may at his option, deliver or cause to be delivered such return to the prescribed income-tax authority[81] in accordance with such scheme[87] as may be specified by the Board in this behalf, by notification in the Official Gazette, and subject to such conditions as may be specified therein, on or before the prescribed time after the end of each financial year, on a floppy, diskette, magnetic cartridge tape, CD-ROM or any other computer readable media (hereinafter referred to as the computer media) and in the manner as may be specified in that scheme[88]:

Provided that where the person collecting tax is a company or the Central Government or a State Government, such person shall, in accordance with the

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78. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

79. Inserted by the Finance Act, 2006, w.e.f. 1-4-2006.

80. Substituted for "prepare half yearly returns for the period ending on 30th September and 31st March in each financial year" by the Finance (No. 2) Act, 2004, w.e.f. 1-10-2004.

81. The prescribed authority under rule 37F is Director General of Income-tax (Systems)/ NSDL.

82. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-10-2004.

83. *See* rule 37E and Form No. 27E.

84. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-10-2004.

85. *See* Scheme for Furnishing of Paper Returns of Tax Collected at Source, 2005.

86. Sub-sections (5B), (5C) and (5D) substituted for sub-sections (5B) and (5C) by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005. Prior to their substitution, sub-sections (5B) and (5C), as inserted by the Finance Act, 1999, w.e.f. 1-6-1999, read as under :

"(5B) Notwithstanding anything contained in any other law for the time being in force, a return filed on a floppy, diskette, magnetic cartridge tape, CD-ROM or any other computer readable media as may be specified by the Board (hereinafter referred to as the computer media) shall be deemed to be a return for the purposes of sub-section (5A) and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof of production of the original, as evidence of any contents of the original or of any fact stated therein.

(5C) A return filed under sub-section (5B) shall fulfil the following conditions, namely:—

(*a*) while receiving returns on computer media, necessary checks by scanning the documents filed on computer media will be carried out and the media will be duly authenticated by the Assessing Officer; and

(*b*) the Assessing Officer shall also take due care to preserve the computer media by duplicating, transferring, mastering or storage without loss of data."

87. *See* Electronic Filing of Returns of Tax Collected at Source Scheme, 2005.

88. *See* rule 37EA and Form No. 27B. *See* also Electronic Filing of Returns of Tax Collected at Source Scheme, 2005.

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provisions of this section, deliver or cause to be delivered, within the prescribed time after the end of each financial year, such returns on computer media under the said scheme.

(5C) Notwithstanding anything contained in any other law for the time being in force, a return filed on computer media shall be deemed to be a return for the purposes of sub-section (5A) and the rules made thereunder and shall be admissible in any proceedings made thereunder, without further proof of production of the original, as evidence of any contents of the original or of any facts stated therein.

(5D) Where the Assessing Officer considers that the return delivered or caused to be delivered under sub-section (5B) is defective, he may intimate the defect to the person collecting tax and give him an opportunity of rectifying the defect within a period of fifteen days from the date of such intimation or within such further period which, on an application made in this behalf, the Assessing Officer may, in his discretion, allow; and if the defect is not rectified within the said period of fifteen days or, as the case may be, the further period so allowed, then, notwithstanding anything contained in any other provision of this Act, such return shall be treated as an invalid return and the provisions of this Act shall apply as if such person had failed to deliver the return.]

(6) Any person responsible for collecting the tax who fails to collect the tax in accordance with the provisions of this section, shall, notwithstanding such failure, be liable to pay the tax to the credit of the Central Government in accordance with the provisions of sub-section (3).

[89][(6A) If any person responsible for collecting tax in accordance with the provisions of this section does not collect the whole or any part of the tax or after collecting, fails to pay the tax as required by or under this Act, he shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of the tax:

Provided that no penalty shall be charged under section 221 from such person unless the Assessing Officer is satisfied that the person has without good and sufficient reasons failed to collect and pay the tax.]

(7) Without prejudice to the provisions of sub-section (6), if the [90][person responsible for collecting tax] does not collect the tax or after collecting the tax fails to pay it as required under this section, he shall be liable to pay simple interest at the rate of [91][one] per cent per month or part thereof on the amount of such tax from the date on which such tax was collectible to the date on which the tax was actually paid [92][and such interest shall be paid before furnishing the quarterly statement for each quarter in accordance with the provisions of sub-section (3)].

(8) Where the tax has not been paid as aforesaid, after it is collected, the amount of the tax together with the amount of simple interest thereon referred to in sub-

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89. Inserted by the Finance Act, 2006, w.e.f. 1-4-2007.

90. Substituted for "seller", *ibid*.

91. Substituted for "one and one-fourth" by the Taxation Laws (Amendment) Act, 2003, w.e.f. 8-9-2003. Earlier the quoted words were substituted for "two" by the Finance Act, 2001, w.e.f. 1-6-2001.

92. Inserted by the Finance Act, 2006, w.e.f. 1-6-2006.

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section (7) shall be a charge upon all the assets of the [93][person responsible for collecting tax].]

[94][(9) Where the Assessing Officer is satisfied that the total income of the buyer [95][or licensee or lessee] justifies the collection of the tax at any lower rate than the relevant rate specified in sub-section (1)[95][or sub-section (1C)], the Assessing Officer shall, on an application[96] made by the buyer [97][or licensee or lessee] in this behalf, give to him a certificate for collection of tax at such lower rate than the relevant rate specified in sub-section (1) [97][or sub-section (1C)].

(10) Where a certificate under sub-section (9) is given, the person responsible for collecting the tax shall, until such certificate is cancelled by the Assessing Officer, collect the tax at the rates specified in such certificate.

(11) The Board may, having regard to the convenience of assessees and the interests of revenue, by notification in the Official Gazette, make rules specifying the cases in which, and the circumstances under which, an application may be made for the grant of a certificate under sub-section (9) and the conditions subject to which such certificate may be granted and providing for all other matters connected therewith.]

[98][*Explanation.*—For the purposes of this section,—

(*a*) "buyer" means a person who obtains in any sale, by way of auction, tender or any other mode, goods of the nature specified in the Table in sub-section (1) or the right to receive any such goods but does not include,—

[99][(*i*) a public sector company, the Central Government, a State Government, and an embassy, a high commission, legation, commission, consulate and the trade representation, of a foreign State and a club; or

(*ii*) a buyer in the retail sale of such goods purchased by him for personal consumption;]

[1][(*b*) "scrap" means waste and scrap from the manufacture or mechanical working of materials which is definitely not usable as such because of breakage, cutting up, wear and other reasons;

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93. Substituted for "seller" by the Finance Act, 2006, w.e.f. 1-4-2007.

94. Sub-sections (9), (10) and (11) inserted by the Finance Act, 1999, w.e.f. 1-6-1999.

95. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-10-2004.

96. *See* rules 37G and 37H and Form No. 13.

97. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-10-2004.

98. Inserted by the Finance Act, 1992, w.e.f. 1-4-1992.

99. Substituted by the Taxation Laws (Amendment) Act, 2003, w.e.f. 8-9-2003. Earlier sub-clauses (*i*) and (*ii*), as substituted for sub-clauses (*i*), (*ii*) and (*iii*) by the Finance Act, 2003, w.e.f. 1-6-2003, read as under :

"(*i*) a public sector company, or

(*ii*) a buyer in the retail sale of such goods obtained in pursuance of such sale;"

1. Clauses (*b*) and (*c*) substituted for clause (*b*) by the Finance Act, 2003, w.e.f. 1-6-2003. Prior to its substitution, clause (*b*) read as under :

'(*b*) "seller" means the Central Government, a State Government or any local authority or corporation or authority established by or under a Central, State or Provincial Act, or any company or firm or co-operative society.'

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(*c*) "seller" means the Central Government, a State Government or any local authority or corporation or authority established by or under a Central, State or Provincial Act, or any company or firm or co-operative society and also includes an individual or a Hindu undivided family whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (*a*) or clause (*b*) of section 44AB during the financial year immediately preceding the financial year in which the goods of the nature specified in the Table in sub-section (1) are sold.]]

[2][**Tax collection account number.**

206CA. (1) Every person collecting tax in accordance with the provisions of section 206C, shall, within such time as may be prescribed[3], apply to the Assessing Officer for the allotment of a tax collection account number[4].

(2) Where a tax collection account number has been allotted to a person, such person shall quote such number—

(*a*) in all challans for the payment of any sum in accordance with the provisions of sub-section (3) of section 206C;

(*b*) in all certificates furnished under sub-section (5) of section 206C;

(*c*) in all the returns delivered in accordance with the provisions of sub-section (5A) or sub-section (5B) of section 206C to any income-tax authority; and

(*d*) in all other documents pertaining to such transactions as may be prescribed in the interest of revenue:]

[5][**Provided** that the provisions of this section shall not apply on or after the 1st day of October, 2004.]

C.—Advance payment of tax[6]

[7][**Liability for payment of advance tax.**

207. Tax shall be payable in advance during any financial year, in accordance with the provisions of sections 208 to 219 (both inclusive), in respect of the total income of the assessee which would be chargeable to tax for the assessment year immediately following that financial year, such income being hereafter in this Chapter referred to as "current income"[8].]

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2. Inserted by the Finance Act, 2002, w.e.f. 1-6-2002.
3. *See* rule 114AA.
4. *See* rule 114AA and Form No. 49B.
5. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-10-2004.
6. For electronic payment of tax, *see* rule 125.
7. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988. Original section 207 was earlier amended by the Finance Act, 1972, w.e.f. 1-4-1972.
8. For the meaning of the expression "current income", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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[9][**Conditions of liability to pay advance tax.**

208. Advance tax shall be payable during a financial year in every case where the amount of such tax payable by the assessee during that year, as computed in accordance with the provisions of this Chapter, is [10][ten thousand] rupees or more.]

Computation of advance tax.

209. [11][(1) The amount of advance tax payable by an assessee in the financial year shall, subject to the provisions of sub-sections (2) and (3), be computed as follows, namely :—

(*a*) where the calculation is made by the assessee for the purposes of payment of advance tax under sub-section (1) or sub-section (2) or sub-section (5) or sub-section (6) of section 210, he shall first estimate his current income and income-tax thereon shall be calculated at the rates in force in the financial year;

(*b*) where the calculation is made by the Assessing Officer for the purpose of making an order under sub-section (3) of section 210, the total income of the latest previous year in respect of which the assessee has been assessed by way of regular assessment or the total income returned by the assessee in any return of income furnished by him for any subsequent previous year, whichever is higher, shall be taken and income-tax thereon shall be calculated at the rates in force in the financial year;

(*c*) where the calculation is made by the Assessing Officer for the purpose of making an amended order under sub-section (4) of section 210, the total income declared in the return furnished by the assessee for the later previous year, or, as the case may be, the total income in respect of which the regular assessment, referred to in that sub-section has been made, shall be taken and income-tax thereon shall be calculated at the rates in force in the financial year;

(*d*) the income-tax calculated under clause (*a*) or clause (*b*) or clause (*c*) shall, in each case, be reduced by the amount of income-tax which

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9. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988. Prior to the substitution by the said Amendment Act, section 208 was first substituted by the Finance Act, 1969, w.e.f. 1-4-1969 and was later amended by the Finance Act, 1972, w.e.f. 1-4-1972, the Finance (No. 2) Act, 1977, w.e.f. 1-9-1977, the Finance Act, 1978, w.e.f. 1-6-1978, the Finance Act, 1979, w.e.f. 1-4-1979, the Finance (No. 2) Act, 1980, w.e.f. 1-9-1980, the Finance Act, 1981, w.e.f. 1-6-1981, the Taxation Laws (Amendment) Act, 1984, w.e.f. 2-4-1985 and the Finance Act, 1985, w.e.f. 24-5-1985.

10. Substituted for "five thousand" by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-2009. Earlier "five thousand" was substituted for "one thousand five hundred" by the Finance (No. 2) Act, 1996, w.e.f. 1-10-1996.

11. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988. Sub-section (1) was earlier amended by the Finance Act, 1963, w.e.f. 1-4-1963, the Finance Act, 1964, w.r.e.f. 1-4-1963, the Direct Taxes (Amendment) Act, 1964, w.e.f. 6-10-1964, the Finance Act, 1965, w.e.f. 1-4-1965, the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967, the Finance Act, 1969, w.e.f. 1-4-1969, the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971, the Finance Act, 1972, w.e.f. 1-4-1972, the Finance Act, 1973, w.e.f. 1-4-1973, the Finance Act, 1974, w.e.f. 1-4-1974 and the Finance Act, 1978, w.e.f. 1-6-1978.

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would be deductible [12][or collectible] at source during the said financial year under any provision of this Act from any income (as computed before allowing any deductions admissible under this Act) which has been taken into account in computing the current income or, as the case may be, the total income aforesaid; and the amount of income-tax as so reduced shall be the advance tax payable.]

[13][(2) Where the Finance Act of the relevant year provides that, in the case of any class of assessees, net agricultural income (as defined in that Act) shall be taken into account for the purposes of computing advance tax, then, the net agricultural income to be taken into account in the case of any assessee falling in that class, shall be—

(*a*) in cases [14][where the Assessing Officer makes an order under sub-section (3) or sub-section (4) of section 210],—

(*i*) if the total income of the latest previous year in respect of which the assessee has been assessed by way of regular assessment forms the basis of computation of advance tax payable by him, the net agricultural income which has been taken into account for the purposes of charging income-tax for the assessment year relevant to that previous year; or

[15][(*ii*) if the total income declared by the assessee for the later previous year referred to in sub-section (4) of section 210 forms the basis of computation of advance tax, the net agricultural income as returned by the assessee in the return of income for the assessment year relevant to such later previous year;]

[16][(*b*) in cases where the advance tax is paid by the assessee on the basis of his estimate of his current income under sub-section (1) or sub-section (2) or sub-section (5) or sub-section (6) of section 210, the net agricultural income, as estimated by him, of the period which would be the previous year for the immediately following assessment year.]

(3) Where the Finance Act of the relevant year specifies any separate rate or rates for the purposes of computing advance tax in the case of every Hindu undivided family which has at least one member whose total income of the previous year exceeds the maximum amount not chargeable to income-tax in his case, then, the [17][Assessing] Officer shall, for making an order under [18][sub-section (3) or sub-

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12. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.r.e.f. 1-6-1988.

13. Inserted by the Finance Act, 1974, w.e.f. 1-4-1974.

14. Substituted for "*where the assessee sends a statement under sub-section (1) of section 209A or* where the Income-tax Officer makes an order under sub-section (1) or sub-section (3) of section 210" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988. Earlier the italicised words were inserted by the Finance Act, 1978, w.e.f. 1-6-1978.

15. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

16. Substituted, *ibid*. Prior to substitution, clause (*b*) was amended by the Finance Act, 1978, w.e.f. 1-6-1978.

17. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

18. Inserted, *ibid*.

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section (4) of] section 210 in the case of any such Hindu undivided family, compute (subject to the provisions of section 164) the advance tax at such rate or rates—

(*a*) in a case where the total income of the latest previous year in respect of which the Hindu undivided family has been assessed by way of regular assessment forms the basis of computation of advance tax, if the total income of any member of the family for the assessment year relevant to such latest previous year exceeds the maximum amount not chargeable to income-tax in his case;

(*b*) in a case where the total income of the previous year [19][in respect of which a return of income is furnished by the Hindu undivided family under section 139 or in response to a notice under sub-section (1) of section 142] forms the basis of computation of advance tax, if the total income of any member of the family for the assessment year relevant to such previous year exceeds the maximum amount not chargeable to income-tax in his case.

Computation and payment of advance tax by assessee.

[20]**209A.** [*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988. Original section was inserted by the Finance Act, 1978, w.e.f. 1-6-1978.*]

[21][**Payment of advance tax by the assessee of his own accord or in pursuance of order of Assessing Officer.**

210. (1) Every person who is liable to pay advance tax under section 208 (whether or not he has been previously assessed by way of regular assessment) shall, of his own accord, pay, on or before each of the due dates specified in section 211, the appropriate percentage, specified in that section, of the advance tax on his current income, calculated in the manner laid down in section 209.

(2) A person who pays any instalment or instalments of advance tax under sub-section (1), may increase or reduce the amount of advance tax payable in the remaining instalment or instalments to accord with his estimate of his current income and the advance tax payable thereon, and make payment of the said amount in the remaining instalment or instalments accordingly.

(3) In the case of a person who has been already assessed by way of regular assessment in respect of the total income of any previous year [22][***], the Assessing Officer, if he is of opinion that such person is liable to pay advance tax, may, at any time during the financial year but not later than the last day of February, by order in writing, require such person to pay advance tax calculated

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19. Substituted for "on the basis of which tax has been paid by the Hindu undivided family under section 140A" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

20. Omitted section 209A was amended by the Finance Act, 1979, w.e.f. 1-4-1979 and the Finance (No. 2) Act, 1980, w.e.f. 1-9-1980.

21. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988. Earlier, it was amended by the Finance Act, 1963, w.e.f. 1-4-1963, the Direct Taxes (Amendment) Act, 1964, w.e.f. 6-10-1964, the Finance Act, 1969, w.e.f. 1-4-1969 and the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

22. Words "and who has not paid any advance tax under sub-section (1)" omitted by the Finance Act, 2002, w.e.f. 1-6-2002.

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in the manner laid down in section 209, and issue to such person a notice of demand under section 156 specifying the instalment or instalments in which such tax is to be paid.

(4) If, after the making of an order by the Assessing Officer under sub-section (3) and at any time before the 1st day of March, a return of income is furnished by the assessee under section 139 or in response to a notice under sub-section (1) of section 142, or a regular assessment of the assessee is made in respect of a previous year later than that referred to in sub-section (3), the Assessing Officer may make an amended order and issue to such assessee a notice of demand under section 156 requiring the assessee to pay, on or before the due date or each of the due dates specified in section 211 falling after the date of the amended order, the appropriate percentage, specified in section 211, of the advance tax computed on the basis of the total income declared in such return or in respect of which the regular assessment aforesaid has been made.

(5) A person who is served with an order of the Assessing Officer under sub-section (3) or an amended order under sub-section (4) may, if in his estimation the advance tax payable on his current income would be less than the amount of the advance tax specified in such order or amended order, send an intimation in the prescribed form[23] to the Assessing Officer to that effect and pay such advance tax as accords with his estimate, calculated in the manner laid down in section 209, at the appropriate percentage thereof specified in section 211, on or before the due date or each of the due dates specified in section 211 falling after the date of such intimation.

(6) A person who is served with an order of the Assessing Officer under sub-section (3) or amended order under sub-section (4) shall, if in his estimation the advance tax payable on his current income would exceed the amount of advance tax specified in such order or amended order or intimated by him under sub-section (5), pay on or before the due date of the last instalment specified in section 211, the appropriate part or, as the case may be, the whole of such higher amount of advance tax as accords with his estimate, calculated in the manner laid down in section 209.]

[24][**Instalments of advance tax and due dates.**[25]

211. [26][(1) Advance tax on the current income calculated in the manner laid down in section 209 shall be payable by—

(*a*) all the companies, who are liable to pay the same, in four instalments during each financial year and the due date of each instalment and the amount of such instalment shall be as specified in Table I below :

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23. *See* rule 39 and Form No. 28A for form of estimate of advance tax.

24. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988. Earlier, it was amended by the Finance Act, 1969, w.e.f. 1-4-1969, the Finance Act, 1972, w.e.f. 1-4-1972 and the Finance Act, 1978, w.e.f. 1-6-1978.

25. *See* Circular No. 676, dated 14-1-1994. For details, *see* Taxmann's Master Guide to Income-tax Act.

26. Substituted by the Finance Act, 1994, w.e.f. 1-4-1994. Prior to its substitution, sub-section (1) was substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988 and later amended by the Finance Act, 1992, w.e.f. 1-4-1992.

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TABLE I

Due date of instalment	*Amount payable*
On or before the 15th June	Not less than fifteen per cent of such advance tax.
On or before the 15th September	Not less than forty-five per cent of such advance tax, as reduced by the amount, if any, paid in the earlier instalment.
On or before the 15th December	Not less than seventy-five per cent of such advance tax, as reduced by the amount or amounts, if any, paid in the earlier instalment or instalments.
On or before the 15th March	The whole amount of such advance tax as reduced by the amount or amounts, if any, paid in the earlier instalment or instalments;

(*b*) all the assessees (other than companies), who are liable to pay the same, in three instalments during each financial year and the due date of each instalment and the amount of such instalment shall be as specified in Table II below :

TABLE II

Due date of instalment	*Amount payable*
On or before the 15th September	Not less than thirty per cent of such advance tax.
On or before the 15th December	Not less than sixty per cent of such advance tax, as reduced by the amount, if any, paid in the earlier instalment.
On or before the 15th March	The whole amount of such advance tax as reduced by the amount or amounts, if any, paid in the earlier instalment or instalments :

Provided that any amount paid by way of advance tax on or before the 31st day of March shall also be treated as advance tax paid during the financial year ending on that day for all the purposes of this Act.]

(2) If the notice of demand issued under section 156 in pursuance of an order of the Assessing Officer under sub-section (3) or sub-section (4) of section 210 is served after any of the due dates specified in sub-section (1), the appropriate part or, as the case may be, the whole of the amount of the advance tax specified in

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such notice shall be payable on or before each of such of those dates as fall after the date of service of the notice of demand.]

Estimate by assessee.

212. [*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.*]

Commission receipts.

213. [27][*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.*]

[28]**Interest payable by Government.**

[29]**214.** (1) The Central Government shall pay simple interest at [30][fifteen] per cent per annum on the amount by which the aggregate sum of any instalments of advance tax paid during any financial year in which they are payable under sections 207 to 213 exceeds the amount of the [31][assessed tax] from the 1st day of April next following the said financial year to the date of the regular assessment for the assessment year immediately following the said financial year, and where any such instalment is paid after the expiry of the financial year, during which it is payable by reason of the provisions of section 213, interest as aforesaid shall also be payable on that instalment from the date of its payment to the date of regular assessment :

[32][**Provided** that in respect of any amount refunded on a provisional assessment under section 141A, no interest shall be paid for any period after the date of such provisional assessment.]

[33][(1A) Where as a result of an order under section 147 or section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264 [34][or an order of the Settlement Commission under sub-section (4) of section 245D], the amount on which interest was payable under sub-section (1) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and in a case where the interest is reduced, the [35][Assessing] Officer shall serve on the assessee, a notice of demand in the

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27. Prior to omission, section 213 was amended by the Finance Act, 1965, w.e.f. 1-4-1965, the Taxation Laws (Amendment) Act, 1967, w.e.f. 1-10-1967, the Finance Act, 1969, w.e.f. 1-4-1969, the Finance Act, 1972, w.e.f. 1-4-1972 and the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984.

28. *See* rule 119A.

29. *See* also Letter [F.No. 12/80/64-IT(B)], dated 1-3-1965, Letter [F.No. 400/59/75-ITCC], dated 10-10-1973, Letter [F.No. 12/12/68-IT(A-II)], dated 11-12-1968 and Instruction No. 947, dated 23-4-1976. For details, *see* Taxmann's Direct Taxes Circulars.

30. Substituted for "twelve" by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984. Earlier "twelve" was substituted for "nine" by the Finance Act, 1972, w.e.f. 1-4-1972, "nine" was substituted for "six" by the Taxation Laws (Amendment) Act, 1967, w.e.f. 1-10-1967 and "six" was substituted for "four" by the Finance Act, 1965, w.e.f. 1-4-1965.

31. Substituted for "tax determined on regular assessment" by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-4-1985.

32. Inserted by the Finance Act, 1968, w.e.f. 1-4-1968.

33. Substituted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-4-1985. Original sub-section (1A) was inserted by the Finance Act, 1968, w.e.f. 1-4-1968.

34. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

35. Substituted for "Income-tax", *ibid.,* w.e.f. 1-4-1988.

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prescribed form specifying the amount of the excess interest payable and requiring him to pay such amount ; and such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall apply accordingly.]

(2) On any portion of such amount which is refunded under this Chapter, interest shall be payable only up to the date on which the refund was made.

[36][(3) This section and sections 215, 216 and 217 shall not apply in respect of any assessment for the assessment year commencing on the 1st day of April, 1989, or any subsequent assessment year and, in the application of the said sections to the assessment for any earlier assessment year, references therein [except in sub-section (1A) and sub-section (3) of section 215] to the other provisions of this Act shall be construed as references to those provisions as for the time being in force and applicable to the relevant assessment year.]

[37][*Explanation 1.*—In this section, "assessed tax" shall have the same meaning as in sub-section (5) of section 215.

Explanation 2.—Where, in relation to an assessment year, an assessment is made for the first time under section 147, the assessment so made shall be regarded as a regular assessment for the purposes of this section.]

Interest payable by assessee.

[38]**215.** [39][[40](1) Where, in any financial year, an assessee has paid [41][advance tax under section 209A or section 212 on the basis of his own estimate (including revised estimate)], and the advance tax so paid is less than seventy-five per cent of the assessed tax, simple interest at the rate of [42][fifteen] per cent per annum from the 1st day of April next following the said financial year up to the date of the regular assessment shall be payable by the assessee upon the amount by which the advance tax so paid falls short of the assessed tax :]

[43][**Provided** that in the case of an assessee, being a company, the provisions of this sub-section shall have effect as if for the words "seventy-five per cent", the words "eighty-three and one-third per cent" had been substituted.]

[44][(2) Where before the date of completion of a regular assessment, tax is paid by the assessee under section 140A or otherwise,—

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36. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

37. Inserted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-4-1985.

38. *See* also Letter [F.No. 400/40/73-ITCC], dated 19-10-1973 and Circular No. 492, dated 21-7-1987. For details, *see* Taxmann's Direct Taxes Circulars.

39. Substituted by the Finance Act, 1969, w.e.f. 1-4-1970.

40. *See* rules 40 and 119A.

41. Substituted for "advance tax under section 212 on the basis of his own estimate" by the Finance Act, 1978, w.e.f. 1-6-1978.

42. Substituted for "twelve" by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984. Earlier "twelve" was substituted for "nine" by the Finance Act, 1972, w.e.f. 1-4-1972.

43. Inserted by the Finance (No. 2) Act, 1980, w.e.f. 1-9-1980.

44. Substituted by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971. Initially, sub-section (2) was substituted by the Finance Act, 1963, w.e.f. 1-4-1963 which was later on amended by the Finance Act, 1969, w.e.f. 1-4-1970.

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(*i*) interest shall be calculated in accordance with the foregoing provision up to the date on which the tax is so paid ; and

(*ii*) thereafter, interest shall be calculated at the rate aforesaid on the amount by which the tax as so paid (in so far as it relates to income subject to advance tax) falls short of the assessed tax.]

[45][(3) Where as a result of an order under section 147 or section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264 [46][or an order of the Settlement Commission under sub-section (4) of section 245D], the amount on which interest was payable under sub-section (1) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and—

(*i*) in a case where the interest is increased, the [47][Assessing] Officer shall serve on the assessee, a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall apply accordingly ;

(*ii*) in a case where the interest is reduced, the excess interest paid, if any, shall be refunded.]

(4) In such cases and under such circumstances as may be prescribed[48], the [49][Assessing] Officer may reduce or waive the interest payable by the assessee under this section.

[50][(5) In this section and sections 217 and 273, "assessed tax" means the tax determined on the basis of the regular assessment (reduced by the amount of tax deductible in accordance with the provisions of sections 192 to 194, section 194A [51][, section 194C] [52][, section 194D] [53][, section 195 and section 196A] so far as such tax relates to income subject to advance tax and so far as it is not due to variations in the rates of tax made by the Finance Act enacted for the year for which the regular assessment is made.]

[54][(6) Where, in relation to an assessment year, an assessment is made for the first time under section 147, the assessment so made shall be regarded as a regular assessment for the purposes of this section and sections 216, 217 and 273.]

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45. Substituted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-4-1985.

46. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

47. Substituted for "Income-tax", *ibid.,* w.e.f. 1-4-1988.

48. *See* rule 40.

49. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

50. Inserted by the Finance Act, 1969, w.e.f. 1-4-1970.

51. Inserted by the Finance Act, 1972, w.e.f. 1-4-1972.

52. Inserted by the Finance Act, 1973, w.e.f. 1-4-1973.

53. Substituted for "and section 195" by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

54. Inserted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-4-1985.

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[55]**Interest payable by assessee in case of under-estimate, etc.**

[56]**216.** Where, on making the regular assessment, the [57][Assessing] Officer finds that any assessee has—

[58][(*a*) under [59][section 209A or section 212] under-estimated the advance tax payable by him and thereby reduced the amount payable in either of the first two instalments ; or]

(*b*) under section 213 wrongly deferred the payment of advance tax on a part of his income ;

he may direct that the assessee shall pay simple interest at [60][fifteen] per cent per annum—

(*i*) in the case referred to in clause (*a*), for the period during which the payment was deficient, on the difference between the amount paid in each such instalment and the amount which should have been paid, having regard to the aggregate advance tax actually paid during the year ; and

(*ii*) in the case referred to in clause (*b*), for the period during which the payment of advance tax was so deferred.

Explanation.—For the purposes of this section, any instalment due before the expiry of six months from the commencement of the previous year in respect of which it is to be paid shall be deemed to have become due fifteen days after the expiry of the said six months.

Interest payable by assessee when no estimate made.

[61]**217.** [62][(1) Where, on making the regular assessment, [63][the [64][Assessing] Officer finds—

(*a*) that any such person as is referred to in clause (*a*) of sub-section (1) of section 209A has not sent the statement referred to in that clause or the estimate in lieu of such statement referred to in sub-section (2) of that section ; or

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55. *See* rule 119A.

56. *See* also Letter [F.No. 400/58/78-ITCC], dated 29-2-1980. For details, *see* Taxmann's Direct Taxes Circulars.

57. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

58. Substituted by the Finance Act, 1969, w.e.f. 1-4-1970.

59. Substituted for "sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) of section 212" by the Finance Act, 1978, w.e.f. 1-6-1978.

60. Substituted for "twelve" by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984. Earlier "twelve" was substituted for "nine" by the Finance Act, 1972, w.e.f. 1-4-1972, "nine" was substituted for "six" by the Taxation Laws (Amendment) Act, 1967, w.e.f. 1-10-1967 and "six" was substituted for "four" by the Finance Act, 1965, w.e.f. 1-4-1965.

61. *See* rules 40 and 119A.

62. Substituted by the Finance Act, 1969, w.e.f. 1-4-1970.

63. Substituted for "the Income-tax Officer finds that any such person as is referred to in sub-section (3) of section 212 has not sent the estimate referred to therein" by the Finance Act, 1978, w.e.f. 1-6-1978.

64. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

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(*b*) that any such person as is referred to in clause (*b*) of sub-section (1) of section 209A has not sent the estimate referred to in that clause,]

simple interest at the rate of [65][fifteen] per cent per annum from the 1st day of April next following the financial year in which the advance tax was payable in accordance with the said [66][sub-section (1) or sub-section (2)] up to the date of the regular assessment shall be payable by the assessee upon the amount equal to the assessed tax as defined in sub-section (5) of section 215.]

[67][(1A) Where, on making the regular assessment, the [68][Assessing] Officer finds that [69][any person who is required to send an estimate under sub-section (4) of section 209A or] any such person as is referred to in sub-section (3A) of section 212 has not sent the estimate referred to therein, simple interest at the rate of [70][fifteen] per cent per annum from the 1st day of April next following the financial year in which the advance tax was payable in accordance with the said [71][sub-section (4) or, as the case may be, sub-section (3A)] up to the date of the regular assessment shall be payable by the assessee upon the amount by which the advance tax paid by him falls short of the assessed tax as defined in sub-section (5) of section 215.]

(2) The provisions of sub-sections (2), (3) and (4) of section 215 shall apply to interest payable under this section as they apply to interest payable under that section.

When assessee deemed to be in default.

218. [72][If any assessee does not pay on the date specified in sub-section (1) of section 211, any instalment of the advance tax that he is required to pay by an order of the Assessing Officer under sub-section (3) or sub-section (4) of section 210 and does not, on or before the date on which any such instalment as is not paid becomes due, send to the Assessing Officer an intimation under sub-section (5) of section 210 or does not pay on the basis of his estimate of his current income the advance tax payable by him under sub-section (6) of section 210, he shall be deemed to be an assessee in default in respect of such instalment or instalments.]

Credit for advance tax.

219. Any sum, other than a penalty or interest, paid by or recovered from an assessee as advance tax in pursuance of this Chapter shall be treated as a

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65. Substituted for “twelve” by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984. Earlier “twelve” was substituted for “nine” by the Finance Act, 1972, w.e.f. 1-4-1972.

66. Substituted for “sub-section” by the Finance Act, 1978, w.e.f. 1-6-1978.

67. Inserted by the Finance Act, 1969, w.e.f. 1-4-1970.

68. Substituted for “Income-tax” by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

69. Inserted by the Finance Act, 1978, w.e.f. 1-6-1978.

70. Substituted for “twelve” by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984. Earlier “twelve” was substituted for “nine” by the Finance Act, 1972, w.e.f. 1-4-1972.

71. Substituted for “sub-section” by the Finance Act, 1978, w.e.f. 1-6-1978.

72. Substituted for sub-sections (1) to (3) of section 218, which were earlier substituted by the Finance Act, 1978, w.e.f. 1-6-1978 and later on amended by the Finance Act, 1979, w.e.f. 1-4-1979, by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

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payment of tax in respect of the income of the period which would be the previous year for an assessment for the assessment year next following the financial year in which it was payable, and credit therefor shall be given to the assessee in the regular assessment.

[73][***]

D.—Collection and recovery

When tax payable and when assessee deemed in default.

[74]**220.** (1) Any amount, otherwise than by way of advance tax, specified as payable in a notice of demand under section 156 shall be paid within [75][thirty] days of the service of the notice at the place and to the person mentioned in the notice :

Provided that, where the [76][Assessing] Officer has any [77]reason to believe that it will be [77]detrimental to revenue if the full period of [78][thirty] days aforesaid is allowed, he may, with the previous approval of the [79][Joint Commissioner], direct that the sum specified in the notice of demand shall be paid within such period being a period less than the period of [80][thirty] days aforesaid, as may be specified by him in the notice of demand.

[81](2) If the amount specified in any notice of demand under section 156 is not paid within the period limited under sub-section (1), the assessee shall be liable to pay simple interest at [82][[83][one] per cent for every month or part of a month comprised in the period commencing from the day immediately following the end of the period mentioned in sub-section (1) and ending with the day on which the amount is paid :]

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73. Proviso omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Original proviso was inserted by the Finance Act, 1968, w.e.f. 1-4-1968.

74. *See* also Circular No. 334, dated 3-4-1982, Instruction No. 96, dated 21-8-1969 and Circular No. 530, dated 6-3-1989 read with Circular No. 589, dated 16-1-1991. For details, *see* Taxmann's Master Guide to Income-tax Act.

75. Substituted for "thirty-five" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

76. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

77. For the meaning of the terms "reason to believe" and "detrimental to revenue", *see* Taxmann's Direct Taxes Manual, Vol. 3.

78. Substituted for "thirty-five" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

79. Substituted for the "Deputy Commissioner" by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier "Deputy Commissioner" was substituted for "Inspecting Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

80. Substituted for "thirty-five" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

81. *See* rule 119A.

82. Substituted for "fifteen per cent per annum from the day commencing after the end of the period mentioned in sub-section (1)" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

83. Substituted for "one and one-fourth" by the Taxation Laws (Amendment) Act, 2003, w.e.f. 8-9-2003. Earlier "one and one-fourth" was substituted for "one and one-half" by the Finance Act, 2001, w.e.f. 1-6-2001.

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[84][**Provided** that, where as a result of an order under section 154, or section 155, or section 250, or section 254, or section 260, or section 262, or section 264 [85][or an order of the Settlement Commission under sub-section (4) of section 245D], the amount on which interest was payable under this section had been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded :]

[85][**Provided further** that in respect of any period commencing on or before the 31st day of March, 1989 and ending after that date, such interest shall, in respect of so much of such period as falls after that date, be calculated at the rate of one and one-half per cent, for every month or part of a month.]

[86][(2A) Notwithstanding anything contained in sub-section (2), [87][the [88][Chief Commissioner or Commissioner] may] reduce or waive the amount of interest [89][paid or] payable by an assessee under the said sub-section if [90][he is satisfied] that—

(*i*) payment of such amount [91][has caused or] would cause genuine hardship to the assessee ;

(*ii*) default in the payment of the amount on which interest [91][has been paid or] was payable under the said sub-section was due to circumstances beyond the control of the assessee ; and

(*iii*) the assessee has co-operated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him.]

(3) Without prejudice to the provisions contained in sub-section (2)[92], on an application made by the assessee before the expiry of the due date under sub-section (1), the [93][Assessing] Officer may extend the time for payment or allow payment by instalments, subject to such conditions as he may think fit to impose in the circumstances of the case.

(4) If the amount is not paid within the time limited under sub-section (1) or extended under sub-section (3), as the case may be, at the place and to the person mentioned in the said notice the assessee shall be deemed to be in default.

(5) If, in a case where payment by instalments is allowed under sub-section (3), the assessee commits defaults in paying any one of the instalments within the

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84. Inserted by the Finance Act, 1963, w.r.e.f. 1-4-1962.

85. Inserted by the Taxation Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

86. Inserted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984.

87. Substituted for "the Board may" by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1987.

88. Substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

89. Inserted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.r.e.f. 1-10-1984.

90. Substituted for ", on the recommendation made by the Commissioner in this behalf, it is satisfied", *ibid.,* w.e.f. 1-4-1987.

91. Inserted, *ibid.,* w.r.e.f. 1-10-1984.

92. For the meaning of the expression "without prejudice to the provisions contained in sub-section (2)", *see* Taxmann's Direct Taxes Manual, Vol. 3.

93. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

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time fixed under that sub-section, the assessee shall be deemed to be in default as to the whole of the amount then outstanding, and the other instalment or instalments shall be deemed to have been due on the same date as the instalment actually in default.

(6) Where an assessee has presented an appeal under section 246 [94][or section 246A] the [95][Assessing] Officer may, in his discretion and subject to such conditions as he may think fit to impose in the circumstances of the case, treat the assessee as not being in default in respect of the amount in dispute in the appeal, even though the time for payment has expired, as long as such appeal remains undisposed of.

(7) Where an assessee has been assessed in respect of income arising outside India in a country the laws of which prohibit or restrict the remittance of money to India, the [95][Assessing] Officer shall not treat the assessee as in default in respect of that part of the tax which is due in respect of that amount of his income which, by reason of such prohibition or restriction, cannot be brought into India, and shall continue to treat the assessee as not in default in respect of such part of the tax until the prohibition or restriction is removed.

Explanation.—For the purposes of this section, income shall be deemed to have been brought into India if it has been utilised or could have been utilised for the purposes of any expenditure actually incurred by the assessee outside India or if the income, whether capitalised or not, has been brought into India in any form.

Penalty payable when tax in default.

[96]**221.** [97][(1) When an assessee is in default or is deemed to be in default in making a payment of tax, he shall, in addition to the amount of the arrears[98] and the amount of interest payable under sub-section (2) of section 220, be liable, by way of penalty, to pay such amount as the [99][Assessing] Officer may direct[1], and in the case of a continuing default, such further amount or amounts as the [2][Assessing] Officer may, from time to time, direct, so, however, that the total amount of penalty does not exceed the amount of tax in arrears :

Provided that before levying any such penalty, the assessee shall be given a reasonable opportunity of being heard :

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94. Inserted by the Finance Act, 2000, w.e.f. 1-6-2000.

95. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

96. *See* also Letter [F.No. 16/87/67-IT(B)], dated 10-7-1967, Circular No. 685, dated 17-6-1994, Circular No. 686, dated 12-8-1994 and Circular No. 696, dated 28-2-1995. For details, *see* Taxmann's Master Guide to Income-tax Act.

97. Substituted by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

98. For the meaning of the terms/expressions "arrears" and "may direct", *see* Taxmann's Direct Taxes Manual, Vol. 3.

99. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

1. For the meaning of the terms/expressions "arrears" and "may direct", *see* Taxmann's Direct Taxes Manual, Vol. 3.

2. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

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[3][**Provided further** that where the assessee proves to the satisfaction of the [4][Assessing] Officer that the default was for good and sufficient reasons[5], no penalty shall be levied under this section.]

[6][*Explanation.*—For the removal of doubt, it is hereby declared that an assessee shall not cease to be liable to any penalty under this sub-section merely by reason of the fact that before the levy of such penalty he has paid the tax.]

(2) Where as a result of any final order the amount of tax, with respect to the default in the payment of which the penalty was levied, has been wholly reduced, the penalty levied shall be cancelled and the amount of penalty paid shall be refunded.

Certificate to Tax Recovery Officer[7].

222. [8][(1) When an assessee is in default or is deemed to be in default in making a payment of tax, the Tax Recovery Officer may draw up under his signature a statement in the prescribed form[9] specifying the amount of arrears due from the assessee (such statement being hereafter in this Chapter and in the Second Schedule referred to as "certificate") and shall proceed to recover from such assessee the amount specified in the certificate by one or more of the modes mentioned below, in accordance with the rules laid down in the Second Schedule—]

(*a*) attachment and sale of the assessee's movable property ;

(*b*) attachment and sale of the assessee's immovable property ;

(*c*) arrest of the assessee and his detention in prison ;

(*d*) appointing a receiver for the management of the assessee's movable and immovable properties.

[10][*Explanation.*—For the purposes of this sub-section, the assessee's movable or immovable property shall include any property which has been transferred, directly or indirectly on or after the 1st day of June, 1973, by the assessee to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration, and which is held by, or stands in the name of, any of the

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3. Substituted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 10-9-1986.

4. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

5. For the meaning of the term "good and sufficient reasons", *see* Taxmann's Direct Taxes Manual, Vol. 3.

6. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

7. *See* rule 117C.

8. Substituted for the following portion in sub-section (1) [as amended by the Direct Tax Laws (Amendment) Act, 1989, w.r.e.f. 1-4-1988] by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989 :

"When an assessee is in default or is deemed to be in default in making a payment of tax, the Assessing Officer may forward to the Tax Recovery Officer a certificate under his signature specifying the amount of arrears due from the assessee, and the Tax Recovery Officer on receipt of such certificate, shall proceed to recover from such assessee the amount specified therein by one or more of the modes mentioned below, in accordance with the rules laid down in the Second Schedule—"

9. *See* rule 117B and Form No. 57 for form of statement drawn by TRO.

10. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

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persons aforesaid; and so far as the movable or immovable property so transferred to his minor child or his son's minor child is concerned, it shall, even after the date of attainment of majority by such minor child or son's minor child, as the case may be, continue to be included in the assessee's movable or immovable property for recovering any arrears due from the assessee in respect of any period prior to such date.]

[11][(2) The Tax Recovery Officer may take action under sub-section (1), notwithstanding that proceedings for recovery of the arrears by any other mode have been taken.]

[12][**Tax Recovery Officer by whom recovery is to be effected.**

223. (1) The Tax Recovery Officer competent to take action under section 222 shall be—

(*a*) the Tax Recovery Officer within whose jurisdiction the assessee carries on his business or profession or within whose jurisdiction the principal place of his business or profession is situate, or

(*b*) the Tax Recovery Officer within whose jurisdiction the assessee resides or any movable or immovable property of the assessee is situate,

the jurisdiction for this purpose being the jurisdiction assigned to the Tax Recovery Officer under the orders or directions issued by the Board, or by the Chief Commissioner or Commissioner who is authorised in this behalf by the Board in pursuance of section 120.

(2) Where an assessee has property within the jurisdiction of more than one Tax Recovery Officer and the Tax Recovery Officer by whom the certificate is drawn up—

(*a*) is not able to recover the entire amount by sale of the property, movable or immovable, within his jurisdiction, or

(*b*) is of the opinion that, for the purpose of expediting or securing the recovery of the whole or any part of the amount under this Chapter, it is necessary so to do,

he may send the certificate or, where only a part of the amount is to be recovered, a copy of the certificate certified in the prescribed manner[13] and specifying the amount to be recovered to a Tax Recovery Officer within whose jurisdiction the assessee resides or has property and, thereupon, that Tax Recovery Officer shall also proceed to recover the amount under this Chapter as if the certificate or copy thereof had been drawn up by him.]

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11. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Prior to its substitution, sub-section (2) was amended by the Direct Tax Laws (Amendment) Act, 1989, w.r.e.f. 1-4-1988.

12. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Prior to its substitution, section 223 was amended by the Direct Tax Laws (Amendment) Act, 1989, w.r.e.f. 1-4-1988 and the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

13. *See* rule 117B and Form No. 57.

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[14][**Validity of certificate and cancellation or amendment thereof.**

224. It shall not be open to the assessee to dispute the correctness of any certificate drawn up by the Tax Recovery Officer on any ground whatsoever, but it shall be lawful for the Tax Recovery Officer to cancel the certificate if, for any reason, he thinks it necessary so to do, or to correct any clerical or arithmetical mistake therein.]

[15][**Stay of proceedings in pursuance of certificate and amendment or cancellation thereof.**

225. (1) It shall be lawful for the Tax Recovery Officer to grant time for the payment of any tax and when he does so, he shall stay the proceedings for the recovery of such tax until the expiry of the time so granted.

(2) Where the order giving rise to a demand of tax for which a certificate has been drawn up is modified in appeal or other proceeding under this Act, and, as a consequence thereof, the demand is reduced but the order is the subject-matter of further proceeding under this Act, the Tax Recovery Officer shall stay the recovery of such part of the amount specified in the certificate as pertains to the said reduction for the period for which the appeal or other proceeding remains pending.

(3) Where a certificate has been drawn up and subsequently the amount of the outstanding demand is reduced[16] as a result of an appeal or other proceeding under this Act, the Tax Recovery Officer shall, when the order which was the subject-matter of such appeal or other proceeding has become final and conclusive, amend the certificate, or cancel it, as the case may be.]

Other modes of recovery.

226. [17][(1) Where no certificate has been drawn up under section 222, the Assessing Officer may recover the tax by any one or more of the modes provided in this section.

(1A) Where a certificate has been drawn up under section 222, the Tax Recovery Officer may, without prejudice to the modes of recovery specified in that section, recover the tax by any one or more of the modes provided in this section.]

(2) If any assessee is in receipt of any income chargeable under the head "Salaries", the [18][Assessing] Officer [19][or Tax Recovery Officer] may require any person paying the same to deduct from any payment subsequent to the date of such requisition any arrears of tax due from such assessee, and such person shall

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14. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Earlier, it was amended by the Direct Tax Laws (Amendment) Act, 1989, w.r.e.f. 1-4-1988.

15. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Earlier, it was amended by the Direct Tax Laws (Amendment) Act, 1989, w.r.e.f. 1-4-1988.

16. For the meaning of the term "reduced", *see* Taxmann's Direct Taxes Manual, Vol. 3.

17. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Earlier, it was amended by the Direct Tax Laws (Amendment) Act, 1989, w.r.e.f. 1-4-1988.

18. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1989, w.r.e.f. 1-4-1988.

19. Inserted, *ibid.,* w.e.f. 1-4-1989.

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comply with any such requisition and shall pay the sum so deducted to the credit of the Central Government or as the Board directs :

Provided that any part of the salary exempt from attachment in execution of a decree of a civil court under section 60 of the Code of Civil Procedure, 1908 (5 of 1908)[20], shall be exempt from any requisition made under this sub-section.

(3) (*i*) The [21][Assessing] Officer [22][or Tax Recovery Officer] may, at any time or from time to time, by notice in writing require any person from whom money is due or may become due[23] to the assessee or any person who holds or may subsequently hold money[24] for or on account of the assessee to pay to the [25][Assessing] Officer [26][or Tax Recovery Officer] either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due by the assessee in respect of arrears or the whole of the money when it is equal to or less than that amount.

(*ii*) A notice under this sub-section may be issued to any person who holds or may subsequently hold any money for or on account of the assessee jointly with any other person and for the purposes of this sub-section, the shares of the joint holders in such account shall be presumed, until the contrary is proved, to be equal.

(*iii*) A copy of the notice shall be forwarded to the assessee at his last address known to the [25][Assessing] Officer [26][or Tax Recovery Officer], and in the case of a joint account to all the joint holders at their last addresses known to the [25][Assessing] Officer [26][or Tax Recovery Officer].

(*iv*) Save as otherwise provided in this sub-section, every person to whom a notice is issued under this sub-section shall be bound to comply with such notice, and, in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary.

(*v*) Any claim respecting any property in relation to which a notice under this sub-section has been issued arising after the date of the notice shall be void as against any demand contained in the notice.

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20. For text of section 60 of the Code of Civil Procedure, 1908, *see* **Appendix**.

21. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1989, w.r.e.f. 1-4-1988.

22. Inserted, *ibid.,* w.e.f. 1-4-1989.

23. For the meaning of the expression "may become due", *see* Taxmann's Direct Taxes Manual, Vol. 3.

24. For the meaning of the expression "or may subsequently hold money", *see* Taxmann's Direct Taxes Manual, Vol. 3.

25. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1989, w.r.e.f. 1-4-1988.

26. Inserted, *ibid.,* w.e.f. 1-4-1989.

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(*vi*) Where a person to whom a notice under this sub-section is sent objects to it by a statement on oath that the sum demanded or any part thereof is not due to the assessee or that he does not hold any money for or on account of the assessee, then nothing contained in this sub-section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, but if it is discovered that such statement was false in any material particular, such person shall be personally liable to the [27][Assessing] Officer [28][or Tax Recovery Officer] to the extent of his own liability to the assessee on the date of the notice, or to the extent of the assessee's liability for any sum due under this Act, whichever is less.

(*vii*) The [27][Assessing] Officer [28][or Tax Recovery Officer] may, at any time or from time to time, amend or revoke any notice issued under this sub-section or extend the time for making any payment in pursuance of such notice.

(*viii*) The [27][Assessing] Officer [28][or Tax Recovery Officer] shall grant a receipt for any amount paid in compliance with a notice issued under this sub-section, and the person so paying shall be fully discharged from his liability to the assessee to the extent of the amount so paid.

(*ix*) Any person discharging any liability to the assessee after receipt of a notice under this sub-section shall be personally liable to the [27][Assessing] Officer [28][or Tax Recovery Officer] to the extent of his own liability to the assessee so discharged or to the extent of the assessee's liability for any sum due under this Act, whichever is less.

(*x*) If the person to whom a notice under this sub-section is sent fails to make payment in pursuance thereof to the [27][Assessing] Officer [28][or Tax Recovery Officer], he shall be deemed to be an assessee in default in respect of the amount specified in the notice and further proceedings may be taken against him for the realisation of the amount as if it were an arrear of tax due from him, in the manner provided in sections 222 to 225 and the notice shall have the same effect as an attachment of a debt by the Tax Recovery Officer in exercise of his powers under section 222.

(4) The [27][Assessing] Officer [28][or Tax Recovery Officer] may apply to the court in whose custody there is money belonging to the assessee for payment to him of the entire amount of such money, or, if it is more than the tax due, an amount sufficient to discharge the tax.

[29][(5) The [30][Assessing] Officer [31][or Tax Recovery Officer] may, if so authorised by the [32][Chief Commissioner or Commissioner] by general or special order, recover any arrears of tax due from an assessee by distraint and sale of his movable property in the manner laid down in the Third Schedule.]

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27. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1989, w.r.e.f. 1-4-1988.

28. Inserted, *ibid.,* w.e.f. 1-4-1989.

29. Substituted by the Finance Act, 1965, w.e.f. 1-4-1965.

30. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1989, w.r.ef. 1-4-1988.

31. Inserted, *ibid.,* w.e.f. 1-4-1989.

32. Substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

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Recovery through State Government.

227. If the recovery of tax in any area has been entrusted to a State Government under clause (*1*) of article 258 of the Constitution, the State Government may direct, with respect to that area or any part thereof; that tax shall be recovered therein with, and as an addition to, any municipal tax or local rate, by the same person and in the same manner as the municipal tax or local rate is recovered.

Recovery of Indian tax in Pakistan and Pakistan tax in India.

228. [33][*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.*]

[34][**Recovery of tax in pursuance of agreements with foreign countries.**

228A. (1) Where an agreement is entered into by the Central Government with the Government of any country outside India for recovery of income-tax under this Act and the corresponding law in force in that country and the Government of that country or any authority under that Government which is specified in this behalf in such agreement sends to the Board a certificate for the recovery of any tax due under such corresponding law from a person having any property in India, the Board may forward such certificate to any Tax Recovery Officer within whose jurisdiction such property is situated and thereupon such Tax Recovery Officer shall—

(*a*) proceed to recover the amount specified in the certificate in the manner in which he would proceed to recover the amount [35][specified in a certificate drawn up by him under section 222]; and

(*b*) remit any sum so recovered by him to the Board after deducting his expenses in connection with the recovery proceedings.

[36][(2) Where an assessee is in default or is deemed to be in default in making a payment of tax, the Tax Recovery Officer may, if the assessee has property in a country outside India (being a country with which the Central Government has entered into an agreement for the recovery of income-tax under this Act and the corresponding law in force in that country), forward to the Board a certificate drawn up by him under section 222 and the Board may take such action thereon as it may deem appropriate having regard to the terms of the agreement with such country.]

Recovery of penalties, fine, interest and other sums.

229. Any sum imposed by way of interest, fine, penalty, or any other sum payable under the provisions of this Act, shall be recoverable in the manner provided in this Chapter for the recovery of arrears of tax.

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33. Prior to its omission, section 228 was amended by the Direct Tax Laws (Amendment) Act, 1989, w.r.e.f. 1-4-1988.

34. Inserted by the Finance Act, 1972, w.e.f. 1-4-1972.

35. Substituted for "specified in a certificate received from an Assessing Officer" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Earlier, it was amended by the Direct Tax Laws (Amendment) Act, 1989, w.r.e.f. 1-4-1988.

36. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Earlier, it was amended by the Direct Tax Laws (Amendment) Act, 1989, w.r.e.f. 1-4-1988.

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Tax clearance certificate.

[37]**230.** [38][(1) Subject to such exceptions as the Central Government may, by notification in the Official Gazette, specify in this behalf, no person,—

(*a*) who is not domiciled in India;

(*b*) who has come to India in connection with business, profession or employment; and

(*c*) who has income derived from any source in India,

shall leave the territory of India by land, sea or air unless he furnishes to such authority[39] as may be prescribed—

(*i*) an undertaking in the prescribed form[40] from his employer; or

(*ii*) through whom such person is in receipt of the income,

to the effect that tax payable by such person who is not domiciled in India shall be paid by the employer referred to in clause (*i*) or the person referred to in clause (*ii*), and the prescribed authority[41] shall, on receipt of the undertaking, immediately give to such person a no objection certificate[42], for leaving India:

Provided that nothing contained in sub-section (1) shall apply to a person who is not domiciled in India but visits India as a foreign tourist or for any other purpose not connected with business, profession or employment.

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37. *See* Instruction No. 1/2004, dated 5-2-2004 and Circular No. 2/2004, dated 10-2-2004. For details, *see* Taxmann's Master Guide to Income-tax Act.

38. Sub-sections (1) and (1A) substituted for sub-section (1) by the Finance Act, 2003, w.e.f. 1-6-2003. Prior to its substitution, sub-section (1), as amended by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989, read as under :

'(1) Subject to such exceptions as the Central Government may, by notification in the Official Gazette, specify in this behalf, no person—

(*a*) who is not domiciled in India; or

(*b*) who is domiciled in India at the time of his departure, but—

(*i*) intends to leave India as an emigrant; or

(*ii*) intends to proceed to another country on a work permit with the object of taking up any employment or other occupation in that country; or

(*iii*) in respect of whom circumstances exist which, in the opinion of an income-tax authority, render it necessary for him to obtain a certificate under this section,

shall leave the territory of India by land, sea or air unless he first obtains from such authority as may be appointed by the Central Government in this behalf (hereinafter in this section referred to as the "competent authority") a certificate stating that he has no liabilities under this Act, the Excess Profits Tax Act, 1940 (15 of 1940), the Business Profits Tax Act, 1947 (21 of 1947), the Indian Income-tax Act, 1922 (11 of 1922), the Wealth-tax Act, 1957 (27 of 1957), the Expenditure-tax Act, 1957 (29 of 1957), or the Gift-tax Act, 1958 (18 of 1958), or that satisfactory arrangements have been made for the payment of all or any of such taxes which are or may become payable by that person:

Provided that in the case of a person not domiciled in India the competent authority may, if it is satisfied that such person intends to return to India, issue an exemption certificate either in respect of a single journey or in respect of all journeys to be undertaken by that person within such period as may be specified in the certificate.'

39. *See* rule 42(1).

40. *See* rule 43(1) and Form No. 30A.

41. *See* rule 42(1).

42. *See* rule 43(2) and Form No. 30B.

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(1A) Subject to such exceptions as the Central Government may, by notification in the Official Gazette, specify in this behalf, every person, who is domiciled in India at the time of his departure from India, shall furnish, in the prescribed form[43] to the income-tax authority or such other authority as may be prescribed[44]—

(*a*) the permanent account number allotted to him under section 139A:

Provided that in case no such permanent account number has been allotted to him, or his total income is not chargeable to income-tax or he is not required to obtain a permanent account number under this Act, such person shall furnish a certificate in the prescribed form;

(*b*) the purpose of his visit outside India;

(*c*) the estimated period of his stay outside India:

[45]**Provided** that no person—

(*i*) who is domiciled in India at the time of his departure; and

(*ii*) in respect of whom circumstances exist which, in the opinion of an income-tax authority render it necessary for such person to obtain a certificate under this section,

shall leave the territory of India by land, sea or air unless he obtains a certificate from the income-tax authority stating that he has no liabilities under this Act, or the Wealth-tax Act, 1957 (27 of 1957), or the Gift-tax Act, 1958 (18 of 1958), or the Expenditure-tax Act, 1987 (35 of 1987), or that satisfactory arrangements have been made for the payment of all or any of such taxes which are or may become payable by that person :

Provided* that no income-tax authority shall make it necessary for any person who is domiciled in India to obtain a certificate under this section unless he records the reasons therefor and obtains the prior approval of the Chief Commissioner of Income-tax.]

(2) If the owner or charterer of any ship or aircraft carrying persons from any place in the territory of India to any place outside India allows any person to whom sub-section (1) [46][or the first proviso to sub-section (1A)] applies to travel by such ship or aircraft without first satisfying himself that such person is in possession of a certificate as required by that sub-section, he shall be personally liable to pay the whole or any part of the amount of tax, if any, payable by such person as the [47][Assessing] Officer may, having regard to the circumstances of the case, determine.

(3) In respect of any sum payable by the owner or charterer of any ship or aircraft under sub-section (2), the owner or charterer, as the case may be, shall be

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43. *See* rule 43(3) and Form No. 30C.

44. *See* rule 42(2).

45. *See* rule 43(4)/(5) and Form Nos. 31 & 33.

46. Inserted by the Taxation Laws (Amendment) Act, 2003, w.r.e.f. 1-6-2003.

47. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

*Word "further" should occur after the word "Provided".

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deemed to be an assessee in default for such sum, and such sum shall be recoverable from him in the manner provided in this Chapter as if it were an arrear of tax.

[48](4) The Board may make rules for regulating any matter necessary for, or incidental to, the purpose of carrying out the provisions of this section.

Explanation.—For the purposes of this section, the expressions "owner" and "charterer" include any representative, agent or employee empowered by the owner or charterer to allow persons to travel by the ship or aircraft.

Restrictions on registration of transfers of immovable property in certain cases.

230A. [49][*Omitted by the Finance Act, 2001, w.e.f. 1-6-2001*.]

Period for commencing recovery proceedings.

231. [50][*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989*.]

Recovery by suit or under other law not affected.

232. The several modes of recovery specified in this Chapter shall not affect in any way—

(*a*) any other law for the time being in force relating to the recovery of debts due to Government; or

(*b*) the right of the Government to institute a suit for the recovery of the arrears due from the assessee;

and it shall be lawful for the [51][Assessing] Officer or the Government, as the case may be, to have recourse to any such law or suit, notwithstanding that the tax due is being recovered from the assessee by any mode specified in this Chapter.

E.—Tax payable under provisional assessment

Recovery of tax payable under provisional assessment.

233. [*Omitted by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971*.]

Tax paid by deduction or advance payment.

234. [52][*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989*.]

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48. *See* rules 42 and 43 and Form Nos. 30A, 30B, 30C, 31 and 33.

49. Prior to its omission, section 230A was inserted by the Direct Taxes (Amendment) Act, 1964, w.e.f. 6-10-1964, and later on amended by the Finance (No. 2) Act, 1971, w.e.f. 1-10-1971, Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988, Finance Act, 1988, w.e.f. 1-4-1988 and Finance Act, 1995, w.e.f. 1-7-1995.

50. Prior to its omission, section 231 was amended by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984.

51. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

52. Prior to its omission, section 234 was amended by the Taxation Laws (Amendment) Act, 1970, w.r.e.f. 1-4-1968/w.e.f. 1-4-1971.

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[53][*F.—Interest chargeable in certain cases*[54]

Interest for defaults in furnishing return of income.

234A. (1) Where the return of income for any assessment year under sub-section (1) or sub-section (4) of section 139, or in response to a notice under sub-section (1) of section 142, is furnished after the due date, or is not furnished, the assessee shall[55] be liable to pay simple interest at the rate of [56][one] per cent for every month or part of a month comprised in the period commencing on the date immediately following the due date, and,—

(*a*) where the return is furnished after the due date, ending on the date of furnishing of the return; or

(*b*) where no return has been furnished, ending on the date of completion of the assessment under section 144,

[57][on the amount of the tax on the total income as determined under sub-section (1) of section 143, and where a regular assessment is made, on the amount of the tax on the total income determined under regular assessment, as reduced by the amount of,—

(*i*) advance tax, if any, paid;

(*ii*) any tax deducted or collected at source;

(*iii*) any relief of tax allowed under section 90 on account of tax paid in a country outside India;

(*iv*) any relief of tax allowed under section 90A on account of tax paid in a specified territory outside India referred to in that section;

(*v*) any deduction, from the Indian income-tax payable, allowed under section 91, on account of tax paid in a country outside India; and

(*vi*) any tax credit allowed to be set off in accordance with the provisions of section 115JAA.]

Explanation 1.—In this section, "due date" means the date specified in sub-section (1) of section 139 as applicable in the case of the assessee.

[58][*Explanation 2.*—In this sub-section, "tax on the total income as determined under sub-section (1) of section 143" shall not include the additional income-tax, if any, payable under section 143.]

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53. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

54. For CBDT's Instructions on reduction/waiver of interest charged under section 234A/234B/234C, *see* Taxmann's Income-tax Rules.

55. For the meaning of the term "shall", *see* Taxmann's Direct Taxes Manual, Vol. 3.

56. Substituted for "one and one-fourth" by the Taxation Laws (Amendment) Act, 2003, w.e.f. 8-9-2003. Earlier the quoted words were amended by the Finance Act, 1999, w.e.f. 1-6-1999 and Finance Act, 2001, w.e.f. 1-6-2001.

57. Substituted for the words "on the amount of the tax on the total income as determined under sub-section (1) of section 143 or on regular assessment as reduced by the advance tax, if any, paid and any tax deducted or collected at source" by the Finance Act, 2006, w.e.f. 1-4-2007. Earlier the quoted words were amended by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

58. Substituted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

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Explanation 3.—Where, in relation to an assessment year, an assessment is made for the first time under section 147 [59][or section 153A], the assessment so made shall be regarded as a regular assessment for the purposes of this section.

Explanation 4.—[60][* * *]

(2) The interest payable under sub-section (1) shall be reduced by the interest, if any, paid under section 140A towards the interest chargeable under this section.

(3) Where the return of income for any assessment year, required by a notice under section 148 [61][or section 153A] issued [62][after the determination of income under sub-section (1) of section 143 or] after the completion of an assessment under sub-section (3) of section 143 or section 144 or section 147, is furnished after the expiry of the time allowed under such notice, or is not furnished, the assessee shall be liable to pay simple interest at the rate of [63][one] per cent for every month or part of a month comprised in the period commencing on the day immediately following the expiry of the time allowed as aforesaid, and,—

(*a*) where the return is furnished after the expiry of the time aforesaid, ending on the date of furnishing the return; or

(*b*) where no return has been furnished, ending on the date of completion of the reassessment or recomputation under section 147 [64][or reassessment under section 153A],

on the amount by which the tax on the total income determined on the basis of such reassessment or recomputation exceeds the tax on the total income determined [65][under sub-section (1) of section 143 or] on the basis of the earlier assessment aforesaid.

Explanation.—[66][* * *]

(4) Where as a result of an order under section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264 or an order of the Settlement Commission under sub-section (4) of section 245D, the amount of tax on which interest was payable under sub-section (1) or sub-section (3) of this section has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and—

(*i*) in a case where the interest is increased, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall apply accordingly;

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59. Inserted by the Finance Act, 2003, w.e.f. 1-6-2003.

60. Omitted by the Finance Act, 2001, w.r.e.f. 1-4-1989. Prior to its omission, *Explanation 4* was inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

61. Inserted by the Finance Act, 2003, w.e.f. 1-6-2003.

62. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

63. Substituted for "one and one-fourth" by the Taxation Laws (Amendment) Act, 2003, w.e.f. 8-9-2003. Earlier the quoted words were amended by the Finance Act, 1999, w.e.f. 1-6-1999 and Finance Act, 2001, w.e.f. 1-6-2001.

64. Inserted by the Finance Act, 2003, w.e.f. 1-6-2003.

65. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

66. Omitted, *ibid.*

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(*ii*) in a case where the interest is reduced, the excess interest paid, if any, shall be refunded.

(5) The provisions of this section shall apply in respect of assessments for the assessment year commencing on the 1st day of April, 1989 and subsequent assessment years.]

[67][**Interest for defaults in payment of advance tax.**

234B. (1) Subject to the other provisions of this section, where, in any financial year, an assessee who is liable to pay advance tax under section 208 has failed to pay such tax or, where the advance tax paid by such assessee under the provisions of section 210 is less than ninety per cent of the assessed tax, the assessee shall[68] be liable to pay simple interest at the rate of [69][one] per cent for every month or part of a month comprised in the period from the 1st day of April next following such financial year [70][to the date of determination of total income under sub-section (1) of section 143 [71][and where a regular assessment is made, to the date of such regular assessment, on an amount]] equal to the assessed tax or, as the case may be, on the amount by which the advance tax paid as aforesaid falls short of the assessed tax.

[72][*Explanation 1.*—In this section, "assessed tax" means the tax on the total income determined under sub-section (1) of section 143 and where a regular assessment is made, the tax on the total income determined under such regular assessment as reduced by the amount of,—

(*i*) any tax deducted or collected at source in accordance with the provisions of Chapter XVII on any income which is subject to such deduction or collection and which is taken into account in computing such total income;

(*ii*) any relief of tax allowed under section 90 on account of tax paid in a country outside India;

(*iii*) any relief of tax allowed under section 90A on account of tax paid in a specified territory outside India referred to in that section;

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67. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

68. For the meaning of the term "shall", *see* Taxmann's Direct Taxes Manual, Vol. 3.

69. Substituted for "one and one-fourth" by the Taxation Laws (Amendment) Act, 2003, w.e.f. 8-9-2003. Earlier the quoted words were amended by the Finance Act, 1999, w.e.f. 1-6-1999 and Finance Act, 2001, w.e.f. 1-6-2001.

70. Substituted for "to the date of the regular assessment" by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

71. Substituted for "or regular assessment, on an amount" by the Finance Act, 1995, w.r.e.f. 1-4-1989.

72. Substituted by the Finance Act, 2006, w.e.f. 1-4-2007. Prior to its substitution, *Explanation 1,* as substituted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989 and Finance Act, 2001, w.r.e.f. 1-4-1989, read as under :

'*Explanation 1.*—In this section, "assessed tax" means the tax on the total income determined under sub-section (1) of section 143 or on regular assessment as reduced by the amount of tax deducted or collected at source in accordance with the provisions of Chapter XVII on any income which is subject to such deduction or collection and which is taken into account in computing such total income.'

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(*iv*) any deduction, from the Indian income-tax payable, allowed under section 91, on account of tax paid in a country outside India; and

(*v*) any tax credit allowed to be set off in accordance with the provisions of section 115JAA.]

Explanation 2.—Where, in relation to an assessment year, an assessment is made for the first time under section 147 [73][or section 153A], the assessment so made shall be regarded as a regular assessment for the purposes of this section.

[74][*Explanation 3.*—In *Explanation 1* and in sub-section (3) "tax on the total income determined under sub-section (1) of section 143" shall not include the additional income-tax, if any, payable under section 143.]

(2) Where, before the date of [75][determination of total income under sub-section (1) of section 143 or] completion of a regular assessment, tax is paid by the assessee under section 140A or otherwise,—

(*i*) interest shall be calculated in accordance with the foregoing provisions of this section up to the date on which the tax is so paid, and reduced by the interest, if any, paid under section 140A towards the interest chargeable under this section;

(*ii*) thereafter, interest shall be calculated at the rate aforesaid on the amount by which the tax so paid together with the advance tax paid falls short of the assessed tax.

(3) Where, as a result of an order of reassessment or recomputation under section 147 [76][or section 153A], the amount on which interest was payable under sub-section (1) is increased, the assessee shall be liable to pay simple interest at the rate of [77][one] per cent for every month or part of a month comprised in the period commencing on the day following [78][the date of determination of total income under sub-section (1) of section 143 [79][and where a regular assessment is made as is referred to in sub-section (1) following the date of such regular assessment]] and ending on the date of the reassessment or recomputation under section 147 [80][or section 153A], on the amount by which the tax on the total income determined on the basis of the reassessment or recomputation exceeds the tax on the total income determined [81][under sub-section (1) of section 143 or] on the basis of the regular assessment aforesaid.

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73. Inserted by the Finance Act, 2003, w.e.f. 1-6-2003.

74. Substituted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

75. Inserted, *ibid.*

76. Inserted by the Finance Act, 2003, w.e.f. 1-6-2003.

77. Substituted for "one and one-fourth" by the Taxation Laws (Amendment) Act, 2003, w.e.f. 8-9-2003. Earlier the quoted words were amended by the Finance Act, 1999, w.e.f. 1-6-1999 and Finance Act, 2001, w.e.f. 1-6-2001.

78. Substituted for "the date of the regular assessment" by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

79. Substituted for "or regular assessment referred to in sub-section (1)" by the Finance Act, 1995, w.r.e.f. 1-4-1989.

80. Inserted by the Finance Act, 2003, w.e.f. 1-6-2003.

81. Substituted for "the date of the regular assessment" by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

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Explanation.—[82][* * *]

(4) Where, as a result of an order under section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264 or an order of the Settlement Commission under sub-section (4) of section 245D, the amount on which interest was payable under sub-section (1) or sub-section (3) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and—

(*i*) in a case where the interest is increased, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable and such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall apply accordingly;

(*ii*) in a case where the interest is reduced, the excess interest paid, if any, shall be refunded.

(5) The provisions of this section shall apply in respect of assessments for the assessment year commencing on the 1st day of April, 1989 and subsequent assessment years.]

[83][**Interest for deferment of advance tax.**

234C. (1) [84][Where in any financial year,—

(*a*) the company which is liable to pay advance tax under section 208 has failed to pay such tax or—

(*i*) the advance tax paid by the company on its current income on or before the 15th day of June is less than fifteen per cent of the tax due on the returned income or the amount of such advance tax paid on or before the 15th day of September is less than forty-five per cent of the tax due on the returned income or the amount of such advance tax paid on or before the 15th day of December is less than seventy-five per cent of the tax due on the returned income, then, the company shall[85] be liable to pay simple interest

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82. Omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

83. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

84. Substituted for the portion beginning with the words "Where in any financial year" and ending with the words "as the case may be, sixty per cent of the tax due on the returned income:" by the Finance Act, 1994, w.e.f. 1-4-1995. Earlier, the quoted portion, as amended by the Finance (No. 2) Act, 1991, w.r.e.f. 1-4-1989 and the Finance Act, 1992, w.e.f. 1-6-1992, read as under :

"Where in any financial year, the assessee who is liable to pay advance tax under section 208 has failed to pay such tax or the advance tax paid by the assessee on his current income on or before the 15th day of September is less than thirty per cent of the tax due on the returned income or the amount of such advance tax paid on or before the 15th day of December is less than sixty per cent of the tax due on the returned income, then, the assessee shall be liable to pay simple interest at the rate of one and one-half per cent per month of the shortfall for a period of three months on the amount of the shortfall from thirty per cent or, as the case may be, sixty per cent of the tax due on the returned income :"

85. For the meaning of the term "shall", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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at the rate of [86][one] per cent per month for a period of three months on the amount of the shortfall from fifteen per cent or forty-five per cent or seventy-five per cent, as the case may be, of the tax due on the returned income;

(*ii*) the advance tax paid by the company on its current income on or before the 15th day of March is less than the tax due on the returned income, then, the company shall be liable to pay simple interest at the rate of [86][one] per cent on the amount of the shortfall from the tax due on the returned income:

Provided that if the advance tax paid by the company on its current income on or before the 15th day of June or the 15th day of September, is not less than twelve per cent or, as the case may be, thirty-six per cent of the tax due on the returned income, then, it shall not be liable to pay any interest on the amount of the shortfall on those dates;

(*b*) the assessee, other than a company, who is liable to pay advance tax under section 208 has failed to pay such tax or,—

(*i*) the advance tax paid by the assessee on his current income on or before the 15th day of September is less than thirty per cent of the tax due on the returned income or the amount of such advance tax paid on or before the 15th day of December is less than sixty per cent of the tax due on the returned income, then, the assessee shall be liable to pay simple interest at the rate of [86][one] per cent per month for a period of three months on the amount of the shortfall from thirty per cent or, as the case may be, sixty per cent of the tax due on the returned income;

(*ii*) the advance tax paid by the assessee on his current income on or before the 15th day of March is less than the tax due on the returned income, then, the assessee shall be liable to pay simple interest at the rate of [86][one] per cent on the amount of the shortfall from the tax due on the returned income :]

[87][**Provided** that nothing contained in this sub-section shall apply to any shortfall in the payment of the tax due on the returned income where such shortfall is on account of under-estimate or failure to estimate—

(*a*) the amount of capital gains; or

(*b*) income of the nature referred to in sub-clause (*ix*) of clause (*24*) of section 2,

and the assessee has paid the whole of the amount of tax payable in respect of income referred to in clause (*a*) or clause (*b*), as the case may be, had such income

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86. Substituted for "one and one-fourth" by the Taxation Laws (Amendment) Act, 2003, w.e.f. 8-9-2003. Earlier "one and one-fourth" was substituted for "one and one-half" by the Finance Act, 2001, w.e.f. 1-6-2001.

87. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

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been a part of the total income, as part of the [88][remaining instalments of advance tax which are due or where no such instalments are due], by the 31st day of March of the financial year:]

[89][**Provided further** that nothing contained in this sub-section shall apply to any shortfall in the payment of the tax due on the returned income where such shortfall is on account of increase in the rate of surcharge under section 2 of the Finance Act, 2000 (10 of 2000), as amended by the Taxation Laws (Amendment) Act, 2000 (1 of 2001), and the assessee has paid the amount of shortfall, on or before the 15th day of March, 2001 in respect of the instalment of advance tax due on the 15th day of June, 2000, the 15th day of September, 2000 and the 15th day of December, 2000 :]

[90][**Provided also** that nothing contained in this sub-section shall apply to any shortfall in the payment of the tax due on the returned income where such shortfall is on account of increase in the rate of surcharge under section 2 of the Finance Act, 2000 (10 of 2000) as amended by the Taxation Laws (Amendment) Act, 2001 (4 of 2001) and the assessee has paid the amount of shortfall on or before the 15th day of March, 2001 in respect of the instalment of advance tax due on the 15th day of June, 2000, the 15th day of September, 2000 and 15th day of December, 2000.]

[91][*Explanation.*—In this section, "tax due on the returned income" means the tax chargeable on the total income declared in the return of income furnished by the assessee for the assessment year commencing on the 1st day of April immediately following the financial year in which the advance tax is paid or payable, as reduced by the amount of,—

(*i*) any tax deductible or collectible at source in accordance with the provisions of Chapter XVII on any income which is subject to such deduction or collection and which is taken into account in computing such total income;

(*ii*) any relief of tax allowed under section 90 on account of tax paid in a country outside India;

(*iii*) any relief of tax allowed under section 90A on account of tax paid in a specified territory outside India referred to in that section;

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88. Substituted for "instalment of advance tax which is immediately due or where no such instalment is so due" by the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997.

89. Second proviso inserted by the Taxation Laws (Amendment) Act, 2000, w.e.f. 4-1-2001. Earlier, the second proviso was inserted by the Taxation Laws (Amendment) Act, 1991, w.e.f. 15-1-1991 and later on omitted by the Finance (No. 2) Act, 1996, w.e.f. 1-4-1997.

90. Third proviso inserted by the Taxation Laws (Amendment) Act, 2001, w.r.e.f. 3-2-2001.

91. Substituted by the Finance Act, 2006, w.e.f. 1-4-2007. Prior to its substitution, *Explanation*, as amended by the Taxation Laws (Amendment) Act, 1991, w.e.f. 15-1-1991 and Finance Act, 1992, w.r.e.f. 1-4-1989, read as under :

'*Explanation.*—In this section, "tax due on the returned income" means the tax chargeable on the total income declared in the return of income furnished by the assessee for the assessment year commencing on the 1st day of April immediately following the financial year in which the advance tax is paid or payable, as reduced by the amount of tax deductible or collectible at source in accordance with the provisions of Chapter XVII on any income which is subject to such deduction or collection and which is taken into account in computing such total income.'

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(*iv*) any deduction, from the Indian income-tax payable, allowed under section 91, on account of tax paid in a country outside India; and

(*v*) any tax credit allowed to be set off in accordance with the provisions of section 115JAA.]

(2) The provisions of this section shall apply in respect of assessments for the assessment year commencing on the 1st day of April, 1989 and subsequent assessment years.]]

[92][**Interest on excess refund.**

234D. (1) Subject to the other provisions of this Act, where any refund is granted to the assessee under sub-section (1) of section 143, and—

(*a*) no refund is due on regular assessment; or

(*b*) the amount refunded under sub-section (1) of section 143 exceeds the amount refundable on regular assessment,

the assessee shall be liable to pay simple interest at the rate of [93][one-half] per cent on the whole or the excess amount so refunded, for every month or part of a month comprised in the period from the date of grant of refund to the date of such regular assessment.

(2) Where, as a result of an order under section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264 or an order of the Settlement Commission under sub-section (4) of section 245D, the amount of refund granted under sub-section (1) of section 143 is held to be correctly allowed, either in whole or in part, as the case may be, then, the interest chargeable, if any, under sub-section (1) shall be reduced accordingly.

Explanation.—Where, in relation to an assessment year, an assessment is made for the first time under section 147 or section 153A, the assessment so made shall be regarded as a regular assessment for the purposes of this section.]

CHAPTER XVIII

RELIEF RESPECTING TAX ON DIVIDENDS IN CERTAIN CASES

Relief to shareholders in respect of agricultural income-tax attributable to dividends.

235. [*Omitted by the Finance (No. 2) Act, 1971, w.e.f. 1-4-1972. Prior to its omission, it was amended by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971 and with retrospective effect from 1-4-1962, the Finance Act, 1966, w.e.f. 1-4-1966 and the Finance Act, 1965, w.e.f. 1-4-1965*.]

Relief to company in respect of dividend paid out of past taxed profits.

236. [94](1) Where in respect of any previous year relevant to the assessment year commencing after the 31st day of March, 1960, an Indian company or a company which has made the prescribed arrangements for the declaration and

92. Inserted by the Finance Act, 2003, w.e.f. 1-6-2003.

93. Substituted for "two-third" by the Taxation Laws (Amendment) Act, 2003, w.e.f. 8-9-2003.

94. *See* rule 27.

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payment of dividends within India, pays any dividend wholly or partly out of its profits and gains actually charged to income-tax for any assessment year ending before the 1st day of April, 1960, and deducts tax therefrom in accordance with the provisions of Chapter XVII-B, credit shall be given to the company against the income-tax, if any, payable by it on the profits and gains of the previous year during which the dividend is paid, of a sum calculated in accordance with the provisions of sub-section (2), and, where the amount of credit so calculated exceeds the income-tax payable by the company as aforesaid, the excess shall be refunded.

(2) The amount of income-tax to be given as credit under sub-section (1) shall be a sum equal to ten per cent of so much of the dividends referred to in sub-section (1) as are paid out of the profits and gains actually charged to income-tax for any assessment year ending before the 1st day of April, 1960.

Explanation 1.—For the purposes of this section, the aggregate of the dividends declared by a company in respect of any previous year shall be deemed first to have come out of the distributable income of that previous year and the balance, if any, out of the undistributed part of the distributable income of one or more previous years immediately preceding that previous year as would be just sufficient to cover the amount of such balance and as has not likewise been taken into account for covering such balance of any other previous year.

Explanation 2.—The expression "distributable income of any previous year" shall mean the total income [95][(as computed before making any deduction under Chapter VI-A)] assessed for that year as reduced by—

(*i*) the amount of tax payable by the company in respect of [96][its] total income;

(*ii*) the amount of any other tax levied under any law for the time being in force on the company by the Government or by a local authority in excess of the amount, if any, which has been allowed in computing the total income;

[97][(*iii*) any sum with reference to which a deduction is allowable to the company under the provisions of section 80G; and]

(*iv*) in the case of a banking company, the amount actually transferred to a reserve fund under section 17 of the Banking Companies Act, 1949 (10 of 1949),

and as increased by—

(*a*) any profits and gains or receipts of the company, not included in its total income [98][(as computed before making any deduction under Chapter VI-A)]; and

(*b*) any amount attributable to any allowance made in computing the profits and gains of the company for purposes of assessment,

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95. Inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968.

96. Substituted for "the said", *ibid.*

97. Substituted, *ibid.*

98. Inserted, *ibid.*

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which the company has not taken into account in its profit and loss account.

[99][**Relief to certain charitable institutions or funds in respect of certain dividends.**

236A. (1) [1][Where seventy-five per cent of the share capital of any company is throughout the previous year beneficially held by an institution or fund established in India for a charitable purpose the income from dividend whereof is exempt under section 11], credit shall be given to the institution or fund against the tax, if any, payable by it, of a sum calculated in accordance with the provisions of sub-section (2), in respect of its income from dividends (other than dividends on preference shares) declared or distributed during the previous year relevant to any assessment year beginning on or after the 1st day of April, [2][1966] [3][by such a company], and where the amount of credit so calculated exceeds the tax, if any, payable by the said institution or fund, the excess shall be refunded.

[4][(2) The amount to be given as credit under sub-section (1) shall be a sum which bears to the amount of the tax payable by the company under the provisions of the annual Finance Act with reference to the relevant amount of distributions of dividends by it the same proportion as the amount of the dividends (other than dividends on preference shares) received by the institution or fund from the company bears to the total amount of dividends (other than dividends on preference shares) declared or distributed by the company during the previous year.

Explanation.—In sub-section (2) of this section and in section 280ZB, the expression "the relevant amount of distributions of dividends" has the meaning assigned to it in the Finance Act of the relevant year.]]

CHAPTER XIX

REFUNDS

Refunds.

[5]**237.** If any person satisfies the [6][Assessing] Officer that the amount of tax paid by him or on his behalf or treated as paid by him or on his behalf for

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99. Inserted by the Direct Taxes (Amendment) Act, 1964, w.e.f. 1-4-1964.

1. Substituted for "In the case of an institution or fund referred to in clause (*iii*) of sub-section (2) of section 104" by the Finance Act, 1987, w.e.f. 1-4-1988.

2. Substituted for "1964" by the Finance Act, 1966, w.e.f. 1-4-1966.

3. Substituted for "by such a company as is referred to in the said clause" by the Finance Act, 1987, w.e.f. 1-4-1988.

4. Substituted by the Finance Act, 1966, w.e.f. 1-4-1966.

5. *See* also Circular No. 23 (LXXII-18), dated 3-8-1962 and Letter [F. No. 91/31/64-ITJ], dated 9-6-1964. For details, *see* Taxmann's Master Guide to Income-tax Act. *See* also Taxmann's Income-tax Rules.

6. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

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any assessment year exceeds the amount with which he is properly chargeable[7] under this Act for that year, he shall be entitled to a refund[7] of the excess.

Person entitled to claim refund in certain special cases.

[8]**238.** (1) Where the income of one person is included under any provision of this Act in the total income of any other person, the latter alone shall be entitled to a refund under this Chapter in respect of such income.

[9][(1A) Where the value of fringe benefits provided or deemed to have been provided by one employer is included under any provisions of Chapter XII-H in the value of fringe benefits provided or deemed to have been provided by any other employer, the latter alone shall be entitled to a refund under this Chapter in respect of such fringe benefits.]

(2) Where through death, incapacity, insolvency, liquidation or other cause, a person is unable to claim or receive any refund due to him, his legal representative or the trustee or guardian or receiver, as the case may be, shall be entitled to claim or receive such refund for the benefit of such person or his estate.

Form of claim for refund and limitation.

[10]**239.** [11](1) Every claim for refund under this Chapter shall be made in the prescribed form and verified in the prescribed manner.

[12][(2) No such claim shall be allowed, unless it is made within the period specified hereunder, namely :—

(*a*) where the claim is in respect of income which is assessable for any assessment year commencing on or before the 1st day of April, 1967, four years from the last day of such assessment year;

(*b*) where the claim is in respect of income which is assessable for the assessment year commencing on the first day of April, 1968, three years from the last day of the assessment year;

(*c*) where the claim is in respect of income which is assessable for any other assessment year, [13][one] year from the last day of such assessment year;]

[14][(*d*) where the claim is in respect of fringe benefits which are assessable for any assessment year commencing on or after the first day of April, 2006, one year from the last day of such assessment year.]

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7. For the meaning of the expressions "properly chargeable" and "refund", *see* Taxmann's Direct Taxes Manual, Vol. 3.

8. *See* also Circular No. 22(LXXII-17), dated 8-8-1961. For details, *see* Taxmann's Master Guide to Income-tax Act.

9. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

10. For order of the Board under section 119(2)(*b*) condoning delay in filing application for refund, refer Taxmann's Income-tax Rules.

11. *See* rule 41 and Form No. 30 for claim for refund.

12. Substituted by the Finance Act, 1968, w.e.f. 1-4-1968.

13. Substituted for "two" by the Finance Act, 1992, w.e.f. 1-4-1993.

14. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

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Refund on appeal, etc.

240. Where, as a result of any order passed in appeal or other proceeding under this Act[15], refund of any amount becomes due to the assessee, the [16][Assessing] Officer shall, except as otherwise provided in this Act, refund the amount to the assessee without his having to make any claim in that behalf:

[17][**Provided** that where, by the order aforesaid,—

(*a*) an assessment is set aside or cancelled and an order of fresh assessment is directed to be made, the refund, if any, shall become due only on the making of such fresh assessment;

(*b*) the assessment is annulled, the refund shall become due only of the amount, if any, of the tax paid in excess of the tax chargeable on the total income returned by the assessee.]

Power to withhold refund in certain cases.

241. [18][*Omitted by the Finance Act, 2001, w.e.f. 1-6-2001.*]

Correctness of assessment not to be questioned.

242. In a claim under this Chapter, it shall not be open to the assessee to question the correctness of any assessment or other matter decided which has become final and conclusive or ask for a review of the same, and the assessee shall not be entitled to any relief on such claim except refund of tax wrongly paid or paid in excess.

[19]**Interest on delayed refunds.**

243. [20][(1) If the [21][Assessing] Officer does not grant the refund,—

(*a*) in any case where the total income of the assessee does not consist solely of income from interest on securities or dividends, within three months from the end of the month in which the total income is determined under this Act, and

(*b*) in any other case, within three months from the end of the month in which the claim for refund is made under this Chapter,

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15. For the meaning of the expression "other proceeding under this Act", *see* Taxmann's Direct Taxes Manual, Vol. 3.

16. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

17. Inserted, *ibid.*, w.e.f. 1-4-1989.

18. Prior to its omission, section 241 was amended by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988 and later on substituted by the Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-4-1989.

19. *See* rule 119A.

20. Substituted for sub-section (1) by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

21. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

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the Central Government shall pay the assessee simple interest at [22][fifteen] per cent per annum on the amount directed to be refunded from the date immediately following the expiry of the period of three months aforesaid to the date of the order granting the refund.

Explanation.—If the delay in granting the refund within the period of three months aforesaid is attributable to the assessee, whether wholly or in part, the period of the delay attributable to him shall be excluded from the period for which interest is payable.]

(2) Where any question arises as to the period to be excluded for the purposes of calculation of interest under the provisions of this section, such question shall be determined by the [23][Chief Commissioner or Commissioner] whose decision shall be final.

[24][(3) The provisions of this section shall not apply in respect of any assessment for the assessment year commencing on the 1st day of April, 1989 or any subsequent assessment years.]

Interest on refund where no claim is needed.

[25]**244.** (1) Where a refund is due to the assessee in pursuance of an order referred to in section 240 and the [26][Assessing] Officer does not grant the refund within a period of [27][three months from the end of the month in which such order is passed], the Central Government shall pay to the assessee simple interest at [28][fifteen] per cent per annum on the amount of refund due from the date immediately following the expiry of the period of [29][three] months aforesaid to the date on which the refund is granted.

[30][(1A) Where the whole or any part of the refund referred to in sub-section (1) is due to the assessee, as a result of any amount[31] having been paid by him after the 31st day of March, 1975, in pursuance of any order of assessment[32] or penalty and such amount or any part thereof having been found in appeal or other

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22. Substituted for "twelve" by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984. Earlier "twelve" was substituted for "nine" by the Finance Act, 1972, w.e.f. 1-4-1972. Section 84 of the Amendment Act, 1984 has clarified that the increase in the rate of interest will apply in respect of any period falling after 30-9-1984, and also in those cases where the interest became chargeable or payable from an earlier date.

23. Substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

24. Inserted, *ibid.*, w.e.f. 1-4-1989.

25. *See* rule 119A.

26. Substituted for "Income-tax", *ibid.*, w.e.f. 1-4-1988.

27. Substituted for "six months from the date of such order" by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

28. Substituted for "twelve" by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984. Earlier, "twelve" was substituted for "nine" by the Finance Act, 1972, w.e.f. 1-4-1972, "nine" was substituted for "six" by the Taxation Laws (Amendment) Act, 1967, w.e.f. 1-10-1967 and "six" was substituted for "four" by the Finance Act, 1965, w.e.f. 1-4-1965.

29. Substituted for "six" by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

30. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

31. For the meaning of the term "amount", *see* Taxmann's Direct Taxes Manual, Vol. 3.

32. For the meaning of the expression "order of assessment", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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proceeding under this Act to be in excess of the amount which such assessee is liable to pay as tax or penalty, as the case may be, under this Act, the Central Government shall pay to such assessee simple interest at the rate specified in sub-section (1) on the amount so found to be in excess from the date on which such amount was paid to the date on which the refund is granted :

Provided that where the amount so found to be in excess was paid in instalments, such interest shall be payable on the amount of each such instalment or any part of such instalment, which was in excess, from the date on which such instalment was paid to the date on which the refund is granted :

Provided further that no interest under this sub-section shall be payable for a period of one month from the date of the passing of the order in appeal or other proceeding :

Provided also that where any interest is payable to an assessee under this sub-section, no interest under sub-section (1) shall be payable to him in respect of the amount so found to be in excess.]

(2) Where a refund is withheld under the provisions of section 241, the Central Government shall pay interest at the aforesaid rate on the amount of refund ultimately determined to be due as a result of the appeal or further proceeding for the period commencing after the expiry of [33][three months from the end of the month in which the order referred to in section 241 is passed] to the date the refund is granted.

[34][(3) The provisions of this section shall not apply in respect of any assessment for the assessment year commencing on the 1st day of April, 1989, or any subsequent assessment years.]

[35][**Interest on refunds.**

[36]**244A.** (1) [37][Where refund of any amount becomes due to the assessee under this Act], he shall, subject to the provisions of this section, be entitled to receive, in addition to the said amount, simple interest thereon calculated in the following manner, namely :—

(*a*) where the refund is out of any tax [38][paid under section 115WJ or] [39][collected at source under section 206C or] paid by way of advance tax or treated as paid under section 199, during the financial year immediately preceding the assessment year, such interest shall be

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33. Substituted for "six months from the date of the order referred to in section 241" by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

34. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

35. Inserted, *ibid.*

36. *See* also Circular No. 20D(XXII-22), dated 20-8-1968 and Instruction No. 2/2007, dated 28-3-2007. For details, *see* Taxmann's Master Guide to Income-tax Act.

37. Substituted for "Where, in pursuance of any order passed under this Act, refund of any amount becomes due to the assessee" by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

38. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

39. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

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calculated at the rate of [40][one-half per cent] for every month or part of a month comprised in the period from the 1st day of April of the assessment year to the date on which the refund is granted:

Provided that no interest shall be payable if the amount of refund is less than ten per cent of the tax as determined [41][under [42][sub-section (1) of section 115WE or] sub-section (1) of section 143 or] on regular assessment;

(*b*) in any other case, such interest shall be calculated at the rate of [43][one-half per cent] for every month or part of a month comprised in the period or periods from the date or, as the case may be, dates of payment of the tax or penalty to the date on which the refund is granted.

Explanation.—For the purposes of this clause, "date of payment of tax or penalty" means the date on and from which the amount of tax or penalty specified in the notice of demand issued under section 156 is paid in excess of such demand.

(2) If the proceedings resulting in the refund are delayed for reasons attributable to the assessee, whether wholly or in part, the period of the delay so attributable to him shall be excluded from the period for which interest is payable, and where any question arises as to the period to be excluded, it shall be decided by the Chief Commissioner or Commissioner whose decision thereon shall be final.

(3) Where, as a result of an order under [44][sub-section (3) of section 115WE or section 115WF or section 115WG or] [45][sub-section (3) of section 143 or section 144 or] section 147 or section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264 or an order of the Settlement Commission under sub-section (4) of section 245D, the amount on which interest was payable under sub-section (1) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and in a case where the interest is reduced, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the amount of the excess interest paid and requiring him to pay such amount; and such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall apply accordingly.

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40. Substituted for "two-third per cent" by the Taxation Laws (Amendment) Act, 2003, w.e.f. 8-9-2003. Earlier "two-third per cent" was substituted for "three-fourth per cent" by the Finance Act, 2002, w.e.f. 1-6-2002, "three-fourth per cent" was substituted for "one per cent" by the Finance Act, 2001, w.e.f. 1-6-2001 and "one per cent" was substituted for "one and one-half per cent" by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

41. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

42. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

43. Substituted for "two-third per cent" by the Taxation Laws (Amendment) Act, 2003, w.e.f. 8-9-2003. Earlier "two-third per cent" was substituted for "three-fourth per cent" by the Finance Act, 2002, w.e.f. 1-6-2002, "three-fourth per cent" was substituted for "one per cent" by the Finance Act, 2001, w.e.f. 1-6-2001 and "one per cent" was substituted for "one and one-half per cent" by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

44. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

45. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

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(4) The provisions of this section shall apply in respect of assessments for the assessment year commencing on the 1st day of April, 1989, and subsequent assessment years :]

[46][**Provided** that in respect of assessment of fringe benefits, the provisions of this sub-section shall have effect as if for the figures "1989", the figures "2006" had been substituted.]

Set off of refunds against tax remaining payable.

[47]**245.** Where under any of the provisions of this Act, a refund is found[48] to be due to any person, the [49][Assessing] Officer, [50][Deputy Commissioner (Appeals)] [51][, Commissioner (Appeals)] or [52][Chief Commissioner or Commissioner], as the case may be, may, in lieu of payment[53] of the refund, set off the amount to be refunded or any part of that amount, against the sum, if any, remaining payable under this Act by the person to whom the refund is due, after giving an intimation in writing to such person of the action proposed to be taken under this section.

[54][*CHAPTER XIX-A*

SETTLEMENT OF CASES

[55][**Definitions.**

245A. In this Chapter, unless the context otherwise requires,—

(*a*) "Bench" means a Bench of the Settlement Commission;

[56][(*b*) "case" means any proceeding for assessment under this Act, of any person in respect of any assessment year or assessment years which may be pending before an Assessing Officer on the date on which an application under sub-section (1) of section 245C is made:

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46. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

47. *See* also Circular No. 3-D(LXXII-21), dated 29/31-1-1968. For details, *see* Taxmann's Master Guide to Income-tax Act.

48. For the meaning of the expression "is found", *see* Taxmann's Direct Taxes Manual, Vol. 3.

49. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

50. Substituted for "Appellate Assistant Commissioner", *ibid.*

51. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

52. Substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

53. For the meaning of the expression "in lieu of payment", *see* Taxmann's Direct Taxes Manual, Vol. 3.

54. Chapter XIX-A, consisting of sections 245A to 245M, inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

55. Substituted by the Finance Act, 1987, w.e.f. 1-6-1987. Prior to its substitution, section 245A was amended by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978 and Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984.

56. Substituted by the Finance Act, 2007, w.e.f. 1-6-2007. Prior to its substitution, clause (*b*) read as under :

'(*b*) "case" means any proceeding under this Act for the assessment or reassessment of any person in respect of any year or years, or by way of appeal or revision in connection with such assessment or reassessment, which may be pending before an income-tax authority on the date on which an application under sub-section (1) of section 245C is made :

(Contd. on p. 1.828)

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Provided that—

(*i*) a proceeding for assessment or reassessment or recomputation under section 147;

(*ii*) [56a]**[***]**

(*iii*) [56a]**[***]**

(*iv*) a proceeding for making fresh assessment in pursuance of an order under section 254 or section 263 or section 264, setting aside or cancelling an assessment,

shall not be a proceeding for assessment for the purposes of this clause.

Explanation.—For the purposes of this clause—

(*i*) a proceeding for assessment or reassessment or recomputation referred to in clause (*i*) of the proviso shall be deemed to have commenced from the date on which a notice under section 148 is issued;

(*ii*) [56b]**[***]**

(*iii*) a proceeding for making fresh assessment referred to in clause (*iv*) of the proviso shall be deemed to have commenced from the date on which the order under section 254 or section 263 or section 264, setting aside or cancelling an assessment was passed;

[56c]**[***(*iiia*) a proceeding for assessment or reassessment for any of the assessment years, referred to in clause (*b*) of sub-section (1) of section 153A in case of a person referred to in section 153A or section 153C, shall be deemed to have commenced on the date of issue of notice initiating such proceedings and concluded on the date on which the assessment is made;***]**

(*iv*) a proceeding for assessment for any assessment year, other than the proceedings of assessment or reassessment referred to in clause (*i*) or [56d]**[***clause (*iv*) of the proviso or clause (*iiia*) of the Explanation***]**, shall be deemed to have commenced from the 1st day of the assessment year and concluded on the date on which the assessment is made;]

(Contd. from p. 1.827)

Provided that where any appeal or application for revision has been preferred after the expiry of the period specified for the filing of such appeal or application for revision under this Act and which has not been admitted, such appeal or revision shall not be deemed to be a proceeding pending within the meaning of this clause;'

56a. Clauses (*ii*) and (*iii*) omitted by the Finance Act, 2010, w.e.f. **1-6-2010**. Prior to their omission, clauses (*ii*) and (*iii*) read as under :

"(*ii*) a proceeding for assessment or reassessment for any of the assessment years referred to in clause (*b*) of section 153A in case of a person referred to in section 153A or section 153C;

(*iii*) a proceeding for assessment or reassessment for the assessment year referred to in clause (*b*) of sub-section (1) of section 153B in case of a person referred to in section 153A or section 153C;"

56b. Omitted, *ibid.* Prior to its omission, clause (*ii*) read as under :

"(*ii*) a proceeding for assessment or reassessment referred to in clause (*ii*) or clause (*iii*) of the proviso shall be deemed to have commenced on the date of initiation of the search under section 132 or requisition under section 132A;"

56c. Inserted, *ibid.*

56d. Substituted for "clause (*ii*) or clause (*iii*) or clause (*iv*) of the proviso", *ibid.*

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(*c*) "Chairman" means the Chairman of the Settlement Commission;

(*d*) "income-tax authority" means an income-tax authority specified in section 116;

(*e*) "Member" means a Member of the Settlement Commission, and includes the Chairman and a Vice-Chairman;

(*f*) "Settlement Commission" means the Income-tax Settlement Commission constituted under section 245B;

(*g*) "Vice-Chairman" means a Vice-Chairman of the Settlement Commission [57][and includes a Member who is senior amongst the Members of a Bench].]

Income-tax Settlement Commission.

245B. (1) The Central Government shall constitute a Commission to be called the Income-tax Settlement Commission [58][***] for the settlement of cases under this Chapter.

(2) The Settlement Commission shall consist of a Chairman [59][and as many Vice-Chairmen and other members as the Central Government thinks fit] and shall function within the Department of the Central Government dealing with direct taxes.

(2A) [60][* * *]

(3) The Chairman [61][, Vice-Chairman] and other members of the Settlement Commission shall be appointed by the Central Government from amongst persons of integrity and outstanding ability, having special knowledge of, and, experience in, problems relating to direct taxes and business accounts:

Provided that, where a member of the Board is appointed as the Chairman [62][, Vice-Chairman] or as a member of the Settlement Commission, he shall cease to be a member of the Board.

[63][* * *]

[64][**Jurisdiction and powers of Settlement Commission.**

245BA. (1) Subject to the other provisions of this Chapter, the jurisdiction, powers and authority of the Settlement Commission may be exercised by Benches thereof.

(2) Subject to the other provisions of this section, a Bench shall be presided over by the Chairman or a Vice-Chairman and shall consist of two other Members.

(3) The Bench for which the Chairman is the Presiding Officer shall be the principal Bench and the other Benches shall be known as additional Benches.

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57. Inserted by the Finance Act, 2007, w.e.f. 1-6-2007.

58. Words '(hereafter in this Chapter referred to as "the Settlement Commission")' omitted by the Finance Act, 1987, w.e.f. 1-6-1987.

59. Substituted for "and two other members" by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 10-9-1986.

60. Omitted, *ibid.* Earlier, sub-section (2A) was inserted by the Finance Act, 1982, w.e.f. 1-4-1982.

61. Inserted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 10-9-1986.

62. Inserted, *ibid.*

63. Second proviso omitted, *ibid.*

64. Inserted by the Finance Act, 1987, w.e.f. 1-6-1987.

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(4) Notwithstanding anything contained in sub-sections (1) and (2), the Chairman may authorise the Vice-Chairman or other Member appointed to one Bench to discharge also the functions of the Vice-Chairman or, as the case may be, other Member of another Bench.

(5) Notwithstanding anything contained in the foregoing provisions of this section, and subject to any rules that may be made in this behalf, when one of the persons constituting a Bench (whether such person be the Presiding Officer or other Member of the Bench) is unable to discharge his functions owing to absence, illness or any other cause or in the event of the occurrence of any vacancy either in the office of the Presiding Officer or in the office of one or the other Members of the Bench, the remaining two persons may function as the Bench and if the Presiding Officer of the Bench is not one of the remaining two persons, the senior among the remaining persons shall act as the Presiding Officer of the Bench :

Provided that if at any stage of the hearing of any such case or matter, it appears to the Presiding Officer that the case or matter is of such a nature that it ought to be heard of by a Bench consisting of three Members, the case or matter may be referred by the Presiding Officer of such Bench to the Chairman for transfer to such Bench as the Chairman may deem fit.

[65][(5A) Notwithstanding anything contained in the foregoing provisions of this section, the Chairman may, for the disposal of any particular case, constitute a Special Bench consisting of more than three Members.]

(6) Subject to the other provisions of this Chapter, the places at which the principal Bench and the additional Benches shall ordinarily sit shall be such as the Central Government may, by notification[66] in the Official Gazette, specify [65][and the Special Bench shall sit at a place to be fixed by the Chairman.]]

[67][**Vice-Chairman to act as Chairman or to discharge his functions in certain circumstances.**

245BB. (1) In the event of the occurrence of any vacancy in the office of the Chairman by reason of his death, resignation or otherwise, the Vice-Chairman or, as the case may be, such one of the Vice-Chairmen as the Central Government may, by notification in the Official Gazette, authorise in this behalf, shall act as the Chairman until the date on which a new Chairman, appointed in accordance with the provisions of this Chapter to fill such vacancy, enters upon his office.

(2) When the Chairman is unable to discharge his functions owing to absence, illness or any other cause, the Vice-Chairman or, as the case may be, such one of the Vice-Chairmen as the Central Government may, by notification in the Official Gazette, authorise in this behalf, shall discharge the functions of the Chairman until the date on which the Chairman resumes his duties.]

[67][**Power of Chairman to transfer cases from one Bench to another.**

245BC. On the application of the assessee or the [68][Chief Commissioner or Commissioner] and after notice to them, and after hearing such of them

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65. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

66. For notification specifying Principal Bench, *see* Taxmann's Master Guide to Income-tax Act.

67. Inserted by the Finance Act, 1987, w.e.f. 1-6-1987.

68. Substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

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as he may desire to be heard, or on his own motion without such notice, the Chairman may transfer any case pending before one Bench, for disposal, to another Bench.]

[69][**Decision to be by majority.**

245BD. If the Members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and make a reference to the Chairman who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Settlement Commission and such point or points shall be decided according to the opinion of the majority of the Members of the Settlement Commission who have heard the case, including those who first heard it.]

Application for settlement of cases.

[70]**245C.** [71][(1) An assessee may, at any stage of a case relating to him[72], make an application in such form and in such manner as may be prescribed, and containing a full and true disclosure of his income which has not been disclosed before the [73][Assessing] Officer, the manner in which such income has been derived, the additional amount of income-tax payable on such income and such other particulars as may be prescribed, to the Settlement Commission to have the case settled and any such application shall be disposed of in the manner hereinafter provided :

[74]**[Provided** *that no such application shall be made unless,—*

(i) *in a case where proceedings for assessment or reassessment for any of the assessment years referred to in clause (*b*) of sub-section (1) of section 153A or clause (*b*) of sub-section (1) of section 153B in case of a person referred to in section 153A or section 153C have been initiated, the additional amount of income-tax payable on the income disclosed in the application exceeds fifty lakh rupees,*

(ii) *in any other case, the additional amount of income-tax payable on the income disclosed in the application exceeds ten lakh rupees,*

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69. Inserted by the Finance Act, 1987, w.e.f. 1-6-1987.

70. *See* rule 44C and Form Nos. 34B and 34BA. Application to Settlement Commission should be accompanied by a fee of Rs. 500.

71. Substituted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984.

72. For the meaning of the expression "at any stage of a case relating to him", *see* Taxmann's Direct Taxes Manual, Vol. 3.

73. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

74. Substituted by the Finance Act, 2010, w.e.f. **1-6-2010**. Prior to its substitution, proviso as amended by the Finance Act, 2007, w.e.f. 1-6-2007, Finance Act, 1995, w.e.f. 1-7-1995 and Finance Act, 1987, w.e.f. 1-6-1987, read as under :

"**Provided** that no such application shall be made unless—

(*i*) the additional amount of income-tax payable on the income disclosed in the application exceeds three lakh rupees; and

(*ii*) such tax and the interest thereon, which would have been paid under the provisions of this Act had the income disclosed in the application been declared in the return of income before the Assessing Officer on the date of application, has been paid on or before the date of making the application and the proof of such payment is attached with the application."

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*and such tax and the interest thereon, which would have been paid under the provisions of this Act had the income disclosed in the application been declared in the return of income before the Assessing Officer on the date of application, has been paid on or before the date of making the application and the proof of such payment is attached with the application.***]**

(1A) For the purposes of sub-section (1) of this section [75][***], the additional amount of income-tax payable in respect of the income disclosed in an application made under sub-section (1) of this section shall be the amount calculated in accordance with the provisions of sub-sections (1B) to (1D).

[76][(1B) Where the income disclosed in the application relates to only one previous year,—

(*i*) if the applicant has not furnished a return in respect of the total income of that year, then, tax shall be calculated on the income disclosed in the application as if such income were the total income;

(*ii*) if the applicant has furnished a return in respect of the total income of that year, tax shall be calculated on the aggregate of the total income returned and the income disclosed in the application as if such aggregate were the total income.]

[77][(1C) The additional amount of income-tax payable in respect of the income disclosed in the application relating to the previous year referred to in sub-section (1B) shall be,—

(*a*) in a case referred to in clause (*i*) of that sub-section, the amount of tax calculated under that clause;

(*b*) in a case referred to in clause (*ii*) of that sub-section, the amount of tax calculated under that clause as reduced by the amount of tax calculated on the total income returned for that year;

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75. Words "and sub-sections (2A) to (2D) of section 245D" omitted by the Finance Act, 2007, w.e.f. 1-6-2007.

76. Substituted, *ibid*. Prior to its substitution, sub-section (1B), as substituted by the Finance Act, 1987, w.e.f. 1-6-1987, read as under :

"(1B) Where the income disclosed in the application relates to only one previous year,—

(*i*) if the applicant has not furnished a return in respect of the total income of that year (whether or not an assessment has been made in respect of the total income of that year), then, except in a case covered by clause (*iii*), tax shall be calculated on the income disclosed in the application as if such income were the total income;

(*ii*) if the applicant has furnished a return in respect of the total income of that year (whether or not an assessment has been made in pursuance of such return), tax shall be calculated on the aggregate of the total income returned and the income disclosed in the application as if such aggregate were the total income;

(*iii*) if the proceeding pending before the income-tax authority is in the nature of a proceeding for reassessment of the applicant under section 147 or by way of appeal or revision in connection with such reassessment, and the applicant has not furnished a return in respect of the total income of that year in the course of such proceeding for reassessment, tax shall be calculated on the aggregate of the total income as assessed in the earlier proceeding for assessment under section 143 or section 144 or section 147 and the income disclosed in the application as if such aggregate were the total income."

77. Substituted by the Finance Act, 1987, w.e.f. 1-6-1987.

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(*c*) [78][***].]

(1D) Where the income disclosed in the application relates to more than one previous year, the additional amount of income-tax payable in respect of the income disclosed for each of the years shall first be calculated in accordance with the provisions of sub-sections (1B) and (1C) and the aggregate of the amount so arrived at in respect of each of the years for which the application has been made under sub-section (1) shall be the additional amount of income-tax payable in respect of the income disclosed in the application.

(1E) [79][***]

(2) Every application made under sub-section (1) shall be accompanied by such fees as may be prescribed[80].

(3) An application made under sub-section (1) shall not be allowed to be withdrawn by the applicant.

[81][(4) An assessee shall, on the date on which he makes an application under sub-section (1) to the Settlement Commission, also intimate the Assessing Officer in the prescribed manner[82] of having made such application to the said Commission.]

Procedure on receipt of an application under section 245C.[83]

245D. [84][(1) On receipt of an application under section 245C, the Settlement Commission shall, within seven days from the date of receipt of the

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78. Omitted by the Finance Act, 2007, w.e.f. 1-6-2007. Prior to its omission, clause (*c*) read as under :

"(*c*) in a case referred to in clause (*iii*) of that sub-section, the amount of tax calculated under that clause as reduced by the amount of tax calculated on the total income assessed in the earlier proceeding for assessment under section 143 or section 144 or section 147."

79. Omitted by the Finance Act, 2002, w.e.f. 1-6-2002.

80. Fee prescribed is Rs. 500.

81. Inserted by the Finance Act, 2007, w.e.f. 1-6-2007.

82. *See* rule 44C & Form No. 34BA.

83. *See* rule 44CA.

84. Substituted by the Finance Act, 2007, w.e.f. 1-6-2007. Prior to its substitution, sub-section (1), as amended by the Finance Act, 1995, w.e.f. 1-7-1995, Finance Act, 1979, w.e.f. 1-4-1979, Finance (No. 2) Act, 1991, w.e.f. 27-9-1991 and Finance Act, 2002, w.e.f. 1-6-2002, read as under :

"(1) On receipt of an application under section 245C, the Settlement Commission shall call for a report from the Commissioner and on the basis of the materials contained in such report and having regard to the nature and circumstances of the case or the complexity of the investigation involved therein, the Settlement Commission, shall, where it is possible, by order, reject the application or allow the application to be proceeded with within a period of one year from the end of the month in which such application was made under section 245C :

Provided that an application shall not be rejected under this sub-section unless an opportunity has been given to the applicant of being heard :

Provided further that the Commissioner shall furnish the report within a period of forty-five days of the receipt of communication from the Settlement Commission in case of all applications made under section 245C on or after the 1st day of July, 1995 and if the Commissioner fails to furnish the report within the said period, the Settlement Commission may make the order without such report."

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application, issue a notice to the applicant requiring him to explain as to why the application made by him be allowed to be proceeded with, and on hearing the applicant, the Settlement Commission shall, within a period of fourteen days from the date of the application, by an order in writing, reject the application or allow the application to be proceeded with:

Provided that where no order has been passed within the aforesaid period by the Settlement Commission, the application shall be deemed to have been allowed to be proceeded with.]

(1A) [85][*Omitted by the Finance (No. 2) Act, 1991, w.e.f. 27-9-1991.*]

(2) A copy of every order under sub-section (1) shall be sent to the applicant and to the Commissioner.

[86][(2A) Where an application was made under section 245C before the 1st day of June, 2007, but an order under the provisions of sub-section (1) of this section, as they stood immediately before their amendment by the Finance Act, 2007, has not been made before the 1st day of June, 2007, such application shall be deemed to have been allowed to be proceeded with if the additional tax on the income disclosed in such application and the interest thereon is paid on or before the 31st day of July, 2007.

Explanation.—In respect of the applications referred to in this sub-section, the 31st day of July, 2007 shall be deemed to be the date of the order of rejection or allowing the application to be proceeded with under sub-section (1).

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85. Prior to omission, sub-section (1A) was inserted by the Finance Act, 1979, w.e.f. 1-4-1979 and amended by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-4-1984.

86. Sub-sections (2A), (2B), (2C) and (2D) substituted by the Finance Act, 2007, w.e.f. 1-6-2007. Prior to their substitution, sub-sections (2A), (2B), (2C) and (2D), as amended by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984, Finance Act, 1985, w.r.e.f. 1-10-1984 and Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988, read as under :

"(2A) Subject to the provisions of sub-section (2B), the assessee shall, within thirty-five days of the receipt of a copy of the order under sub-section (1) allowing the application to be proceeded with, pay the additional amount of income-tax payable on the income disclosed in the application and shall furnish proof of such payment to the Settlement Commission.

(2B) If the Settlement Commission is satisfied, on an application made in this behalf by the assessee, that he is unable for good and sufficient reasons to pay the additional amount of income-tax referred to in sub-section (2A) within the time specified in that sub-section, it may extend the time for payment of the amount which remains unpaid or allow payment thereof by instalments if the assessee furnishes adequate security for the payment thereof.

(2C) Where the additional amount of income-tax is not paid within the time specified under sub-section (2A), then, whether or not the Settlement Commission has extended the time for payment of the amount which remains unpaid or has allowed payment thereof by instalments under sub-section (2B), the assessee shall be liable to pay simple interest at fifteen per cent per annum on the amount remaining unpaid from the date of expiry of the period of thirty-five days referred to in sub-section (2A).

(2D) Where the additional amount of income-tax referred to in sub-section (2A) is not paid by the assessee within the time specified under that sub-section or extended under sub-section (2B), as the case may be, the Settlement Commission may direct that the amount of income-tax remaining unpaid, together with any interest payable thereon under sub-section (2C), be recovered and any penalty for default in making payment of such additional amount may be imposed and recovered, in accordance with the provisions of Chapter XVII, by the Assessing Officer having jurisdiction over the assessee."

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(2B) The Settlement Commission shall,—

(*i*) in respect of an application which is allowed to be proceeded with under sub-section (1), within thirty days from the date on which the application was made; or

(*ii*) in respect of an application referred to in sub-section (2A) which is deemed to have been allowed to be proceeded with under that sub-section, on or before the 7th day of August, 2007,

call for a report from the Commissioner, and the Commissioner shall furnish the report within a period of thirty days of the receipt of communication from the Settlement Commission.

(2C) Where a report of the Commissioner called for under sub-section (2B) has been furnished within the period specified therein, the Settlement Commission may, on the basis of the report and within a period of fifteen days of the receipt of the report, by an order in writing, declare the application in question as invalid, and shall send the copy of such order to the applicant and the Commissioner:

Provided that an application shall not be declared invalid unless an opportunity has been given to the applicant of being heard:

Provided further that where the Commissioner has not furnished the report within the aforesaid period, the Settlement Commission shall proceed further in the matter without the report of the Commissioner.

(2D) Where an application was made under sub-section (1) of section 245C before the 1st day of June, 2007 and an order under the provisions of sub-section (1) of this section, as they stood immediately before their amendment by the Finance Act, 2007, allowing the application to have been proceeded with, has been passed before the 1st day of June, 2007, but an order under the provisions of sub-section (4), as they stood immediately before their amendment by the Finance Act, 2007, was not passed before the 1st day of June, 2007, such application shall not be allowed to be further proceeded with unless the additional tax on the income disclosed in such application and the interest thereon, is, notwithstanding any extension of time already granted by the Settlement Commission, paid on or before the 31st day of July, 2007.]

[87][(3)The Settlement Commission, in respect of—

(*i*) an application which has not been declared invalid under sub-section (2C); or

(*ii*) an application referred to in sub-section (2D) which has been allowed to be further proceeded with under that sub-section,

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87. Sub-sections (3), (4) and (4A) substituted by the Finance Act, 2007, w.e.f. 1-6-2007. Prior to their substitution, sub-sections (3), (4) and (4A), as amended by the Finance Act, 2002, w.e.f. 1-6-2002, read as under :

"(3) Where an application is allowed to be proceeded with under sub-section (1), the Settlement Commission may call for the relevant records from the Commissioner and after examination of such records, if the Settlement Commission is of the opinion that any further enquiry or investigation in the matter is necessary, it may direct the Commissioner to make or cause to be made such further enquiry or investigation and furnish a report on the matters covered by the application and any other matter relating to the case.

(Contd. on p. 1.836)

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may call for the records from the Commissioner and after examination of such records, if the Settlement Commission is of the opinion that any further enquiry or investigation in the matter is necessary, it may direct the Commissioner to make or cause to be made such further enquiry or investigation and furnish a report on the matters covered by the application and any other matter relating to the case, and the Commissioner shall furnish the report within a period of ninety days of the receipt of communication from the Settlement Commission:

Provided that where the Commissioner does not furnish the report within the aforesaid period, the Settlement Commission may proceed to pass an order under sub-section (4) without such report.

(4) After examination of the records and the report of the Commissioner, if any, received under—

(*i*) sub-section (2B) or sub-section (3), or

(*ii*) the provisions of sub-section (1) as they stood immediately before their amendment by the Finance Act, 2007,

and after giving an opportunity to the applicant and to the Commissioner to be heard, either in person or through a representative duly authorised in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the Settlement Commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the Commissioner.

(4A) The Settlement Commission shall pass an order under sub-section (4),—

(*i*) in respect of an application referred to in sub-section (2A) or sub-section (2D), on or before the 31st day of March, 2008;

(*ii*) in respect of an application made on or after the 1st day of June, 2007 [87a]**[***but before the 1st day of June, 2010***]**, within twelve months from the end of the month in which the application was made;]

[87b]**[**(iii) *in respect of an application made on or after the 1st day of June, 2010, within eighteen months from the end of the month in which the application was made.***]**

(Contd. from p. 1.835)

(4) After examination of the records and the report of the Commissioner, received under sub-section (1), and the report, if any, of the Commissioner received under sub-section (3), and after giving an opportunity to the applicant and to the Commissioner to be heard, either in person or through a representative duly authorised in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the Settlement Commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the Commissioner under sub-section (1) or sub-section (3).

(4A) In every application allowed to be proceeded with under sub-section (1), the Settlement Commission shall, where it is possible, pass an order under sub-section (4) within a period of four years from the end of the financial year in which such application was allowed to be proceeded with."

87a. Inserted by the Finance Act, 2010, w.e.f. **1-4-2010**.

87b. Inserted, *ibid.*, w.e.f. **1-6-2010**.

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[88][(5) Subject to the provisions of section 245BA, the materials brought on record before the Settlement Commission shall be considered by the Members of the concerned Bench before passing any order under sub-section (4) and, in relation to the passing of such order, the provisions of section 245BD shall apply.]

(6) Every order passed under sub-section (4) shall provide for the terms of settlement[89] including any demand by way of [90][tax, penalty or interest], the manner in which any sum due under the settlement[89] shall be paid and all other matters to make the settlement effective and shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts.

[91][(6A) Where any tax payable in pursuance of an order under sub-section (4) is not paid by the assessee within thirty-five days of the receipt of a copy of the order by him, then, whether or not the Settlement Commission has extended the time for payment of such tax or has allowed payment thereof by instalments, the assessee shall be liable to pay simple interest at [92][one and one-fourth per cent for every month or part of a month] on the amount remaining unpaid from the date of expiry of the period of thirty-five days aforesaid.]

(7) Where a settlement becomes void as provided under sub-section (6), the proceedings with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission and the income-tax authority concerned, may, notwithstanding anything contained in any other provision of this Act, complete such proceedings at any time before the expiry of two years from the end of the financial year in which the settlement became void.

[93][(8) For the removal of doubts, it is hereby declared that nothing contained in section 153 shall apply to any order passed under sub-section (4) or to any order of assessment, reassessment or recomputation required to be made by the [94][Assessing] Officer in pursuance of any directions contained in such order passed by the Settlement Commission [95][and nothing contained in the proviso to sub-section (1) of section 186 shall apply to the cancellation of the registration of a firm required to be made in pursuance of any such directions as aforesaid.]]

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88. Inserted by the Finance Act, 1987, w.e.f. 1-6-1987. Original sub-section (5), as amended by the Finance Act, 1982, w.e.f. 1-4-1982, was omitted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 10-9-1986.

89. For the meaning of term "settle"/"settlement", *see* Taxmann's Direct Taxes Manual, Vol. 3.

90. Substituted for "tax or penalty" by the Finance Act, 1987, w.e.f. 1-6-1987. Earlier "tax or penalty" was substituted for "tax, penalty or interest" by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984.

91. Inserted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984.

92. Substituted for "fifteen per cent per annum" by the Finance Act, 2007, w.e.f. 1-4-2008.

93. Inserted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984.

94. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

95. Inserted by the Finance Act, 1987, w.e.f. 1-6-1987.

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[96][**Power of Settlement Commission to order provisional attachment to protect revenue.**

245DD. (1) Where, during the pendency of any proceeding before it, the Settlement Commission is of the opinion that for the purpose of protecting the interests of the revenue it is necessary so to do, it may, by order, attach provisionally any property belonging to the applicant in the manner provided in the Second Schedule :

Provided that where a provisional attachment made under section 281B is pending immediately before an application is made under section 245C, an order under this sub-section shall continue such provisional attachment up to the period up to which an order made under section 281B would have continued if such application had not been made :

Provided further that where the Settlement Commission passes an order under this sub-section after the expiry of the period referred to in the preceding proviso, the provisions of sub-section (2) shall apply to such order as if the said order had originally been passed by the Settlement Commission.

(2) Every provisional attachment made by the Settlement Commission under sub-section (1) shall cease to have effect after the expiry of a period of six months from the date of the order made under sub-section (1) :

Provided that the Settlement Commission may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as it thinks fit [97][***]].

Power of Settlement Commission to reopen completed proceedings.

245E. If the Settlement Commission is of the opinion (the reasons for such opinion to be recorded by it in writing) that, for the proper disposal of the case pending before it, it is necessary or expedient to reopen any proceeding connected with the case but which has been completed [98][***] under this Act by any income-tax authority before the application under section 245C was made, it may, with the concurrence of the applicant, reopen such proceeding and pass such order thereon as it thinks fit, as if the case in relation to which the application for settlement had been made by the applicant under that section covered such proceeding also :

[99][**Provided** that no proceeding shall be reopened by the Settlement Commission under this section if the period between the end of the assessment year to which such a proceeding relates and the date of application for settlement under section 245C exceeds nine years :]

[1][**Provided further** that no proceeding shall be reopened by the Settlement Commission under this section in a case where an application under section 245C is made on or after the 1st day of June, 2007.]

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96. Inserted by the Finance Act, 1988, w.e.f. 1-4-1988.

97. Words ", so, however, that the total period of extension shall not in any case exceed two years" omitted by the Finance Act, 2007, w.e.f. 1-6-2008.

98. "under the Indian Income-tax Act, 1922 (11 of 1922), or" omitted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984.

99. Substituted by the Finance Act, 1987, w.e.f. 1-6-1987.

1. Inserted by the Finance Act, 2007, w.e.f. 1-6-2007.

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Powers and procedure of Settlement Commission.

245F. (1) In addition to the powers conferred on the Settlement Commission under this Chapter, it shall have all the powers which are vested in an income-tax authority under this Act.

(2) Where an application made under section 245C has been allowed to be proceeded with under section 245D, the Settlement Commission shall, until an order is passed under sub-section (4) of section 245D, have, subject to the provisions of sub-section (3) of that section, exclusive jurisdiction to exercise the powers and perform the functions of an income-tax authority under this Act in relation to the case :

[2][**Provided** that where an application has been made under section 245C on or after the 1st day of June, 2007, the Settlement Commission shall have such exclusive jurisdiction from the date on which the application was made:

Provided further that where—

(*i*) an application made on or after the 1st day of June, 2007, is rejected under sub-section (1) of section 245D; or

(*ii*) an application is not allowed to be proceeded with under sub-section (2A) of section 245D, or, as the case may be, is declared invalid under sub-section (2C) of that section; or

(*iii*) an application is not allowed to be further proceeded with under sub-section (2D) of section 245D,

the Settlement Commission, in respect of such application shall have such exclusive jurisdiction upto the date on which the application is rejected, or, not allowed to be proceeded with, or, declared invalid, or, not allowed to be further proceeded with, as the case may be.]

(3) Notwithstanding anything contained in sub-section (2) and in the absence of any express direction to the contrary by the Settlement Commission, nothing contained in this section shall affect the operation of any other provision of this Act requiring the applicant to pay tax on the basis of self-assessment [3][* * *] in relation to the matters before the Settlement Commission.

(4) For the removal of doubt, it is hereby declared that, in the absence of any express direction by the Settlement Commission to the contrary, nothing in this Chapter shall affect the operation of the provisions of this Act in so far as they relate to any matters other than those before the Settlement Commission.

(5) [4][* * *]

(6) [5][* * *]

[6][(7) The Settlement Commission shall, subject to the provisions of this Chapter, have power to regulate its own procedure and the procedure of Benches thereof

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2. Inserted by the Finance Act, 2007, w.e.f. 1-6-2007.

3. "or by way of advance tax" omitted by the Finance Act, 1987, w.e.f. 1-6-1987.

4. Omitted, *ibid.* Original sub-section (5) was earlier substituted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 10-9-1986.

5. Omitted, *ibid.* Original sub-section (6) was inserted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 10-9-1986.

6. Inserted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 10-9-1986.

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in all matters arising out of the exercise of its powers or of the discharge of its functions, including the places at which the Benches shall hold their sittings.]

Inspection, etc., of reports.

245G. [7]No person shall be entitled to inspect, or obtain copies of, any reports made by any income-tax authority to the Settlement Commission; but the Settlement Commission may, in its discretion, furnish copies thereof to any such person on an application made to it in this behalf and on payment of the prescribed fee :

Provided that, for the purpose of enabling any person whose case is under consideration to rebut any evidence brought on record against him in any such report, the Settlement Commission shall, on an application made in this behalf, and on payment of the prescribed fee by such person, furnish him with a certified copy of any such report or part thereof relevant for the purpose.

Power of Settlement Commission to grant immunity from prosecution and penalty.

245H. (1) The Settlement Commission may, if it is satisfied that any person who made the application for settlement under section 245C has co-operated with the Settlement Commission in the proceedings before it and has made a full and true disclosure of his income and the manner in which such income has been derived, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act or under the Indian Penal Code (45 of 1860) or under any other Central Act for the time being in force and also [8][(either wholly or in part)] from the imposition of any penalty under this Act, with respect to the case covered by the settlement :

[9][**Provided** that no such immunity shall be granted by the Settlement Commission in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of the application under section 245C :]

[10][**Provided further** that the Settlement Commission shall not grant immunity from prosecution for any offence under the Indian Penal Code (45 of 1860) or under any Central Act other than this Act and the Wealth-tax Act, 1957 (27 of 1957) to a person who makes an application under section 245C on or after the 1st day of June, 2007.]

[9][(1A) An immunity granted to a person under sub-section (1) shall stand withdrawn if such person fails to pay any sum specified in the order of settlement passed under sub-section (4) of section 245D within the time specified in such order or within such further time as may be allowed by the Settlement Commission, or fails to comply with any other condition subject to which the immunity was granted and thereupon the provisions of this Act shall apply as if such immunity had not been granted.]

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7. *See* rule 44D.

8. Inserted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984.

9. Inserted by the Finance Act, 1987, w.e.f. 1-6-1987.

10. Inserted by the Finance Act, 2007, w.e.f. 1-6-2007.

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(2) An immunity granted to a person under sub-section (1) may, at any time, be withdrawn by the Settlement Commission, if it is satisfied that such person [11][***] had, in the course of the settlement proceedings, concealed any particulars material to the settlement or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the settlement and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted.

[12][**Abatement of proceeding before Settlement Commission.**

245HA. (1) Where—

(*i*) an application made under section 245C on or after the 1st day of June, 2007 has been rejected under sub-section (1) of section 245D; or

(*ii*) an application made under section 245C has not been allowed to be proceeded with under sub-section (2A) or further proceeded with under sub-section (2D) of section 245D; or

(*iii*) an application made under section 245C has been declared as invalid under sub-section (2C) of section 245D; or

(*iv*) in respect of any other application made under section 245C, an order under sub-section (4) of section 245D has not been passed within the time or period specified under sub-section (4A) of section 245D,

the proceedings before the Settlement Commission shall abate on the specified date.

Explanation.—For the purposes of this sub-section, "specified date" means—

(*a*) in respect of an application referred to in clause (*i*), the day on which the application was rejected;

(*b*) in respect of an application referred to in clause (*ii*), the 31st day of July, 2007;

(*c*) in respect of an application referred to in clause (*iii*), the last day of the month in which the application was declared invalid;

(*d*) in respect of an application referred to in clause (*iv*), on the date on which the time or period specified in sub-section (4A) of section 245D expires.

(2) Where a proceeding before the Settlement Commission abates, the Assessing Officer, or, as the case may be, any other income-tax authority before whom the proceeding at the time of making the application was pending, shall dispose of the case in accordance with the provisions of this Act as if no application under section 245C had been made.

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11. "has not complied with the conditions subject to which the immunity was granted or that such person" omitted by the Finance Act, 1987, w.e.f. 1-6-1987.

12. Inserted by the Finance Act, 2007, w.e.f. 1-6-2007. Earlier section 245HA was inserted by the Finance Act, 1987, w.e.f. 1-6-1987 and amended by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988 and later on omitted by the Finance Act, 2002, w.e.f. 1-6-2002.

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(3) For the purposes of sub-section (2), the Assessing Officer, or, as the case may be, other income-tax authority, shall be entitled to use all the material and other information produced by the assessee before the Settlement Commission or the results of the inquiry held or evidence recorded by the Settlement Commission in the course of the proceedings before it, as if such material, information, inquiry and evidence had been produced before the Assessing Officer or other income-tax authority or held or recorded by him in the course of the proceedings before him.

(4) For the purposes of the time-limit under sections 149, 153, 153B, 154, 155, 158BE and 231 and for the purposes of payment of interest under section 243 or 244 or, as the case may be, section 244A, for making the assessment or reassessment under sub-section (2), the period commencing on and from the date of the application to the Settlement Commission under section 245C and ending with "specified date" referred to in sub-section (1) shall be excluded; and where the assessee is a firm, for the purposes of the time-limit for cancellation of registration of the firm under sub-section (1) of section 186, the period aforesaid shall, likewise, be excluded.]

[13][**Credit for tax paid in case of abatement of proceedings.**

245HAA. Where an application made under section 245C on or after the 1st day of June, 2007, is rejected under sub-section (1) of section 245D, or any other application made under section 245C is not allowed to be proceeded with under sub-section (2A) of section 245D or is declared invalid under sub-section (2C) of section 245D or has not been allowed to be further proceeded with under sub-section (2D) of section 245D or an order under sub-section (4) of section 245D has not been passed within the time or period specified under sub-section (4A) of section 245D, the Assessing Officer shall allow the credit for the tax and interest paid on or before the date of making the application or during the pendency of the case before the Settlement Commission.]

Order of settlement to be conclusive.

245-I. Every order of settlement passed under sub-section (4) of section 245D shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in this Chapter, be reopened in any proceeding under this Act or under any other law for the time being in force.

Recovery of sums due under order of settlement.

245J. Any sum specified in an order of settlement passed under sub-section (4) of section 245D may, subject to such conditions, if any, as may be specified therein, be recovered, and any penalty for default in making payment of such sum may be imposed and recovered in accordance with the provisions of Chapter XVII, by the [14][Assessing] Officer having jurisdiction over the person who made the application for settlement under section 245C.

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13. Inserted by the Finance Act, 2007, w.e.f. 1-6-2007.

14. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

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[15][**Bar on subsequent application for settlement.**

245K. (1) Where—

(*i*) an order of settlement passed under sub-section (4) of section 245D provides for the imposition of a penalty on the person who made the application under section 245C for settlement, on the ground of concealment of particulars of his income; or

(*ii*) after the passing of an order of settlement under the said sub-section (4) in relation to a case, such person is convicted of any offence under Chapter XXII in relation to that case; or

(*iii*) the case of such person was sent back to the Assessing Officer by the Settlement Commission on or before the 1st day of June, 2002,

then, he shall not be entitled to apply for settlement under section 245C in relation to any other matter.

(2) Where a person has made an application under section 245C on or after the 1st day of June, 2007 and if such application has been allowed to be proceeded with under sub-section (1) of section 245D, such person shall not be subsequently entitled to make an application under section 245C.]

Proceedings before Settlement Commission to be judicial proceedings.

245L. Any proceeding under this Chapter before the Settlement Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code (45 of 1860).

Certain persons who have filed appeals to the Appellate Tribunal entitled to make applications to the Settlement Commission.

245M. [16][*Omitted by the Finance Act, 1987, w.e.f. 1-6-1987.*]

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15. Substituted by the Finance Act, 2007, w.e.f. 1-6-2007. Prior to its substitution, section 245K, as amended by the Finance Act, 1987, w.e.f. 1-6-1987 and Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988, read as under :

"245K. *Bar on subsequent application for settlement in certain cases.*—Where,—

(*i*) an order of settlement passed under sub-section (4) of section 245D provides for the imposition of a penalty on the person who made the application under section 245C for settlement, on the ground of concealment of particulars of his income; or

(*ii*) after the passing of an order of settlement under the said sub-section (4) in relation to a case, such person is convicted of any offence under Chapter XXII in relation to that case; or

(*iii*) the case of such person is sent back to the Assessing Officer by the Settlement Commission under section 245HA,

then, he shall not be entitled to apply for settlement under section 245C in relation to any other matter."

16. Prior to its omission, section 245M was inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976 and later amended by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984.

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[17][*CHAPTER XIX-B*

ADVANCE RULINGS

Definitions.

245N. In this Chapter, unless the context otherwise requires,—

[18][(*a*) "advance ruling" means—

(*i*) a determination by the Authority in relation to a transaction which has been undertaken or is proposed to be undertaken by a non-resident applicant; or

(*ii*) a determination by the Authority in relation to [19][the tax liability of a non-resident arising out of] a transaction which has been undertaken or is proposed to be undertaken by a resident applicant with [20][such] non-resident,

and such determination shall include the determination of any question of law or of fact specified in the application;

(*iii*) a determination or decision by the Authority in respect of an issue relating to computation of total income which is pending before any income-tax authority or the Appellate Tribunal and such determination or decision shall include the determination or decision of any question of law or of fact relating to such computation of total income specified in the application :

[21][**Provided** that where an advance ruling has been pronounced, before the date on which the Finance Act, 2003 receives the assent of the President, by the Authority in respect of an application by a resident applicant referred to in sub-clause (*ii*) of this clause as it stood immediately before such date, such ruling shall be binding on the persons specified in section 245S;]

(*b*) "applicant" means any person who—

(*i*) is a non-resident referred to in sub-clause (*i*) of clause (*a*); or

(*ii*) is a resident referred to in sub-clause (*ii*) of clause (*a*); or

(*iii*) is a resident falling within any such class or category of persons as the Central Government may, by notification in the Official Gazette[22], specify in this behalf; and

(*iv*) makes an application under sub-section (1) of section 245Q;]

(*c*) "application" means an application made to the Authority under sub-section (1) of section 245Q;

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17. Chapter XIX-B, consisting of sections 245N to 245V, inserted by the Finance Act, 1993, w.e.f. 1-6-1993.

18. Clauses (*a*) and (*b*) substituted by the Finance Act, 2000, w.e.f. 1-6-2000. Prior to their substitution, clauses (*a*) and (*b*) were inserted by the Finance Act, 1993, w.e.f. 1-6-1993 and later on substituted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

19. Inserted by the Finance Act, 2003, w.r.e.f. 1-6-2000.

20. Substituted for "a", *ibid.*

21. Inserted, *ibid.*, w.e.f. 14-5-2003.

22. For notified class or category of persons, *see* Taxmann's Master Guide to Income-tax Act.

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(*d*) "Authority" means the Authority for Advance Rulings constituted under section 245-O;

(*e*) "Chairman" means the Chairman of the Authority;

(*f*) "Member" means a Member of the Authority and includes the Chairman.

Authority for Advance Rulings.

245-O. (1) The Central Government shall constitute an Authority for giving advance rulings, to be known as "Authority for Advance Rulings".

(2) The Authority shall consist of the following Members appointed by the Central Government, namely :—

(*a*) a Chairman, who is a retired Judge of the Supreme Court;

(*b*) an officer of the Indian Revenue Service who is qualified to be a member of the Central Board of Direct Taxes;

(*c*) an officer of the Indian Legal Service who is, or is qualified to be, an Additional Secretary to the Government of India.

(3) The salaries and allowances payable to, and the terms and conditions of service of, the Members shall be such as may be prescribed.

(4) The Central Government shall provide the Authority with such officers and staff as may be necessary for the efficient exercise of the powers of the Authority under this Act.

(5) The office of the Authority shall be located in Delhi.

Vacancies, etc., not to invalidate proceedings.

245P. No proceeding before, or pronouncement of advance ruling by, the Authority shall be questioned or shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the Authority.

Application for advance ruling.

245Q. (1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and in such manner as may be prescribed[23], stating the question on which the advance ruling is sought.

(2) The application shall be made in quadruplicate and be accompanied by a fee of two thousand five hundred rupees.

(3) An applicant may withdraw an application within thirty days from the date of the application.

Procedure on receipt of application.

245R. (1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the Commissioner and, if necessary, call upon him to furnish the relevant records :

Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the Commissioner.

(2) The Authority may, after examining the application and the records called for, by order, either allow or reject the application :

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23. See rule 44E and Form Nos. 34C to 34E for application for obtaining advance ruling in quadruplicate.

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[24][**Provided** that the Authority shall not allow the application where the question raised in the application,—

(*i*) is already pending before any income-tax authority or Appellate Tribunal [except in the case of a resident applicant falling in sub-clause (*iii*) of clause (*b*) of section 245N] or any court;

(*ii*) involves determination of fair market value of any property;

(*iii*) relates to a transaction or issue which is designed *prima facie* for the avoidance of income-tax [except in the case of a resident applicant falling in sub-clause (*iii*) of clause (*b*) of section 245N]:]

Provided further that no application shall be rejected under this sub-section unless an opportunity has been given to the applicant of being heard:

Provided also that where the application is rejected, reasons for such rejection shall be given in the order.

(3) A copy of every order made under sub-section (2) shall be sent to the applicant and to the Commissioner.

(4) Where an application is allowed under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority, pronounce its advance ruling on the question specified in the application.

(5) On a request received from the applicant, the Authority shall, before pronouncing its advance ruling, provide an opportunity to the applicant of being heard, either in person or through a duly authorised representative.

Explanation.—For the purposes of this sub-section, "authorised representative" shall have the meaning assigned to it in sub-section (2) of section 288, as if the applicant were an assessee.

(6) The Authority shall pronounce its advance ruling in writing within six months of the receipt of application.

(7) A copy of the advance ruling pronounced by the Authority, duly signed by the Members and certified in the prescribed manner[25] shall be sent to the applicant and to the Commissioner, as soon as may be, after such pronouncement.

[26][**Appellate authority not to proceed in certain cases.**

245RR. No income-tax authority or the Appellate Tribunal shall proceed to decide any issue in respect to which an application has been made by an applicant, being a resident, under sub-section (1) of [27][section 245Q].]

Applicability of advance ruling.

245S. (1) The advance ruling pronounced by the Authority under section 245R shall be binding only—

(*a*) on the applicant who had sought it;

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24. Substituted by the Finance Act, 2000, w.e.f. 1-6-2000. Prior to its substitution, proviso was amended by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

25. *See* rule 44F for certification of copies of the advance rulings pronounced by the Authority.

26. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

27. Substituted for "section 245R" by the Finance (No. 2) Act, 2004, w.r.e.f. 1-10-1998.

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(*b*) in respect of the transaction in relation to which the ruling had been sought; and

(*c*) on the Commissioner, and the income-tax authorities subordinate to him, in respect of the applicant and the said transaction.

(2) The advance ruling referred to in sub-section (1) shall be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been pronounced.

Advance ruling to be void in certain circumstances.

245T. (1) Where the Authority finds, on a representation made to it by the Commissioner or otherwise, that an advance ruling pronounced by it under sub-section (6) of section 245R has been obtained by the applicant by fraud or misrepresentation of facts, it may, by order, declare such ruling to be void *ab initio* and thereupon all the provisions of this Act shall apply (after excluding the period beginning with the date of such advance ruling and ending with the date of order under this sub-section) to the applicant as if such advance ruling had never been made.

(2) A copy of the order made under sub-section (1) shall be sent to the applicant and the Commissioner.

Powers of the Authority.

245U. (1) The Authority shall, for the purpose of exercising its powers, have all the powers of a civil court under the Code of Civil Procedure, 1908 (5 of 1908) as are referred to in section 131 of this Act.

(2) The Authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI, of the Code of Criminal Procedure, 1973 (2 of 1974) and every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

Procedure of Authority.

245V. The Authority shall, subject to the provisions of this Chapter, have power to regulate[28] its own procedure in all matters arising out of the exercise of its powers under this Act.]

CHAPTER XX

APPEALS AND REVISION

[29][*A.—Appeals* [30][***] *to the Deputy Commissioner (Appeals) and Commissioner (Appeals)*

Appealable orders.

246. (1) Subject to the provisions of sub-section (2), any assessee aggrieved by any of the following orders of an Assessing Officer (other than the Deputy

28. See Authority for Advance Rulings (Procedure) Rules, 1996.

29. Substituted for the sub-heading and section 246 by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Prior to its substitution, sub-heading along with section 246 were

(Contd. on p. 1.848)

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Commissioner) may appeal to the Deputy Commissioner (Appeals) [31][before the 1st day of June, 2000] against such order—

(*a*) an order against the assessee, where the assessee denies his liability to be assessed[32] under this Act [33][, or an intimation under sub-section (1) or sub-section (1B) of section 143, where the assessee objects to the making of adjustments,] or any order of assessment under sub-section (3) of section 143 or section 144, where the assessee objects to the amount of income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed;

(*b*) an order of assessment, reassessment or recomputation under section 147 or section 150;

(*c*) an order under section 154 or section 155 having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assessee under either of the said sections;

(*d*) an order made under section 163 treating the assessee as the agent of a non-resident;

(*e*) an order under sub-section (2) or sub-section (3) of section 170;

(*f*) an order under section 171;

(*g*) any order under clause (*b*) of sub-section (1) or under sub-section (2) or sub-section (3) or sub-section (5) of section 185 [34][***] [35][in respect of any assessment for the assessment year commencing on or before the 1st day of April, 1992];

(*h*) an order cancelling the registration of a firm under sub-section (1) or under sub-section (2) of section 186 [36][***] [37][in respect of any assessment for the assessment year commencing on or before the 1st day of April, 1992];

(Contd. from p. 1.847)

amended by the Finance Act, 1964, w.e.f. 1-4-1964, Finance Act, 1966, w.e.f. 1-4-1967, Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971, Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976, Finance (No. 2) Act, 1977, w.e.f. 10-7-1978, Finance Act, 1979, w.e.f. 1-6-1979, Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984, Finance Act, 1984, w.e.f. 1-4-1985, Finance Act, 1987, w.e.f. 1-4-1988 and Finance Act, 1988, w.r.e.f. 1-4-1988/ 1-6-1987.

30. "or applications" omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

31. Inserted by the Finance Act, 2000, w.e.f. 1-6-2000.

32. For the meaning of the expression "denies his liability to be assessed", *see* Taxmann's Direct Taxes Manual, Vol. 3.

33. Inserted by the Finance Act, 1994, w.e.f. 1-6-1994.

34. Words "in respect of any assessment for the assessment year commencing on the 1st day of April, 1988 or any earlier assessment year" omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

35. Inserted by the Finance Act, 1992, w.e.f. 1-4-1993.

36. Words "in respect of any assessment for the assessment year commencing on the 1st day of April, 1988 or any earlier assessment year" omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

37. Inserted by the Finance Act, 1992, w.e.f. 1-4-1993.

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(*i*) an order under section 201;

(*j*) an order under section 216 in respect of any assessment for the assessment year commencing on the 1st day of April, 1988 or any earlier assessment year;

(*k*) an order under section 237;

(*l*) an order imposing a penalty under—

(*i*) section 221, or

(*ii*) section 271, section 271A, section 271B, [38][***] [39][section 272A, section 272AA or section 272BB];

(*iii*) [40][***] section 272, section 272B or section 273, as they stood immediately before the 1st day of April, 1989, in respect of any assessment for the assessment year commencing on the 1st day of April, 1988 or any earlier assessment years.

[41][(1A) Notwithstanding anything contained in sub-section (1), every appeal filed, on or after the 1st day of October, 1998 but before the 1st day of June, 2000, before the Deputy Commissioner (Appeals) and any matter arising out of or connected with such appeal and which is so pending shall stand transferred to the Commissioner (Appeals) and the Commissioner (Appeals) may proceed with such appeal or matter from the stage at which it was on that day.]

(2) Notwithstanding anything contained in sub-section (1), any assessee aggrieved by any of the following orders (whether made before or after the appointed day) may appeal to the Commissioner (Appeals) [41][before the 1st day of June, 2000] against such order—

(*a*) [42][an intimation or order specified in sub-section (1) where such intimation is sent or such order] is made by the Deputy Commissioner in exercise of the powers or functions conferred on or assigned to him under section 120 or section 124;

(*b*) an order specified in clauses (*a*) to (*e*) (both inclusive) and clauses (*i*) to (*l*) (both inclusive) of sub-section (1) [43][or an order under section 104, as it stood immediately before the 1st day of April, 1988 in respect of any assessment for the assessment year commencing on the 1st day of April, 1987 or any earlier assessment year] made against the assessee, being a company;

(*c*) an order of assessment made after the 30th day of September, 1984, on the basis of the directions issued by the Deputy Commissioner under section 144A;

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38. "section 271C, section 271D, section 271E," omitted by the Finance Act, 1990, w.e.f. 1-4-1990.

39. Substituted for "section 271E or section 272A" by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

40. Words "sub-section (1) of section 271," omitted, *ibid*.

41. Inserted by the Finance Act, 2000, w.e.f. 1-6-2000.

42. Substituted for "an order specified in sub-section (1) where such order" by the Finance Act, 1994, w.e.f. 1-6-1994.

43. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

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(*d*) an order made by the Deputy Commissioner under section 154;

[44][(*da*) an order of assessment made by an Assessing Officer under clause (*c*) of section 158BC, in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, on or after the 1st day of January, 1997;

(*db*) an order imposing a penalty under sub-section (2) of section 158BFA;]

(*e*) an order imposing a penalty under section 271B [45][or section 271BB];

[45][(*ee*) an order made by a Deputy Commissioner imposing a penalty under section 271C, section 271D or section 271E;]

(*f*) an order made by a Deputy Commissioner or a Deputy Director imposing a penalty under section 272A;

[46][(*ff*) an order made by a Deputy Commissioner imposing a penalty under section 272AA;]

[47][(*g*) an order imposing a penalty under Chapter XXI by the Income-tax Officer or the Assistant Commissioner where such penalty has been imposed with the previous approval of the Deputy Commissioner under sub-section (2) of section 274;]

(*h*) an order made by an Assessing Officer (other than Deputy Commissioner) under the provisions of this Act in the case of such person or classes of persons as the Board may, having regard to the nature of the cases, the complexities involved and other relevant considerations, direct.

(3) Notwithstanding anything contained in sub-section (1), the Board or the Director General, or the Chief Commissioner or Commissioner if so authorised by the Board, may, by order in writing, transfer any appeal which is pending before a Deputy Commissioner (Appeals) and any matter arising out of or connected with such appeal and which is so pending, to the Commissioner (Appeals) if the Board or, as the case may be, the Director General or Chief Commissioner or Commissioner (at the request of the appellant or otherwise) is satisfied that it is necessary or expedient so to do having regard to the nature of the case, the complexities involved and other relevant considerations and the Commissioner (Appeals) may proceed with such appeal or matter, from the stage at which it was before it was so transferred:

Provided that the appellant may demand that before proceeding further with the appeal or matter, the previous proceeding or any part thereof be re-opened or that he be reheard.

Explanation.—For the purposes of this section,—

(*a*) "appointed day" means the 10th day of July, 1978, being the day appointed under section 39 of the Finance (No. 2) Act, 1977 (29 of 1977);

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44. Inserted by the Income-tax (Amendment) Act, 1997, w.e.f. 1-1-1997.

45. Inserted by the Finance Act, 1990, w.e.f. 1-4-1990.

46. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

47. Substituted, *ibid.*

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(*b*) "status" means the category under which the assessee is assessed as "individual", "Hindu undivided family" and so on.]

[48][**Appealable orders before Commissioner (Appeals).**

246A. (1) Any assessee aggrieved by any of the following orders (whether made before or after the appointed day) may appeal to the Commissioner (Appeals) against—

(*a*) an order [49][passed by a Joint Commissioner under clause (*ii*) of sub-section (3) of section 115VP or an order] against the assessee where the assessee denies his liability to be assessed under this Act or an intimation under sub-section (1) or sub-section (1B) of section 143, where the assessee objects to the making of adjustments, or any order of assessment under sub-section (3) of section 143 [50][except an order passed in pursuance of directions of the Dispute Resolution Panel] or section 144, to the income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed;

[51][(*aa*) an order of assessment under sub-section (3) of section 115WE or section 115WF, where the assessee, being an employer objects to the value of fringe benefits assessed;

(*ab*) an order of assessment or reassessment under section 115WG;]

(*b*) an order of assessment, reassessment or recomputation under section 147 [50][except an order passed in pursuance of directions of the Dispute Resolution Panel] or section 150;

[52][(*ba*) an order of assessment or reassessment under section 153A;]

(*c*) an order made under section 154 or section 155 having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assessee under either of the said sections;

(*d*) an order made under section 163 treating the assessee as the agent of a non-resident;

(*e*) an order made under sub-section (2) or sub-section (3) of section 170;

(*f*) an order made under section 171;

(*g*) an order made under clause (*b*) of sub-section (1) or under sub-section (2) or sub-section (3) or sub-section (5) of section 185 in respect of an assessment for the assessment year commencing on or before the 1st day of April, 1992;

(*h*) an order cancelling the registration of a firm under sub-section (1) or under sub-section (2) of section 186 in respect of any assessment for

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48. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Original section 246A was inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989 and later on omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

49. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-10-2004.

50. Inserted by the Finance (No. 2) Act, 2009, w.e.f. 1-10-2009.

51. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

52. Inserted by the Finance Act, 2003, w.e.f. 1-6-2003.

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the assessment year commencing on or before the 1st day of April, 1992 or any earlier assessment year;

[53][(*ha*) an order made under section 201;]

[54][(*hb*) an order made under sub-section (6A) of section 206C;]

(*i*) an order made under section 237;

(*j*) an order imposing a penalty under—

(*A*) section 221; or

(*B*) section 271, section 271A, [55][section 271AAA,] section 271F, [56][section 271FB,] section 272AA or section 272BB;

(*C*) section 272, section 272B or section 273, as they stood immediately before the 1st day of April, 1989, in respect of an assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment years;

[57][(*ja*) an order of imposing or enhancing penalty under sub-section (1A) of section 275;]

(*k*) an order of assessment made by an Assessing Officer under clause (*c*) of section 158BC, in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A on or after the 1st day of January, 1997;

(*l*) an order imposing a penalty under sub-section (2) of section 158BFA;

(*m*) an order imposing a penalty under section 271B or section 271BB;

(*n*) an order made by a Deputy Commissioner imposing a penalty under section 271C [58][, section 271CA], section 271D or section 271E;

(*o*) an order made by a Deputy Commissioner or a Deputy Director imposing a penalty under section 272A;

(*p*) an order made by a Deputy Commissioner imposing a penalty under section 272AA;

(*q*) an order imposing a penalty under Chapter XXI;

(*r*) an order made by an Assessing Officer other than a Deputy Commissioner under the provisions of this Act in the case of such person or class of persons, as the Board may, having regard to the nature of the cases, the complexities involved and other relevant considerations, direct.

Explanation.—For the purposes of this sub-section, where on or after the 1st day of October, 1998, the post of Deputy Commissioner has been redesignated as Joint Commissioner and the post of Deputy Director has been redesignated as Joint Director, the references in this sub-section for "Deputy Commissioner" and "Deputy Director" shall be substituted by "Joint Commissioner" and "Joint Director" respectively.

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53. Inserted by the Finance Act, 2000, w.e.f. 1-6-2000.

54. Inserted by the Finance Act, 2007, w.e.f. 1-6-2007.

55. Inserted, *ibid.*

56. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

57. Inserted by the Taxation Laws (Amendment) Act, 2006, w.e.f. 13-7-2006.

58. Inserted by the Finance Act, 2006, w.e.f. 1-4-2007.

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[59][(1A) Every appeal filed by an assessee in default against an order under section 201 on or after the 1st day of October, 1998 but before the 1st day of June, 2000 shall be deemed to have been filed under this section.]

[60][(1B) Every appeal filed by an assessee in default against an order under sub-section (6A) of section 206C on or after the 1st day of April, 2007 but before the 1st day of June, 2007 shall be deemed to have been filed under this section.]

(2) Notwithstanding anything contained in sub-section (1) of section 246, every appeal under this Act which is pending immediately before the appointed day, before the Deputy Commissioner (Appeals) and any matter arising out of or connected with such appeals and which is so pending shall stand transferred on that date to the Commissioner (Appeals) and the Commissioner (Appeals) may proceed with such appeal or matter from the stage at which it was on that day :

Provided that the appellant may demand that before proceeding further with the appeal or matter, the previous proceeding or any part thereof be reopened or that he be re-heard.

Explanation.—For the purposes of this section, "appointed day" means the day appointed by the Central Government by notification[61] in the Official Gazette.]

Appeal by partner.

247. [62][*Omitted by the Finance Act, 1992, w.e.f. 1-4-1993.*]

[63][**Appeal by a person denying liability to deduct tax in certain cases.**

248. Where under an agreement or other arrangement, the tax deductible on any income, other than interest, under section 195 is to be borne by the person by whom the income is payable, and such person having paid such tax to the credit of the Central Government, claims that no tax was required to be deducted on such income, he may appeal to the Commissioner (Appeals) for a declaration that no tax was deductible on such income.]

Form of appeal and limitation.

249. (1) Every appeal under this Chapter shall be in the prescribed form[64] and shall be verified in the prescribed manner [65][and shall, in case of an appeal made to the Commissioner (Appeals) on or after the 1st day of October, 1998,

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59. Inserted by the Finance Act, 2000, w.e.f. 1-6-2000.

60. Inserted by the Finance Act, 2007, w.e.f. 1-6-2007.

61. Notified "appointed day" is 1-10-1998.

62. Prior to omission, section 247 was amended by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978, the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988 and omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989 and later reintroduced by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

63. Substituted by the Finance Act, 2007, w.e.f. 1-6-2007. Prior to its substitution, section 248, as amended by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978, Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988 and Finance (No. 2) Act, 1998, w.e.f. 1-10-1998, read as under :

"248. *Appeal by person denying liability to deduct tax.*—Any person having in accordance with the provisions of sections 195 and 200 deducted and paid tax in respect of any sum chargeable under this Act, other than interest, who denies his liability to make such deduction, may appeal to the Commissioner (Appeals) to be declared not liable to make such deduction."

64. *See* rules 45 and 46 and Form No. 35 for form of appeal to Commissioner (Appeals).

65. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

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irrespective of the date of initiation of the assessment proceedings relating thereto be accompanied by a fee of,—

(*i*) where the total income of the assessee as computed by the Assessing Officer in the case to which the appeal relates is one hundred thousand rupees or less, two hundred fifty rupees;

(*ii*) where the total income of the assessee, computed as aforesaid, in the case to which the appeal relates is more than one hundred thousand rupees but not more than two hundred thousand rupees, five hundred rupees;

(*iii*) where the total income of the assessee, computed as aforesaid, in the case to which the appeal relates is more than two hundred thousand rupees, one thousand rupees;]

[66][(*iv*) where the subject matter of an appeal is not covered under clauses (*i*), (*ii*) and (*iii*), two hundred fifty rupees.]

(2) The appeal shall be presented within thirty days of the following date, that is to say,—

[67][(*a*) where the appeal is under section 248, the date of payment of the tax, or]

(*b*) where the appeal relates to any assessment or penalty, the date of service of the notice of demand relating to the assessment or penalty :

[68][**Provided** that, where an application has been made under section 146 for reopening an assessment, the period from the date on which the application is made to the date on which the order passed on the application is served on the assessee shall be excluded, or]

(*c*) in any other case, the date on which intimation of the order sought to be appealed against is served.

[69][(2A) Notwithstanding anything contained in sub-section (2), where an order has been made under section 201 on or after the 1st day of October, 1998 but before the 1st day of June, 2000 and the assessee in default has not presented any appeal within the time specified in that sub-section, he may present such appeal before the 1st day of July, 2000.]

(3) The [70][***] [71][Commissioner (Appeals)] may admit an appeal after the expiration of the said period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

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66. Inserted by the Finance Act, 1999, w.e.f. 1-6-1999.

67. Substituted by the Finance Act, 2007, w.e.f. 1-6-2007. Prior to its substitution, clause (*a*) read as under :

"(*a*) where the appeal relates to any tax deducted under sub-section (1) of section 195, the date of payment of the tax, or"

68. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

69. Inserted by the Finance Act, 2000, w.e.f. 1-6-2000.

70. Words "Deputy Commissioner (Appeals) or, as the case may be, the" omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier, "Deputy Commissioner (Appeals)" was substituted for "Appellate Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988 and "or, as the case may be, the" was inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

71. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

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[72][(4) No appeal under this Chapter shall be admitted unless at the time of filing of the appeal,—

(*a*) where a return has been filed by the assessee, the assessee has paid the tax due on the income returned by him; or

(*b*) where no return has been filed by the assessee, the assessee has paid an amount equal to the amount of advance tax which was payable by him :

Provided that, [73][in a case falling under clause (*b*) and] on an application made by the appellant in this behalf, the [74][* * *] [75][Commissioner (Appeals)] may, for any good and sufficient reason to be recorded in writing, exempt him from the operation of the provisions of [76][that clause].]

Procedure in appeal.

[77]**250.** (1) The [78][* * *] [79][Commissioner (Appeals)] shall fix a day and place for the hearing of the appeal, and shall give notice of the same to the appellant and to the [80][Assessing] Officer against whose order the appeal is preferred.

(2) The following shall have the right to be heard at the hearing of the appeal—

(*a*) the appellant, either in person or by an authorised representative;

(*b*) the [80][Assessing] Officer, either in person or by a representative.

(3) The [81][* * *] [82][Commissioner (Appeals)] shall have the power to adjourn the hearing of the appeal from time to time.

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72. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

73. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

74. Words "Deputy Commissioner (Appeals) or, as the case may be, the" omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier "Deputy Commissioner (Appeals)" was substituted for "Appellate Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988 and "or, as the case may be, the" was inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

75. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

76. Substituted for "this sub-section" by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

77. *See* rule 46A. Appellate Orders should be issued within 15 days of last hearing - *See* Instruction No. 20/2003, dated 23-12-2003. For details, *see* Taxmann's Master Guide to Income-tax Act.

78. Words "Deputy Commissioner (Appeals) or, as the case may be, the" omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier "Deputy Commissioner (Appeals)" was substituted for "Appellate Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988 and "or, as the case may be, the" was inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

79. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

80. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

81. Words "Deputy Commissioner (Appeals) or, as the case may be, the" omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier "Deputy Commissioner (Appeals)" was substituted for "Appellate Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988 and "or, as the case may be, the" was inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

82. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

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(4) The [83][* * *] [84][Commissioner (Appeals)] may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the [85][Assessing] Officer to make further inquiry and report the result of the same to the [83][* * *] [84][Commissioner (Appeals)].

(5) The [86][* * *] [87][Commissioner (Appeals)] may, at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the grounds of appeal, if the [86][* * *] [87][Commissioner (Appeals)] is satisfied that the omission of that ground from the form of appeal was not wilful or unreasonable.

(6) The order of the [86][* * *] [87][Commissioner (Appeals)] disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.

[88][(6A) In every appeal, the Commissioner (Appeals), where it is possible, may hear and decide such appeal within a period of one year from the end of the financial year in which such appeal is filed before him under sub-section (1) of section 246A.]

(7) On the disposal of the appeal, the [86][* * *] [87][Commissioner (Appeals)] shall communicate the order passed by him to the assessee and to the [89][Chief Commissioner or Commissioner].

Powers of the [86][* * *] [87][Commissioner (Appeals)].

251. (1) In disposing of an appeal, the [86][* * *] [87][Commissioner (Appeals)] shall have the following powers—

(*a*) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment[90] [91][* * *];

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83. Words "Deputy Commissioner (Appeals) or, as the case may be, the" omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier "Deputy Commissioner (Appeals)" was substituted for "Appellate Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988 and "or, as the case may be, the" was inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

84. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

85. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

86. Words "Deputy Commissioner (Appeals) or, as the case may be, the" omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier "Deputy Commissioner (Appeals)" was substituted for "Appellate Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988 and "or, as the case may be, the" was inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

87. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

88. Inserted by the Finance Act, 1999, w.e.f. 1-6-1999.

89. Substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

90. For the meaning of the expression "annul the assessment", *see* Taxmann's Direct Taxes Manual, Vol. 3.

91. The portion beginning with the words "or he may set aside" and ending with the words "on the basis of such fresh assessment;" omitted by the Finance Act, 2001, w.e.f. 1-6-2001. Prior to its omission, the quoted portion was amended by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978, the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988 and the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

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[92][(*aa*) in an appeal against the order of assessment in respect of which the proceeding before the Settlement Commission abates under section 245HA, he may, after taking into consideration all the material and other information produced by the assessee before, or the results of the inquiry held or evidence recorded by, the Settlement Commission, in the course of the proceeding before it and such other material as may be brought on his record, confirm, reduce, enhance or annul the assessment;]

(*b*) in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;

(*c*) in any other case, he may pass such orders in the appeal as he thinks fit.

(2) The [93][* * *] [94][Commissioner (Appeals)] shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.

Explanation.—In disposing of an appeal, the [93][* * *] [94][Commissioner (Appeals)] may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the [93][* * *] [94][Commissioner (Appeals)] by the appellant.

B.—Appeals to the Appellate Tribunal

Appellate Tribunal.

252. (1) The Central Government shall constitute an Appellate Tribunal consisting of as many judicial and accountant members as it thinks fit to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act.

[95][(2) A judicial member shall be a person who has for at least ten years held a judicial office in the territory of India or who has been a member of the [96][Indian] Legal Service and has held a post in Grade [97][II] of that Service or any equivalent or higher post for at least three years or who has been an advocate for at least ten years.

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

(*i*) in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advo-

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92. Inserted by the Finance Act, 2008, w.e.f. 1-4-2008.

93. Words "Deputy Commissioner (Appeals) or, as the case may be, the" omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier "Deputy Commissioner (Appeals)" was substituted for "Appellate Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988 and "or, as the case may be, the" was inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

94. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

95. Substituted by the Finance Act, 1981, w.e.f. 1-4-1981.

96. Substituted for "Central" by the Finance (No. 2) Act, 1998, w.e.f. 1-8-1998.

97. Substituted for "I", *ibid.*

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cate or has held the office of a member of a Tribunal or any post, under the Union or a State, requiring special knowledge of law;

(*ii*) in computing the period during which a person has been an advocate, there shall be included any period during which the person has held judicial office or the office of a member of a Tribunal or any post, under the Union or a State, requiring special knowledge of law after he became an advocate.

(2A) An accountant member shall be a person who has for at least ten years been in the practice of accountancy as a chartered accountant under the Chartered Accountants Act, 1949 (38 of 1949), or as a registered accountant under any law formerly in force or partly as a registered accountant and partly as a chartered accountant, or who has been a member of the Indian Income-tax Service, Group A and has held the post of [98][Additional] Commissioner of Income-tax or any equivalent or higher post for at least three years.]

[99][(3) The Central Government shall appoint the Senior Vice-President or one of the Vice-Presidents of the Appellate Tribunal to be the President thereof.]

[1][(4) The Central Government may appoint one or more members of the Appellate Tribunal to be the Vice-President or, as the case may be, Vice-Presidents thereof.]

[2][(4A) The Central Government may appoint one of the Vice-Presidents of the Appellate Tribunal to be the Senior Vice-President thereof.]

[3](5) [4][The Senior Vice-President or a Vice-President] shall exercise such of the powers and perform such of the functions of the President as may be delegated to him by the President by a general or special order in writing.

[5]**Appeals to the Appellate Tribunal.**

[6]**253.** (1) Any assessee aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order—

(*a*) an order passed by a [7][Deputy Commissioner (Appeals)] [8][before the 1st day of October, 1998] [9][or, as the case may be, a Commissioner

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98. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-8-1998.

99. Substituted by the Finance Act, 2002, w.e.f. 1-4-2002. Prior to its substitution, sub-section (3) read as under :

"(3) The Central Government shall ordinarily appoint a judicial member of the Appellate Tribunal to be the President thereof."

1. Inserted by the Finance Act, 1972, w.e.f. 1-4-1972.

2. Inserted by the Finance Act, 1984, w.e.f. 1-4-1984.

3. For Instructions and Standing Orders, refer Taxmann's Master Guide to Income-tax Act.

4. Substituted for "A Vice-President" by the Finance Act, 1984, w.e.f. 1-4-1984.

5. *See* rule 47(1) and Form Nos. 36 and 36A for form of appeal to Appellate Tribunal and form of cross-objections.

6. *See* also Instructions issued by the Income-tax Appellate Tribunal. For details, *see* Taxmann's Income-tax Rules/Master Guide to Income-tax Act.

7. Substituted for "Appellate Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

8. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

9. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

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(Appeals)] under [10][***] [11][section 154], [12][***] section 250, [13][section 271, section 271A or section 272A]; or

[14][(*b*) an order passed by an Assessing Officer under clause (*c*) of section 158BC, in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, after the 30th day of June, 1995, but before the 1st day of January, 1997; or]

[15][(*ba*) an order passed by an Assessing Officer under sub-section (1) of section 115VZC; or]

(*c*) an order passed by a Commissioner [16][under section 12AA [17][or under clause (*vi*) of sub-section (5) of section 80G] or] under section 263 [18][or under section 271] [19][or under section 272A] [20][***] or an order passed by him under section 154 amending his order under section 263] [21][or an order passed by a Chief Commissioner or a Director General or a Director under section 272A; [22][or]]

[22][(*d*) an order passed by an Assessing Officer under sub-section (3), of section 143 or section 147 in pursuance of the directions of the Dispute Resolution Panel or an order passed under section 154 in respect of such order.]

(2) The Commissioner may, if he objects to any order passed by a [23][Deputy Commissioner (Appeals)] [24][before the 1st day of October, 1998] [25][or, as the case may be, a Commissioner (Appeals)] under [26][section 154 or] section 250, direct the [27][Assessing] Officer to appeal to the Appellate Tribunal against the order.

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10. "sub-section (2) of section 131," omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

11. Inserted by the Direct Taxes (Amendment) Act, 1964, w.e.f. 6-10-1964.

12. "section 246A," omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Earlier, it was inserted by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date.

13. Substituted for "or section 271" by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

14. Substituted by the Income-tax (Amendment) Act, 1997, w.e.f. 1-1-1997. Prior to its substitution, clause (*b*), as inserted by the Finance Act, 1995, w.e.f. 1-7-1995, read as under : "(*b*) an order passed by an Assessing Officer under clause (*c*) of section 158BC; or"
Earlier clause (*b*) was amended by the Direct Taxes (Amendment) Act, 1964, w.e.f. 6-10-1964, the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976, the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978 and later on omitted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984.

15. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-10-2004.

16. Inserted by the Finance Act, 1999, w.e.f. 1-6-1999.

17. Inserted by the Finance Act, 2007, w.e.f. 1-6-2007.

18. Inserted by the Finance Act, 2002, w.e.f. 1-6-2002.

19. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

20. "or under section 285A" omitted by the Finance Act, 1988, w.e.f. 1-4-1988. Omitted words were earlier inserted by the Direct Taxes (Amendment) Act, 1964, w.e.f. 6-10-1964.

21. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

22. Inserted by the Finance (No. 2) Act, 2009, w.e.f. 1-10-2009.

23. Substituted for "Appellate Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

24. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

25. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

26. Inserted by the Direct Taxes (Amendment) Act, 1964, w.e.f. 6-10-1964.

27. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

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(3) Every appeal under sub-section (1) or sub-section (2) shall be filed within sixty days of the date on which the order sought to be appealed against is communicated to the assessee or to the Commissioner, as the case may be :

[28][**Provided** that in respect of any appeal under clause (*b*) of sub-section (1), this sub-section shall have effect as if for the words "sixty days", the words "thirty days" had been substituted.]

(4) The [29][Assessing] Officer or the assessee, as the case may be, on receipt of notice that an appeal against the order of the [30][Deputy Commissioner (Appeals)] [31][or, as the case may be, the Commissioner (Appeals)] has been preferred under sub-section (1) or sub-section (2) by the other party, may, notwithstanding that he may not have appealed against such order or any part thereof; within thirty days of the receipt of the notice, file a memorandum of cross-objections, verified in the prescribed manner, against any part of the order[32] of the [33][Deputy Commissioner (Appeals)] [34][or, as the case may be, the Commissioner (Appeals)], and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3).

(5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (3) or sub-section (4), if it is satisfied that there was sufficient cause for not presenting it within that period.

[35][(6) An appeal to the Appellate Tribunal shall be in the prescribed form[36] and shall be verified in the prescribed manner and shall, in the case of an appeal made, on or after the 1st day of October, 1998, irrespective of the date of initiation of the assessment proceedings relating thereto, be accompanied by a fee of,—

(*a*) where the total income of the assessee as computed by the Assessing Officer, in the case to which the appeal relates, is one hundred thousand rupees or less, five hundred rupees,

(*b*) where the total income of the assessee, computed as aforesaid, in the case to which the appeal relates is more than one hundred thousand rupees but not more than two hundred thousand rupees, one thousand five hundred rupees,

(*c*) where the total income of the assessee, computed as aforesaid, in the case to which the appeal relates is more than two hundred thousand rupees, one per cent of the assessed income, subject to a maximum of ten thousand rupees,

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28. Inserted by the Finance Act, 1995, w.e.f. 1-7-1995.

29. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

30. Substituted for "Appellate Assistant Commissioner", *ibid.*

31. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

32. For the meaning of the expression "any part of the order", *see* Taxmann's Direct Taxes Manual, Vol. 3.

33. Substituted for "Appellate Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

34. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

35. Substituted for sub-section (6) by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Prior to its substitution, sub-section (6) was amended by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971, the Finance Act, 1981, w.e.f. 1-6-1981 and the Finance Act, 1992, w.e.f. 1-6-1992 and later on substituted by the Finance Act, 1993, w.r.e.f. 1-6-1992.

36. *See* rule 47 and Form Nos. 36 & 36A.

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[37][(*d*) where the subject matter of an appeal relates to any matter, other than those specified in clauses (*a*), (*b*) and (*c*), five hundred rupees:]

Provided that no such fee shall be payable in the case of an appeal referred to in sub-section (2) or a memorandum of cross-objections referred to in sub-section (4).

(7) An application for stay of demand shall be accompanied by a fee of five hundred rupees.]

Orders of Appellate Tribunal.

254. (1) The Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit[38].

(1A) [39][***]

(2) The Appellate Tribunal may, at any time within four years from the date of the order, with a view to rectifying any mistake apparent from the record[40], amend any order passed by it under sub-section (1), and shall make such amendment[40] if the mistake is brought to its notice by the assessee or the [41][Assessing] Officer :

Provided that an amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this sub-section unless the Appellate Tribunal has given notice to the assessee of its intention to do so and has allowed the assessee a reasonable opportunity of being heard :

[42][**Provided further** that any application filed by the assessee in this sub-section on or after the 1st day of October, 1998, shall be accompanied by a fee of fifty rupees.]

[43][(2A) In every appeal, the Appellate Tribunal, where it is possible, may hear and decide such appeal within a period of four years from the end of the financial year in which such appeal is filed under sub-section (1) [44][or sub-section (2)] of section 253 :

[45][**Provided** that the Appellate Tribunal may, after considering the merits of the application made by the assessee, pass an order of stay in any proceedings relating to an appeal filed under sub-section (1) of section 253, for a period not exceeding one hundred and eighty days from the date of such order and the Appellate Tribunal shall dispose of the appeal within the said period of stay specified in that order:

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37. Inserted by the Finance Act, 1999, w.e.f. 1-6-1999.

38. For the meaning of the expression "pass such orders . . . as it thinks fit", *see* Taxmann's Direct Taxes Manual, Vol. 3.

39. Omitted by the Taxation Laws (Amendment) Act, 1972, w.e.f. 1-1-1973. Original sub-section was inserted by the Finance Act, 1964, w.e.f. 1-4-1964.

40. For the meaning of the terms/expressions, "mistake apparent from the record" and "amendment", *see* Taxmann's Direct Taxes Manual, Vol. 3.

41. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

42. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

43. Sub-sections (2A) and (2B) inserted by the Finance Act, 1999, w.e.f. 1-6-1999.

44. Inserted by the Finance Act, 2000, w.e.f. 1-6-2000.

45. Substituted by the Finance Act, 2007, w.e.f. 1-6-2007. Prior to their substitution, provisos, as inserted by the Finance Act, 2001, w.e.f. 1-6-2001, read as under :

(Contd. on p. 1.862)

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Provided further that where such appeal is not so disposed of within the said period of stay as specified in the order of stay, the Appellate Tribunal may, on an application made in this behalf by the assessee and on being satisfied that the delay in disposing of the appeal is not attributable to the assessee, extend the period of stay, or pass an order of stay for a further period or periods as it thinks fit; so, however, that the aggregate of the period originally allowed and the period or periods so extended or allowed shall not, in any case, exceed three hundred and sixty-five days and the Appellate Tribunal shall dispose of the appeal within the period or periods of stay so extended or allowed:

[46][**Provided also** that if such appeal is not so disposed of within the period allowed under the first proviso or the period or periods extended or allowed under the second proviso, which shall not, in any case, exceed three hundred and sixty-five days, the order of stay shall stand vacated after the expiry of such period or periods, even if the delay in disposing of the appeal is not attributable to the assessee.]]

(2B) The cost of any appeal to the Appellate Tribunal shall be at the discretion of that Tribunal.]

(3) The Appellate Tribunal shall send a copy of any orders passed under this section to the assessee and to the [47][[48][***] Commissioner].

(4) [49][Save as provided in section 256 [49a][or section 260A]], orders passed by the Appellate Tribunal on appeal shall be final.

Procedure of Appellate Tribunal.

[50]**255.** (1) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the President of the Appellate Tribunal from among the members thereof.

(2) Subject to the provisions contained in sub-section (3), a Bench shall consist of one judicial member and one accountant member.

(3) The President or any other member of the Appellate Tribunal authorised in this behalf by the Central Government may, sitting singly, dispose of any case

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(Contd. from p. 1.861)

"**Provided** that where an order of stay is made in any proceedings relating to an appeal filed under sub-section (1) of section 253, the Appellate Tribunal shall dispose of the appeal within a period of one hundred and eighty days from the date of such order :

Provided further that if such appeal is not so disposed of within the period specified in the first proviso, the stay order shall stand vacated after the expiry of the said period."

46. Substituted by the Finance Act, 2008, w.e.f. 1-10-2008. Prior to its substitution, proviso read as under :

"**Provided also** that if such appeal is not so disposed of within the period allowed under the first proviso or the period or periods extended or allowed under the second proviso, the order of stay shall stand vacated after the expiry of such period or periods."

47. Substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

48. Words "Chief Commissioner or" were omitted by the Finance (No. 2) Act, 1991, w.e.f. 27-9-1991.

49. Words "Save as provided in the National Tax Tribunal Act, 2005" shall be substituted for the words "Save as provided in section 256 or section 260A" by the National Tax Tribunal Act, 2005, with effect from a date yet to be notified.

49a. Inserted by the Finance Act, 1999, w.e.f. 1-6-1999.

50. For Instructions and Orders, *see* Taxmann's Income-tax Rules and Master Guide to Income-tax Act.

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which has been allotted to the Bench of which he is a member and which pertains to an assessee whose total income as computed by the [51][Assessing] Officer in the case does not exceed [52][five hundred thousand rupees], and the President may, for the disposal of any particular case, constitute a Special Bench consisting of three or more members, one of whom shall necessarily be a judicial member and one an accountant member.

(4) If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President of the Appellate Tribunal for hearing on such point or points by one or more of the other members of the Appellate Tribunal, and such point or points shall be decided according to the opinion of the majority of the members of the Appellate Tribunal who have heard the case, including those who first heard it.

[53](5) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure and the procedure of Benches thereof in all matters arising out of the exercise of its powers or of the discharge of its functions, including the places at which the Benches shall hold their sittings.

(6) The Appellate Tribunal shall, for the purpose of discharging its functions, have all the powers which are vested in the income-tax authorities referred to in section 131, and any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code (45 of 1860), and the Appellate Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (5 of 1898)[54].

[54a]*C.—Reference to High Court*

[54a]**Statement of case to the High Court.**

256. [55](1) The assessee or the Commissioner may, within sixty days of the date upon which he is served with notice of an order [56][passed before the 1st day of October, 1998,] under section 254, by application in the prescribed form, accompanied where the application is made by the assessee by a fee of [57][two hundred rupees], require the Appellate Tribunal to refer to the High Court any question of law arising out of such order[58] and, subject to the other provisions

51. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

52. Substituted for "one hundred thousand rupees" by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier "one hundred thousand rupees" was substituted for "forty thousand rupees" by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989 and "forty thousand rupees" was substituted for "twenty-five thousand rupees" by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

53. For notified Standing Order, *see* Taxmann's Income-tax Rules.

54. Now the Code of Criminal Procedure, 1973 (2 of 1974).

54a. Sub-heading *'C.—Reference to High Court'* and section 256 shall be omitted by the National Tax Tribunal Act, 2005, with effect from a date yet to be notified.

55. *See* rule 48 and Form No. 37 for form of Reference to High Court.

56. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

57. Substituted for "one hundred and twenty-five rupees" by the Finance Act, 1981, w.e.f. 1-6-1981. Earlier "one hundred and twenty-five rupees" was substituted for "rupees one hundred" by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

58. For the meaning of the terms/expressions "question", "question of law" and "question of law arising out of such order", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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contained in this section, the Appellate Tribunal shall, within one hundred and twenty days of the receipt of such application, draw up a statement of the case and refer it to the High Court :

Provided that the Appellate Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period hereinbefore specified, allow it to be presented within a further period not exceeding thirty days.

(2) If, on an application made under sub-section (1), the Appellate Tribunal refuses to state the case on the ground that no question of law arises, the assessee or the Commissioner, as the case may be, may, within six months from the date on which he is served with notice of such refusal, apply to the High Court, and the High Court may, if it is not satisfied with the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case and to refer it, and on receipt of any such requisition, the Appellate Tribunal shall state the case and refer it accordingly.

[58a]**[***(2A) The High Court may admit an application after the expiry of the period of six months referred to in sub-section (2), if it is satisfied that there was sufficient cause for not filing the same within that period.***]**

(3) Where in the exercise of its powers under sub-section (2), the Appellate Tribunal refuses to state a case which it has been required by the assessee to state, the assessee may, within thirty days from the date on which he receives notice of such refusal, withdraw his application, and, if he does so, the fee paid shall be refunded.]

Statement of case to Supreme Court in certain cases.

257. If, on an application made [59][against an order made under section 254 before the 1st day of October, 1998,] under section 256 the Appellate Tribunal is of the opinion that, on account of a conflict in the decisions of High Courts in respect of any particular question of law, it is expedient that a reference should be made direct to the Supreme Court, the Appellate Tribunal may draw up a statement of the case and refer it through its President direct to the Supreme Court.

[59a]**[Power of High Court or Supreme Court to require statement to be amended.**

258. If the High Court or the Supreme Court is not satisfied that the statements in a case referred to it are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Appellate Tribunal for the purpose of making such additions thereto or alterations therein as it may direct in that behalf.]

[59a]**[Case before High Court to be heard by not less than two judges.**

259. (1) When any case has been referred to the High Court under section 256, it shall be heard by a Bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such judges or of the majority, if any, of such judges.

58a. Inserted by the Finance Act, 2010, w.r.e.f. **1-6-1981**.

59. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

59a. Shall be omitted by the National Tax Tribunal Act, 2005, with effect from a date yet to be notified.

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(2) Where there is no such majority, the judges shall state the point of law upon which they differ, and the case shall then be heard upon that point only by one or more of the other judges of the High Court, and such point shall be decided according to the opinion of the majority of the judges who have heard the case including those who first heard it.]

[59b]**[Decision of High Court or Supreme Court on the case stated.**

260. (1) The High Court or the Supreme Court upon hearing any such case shall decide the questions of law raised therein, and shall deliver its judgment[60] thereon containing the grounds on which such decision is founded, and a copy of the judgment shall be sent under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case conformably to such judgment.

[61][(1A) Where the High Court delivers a judgment in an appeal filed before it under section 260A, effect shall be given to the order passed on the appeal by the Assessing Officer on the basis of a certified copy of the judgment.]

(2) The costs of any reference to the High Court or the Supreme Court which shall not include the fee for making the reference shall be in the discretion of the Court.]

[62][*CC.—Appeals to High Court* [63]

Appeal to High Court.

260A. (1) [64]An appeal shall lie to the High Court from every order passed in appeal[64] by the Appellate Tribunal[65][before the date of establishment of the National Tax Tribunal], if the High Court is satisfied that the case involves a substantial question of law.[64]

59b. Following section 260 shall be substituted for existing section 260 by the National Tax Tribunal Act, 2005, with effect from a date yet to be notified :

"260. *Effect to the decisions of Supreme Court and of the National Tax Tribunal.*—(1) The Supreme Court upon hearing any reference made to it by the Appellate Tribunal under section 257 shall decide the question of law raised therein, and shall deliver its judgment thereon containing the grounds on which such decision is founded, and a copy of the judgment shall be sent under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case conforming to such judgment.

(2) Where the National Tax Tribunal delivers a judgment in an appeal filed before it or in any matter transferred to it under the National Tax Tribunal Act, 2005, effect shall be given to the order of that Tribunal by the Assessing Officer on the basis of certified copy of the judgment.

(3) The cost of any reference to the Supreme Court which shall not include the fee for making the reference shall be at the discretion of the Court."

60. For the meaning of the term "judgment", *see* Taxmann's Direct Taxes Manual, Vol. 3.

61. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

62. Sub-heading "CC" and sections 260A and 260B inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

63. For Departmental Instructions, *see* Taxmann's Master Guide to Income-tax Act.

64. For the meaning of the expressions "An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal", "every order passed in appeal" and "substantial question of law", *see* Taxmann's Direct Taxes Manual, Vol. 3.

65. Shall be inserted by the National Tax Tribunal Act, 2005, with effect from a date yet to be notified.

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(2) [66][The Chief Commissioner or the Commissioner or an assessee aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be—]

(*a*) filed within one hundred and twenty days from the date on which the order appealed against is [67][received by the assessee or the Chief Commissioner or Commissioner];

(*b*) [68][***]

(*c*) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

[68a]**[***(2A) The High Court may admit an appeal after the expiry of the period of one hundred and twenty days referred to in clause (a) of sub-section (2), if it is satisfied that there was sufficient cause for not filing the same within that period.***]**

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(4) The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question :

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(5) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(6) The High Court may determine any issue which—

(*a*) has not been determined by the Appellate Tribunal; or

(*b*) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-section (1).

[69][(7) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.]

Case before High Court to be heard by not less than two Judges.

260B. (1) When an appeal has been filed before the High Court under section 260A, it shall be heard by a bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.

(2) Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall then be heard upon that point only by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.]

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66. Substituted for "An appeal under this sub-section shall be—" by the Finance Act, 1999, w.e.f. 1-6-1999.

67. Substituted for "communicated to the appellant", *ibid.*

68. Omitted, *ibid.*

68a. Inserted by the Finance Act, 2010, w.r.e.f. **1-10-1998**.

69. Inserted by the Finance Act, 1999, w.e.f. 1-6-1999.

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D.—Appeals to the Supreme Court

Appeal to Supreme Court.

261. An appeal shall lie to the Supreme Court from any judgment of the High Court delivered [70][before the establishment of the National Tax Tribunal] on a reference made under section 256 [71][against an order made under section 254 before the 1st day of October, 1998 or an appeal made to High Court in respect of an order passed under section 254 on or after that date] in any case which the High Court certifies to be a fit one for appeal to the Supreme Court.

Hearing before Supreme Court.

262. (1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under section 261 as they apply in the case of appeals from decrees of a High Court :

Provided that nothing in this section shall be deemed to affect the provisions of sub-section (1) of section 260 or section 265.

(2) The costs of the appeal shall be in the discretion of the Supreme Court.

(3) Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in section 260 in the case of a judgment of the High Court.

E.—Revision by the Commissioner

Revision of orders prejudicial to revenue.

263. (1) The Commissioner may call for and examine the record[72] of any proceeding under this Act, and if he considers that any order passed therein by the [73][Assessing] Officer is erroneous in so far[72] as it is prejudicial to the interests of the revenue[72], he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment[72] and directing a fresh assessment.

[74][*Explanation*.—For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,—

(*a*) an order passed [75][on or before or after the 1st day of June, 1988] by the Assessing Officer shall include—

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70. Shall be inserted by the National Tax Tribunal Act, 2005, with effect from a date yet to be notified.

71. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

72. For the meaning of the terms and expressions "record", "insofar as", "prejudicial to the interests of the revenue" and "assessment", *see* Taxmann's Direct Taxes Manual, Vol. 3.

73. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

74. Substituted by the Finance Act, 1988, w.e.f. 1-6-1988. Prior to its substitution, *Explanation* was inserted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984 and amended by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

75. Inserted by the Finance Act, 1989, w.r.e.f. 1-6-1988.

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(*i*) an order of assessment made by the Assistant Commissioner [76][or Deputy Commissioner] or the Income-tax Officer on the basis of the directions issued by the [77][Joint] Commissioner under section 144A;

(*ii*) an order made by the [77][Joint] Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer conferred on, or assigned to, him under the orders or directions issued by the Board or by the Chief Commissioner or Director General or Commissioner authorised by the Board in this behalf under section 120;

(*b*) "record" [78][shall include and shall be deemed always to have included] all records relating to any proceeding under this Act available at the time of examination by the Commissioner;

(*c*) where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal [79][filed on or before or after the 1st day of June, 1988], the powers of the Commissioner under this sub-section shall extend [79][and shall be deemed always to have extended] to such matters as had not been considered and decided in such appeal.]

[80][(2) No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.]

(3) Notwithstanding anything contained in sub-section (2), an order in revision under this section may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, [81][National Tax Tribunal,] the High Court or the Supreme Court.

Explanation.—In computing the period of limitation for the purposes of sub-section (2), the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.

Revision of other orders.

[82]**264.** (1) In the case of any order[83] other than an order to which section 263 applies passed by an authority subordinate to him, the Commissioner may, either of his own motion or on an application by the assessee for revision, call for the record of any proceeding under this Act in which any such order has

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76. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

77. Substituted for "Deputy", *ibid.*

78. Substituted for "includes" by the Finance Act, 1989, w.r.e.f. 1-6-1988.

79. Inserted, *ibid.*

80. Substituted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984.

81. Shall be inserted by the National Tax Tribunal Act, 2005, with effect from a date yet to be notified.

82. *See* also Circular No. 367, dated 26-7-1983 and Letter [F. No. 6/52/68-ITJ], dated 30-7-1970. For details, *see* Taxmann's Master Guide to Income-tax Act.

83. For the meaning of the term "order", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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been passed and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit.

(2) The Commissioner shall not of his own motion revise any order under this section if the order has been made more than one year previously.

(3) In the case of an application for revision under this section by the assessee, the application must be made within one year from the date on which the order in question was communicated to him or the date on which he otherwise came to know of it, whichever is earlier :

Provided that the Commissioner may, if he is satisfied that the assessee was prevented by sufficient cause[84] from making the application within that period, admit an application made after the expiry of that period.

(4) The Commissioner shall not revise any order under this section in the following cases—

(*a*) where an appeal against the order lies to the [85][Deputy Commissioner (Appeals)] [86][or to the Commissioner (Appeals)] or to the Appellate Tribunal but has not been made and the time within which such appeal may be made has not expired, or, in the case of an appeal [87][to the Commissioner (Appeals) or] to the Appellate Tribunal, the assessee has not waived his right of appeal; or

(*b*) where the order is pending on an appeal before the [88][Deputy Commissioner (Appeals)]; or

(*c*) where the order[89] has been made the subject of an appeal [87][to the Commissioner (Appeals) or] to the Appellate Tribunal.

(5) Every application by an assessee for revision under this section shall be accompanied by a fee of [90][five hundred] rupees.

[91][(6) On every application by an assessee for revision under this sub-section, made on or after the 1st day of October, 1998, an order shall be passed within one year from the end of the financial year in which such application is made by the assessee for revision.

Explanation.—In computing the period of limitation for the purposes of this sub-section, the time taken in giving an opportunity to the assessee to be re-heard under the proviso to section 129 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.

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84. For the meaning of the expression "sufficient cause", *see* Taxmann's Direct Taxes Manual, Vol. 3.

85. Substituted for "Appellate Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

86. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

87. Inserted, *ibid*.

88. Substituted for "Appellate Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

89. For the meaning of the terms and expressions "order" and "subject to an appeal", *see* Taxmann's Direct Taxes Manual, Vol. 3.

90. Substituted for "twenty-five" by the Finance Act, 2001, w.e.f. 1-6-2001.

91. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

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(7) Notwithstanding anything contained in sub-section (6), an order in revision under sub-section (6) may be passed at any time in consequence of or to give effect to any finding or direction contained in an order of the Appellate Tribunal, [92][National Tax Tribunal,] the High Court or the Supreme Court.]

Explanation 1.—An order by the Commissioner declining to interfere shall, for the purposes of this section, be deemed not to be an order prejudicial to the assessee.

Explanation 2.—For the purposes of this section, the [93][Deputy Commissioner (Appeals)] shall be deemed to be an authority subordinate to the Commissioner.

F.—General

Tax to be paid notwithstanding reference, etc.

265. Notwithstanding that a reference has been made to the High Court or the Supreme Court or an appeal has been preferred to the Supreme Court, tax shall be payable in accordance with the assessment made in the case.

Execution for costs awarded by Supreme Court.

266. The High Court may, on petition made for the execution of the order of the Supreme Court in respect of any costs awarded thereby, transmit the order for execution to any court subordinate to the High Court.

[94][**Amendment of assessment on appeal.**

267. Where as a result of an appeal under section 246 [95][or section 246A] or section 253, any change is made in the assessment of a body of individuals or an association of persons or a new assessment of a body of individuals or an association of persons is ordered to be made, the [96][***] Commissioner (Appeals) or the Appellate Tribunal, as the case may be, shall pass an order authorising the Assessing Officer either to amend the assessment made on any member of the body or association or make a fresh assessment on any member of the body or association.]

Exclusion of time taken for copy[97]**.**

268. In computing the period of limitation prescribed for an appeal [98][or an application] under this Act, the day on which the order complained of was served and, if the assessee was not furnished with a copy of the order when the

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92. Shall be inserted by the National Tax Tribunal Act, 2005, with effect from a date yet to be notified.

93. Substituted for "Appellate Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

94. Substituted by the Finance Act, 1992, w.e.f. 1-4-1993. Prior to its substitution, section 267 was amended by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978, the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988/1-4-1989 and the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

95. Inserted by the Finance Act, 2000, w.e.f. 1-6-2000.

96. Words "Deputy Commissioner (Appeals) or the" omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

97. *See* Circular No. 1, dated 24-4-1958. For details, *see* Taxmann's Master Guide to Income-tax Act.

98. Inserted by the Finance Act, 1990, w.e.f. 1-4-1990. Earlier these words were omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

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notice of the order was served upon him, the time requisite for obtaining a copy of such order, shall be excluded.

[99][**Filing of appeal or application for reference by income-tax authority.**

268A. (1) The Board may, from time to time, issue orders, instructions or directions to other income-tax authorities, fixing such monetary limits as it may deem fit, for the purpose of regulating filing of appeal or application for reference by any income-tax authority under the provisions of this Chapter.

(2) Where, in pursuance of the orders, instructions or directions issued under sub-section (1), an income-tax authority has not filed any appeal or application for reference on any issue in the case of an assessee for any assessment year, it shall not preclude such authority from filing an appeal or application for reference on the same issue in the case of—

(*a*) the same assessee for any other assessment year; or

(*b*) any other assessee for the same or any other assessment year.

(3) Notwithstanding that no appeal or application for reference has been filed by an income-tax authority pursuant to the orders or instructions or directions issued under sub-section (1), it shall not be lawful for an assessee, being a party in any appeal or reference, to contend that the income-tax authority has acquiesced in the decision on the disputed issue by not filing an appeal or application for reference in any case.

(4) The Appellate Tribunal or Court, hearing such appeal or reference, shall have regard to the orders, instructions or directions issued under sub-section (1) and the circumstances under which such appeal or application for reference was filed or not filed in respect of any case.

(5) Every order, instruction or direction which has been issued by the Board fixing monetary limits for filing an appeal or application for reference shall be deemed to have been issued under sub-section (1) and the provisions of sub-sections (2), (3) and (4) shall apply accordingly.]

Definition of "High Court".

269. In this Chapter,—

"High Court" means—

(*i*) in relation to any State, the High Court for that State ;

[1][(*ii*) in relation to the Union territory of Delhi, the High Court of Delhi ;

(*iia*) [2][* * *]]

(*iii*) [3][* * *]

(*iv*) in relation to the Union territory of the Andaman and Nicobar Islands, the High Court at Calcutta ;

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99. Inserted by the Finance Act, 2008, w.r.e.f. 1-4-1999.

1. Substituted for clause (*ii*) by the Punjab Reorganisation and Delhi High Court (Adaptation of Laws on Union Subjects) Order, 1968, w.r.e.f. 1-11-1966.

2. Omitted by the State of Himachal Pradesh (Adaptation of Laws on Union Subjects) Order, 1973, w.r.e.f. 25-1-1971.

3. Clause (*iii*) omitted by the Finance Act, 1994, w.e.f. 1-4-1995. Prior to omission, clause (*iii*) was substituted by the North-Eastern Areas (Reorganisation) (Adaptation of Laws on Union Subjects) Order, 1974, w.r.e.f. 21-1-1972.

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(*v*) in relation to the Union territory of [4][Lakshadweep], the High Court of Kerala ;

[5][(*va*) in relation to the Union territory of Chandigarh, the High Court of Punjab and Haryana ;]

[6][(*vi*) in relation to the Union territories of Dadra and Nagar Haveli and [7][* * *] Daman and Diu, the High Court at Bombay ; and

(*vii*) in relation to the Union territory of Pondicherry, the High Court at Madras.]

[8][***CHAPTER XX-A***

ACQUISITION OF IMMOVABLE PROPERTIES IN CERTAIN CASES OF TRANSFER TO COUNTERACT EVASION OF TAX

Definitions.

269A. In this Chapter, unless the context otherwise requires,—

(*a*) [9]["apparent consideration",—

(*1*) in relation to any immovable property transferred, being immovable property of the nature referred to in sub-clause (*i*) of clause (*e*), means,—]

(*i*) if the transfer is by way of sale, the consideration for such transfer as specified in the instrument of transfer ;

(*ii*) if the transfer is by way of exchange,—

(*A*) in a case where the consideration for the transfer consists of a thing or things only, the price that such thing or things would ordinarily fetch on sale in the open market on the date of execution of the instrument of transfer ;

(*B*) in a case where the consideration for the transfer consists of a thing or things and a sum of money, the aggregate of the price that such thing or things would ordinarily fetch on sale in the open market on the date of execution of the instrument of transfer and such sum ;

[10][(*iii*) if the transfer is by way of lease,—

4. Substituted for "the Laccadive, Minicoy and Amindivi Islands" by the Laccadive, Minicoy and Amindivi Islands (Alteration of Name) Adaptation of Laws Order, 1974, w.r.e.f. 1-11-1973.

5. Inserted by the Punjab Reorganisation and Delhi High Court (Adaptation of Laws on Union Subjects) Order, 1968, w.r.e.f. 1-11-1966.

6. Inserted by the Taxation Laws (Extension to Union Territories) Regulation, 1963, w.e.f. 1-4-1963.

7. Word "Goa," omitted by the Finance Act, 1994, w.e.f. 1-4-1995.

8. Chapter XX-A, consisting of sections 269A to 269S, inserted by the Taxation Laws (Amendment) Act, 1972, w.e.f. 15-11-1972 and ceased to operate in respect of transfer of immovable property made after 30-9-1986.

9. Substituted for ' "apparent consideration", in relation to any immovable property transferred, means,—' by the Income-tax (Amendment) Act, 1981, w.e.f. 1-7-1982.

10. Inserted, *ibid.*

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(*A*) in a case where the consideration for the transfer consists of premium only, the amount of premium as specified in the instrument of transfer ;

(*B*) in a case where the consideration for the transfer consists of rent only, the aggregate of the moneys (if any) payable by way of rent and the amounts for the service or things forming part of or constituting the rent, as specified in the instrument of transfer ;

(*C*) in a case where the consideration for the transfer consists of premium and rent, the aggregate of the amount of the premium, the moneys (if any) payable by way of rent and the amounts for the service or things forming part of or constituting the rent, as specified in the instrument of transfer,

and where the whole or any part of the consideration for such transfer is payable on any date or dates falling after the date of such transfer, the value of the consideration payable after such date shall be deemed to be the discounted value of such consideration, as on the date of such transfer, determined by adopting the rate of interest at eight per cent per annum ;

(*2*) in relation to any immovable property transferred, being immovable property of the nature referred to in sub-clause (*ii*) of clause (*e*), means,—

(*i*) in a case where the consideration for the transfer consists of a sum of money only, such sum ;

(*ii*) in a case where the consideration for the transfer consists of a thing or things only, the price that such thing or things would ordinarily fetch on sale in the open market on the date of the transfer ;

(*iii*) in a case where the consideration for the transfer consists of a thing or things and a sum of money, the aggregate of the price that such thing or things would ordinarily fetch on sale in the open market on the date of the transfer and such sum,

and where the whole or any part of the consideration for such transfer is payable on any date or dates falling after the date of such transfer, the value of the consideration payable after such date shall be deemed to be the discounted value of such consideration, as on the date of such transfer, determined by adopting the rate of interest at eight per cent per annum ;]

(*b*) "competent authority" means [11][a [12][Joint] Commissioner] authorised by the Central Government under section 269B to perform the functions of a competent authority under this Chapter ;

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11. Substituted for "an Assistant Commissioner of Income-tax" by the Direct Tax Laws (Amendment) Act, 1989, w.r.e.f. 1-4-1988.

12. Substituted for "Deputy" by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

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(*c*) "court" means a principal civil court of original jurisdiction unless the Central Government has appointed (as it is hereby authorised to do) any special judicial officer within any specified local limits to perform the functions of the court under this Chapter ;

[13][(*d*) "fair market value",—

(*i*) in relation to any immovable property transferred by way of sale or exchange, being immovable property of the nature referred to in sub-clause (*i*) of clause (*e*), means the price that the immovable property would ordinarily fetch on sale in the open market on the date of execution of the instrument of transfer of such property ;

(*ii*) in relation to any immovable property transferred by way of lease, being immovable property of the nature referred to in sub-clause (*i*) of clause (*e*), means the premium that such transfer would ordinarily fetch in the open market on the date of execution of the instrument of transfer of such property, if the consideration for such transfer had been by way of premium only ;

(*iii*) in relation to any immovable property transferred, being immovable property of the nature referred to in sub-clause (*ii*) of clause (*e*), means the consideration in the form of money that such transfer would ordinarily fetch in the open market on the date of the transfer, if such transfer had been made only for consideration in money ;]

(*e*) [14]["immovable property" means,—

(*i*) any land or any building] or part of a building, and includes, where any land or any building or part of a building is transferred together with any machinery, plant, furniture, fittings or other things, such machinery, plant, furniture, fittings or other things also.

Explanation.—For the purposes of this [15][sub-clause], land, building, part of a building, machinery, plant, furniture, fittings and other things include any rights therein ;

[16][(*ii*) any rights of the nature referred to in clause (*b*) of sub-section (1) of section 269AB ;]

[17][(*f*) "instrument of transfer" means the instrument of transfer registered under the Registration Act, 1908 (16 of 1908), or, as the case may be, the statement registered under section 269AB with the competent authority ;]

(*g*) "person interested", in relation to any immovable property, includes all persons claiming, or entitled to claim, an interest in the compensa-

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13. Substituted by the Income-tax (Amendment) Act, 1981, w.e.f. 1-7-1982.

14. Substituted for ' "immovable property" means any land or any building', *ibid*.

15. Substituted for "clause", *ibid*.

16. Inserted, *ibid*.

17. Substituted, *ibid*.

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tion payable on account of the acquisition of that property under this Chapter ;

[18][(*h*) "transfer",—

(*i*) in relation to any immovable property referred to in sub-clause (*i*) of clause (*e*), means transfer of such property by way of sale or exchange or lease for a term of not less than twelve years, and includes allowing the possession of such property to be taken or retained in part performance of a contract of the nature referred to in section 53A[19] of the Transfer of Property Act, 1882 (4 of 1882).

Explanation.—For the purposes of this sub-clause, a lease which provides for the extension of the term thereof by a further term or terms shall be deemed to be a lease for a term of not less than twelve years if the aggregate of the term for which such lease has been granted and the further term or terms for which it can be so extended is not less than twelve years ;

(*ii*) in relation to any immovable property of the nature referred to in sub-clause (*ii*) of clause (*e*), means the doing of anything (whether by way of transfer of shares in a co-operative society or company or by way of any agreement or arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of, such property.]

[20][**Registration of certain transactions.**

269AB. (1) The following transactions, that is to say,—

(*a*) every transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A[21] of the Transfer of Property Act, 1882 (4 of 1882), and

(*b*) every transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other association of persons or by way of any agreement or any arrangement of whatever nature) whereby a person acquires any rights in or with respect to any building or part of a building (whether or not including any machinery, plant, furniture, fittings or other things therein) which has been constructed or which is to be constructed [not being a transaction by way of sale, exchange or lease of such building or part of a building which is required to be registered under the Registration Act, 1908 (16 of 1908)],

shall be reduced to writing in the form of a statement by each of the parties to such transaction or by any of the parties to such transaction acting on behalf of himself and on behalf of the other parties.

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18. Substituted by the Income-tax (Amendment) Act, 1981, w.e.f. 1-7-1982.

19. For text of section 53A of the Transfer of Property Act, *see* **Appendix**.

20. Inserted by the Income-tax (Amendment) Act, 1981, w.e.f. 1-7-1982.

21. For text of section 53A of the Transfer of Property Act, *see* **Appendix**.

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[22](2) Every statement in respect of a transaction referred to in sub-section (1) shall—

(*a*) be in the prescribed form ;

(*b*) set forth such particulars as may be prescribed ; and

(*c*) be verified in the prescribed manner,

and registered with the competent authority, in such manner and within such time as may be prescribed, by each of the parties to such transaction or by any of the parties to such transaction acting on behalf of himself and on behalf of the other parties.]

[23]**Competent authority.**

269B. [24](1) The Central Government may, by general or special order published in the Official Gazette,—

(*a*) authorise as many [25][[26][Joint] Commissioners], as it thinks fit, to perform the functions of a competent authority under this Chapter ; and

(*b*) define the local limits within which the competent authorities shall perform their functions under this Chapter.

(2) In respect of any function to be performed by a competent authority under any provision of this Chapter in relation to any immovable property referred to in section 269C, the competent authority referred to therein shall,—

(*a*) in a case where such property is situate within the local limits of the jurisdiction of only one competent authority, be such competent authority ;

(*b*) in a case where such property is situate within the local limits of the jurisdiction of two or more competent authorities, be the competent authority empowered to perform such functions in relation to such property in accordance with rules made in this behalf by the Board under section 295.

[27][*Explanation.*—For the purposes of this sub-section, immovable property, being rights of the nature referred to in clause (*b*) of sub-section (1) of section 269AB in, or with respect to, any building or part of a building which has been constructed or which is to be constructed shall be deemed to be situate at the place where the building has been constructed or is to be constructed.]

(3) No person shall be entitled to call in question the jurisdiction of a competent authority in respect of any immovable property after the expiry of thirty days from the date on which such competent authority initiates proceedings under section 269D for the acquisition of such property.

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22. *See* rule 48DD and Form No. 37EE.

23. *See* rule 48D.

24. For authorisation of Deputy Commissioner of Income-tax to perform functions of competent authority under Chapter XXA, *see* Taxmann's Direct Taxes Circulars.

25. Substituted for "Assistant Commissioners of Income-tax" by the Direct Tax Laws (Amendment) Act, 1989, w.r.e.f. 1-4-1988.

26. Substituted for "Deputy" by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

27. Inserted by the Income-tax (Amendment) Act, 1981, w.e.f. 1-7-1982.

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(4) Subject to the provisions of sub-section (3), where the jurisdiction of a competent authority is questioned, the competent authority shall, if satisfied with the correctness of the claim, by order in writing, determine the question accordingly and if he is not so satisfied, he shall refer the question to the Board and the Board shall, by order in writing, determine the question.

Immovable property in respect of which proceedings for acquisition may be taken.

[28]**269C.** (1) Where the competent authority has reason to believe that any immovable property of a fair market value exceeding [29][one hundred] thousand rupees has been transferred by a person (hereafter in this Chapter referred to as the transferor) to another person (hereafter in this Chapter referred to as the transferee) for an apparent consideration which is less than the fair market value of the property and that the consideration for such transfer as agreed to between the parties has not been truly stated in the instrument of transfer with the object of—

(*a*) facilitating the reduction or evasion of the liability of the transferor to pay tax under this Act in respect of any income arising from the transfer ; or

(*b*) facilitating the concealment of any income or any moneys or other assets which have not been or which ought to be disclosed by the transferee for the purposes of the Indian Income-tax Act, 1922 (11 of 1922), or this Act or the Wealth-tax Act, 1957 (27 of 1957),

the competent authority may, subject to the provisions of this Chapter, initiate proceedings for the acquisition of such property under this Chapter :

Provided that before initiating such proceedings, the competent authority shall record his reasons for doing so :

Provided further that no such proceedings shall be initiated unless the competent authority has reason to believe that the fair market value of the property exceeds the apparent consideration therefor by more than fifteen per cent of such apparent consideration.

(2) In any proceedings under this Chapter in respect of any immovable property,—

(*a*) where the fair market value of such property exceeds the apparent consideration therefor by more than twenty-five per cent of such apparent consideration, it shall be conclusive proof that the consideration for such transfer as agreed to between the parties has not been truly stated in the instrument of transfer ;

(*b*) where the property has been transferred for an apparent consideration which is less than its fair market value, it shall be presumed, unless the contrary is proved, that the consideration for such transfer as agreed to between the parties has not been truly stated in the instrument of transfer with such object as is referred to in clause (*a*) or clause (*b*) of sub-section (1).

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28. *See* also Circular No. 455, dated 16-5-1986.

29. Substituted for "twenty-five" by the Finance Act, 1984, w.e.f. 1-6-1984.

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[30]**Preliminary notice.**

269D. (1) The competent authority shall initiate proceedings for the acquisition, under this Chapter, of any immovable property referred to in section 269C by notice to that effect published in the Official Gazette :

Provided that no such proceedings shall be initiated in respect of any immovable property after the expiration of a period of [31][nine] months from the end of the month in which the instrument of transfer in respect of such property is registered under the Registration Act, 1908 (16 of 1908), [32][or, as the case may be, section 269AB] :

Provided further that—

(*a*) in a case where it is determined under sub-section (4) of section 269B by the competent authority who has initiated proceedings for the acquisition of any immovable property under this Chapter or by the Board that such competent authority has no jurisdiction to initiate such proceedings, the competent authority having jurisdiction may initiate such proceedings within—

(*i*) the period of [33][nine] months specified in the foregoing proviso ; or

(*ii*) a period of thirty days from the date of such determination,

whichever period expires later ;

(*b*) in a case where proceedings for the acquisition of any immovable property under this Chapter could not be initiated during any period of time by reason of any injunction or order of any court prohibiting the initiation of such proceedings or preventing the examination of documents or other materials required to be examined for the purpose of determining whether such proceedings should be initiated, the time of the continuance of the injunction or order, the day on which it was issued or made and the day on which it was withdrawn shall be excluded in computing the period during which such proceedings may be initiated under this sub-section.

(2) The competent authority shall—

(*a*) cause a notice under sub-section (1) in respect of any immovable property to be served on the transferor, the transferee, the person in occupation of the property, if the transferee is not in occupation thereof, and on every person whom the competent authority knows to be interested in the property ;

(*b*) cause such notice to be published—

(*i*) in his office by affixing a copy thereof to a conspicuous place ;

(*ii*) in the locality in which the immovable property to which it relates is situate, by affixing a copy thereof to a conspicuous part of the

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30. *See* rule 48E.

31. Substituted for "six" by the Income-tax (Amendment) Act, 1973, w.r.e.f. 15-11-1972.

32. Inserted by the Income-tax (Amendment) Act, 1981, w.e.f. 1-7-1982.

33. Substituted for "six" by the Income-tax (Amendment) Act, 1973, w.r.e.f. 15-11-1972.

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property and also by making known in such manner as may be prescribed the substance of such notice at convenient places in the said locality.

[34][*Explanation.*—The provisions of the *Explanation* to sub-section (2) of section 269B shall apply for the purposes of this sub-section as they apply for the purposes of that sub-section.]

Objections.

269E. (1) Objections against the acquisition of the immovable property in respect of which a notice has been published in the Official Gazette under sub-section (1) of section 269D may be made—

(*a*) by the transferor or the transferee or any other person referred to in clause (*a*) of sub-section (2) of that section, within a period of forty-five days from the date of such publication or a period of thirty days from the date of service of notice on such person under the said clause, whichever period expires later ;

(*b*) by any other person interested in such immovable property, within forty-five days from the date of such publication.

(2) Every objection under sub-section (1) shall be made to the competent authority in writing.

(3) For the removal of doubts, it is hereby declared that objection may be made under sub-section (1) that the provisions of clause (*a*) of sub-section (2) of section 269C do not apply in relation to any immovable property on the ground that the fair market value of such property does not exceed the apparent consideration therefor by more than twenty-five per cent of such apparent consideration.

Hearing of objections.

269F. (1) The competent authority shall fix a day and place for the hearing of the objections made under section 269E against the acquisition under this Chapter of any immovable property, and shall give notice of the same to every person who has made such objection :

Provided that such notice shall also be given to the transferee of such property even if he has not made any such objection.

(2) Every person to whom a notice is given under sub-section (1) shall have the right to be heard at the hearing of the objections.

(3) The competent authority shall have the power to adjourn the hearing of the objections from time to time.

(4) The competent authority may, before disposing of the objections, make such further inquiry as he thinks fit.

(5) The decision of the competent authority in respect of the objections heard shall be in writing and shall state the reasons for the decision with respect to each objection.

(6) If after hearing the objections, if any, and after taking into account all the relevant material on record, the competent authority is satisfied that,—

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34. Inserted by the Income-tax (Amendment) Act, 1981, w.e.f. 1-7-1982.

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(*a*) the immovable property to which the proceedings relate is of a fair market value exceeding [35][one hundred] thousand rupees ;

(*b*) the fair market value of such property exceeds the apparent consideration therefor by more than fifteen per cent of such apparent consideration ; and

(*c*) the consideration for such transfer as agreed to between the parties has not been truly stated in the instrument of transfer with such object as is referred to in clause (*a*) or clause (*b*) of sub-section (1) of section 269C,

he may, after obtaining the approval of the Commissioner, make an order for the acquisition of the property under this Chapter.

Explanation.—In this sub-section, "Commissioner", in relation to a competent authority, means such Commissioner as the Board may, by general or special order in writing, specify in this behalf.

(7) If the competent authority is not satisfied as provided in sub-section (6), he shall, by order in writing, declare that the property will not be acquired under this Chapter.

(8) The competent authority shall serve a copy of his order under sub-section (6) or sub-section (7), as the case may be, on the transferor, the transferee and on every person who has made objections against such acquisition under section 269E.

(9) In any proceedings under this Chapter in respect of any immovable property, no objection shall be entertained on the ground that although the apparent consideration for the property is less than the fair market value of the property on the date of the execution of the instrument of transfer [36][or where such property is of the nature referred to in sub-clause (*ii*) of clause (*e*) of section 269A on the date of the transfer], the consideration as agreed to between the parties has been truly stated in the instrument of transfer because such consideration was agreed to having regard to the price that such property would have ordinarily fetched [37][on such transfer in the open market on the date of the conclusion of the agreement to transfer the property], except where such agreement has been registered under the Registration Act, 1908 (16 of 1908).

Appeal against order for acquisition.

[38]**269G.** (1) An appeal may be preferred to the Appellate Tribunal against the order for the acquisition of any immovable property made by the competent authority under section 269F,—

(*a*) by the transferor or the transferee or any other person referred to in sub-section (8) of that section, within a period of forty-five days from the date of such order or a period of thirty days from the date of

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35. Substituted for "twenty-five" by the Finance Act, 1984, w.e.f. 1-6-1984.

36. Inserted by the Income-tax (Amendment) Act, 1981, w.e.f. 1-7-1982.

37. Substituted for "on sale in the open market on the date of the conclusion of the agreement to sell the property", *ibid*.

38. For notification laying down procedure to be followed by the Tribunal, *see* Taxmann's Direct Taxes Circulars.

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service of a copy of the order on such person under the said sub-section, whichever period expires later ;

(*b*) by any other person interested in such immovable property, within forty-five days from the date of such order :

Provided that the Appellate Tribunal may, on an application made in this behalf before the expiry of the said period of forty-five days or, as the case may be, thirty days, permit, by order, the appeal to be presented within such further period as may be specified therein if the applicant satisfies the Appellate Tribunal that he has sufficient cause for not being able to present the appeal within the said period of forty-five days or, as the case may be, thirty days.

[39](2) Every appeal under this section shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a fee of [40][two hundred] rupees.

(3) The Appellate Tribunal shall fix a day and place for the hearing of the appeal and shall give notice of the same to the appellant and to the competent authority.

(4) The Appellate Tribunal may, after giving the appellant and the competent authority an opportunity of being heard, pass such orders thereon as it thinks fit.

(5) The Appellate Tribunal may, at any time within thirty days from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (4) and shall make such amendment if the mistake is brought to its notice by the appellant or the competent authority :

Provided that if any such amendment is likely to affect any person prejudicially, it shall not be made without giving to such person a reasonable opportunity of being heard.

(6) The Appellate Tribunal shall send a copy of any orders passed under this section to the appellant and to the Commissioner.

(7) Save as provided in section 269H, orders passed by the Appellate Tribunal on appeal shall be final.

(8) Every appeal under this section shall be disposed of as expeditiously as possible and endeavour shall be made to dispose of every such appeal within ninety days from the date on which it is presented.

(9) The provisions of section 255 (except sub-section (3) thereof) shall, so far as may be, apply in relation to the powers, functions and proceedings of the Appellate Tribunal under this section as they apply in relation to the powers, functions and proceedings of the Appellate Tribunal under Chapter XX.

Appeal to High Court.

269H. (1) The Commissioner or any person aggrieved by any order of the Appellate Tribunal under section 269G may, within sixty days of the date on which he is served with notice of such order under that section, prefer an appeal against such order to the High Court on any question of law :

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39. *See* rule 48F and Form No. 37F.

40. Substituted for "one hundred and twenty-five" by the Finance Act, 1981, w.e.f. 1-6-1981.

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Provided that the High Court may, on an application made in this behalf before the expiry of the said period of sixty days, permit, by order, the appeal to be presented within such further period as may be specified therein, if the applicant satisfies the High Court that he has sufficient cause for not being able to present the appeal within the said period of sixty days.

(2) An appeal under sub-section (1) shall be heard by a Bench of not less than two Judges of the High Court and the provisions of section 259 shall apply in relation to any such appeal as they apply in relation to a case referred to the High Court under section 256.

(3) The costs of the appeal shall be in the discretion of the High Court.

Vesting of property in Central Government.

269-I. (1) As soon as may be after the order for acquisition of any immovable property made under sub-section (6) of section 269F becomes final, the competent authority may, by notice in writing, order any person who may be in possession of the immovable property to surrender or deliver possession thereof to the competent authority or any other person duly authorised in writing by the competent authority in this behalf, within thirty days of the date of the service of the notice.

Explanation.—For the purposes of this sub-section, an order for the acquisition of any immovable property (hereafter in this *Explanation* referred to as the order for acquisition) made under sub-section (6) of section 269F becomes final,—

(*a*) in a case where the order for acquisition is not made the subject of an appeal to the Appellate Tribunal under section 269G, upon the expiry of the period during which such appeal may be presented under that section ;

(*b*) in a case where the order for acquisition is made the subject of an appeal to the Appellate Tribunal under section 269G,—

(*i*) if the order for acquisition is confirmed by the Appellate Tribunal and the order of the Appellate Tribunal is not made the subject of an appeal to the High Court under section 269H, upon the expiry of the period during which such appeal may be presented under that section to the High Court ;

(*ii*) if the order of the Appellate Tribunal is made the subject of an appeal to the High Court under section 269H, upon the confirmation of the order for acquisition by the High Court.

(2) If any person refuses or fails to comply with the notice under sub-section (1), the competent authority or other person duly authorised by the competent authority under that sub-section may take possession of the immovable property and may, for that purpose, use such force as may be necessary.

(3) Notwithstanding anything contained in sub-section (2), the competent authority may, for the purpose of taking possession of any property referred to in sub-section (1), requisition the services of any police officer to assist him and it shall be the duty of such officer to comply with such requisition.

(4) When the possession of the immovable property is surrendered or delivered under sub-section (1) to the competent authority or a person duly authorised by

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him in that behalf or, as the case may be, when the possession thereof is taken under sub-section (2) or sub-section (3) by such authority or person, the property shall vest absolutely in the Central Government free from all encumbrances :

Provided that nothing in this sub-section shall operate to discharge the transferee or any other person (not being the Central Government) from liability in respect of such encumbrances and, notwithstanding anything contained in any other law, such liability may be enforced against the transferee or such other person by a suit for damages.

[41][(5) Notwithstanding anything contained in sub-section (4) or any other law or any instrument or any agreement for the time being in force, where an order for acquisition of any immovable property, being rights of the nature referred to in clause (*b*) of sub-section (1) of section 269AB, in or with respect to any building or part of a building which has been constructed or which is to be constructed, has become final, then, such order shall, by its own force, have the effect of—

(*a*) vesting such rights in the Central Government, and

(*b*) placing the Central Government in the same position in relation to such rights as the person in whom such rights would have continued to vest if such order had not become final,

and the competent authority may issue such directions as he may deem fit to any person concerned for taking the necessary steps for compliance with the provisions of clauses (*a*) and (*b*).

(6) In the case of any immovable property, being rights of the nature referred to in clause (*b*) of sub-section (1) of section 269AB, in or with respect to any building or part of a building, the provisions of sub-sections (1), (2) and (3) shall have effect as if the references to immovable property therein were a reference to such building or, as the case may be, part of such building.]

Compensation.

269J. (1) Where any immovable property is acquired under this Chapter, the Central Government shall pay for such acquisition compensation which shall be a sum equal to the aggregate of the amount of the apparent consideration for its transfer and fifteen per cent of the said amount :

[42][**Provided** that in a case where, under the agreement between the parties concerned, the whole or any part of the consideration for the transfer of such immovable property is payable on any date or dates falling after the date on which such property is acquired, the compensation payable by the Central Government shall be the aggregate of the following amounts, namely :—

(*i*) an amount equal to fifteen per cent of the apparent consideration ;

(*ii*) the amount, if any, that has become payable in accordance with such agreement on or before the date on which such property is acquired under this Chapter ; and

(*iii*) the amount payable after the date on which such property is acquired under this Chapter.]

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41. Inserted by the Income-tax (Amendment) Act, 1981, w.e.f. 1-7-1982.

42. Inserted, *ibid*.

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(2) Notwithstanding anything contained in sub-section (1),—

(*a*) where, after the transfer to the transferee of the property referred to in that sub-section but before the vesting of the property in the Central Government, the property has been damaged (otherwise than as a result of normal wear and tear), the compensation payable under that sub-section shall be reduced by such amount as the competent authority and the persons entitled to the compensation may agree within fifteen days of the vesting of the property in the Central Government or in default of such agreement as the court may, on a reference made to it in this behalf by the competent authority or by any person duly authorised for the purpose by the competent authority, determine to be the amount that may have to be expended for restoring the property to the condition in which it was at the time of such transfer ;

(*b*) where, after the transfer of such property to the transferee but before the date of publication in the Official Gazette of the notice in respect of such property under sub-section (1) of section 269D, any improvements have been made to the property, whether by way of addition or alteration or in any other manner, the compensation payable in respect of such property under sub-section (1) shall be increased by such amount as the competent authority and the persons entitled to the compensation may agree within fifteen days of the vesting of the property in the Central Government or in default of such agreement as the court may, on a reference made to it in this behalf by the competent authority or by any person duly authorised for the purpose by the competent authority, determine to be the amount spent for making such improvements.

(3) Every reference under clause (*a*) or clause (*b*) of sub-section (2) shall be made within thirty days of the date on which the immovable property to which it relates becomes vested in the Central Government or within such further period as the court may, on an application made in this behalf before the expiry of the said period and on being satisfied that there is sufficient cause for doing so, allow and such reference shall state clearly the compensation payable under sub-section (1) in respect of the immovable property and the amount by which, according to the estimate of the competent authority, such compensation shall be reduced under clause (*a*) or, as the case may be, increased under clause (*b*), of sub-section (2).

(4) The amount by which the compensation payable under sub-section (1) in respect of any immovable property acquired under this Chapter falls short of the amount which would have been payable as compensation if that property had been acquired under the Land Acquisition Act, 1894 (1 of 1894), after the issue of a preliminary notice under section 4 of that Act on the date of publication in the Official Gazette of the notice in respect of the property under sub-section (1) of section 269D, shall be deemed to have been realised by the Central Government as a penalty from the transferee for being a party to a transfer with such object as is referred to in clause (*a*) or clause (*b*) of sub-section (1) of section 269C, and no penalty shall be levied for any assessment year on the transferee—

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(*a*) under clause (*iii*) of sub-section (1) of section 271, for concealing the particulars or furnishing inaccurate particulars of so much of his income as is utilised by him for paying to the transferor, by way of consideration for the property, any amount in excess of the apparent consideration for the property, notwithstanding that such amount is included in the income of the transferee ;

(*b*) under clause (*iii*) of sub-section (1) of section 18 of the Wealth-tax Act, 1957 (27 of 1957), for concealing the particulars or furnishing inaccurate particulars of so much of his assets as are utilised by him for paying to the transferor, by way of consideration for the property, any amount in excess of the apparent consideration for the property, notwithstanding that such assets are included in the net wealth of the transferee.

Payment or deposit of compensation.

269K. (1) The amount of compensation payable in accordance with the provisions of section 269J for the acquisition of any immovable property shall be tendered to the person or persons entitled thereto, as soon as may be, after the property becomes vested in the Central Government under sub-section (4) of section 269-I :

[43][**Provided** that in a case falling under the proviso to sub-section (1) of section 269J, the amounts referred to in clause (*i*) and clause (*ii*) of that proviso shall be tendered to the person or persons entitled thereto, as soon as may be, after the property becomes vested in the Central Government under section 269-I, and the amount referred to in clause (*iii*) of the said proviso shall be tendered on the date on which it would be payable in accordance with the agreement between the parties concerned, and where such amount is payable in instalments on different dates, then in such instalments on those dates :]

Provided [44][**further**] that in any case where a reference is or has to be made under sub-section (2) of section 269J to the court for the determination of the amount by which the compensation payable under sub-section (1) of that section shall be reduced or increased, the amount of such compensation as reduced or increased by the amount estimated in that behalf by the competent authority for the purposes of such reference shall be tendered as aforesaid.

(2) Notwithstanding anything contained in sub-section (1), if any dispute arises as to the apportionment of the compensation amongst persons claiming to be entitled thereto, the Central Government shall deposit in the court the compensation required to be tendered under sub-section (1) and refer such dispute for the decision of the court and the decision of the court thereon shall be final.

(3) Notwithstanding anything contained in sub-section (1), if the persons entitled to compensation do not consent to receive it, or if there is no person competent to alienate the immovable property, or if there is any dispute as to the title to receive the compensation, the Central Government shall deposit in the court the compensation required to be tendered under sub-section (1) and refer the matter for the decision of the court :

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43. Inserted by the Income-tax (Amendment) Act, 1981, w.e.f. 1-7-1982.

44. Inserted, *ibid.*

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Provided that nothing herein contained shall affect the liability of any person who may receive the whole or any part of the compensation for any immovable property acquired under this Chapter to pay the same to the person lawfully entitled thereto.

(4) If the Central Government fails to tender under sub-section (1) or deposit under sub-section (2) or sub-section (3) the whole or any part of the compensation required to be tendered or deposited thereunder within thirty days of the date on which the immovable property to which the compensation relates becomes vested in the Central Government under sub-section (4) of section 269-I, the Central Government shall be liable to pay simple interest at the rate of [45][fifteen] per cent per annum reckoned from the day immediately following the date of expiry of the said period up to the date on which it so tenders or deposits such compensation or, as the case may be, such part of the compensation.

(5) Where any amount of compensation (including interest, if any, thereon) has been deposited in the court under this section, the court may, either of its own motion or on an application made by or on behalf of any party interested or claiming to be interested in such amount, order the same to be invested in such Government or other securities as it may think proper, and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as will, in its opinion, give the parties interested therein the same benefit therefrom as they might have had from the immovable property in respect whereof such amount has been deposited or as near thereto as may be.

Assistance by Valuation Officers.

269L. (1) The competent authority may,—

(*a*) for the purpose of initiating proceedings for the acquisition of any immovable property under section 269C or for the purpose of making an order under section 269F in respect of any immovable property, require a Valuation Officer to determine the fair market value of such property and report the same to him ;

(*b*) for the purpose of estimating the amount by which the compensation payable under sub-section (1) of section 269J in respect of any immovable property may be reduced or, as the case may be, increased under clause (*a*) or clause (*b*) of sub-section (2) of that section, require the Valuation Officer to make such estimate and report the same to him.

(2) The Valuation Officer to whom a reference is made under clause (*a*) or clause (*b*) of sub-section (1) shall, for the purpose of dealing with such reference, have all the powers that he has under section 38A of the Wealth-tax Act, 1957 (27 of 1957).

(3) If in an appeal under section 269G against the order for acquisition of any immovable property, the fair market value of such property is in dispute, the Appellate Tribunal shall, on a request being made in this behalf by the competent authority, give an opportunity of being heard to any Valuation Officer nominated for the purpose by the competent authority.

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45. Substituted for "twelve" by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984.

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Explanation.—In this section, "Valuation Officer" has the same meaning as in clause (*r*) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).

Powers of competent authority.

269M. The competent authority shall have, for the purposes of this Chapter, all the powers that a Commissioner has, for the purposes of this Act, under section 131.

Rectification of mistakes.

269N. With a view to rectifying any mistake apparent from the record, the competent authority may amend any order made by him under this Chapter at any time before the time for presenting an appeal against such order has expired, either on his own motion or on the mistake being brought to his notice by any person affected by the order :

Provided that if any such amendment is likely to affect any person prejudicially, it shall not be made without giving to such person a reasonable opportunity of being heard.

Appearance by authorised representative or registered valuer.

269-O. Any person who is entitled or required to attend before a competent authority or the Appellate Tribunal in any proceeding under this Chapter, otherwise than when required to attend personally for examination on oath or affirmation, may attend—

(*a*) by an authorised representative in connection with any matter ;

(*b*) by a registered valuer in connection with any matter relating to the valuation of any immovable property for the purposes of this Chapter or the estimation of the amount by which the compensation payable under sub-section (1) of section 269J for the acquisition of any immovable property may be reduced or, as the case may be, increased in accordance with the provisions of clause (*a*) or clause (*b*) of sub-section (2) of that section.

Explanation.—In this section,—

(*i*) "authorised representative" has the same meaning as in section 288 ;

[46](*ii*) "registered valuer" has the same meaning as in clause (*oaa*) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).

Statement to be furnished in respect of transfers of immovable property.

269P. [47](1) Notwithstanding anything contained in any other law for the time being in force, no registering officer appointed under the Registration Act, 1908 (16 of 1908), shall register any document which purports to transfer any immovable property belonging to any person unless a statement in duplicate in respect of such transfer, in the prescribed form and verified in the prescribed manner and setting forth such particulars as may be prescribed, is furnished to him along with the instrument of transfer :

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46. Expression "registered valuer" has been defined in section 2(*oaa*) of the Wealth-tax Act, 1957 as under :

'(*oaa*) "registered valuer" means a person registered as a valuer under section 34AB;'

47. *See* rule 48G and Form No. 37G.

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[48][**Provided** that the provisions of this sub-section shall not apply in relation to any document which purports to transfer any immovable property for an apparent consideration not exceeding [49][fifty] thousand rupees.

Explanation.—For the purposes of this proviso, "apparent consideration" shall have the meaning assigned to it in clause (*a*) of section 269A subject to the modifications that for the expressions "immovable property transferred" and "instrument of transfer" occurring in that clause, the expressions "immovable property purported to be transferred" and "document purporting to transfer such immovable property" shall, respectively, be substituted.]

(2) The registering officer shall, at the end of every fortnight, forward to the competent authority,—

(*a*) one set of the statements received by him under sub-section (1) during the fortnight ; and

(*b*) [50]a return in the prescribed form and verified in the prescribed manner and setting forth such particulars as may be prescribed in respect of documents of the nature referred to in sub-section (1) which have been registered by him during the fortnight.

Chapter not to apply to transfers to relatives.

269Q. The provisions of this Chapter shall not apply to or in relation to any transfer of immovable property made by a person to his relative on account of natural love and affection for a consideration which is less than its fair market value if a recital to that effect is made in the instrument of transfer.

Properties liable for acquisition under this Chapter not to be acquired under other laws.

269R. Notwithstanding anything contained in the Land Acquisition Act, 1894 (1 of 1894), or any corresponding law for the time being in force, no immovable property referred to in section 269C shall be acquired for any purpose of the Union under that Act or such law unless the time for initiation of proceedings for the acquisition of such property under this Chapter has expired without such proceedings having been initiated or unless the competent authority has declared that such property will not be acquired under this Chapter.

[51][**Chapter not to apply where transfer of immovable property made after a certain date.**

269RR. The provisions of this Chapter shall not apply to or in relation to the transfer of any immovable property made after the 30th day of September, 1986.]

Chapter not to extend to State of Jammu and Kashmir.

269S. The provisions of this Chapter shall not extend to the State of Jammu and Kashmir.]

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48. Inserted by the Income-tax (Amendment) Act, 1973, w.e.f. 1-1-1974.

49. Substituted for "ten" by the Finance Act, 1984, w.e.f. 1-6-1984.

50. See rule 48H and Form No. 37H.

51. Inserted by the Finance Act, 1986, w.e.f. 1-10-1986.

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[52][***CHAPTER XX-B***]

REQUIREMENT AS TO MODE OF [53][ACCEPTANCE, PAYMENT OR] REPAYMENT IN CERTAIN CASES TO COUNTERACT EVASION OF TAX

[53][**Mode of taking or accepting certain loans and deposits.**

[54]**269SS.** No person shall, after the 30th day of June, 1984, take or accept from any other person (hereafter in this section referred to as the depositor), any loan or deposit otherwise than by an account payee cheque or account payee bank draft if,—

(*a*) the amount of such loan or deposit or the aggregate amount of such loan and deposit ; or

(*b*) on the date of taking or accepting such loan or deposit, any loan or deposit taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid ; or

(*c*) the amount or the aggregate amount referred to in clause (*a*) together with the amount or the aggregate amount referred to in clause (*b*),

is [55][twenty] thousand rupees or more :

Provided that the provisions of this section shall not apply to any loan or deposit taken or accepted from, or any loan or deposit taken or accepted by,—

(*a*) Government ;

(*b*) any banking company, post office savings bank or co-operative bank ;

(*c*) any corporation established by a Central, State or Provincial Act ;

(*d*) any Government company[56] as defined in section 617 of the Companies Act, 1956 (1 of 1956) ;

(*e*) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify[57] in this behalf in the Official Gazette :

[58][**Provided further** that the provisions of this section shall not apply to any loan or deposit where the person from whom the loan or deposit is taken or accepted and the person by whom the loan or deposit is taken or accepted are both having agricultural income and neither of them has any income chargeable to tax under this Act.]

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52. Chapter XX-B inserted by the Income-tax (Second Amendment) Act, 1981, w.e.f. 11-7-1981.

53. Inserted by the Finance Act, 1984, w.e.f. 1-4-1984.

54. *See* also Circular No. 522, dated 18-8-1988. For details, *see* Taxmann's Master Guide to Income-tax Act.

55. Substituted for "ten" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

56. For definition of "Government company", *see* footnote 71 on p. 1.23 *ante*.

57. For notification specifying institution, *see* Taxmann's Master Guide to Income-tax Act.

58. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

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Explanation.—For the purposes of this section,—

[59][(*i*) "banking company" means a company to which the Banking Regulation Act, 1949 (10 of 1949), applies and includes any bank or banking institution referred to in section 51 of that Act ;]

(*ii*) "co-operative bank" shall have the meaning assigned to it in Part V of the Banking Regulation Act, 1949 (10 of 1949) ;

(*iii*) "loan or deposit" means loan or deposit of money.]

[60][**Mode of repayment of certain loans or deposits**[61]**.**

269T. No branch of a banking company or a co-operative bank and no other company or co-operative society and no firm or other person shall repay any loan or deposit made with it otherwise than by an account payee cheque or account payee bank draft drawn in the name of the person who has made the loan or deposit if—

(*a*) the amount of the loan or deposit together with the interest, if any, payable thereon, or

(*b*) the aggregate amount of the loans or deposits held by such person with the branch of the banking company or co-operative bank or, as the case may be, the other company or co-operative society or the firm, or other person either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such loans or deposits,

is twenty thousand rupees or more:

Provided that where the repayment is by a branch of a banking company or co-operative bank, such repayment may also be made by crediting the amount of such loan or deposit to the savings bank account or the current account (if any) with such branch of the person to whom such loan or deposit has to be repaid :

[62][**Provided further** that nothing contained in this section shall apply to repayment of any loan or deposit taken or accepted from—

(*i*) Government;

(*ii*) any banking company, post office savings bank or co-operative bank;

(*iii*) any corporation established by a Central, State or Provincial Act;

(*iv*) any Government company[63] as defined in section 617 of the Companies Act, 1956 (1 of 1956);

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59. Substituted by the Finance Act, 1985, w.e.f. 1-4-1986. *See* also **Appendix** for meaning of 'banking company'.

60. Substituted by the Finance Act, 2002, w.e.f. 1-6-2002. Prior to its substitution, section 269T was inserted by the Income-tax (Second Amendment) Act, 1981, w.e.f. 11-7-1981 and later on amended by the Finance Act, 1984, w.e.f. 1-4-1984, Finance Act, 1985, w.e.f. 1-4-1986 and Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

61. For the meaning of the term "deposit", *see* Taxmann's Direct Taxes Manual, Vol. 3. *See* also Circular No. 479, dated 16-1-1987, Circular No. 522, dated 18-8-1988 and Circular No. 556, dated 23-2-1990. For details, *see* Taxmann's Master Guide to Income-tax Act.

62. Inserted by the Finance Act, 2003, w.r.e.f. 1-6-2002.

63. For definition of "Government company", *see* footnote 71 on p. 1.23 *ante*.

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(*v*) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette.]

Explanation.—For the purposes of this section,—

(*i*) "banking company" shall have the meaning assigned to it in clause (*i*) of the *Explanation* to section 269SS;

(*ii*) "co-operative bank" shall have the meaning assigned to it in Part V of the Banking Regulation Act, 1949 (10 of 1949);

(*iii*) "loan or deposit" means any loan or deposit of money which is repayable after notice or repayable after a period and, in the case of a person other than a company, includes loan or deposit of any nature.]

[64][**Mode of repayment of Special Bearer Bonds, 1991.**

269TT. Notwithstanding anything contained in any other law for the time being in force, the amount payable on redemption of Special Bearer Bonds, 1991, shall be paid only by an account payee cheque or account payee bank draft drawn in the name of the person to whom such payment is to be made.]

[65][***CHAPTER XX-C***

PURCHASE BY CENTRAL GOVERNMENT OF IMMOVABLE PROPERTIES IN CERTAIN CASES OF TRANSFER

Commencement of Chapter.

269U. The provisions of this Chapter shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different areas.

Definitions.

269UA. In this Chapter, unless the context otherwise requires,—

(*a*) "agreement for transfer" means an agreement, whether registered under the Registration Act, 1908 (16 of 1908) or not, for the transfer of any immovable property ;

(*b*) "apparent consideration",—

(*1*) in relation to any immovable property in respect of which an agreement for transfer is made, being immovable property of the nature referred to in sub-clause (*i*) of clause (*d*), means,—

(*i*) if the immovable property is to be transferred by way of sale, the consideration for such transfer as specified in the agreement for transfer ;

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64. Inserted by the Income-tax (Second Amendment) Act, 1981, w.e.f. 19-9-1981.

65. Chapter XX-C, consisting of sections 269U to 269UO, inserted by the Finance Act, 1986, w.e.f. 1-10-1986, *vide* Notification No. SO 480(E), dated 7-8-1986.

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(*ii*) if the immovable property is to be transferred by way of exchange,—

(*A*) in a case where the consideration for the transfer consists of a thing[66] or things only, the price that such thing or things would ordinarily fetch on sale in the open market on the date on which the agreement for transfer is made ;

(*B*) in a case where the consideration for the transfer consists of a thing or things and a sum of money, the aggregate of the price that such thing or things would ordinarily fetch on sale in the open market on the date on which the agreement for transfer is made, and such sum ;

(*iii*) if the immovable property is to be transferred by way of lease,—

(*A*) in a case where the consideration for the transfer consists of premium only, the amount of premium as specified in the agreement for transfer ;

(*B*) in a case where the consideration for the transfer consists of rent only, the aggregate of the moneys (if any) payable by way of rent and the amounts for the service or things forming part of or constituting the rent, as specified in the agreement for transfer ;

(*C*) in a case where the consideration for the transfer consists of premium and rent, the aggregate of the amount of the premium, the moneys (if any) payable by way of rent and the amounts for the service or things forming part of or constituting the rent, as specified in the agreement for transfer,

and where the whole or any part of the consideration for such transfer is payable on any date or dates falling after the date of such agreement for transfer, the value of the consideration payable after such date shall be deemed to be the discounted value[67] of such consideration, as on the date of such agreement for transfer, determined by adopting such rate of interest as may be prescribed in this behalf ;

(*2*) in relation to any immovable property in respect of which an agreement for transfer is made, being immovable property of the nature referred to in sub-clause (*ii*) of clause (*d*), means,—

(*i*) in a case where the consideration for the transfer consists of a sum of money only, such sum ;

(*ii*) in a case where the consideration for the transfer consists of a thing or things only, the price that such thing or things

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66. For the meaning of the term "thing", *see* Taxmann's Direct Taxes Manual, Vol. 3.

67. Rate of interest for determination of discounted value is 8 per cent per annum *vide* rule 48-I.

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would ordinarily fetch on sale in the open market on the date on which the agreement for transfer is made ;

(*iii*) in a case where the consideration for the transfer consists of a thing or things and a sum of money, the aggregate of the price that such thing or things would ordinarily fetch on sale in the open market on the date on which the agreement for transfer is made, and such sum,

and where the whole or any part of the consideration for such transfer is payable on any date or dates falling after the date of such agreement for transfer, the value of the consideration payable after such date shall be deemed to be the discounted value[68] of such consideration, as on the date of such agreement for transfer, determined by adopting such rate of interest as may be prescribed in this behalf ;

[69](*c*) "appropriate authority" means an authority constituted under section 269UB to perform the functions of an appropriate authority under this Chapter ;

(*d*) "immovable property" means—

(*i*) any land or any building or part of a building, and includes, where any land or any building or part of a building is to be transferred together with any machinery, plant, furniture, fittings or other things, such machinery, plant, furniture, fittings or other things also.

Explanation.—For the purposes of this sub-clause, "land, building, part of a building, machinery, plant, furniture, fittings and other things" include any rights therein ;

(*ii*) any rights in or with respect to any land or any building or a part of a building (whether or not including any machinery, plant, furniture, fittings or other things therein) which has been constructed or which is to be constructed, accruing or arising from any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other association of persons or by way of any agreement or any arrangement of whatever nature), not being a transaction by way of sale, exchange or lease of such land, building or part of a building ;

(*e*) "person interested"[70], in relation to any immovable property, includes all persons claiming, or entitled to claim, an interest in the consideration payable on account of the vesting of that property in the Central Government under this Chapter ;

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68. Rate of interest for determination of discounted value is 8 per cent per annum *vide* rule 48-I.

69. *See* rule 48J.

70. For the meaning of the terms/expressions "person interested" and "transfer", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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(*f*) "transfer"[70a],—

(*i*) in relation to any immovable property referred to in sub-clause (*i*) of clause (*d*), means transfer of such property by way of sale or exchange or lease for a term of not less than twelve years, and includes allowing the possession of such property to be taken or retained in part performance of a contract of the nature referred to in section 53A[71] of the Transfer of Property Act, 1882 (4 of 1882).

Explanation.—For the purposes of this sub-clause, a lease which provides for the extension of the term thereof by a further term or terms shall be deemed to be a lease for a term of not less than twelve years, if the aggregate of the term for which such lease is to be granted and the further term or terms for which it can be so extended is not less than twelve years ;

(*ii*) in relation to any immovable property of the nature referred to in sub-clause (*ii*) of clause (*d*), means the doing of anything (whether by way of admitting as a member of or by way of transfer of shares in a co-operative society or company or other association of persons or by way of any agreement or arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of, such property.

Appropriate authority.

269UB. (1) The Central Government may, by order, publish in the Official Gazette,—

(*a*) constitute as many appropriate authorities, as it thinks fit, to perform the functions of an appropriate authority under this Chapter ; and

(*b*) define the local limits within which the appropriate authorities shall perform their functions under this Chapter.

(2) An appropriate authority shall consist of three persons, two of whom shall be members of the Indian Income-tax Service, Group A, holding the post of Commissioner of Income-tax or any equivalent or higher post, and one shall be a member of the Central Engineering Service, Group A, holding the post of Chief Engineer or any equivalent or higher post.

(3) In respect of any function to be performed by an appropriate authority under any provision of this Chapter in relation to any immovable property referred to in section 269UC, the appropriate authority referred to therein shall,—

(*a*) in a case where such property is situate within the local limits of the jurisdiction of only one appropriate authority, be such appropriate authority ;

(*b*) in a case where such property is situate within the local limits of the jurisdiction of two or more appropriate authorities, be the appropriate authority empowered to perform such functions in relation to such property in accordance with the rules[72] made in this behalf by the Board under section 295.

70a. For the meaning of the terms/expressions "person interested" and "transfer", *see* Taxmann's Direct Taxes Manual, Vol. 3.

71. For text of section 53A of the Transfer of Property Act, 1882, *see* **Appendix**.

72. See rule 48J.

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Explanation.—For the purposes of this sub-section, immovable property being rights of the nature referred to in sub-clause (*ii*) of clause (*d*) of section 269UA in, or with respect to, any land or any building or part of a building which has been constructed or which is to be constructed shall be deemed to be situate at the place where the land is situate or, as the case may be, where the building has been constructed or is to be constructed.

Restrictions on transfer of immovable property.

269UC. (1) Notwithstanding anything contained in the Transfer of Property Act, 1882 (4 of 1882), or in any other law for the time being in force,[73][no transfer of any immovable property in such area and of such value exceeding five lakh rupees, as may be prescribed[74]], shall be effected except after an agreement for transfer is entered into between the person who intends transferring the immovable property (hereinafter referred to as the transferor) and the person to whom it is proposed to be transferred (hereinafter referred to as the transferee) in accordance with the provisions of sub-section (2) at least [75][four] months before the intended date of transfer.

(2) The agreement referred to in sub-section (1) shall be reduced to writing in the form of a statement by each of the parties to such transfer or by any of the parties to such transfer acting on behalf of himself and on behalf of the other parties.

[76](3) Every statement referred to in sub-section (2) shall,—

(*i*) be in the prescribed form ;

(*ii*) set forth such particulars as may be prescribed ; and

(*iii*) be verified in the prescribed manner,

and shall be furnished to the appropriate authority in such manner and within such time as may be prescribed, by each of the parties to such transaction or by any of the parties to such transaction acting on behalf of himself and on behalf of the other parties.

[77][(4) Where it is found that the statement referred to in sub-section (2) is defective, the appropriate authority may intimate the defect to the parties concerned and give them an opportunity to rectify the defect within a period of fifteen days from the date of such intimation or within such further period which, on an application made in this behalf, the appropriate authority may, in its discretion, allow and if the defect is not rectified within the said period of fifteen days, or as the case may be, the further period so allowed, then, notwithstanding anything contained in any other provision of this Chapter, the statement shall be deemed never to have been furnished.]

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73. Substituted for "no transfer of any immovable property of such value exceeding five lakh rupees as may be prescribed" by the Finance Act, 1995, w.e.f. 1-7-1995.

74. *See* rule 48K.

75. Substituted for "three" by the Finance Act, 1993, w.e.f. 1-6-1993.

76. *See* rule 48L.

77. Inserted by the Finance Act, 1995, w.e.f. 1-7-1995.

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Order by appropriate authority for purchase by Central Government of immovable property.

269UD. (1) [78][Subject to the provisions of sub-sections (1A) and (1B), the appropriate authority], after the receipt of the statement under sub-section (3) of section 269UC in respect of any immovable property, may, notwithstanding anything contained in any other law or any instrument or any agreement for the time being in force, [79][* * *] make an order for the purchase by the Central Government of such immovable property at an amount equal to the amount of apparent consideration :

Provided that no such order shall be made in respect of any immovable property after the expiration of a period of two months from the end of the month in which the statement referred to in section 269UC in respect of such property is received by the appropriate authority :

[80][**Provided further** that where the statement referred to in section 269UC in respect of any immovable property is received by the appropriate authority on or after the 1st day of June, 1993, the provisions of the first proviso shall have effect as if for the words "two months", the words "three months" had been substituted :]

[81][**Provided also** that the period of limitation referred to in the second proviso shall be reckoned, where any defect as referred to in sub-section (4) of section 269UC has been intimated, with reference to the date of receipt of the rectified statement by the appropriate authority :]

Provided [82][**also**] that in a case where the statement referred to in section 269UC in respect of the immovable property concerned is given to an appropriate authority, other than the appropriate authority having jurisdiction in accordance with the provisions of section 269UB to make the order referred to in this sub-section in relation to the immovable property concerned, the period of limitation referred to in [83][the first and second provisos] shall be reckoned with reference to the date of receipt of the statement by the appropriate authority having jurisdiction to make the order under this sub-section :

[84][**Provided also** that the period of limitation referred to in the second proviso shall be reckoned, where any stay has been granted by any court against the passing of an order for the purchase of the immovable property under this Chapter, with reference to the date of vacation of the said stay.]

[85][(1A) Before making an order under sub-section (1), the appropriate authority shall give a reasonable opportunity of being heard to the transferor, the person in occupation of the immovable property if the transferor is not in occupation of

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78. Substituted for "The appropriate authority" by the Finance Act, 1993, w.r.e.f. 17-11-1992.
79. Words "and for reasons to be recorded in writing," omitted, *ibid.*
80. Inserted by the Finance Act, 1993, w.e.f. 1-6-1993.
81. Inserted by the Finance Act, 1995, w.e.f. 1-7-1995.
82. Substituted for "further" by the Finance Act, 1993, w.e.f. 1-6-1993.
83. Substituted for "the preceding proviso", *ibid.*
84. Inserted, *ibid.*
85. Inserted by the Finance Act, 1993, w.r.e.f. 17-11-1992.

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the property, the transferee and to every other person whom the appropriate authority knows to be interested[86] in the property.

(1B) Every order made by the appropriate authority under sub-section (1) shall specify the grounds on which it is made.]

(2) The appropriate authority shall cause a copy of its order under sub-section (1) in respect of any immovable property to be served on the transferor, the person in occupation of the immovable property if the transferor is not in occupation thereof, the transferee, and on every other person whom the appropriate authority knows to be interested in the property.

Vesting of property in Central Government.

269UE. (1) Where an order under sub-section (1) of section 269UD is made by the appropriate authority in respect of an immovable property referred to in sub-clause (*i*) of clause (*d*) of section 269UA, such property shall, on the date of such order, vest in the Central Government [87][in terms of the agreement for transfer[88] referred to in sub-section (1) of section 269UC] :

[89][**Provided** that where the appropriate authority, after giving an opportunity of being heard to the transferor, the transferee or other persons interested in the said property, under sub-section (1A) of section 269UD, is of the opinion that any encumbrance on the property or leasehold interest specified in the aforesaid agreement for transfer is so specified with a view to defeat the provisions of this Chapter, it may, by order, declare such encumbrance or leasehold interest to be void and thereupon the aforesaid property shall vest in the Central Government free from such encumbrance or leasehold interest.]

(2) The transferor or any other person who may be in possession of the immovable property in respect of which an order under sub-section (1) of section 269UD is made, shall surrender or deliver possession thereof to the appropriate authority or any other person duly authorised by the appropriate authority in this behalf within fifteen days of the service of such order on him :

[90][**Provided** that the provisions of this sub-section and sub-sections (3) and (4) shall not apply where the person in possession of the immovable property, in respect of which an order under sub-section (1) of section 269UD is made, is a *bona fide* holder of any encumbrance on such property or a *bona fide* lessee of such property, if the said encumbrance or lease has not been declared void under the proviso to sub-section (1) and such person is eligible to continue in possession of such property even after the transfer in terms of the aforesaid agreement for transfer.]

(3) If any person refuses or fails to comply with the provisions of sub-section (2), the appropriate authority or other person duly authorised by it under that sub-

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86. For the meaning of the expression "person . . . interested", *see* Taxmann's Direct Taxes Manual, Vol. 3.

87. Substituted for "free from all encumbrances" by the Finance Act, 1993, w.r.e.f. 17-11-1992.

88. For the meaning of the expression "in terms of the agreement for transfer", *see* Taxmann's Direct Taxes Manual, Vol. 3.

89. Inserted by the Finance Act, 1993, w.r.e.f. 17-11-1992.

90. Inserted, *ibid.*

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section may take possession of the immovable property and may, for that purpose, use such force as may be necessary.

(4) Notwithstanding anything contained in sub-section (2), the appropriate authority may, for the purpose of taking possession of any property referred to in sub-section (1), requisition the services of any police officer to assist him and it shall be the duty of such officer to comply with such requisition.

(5) For the removal of doubts, it is hereby declared that nothing in this section shall operate to discharge the transferor or any other person (not being the Central Government) from liability in respect of any encumbrances on the property and, notwithstanding anything contained in any other law for the time being in force, such liability may be enforced against the transferor or such other person.

(6) Where an order under sub-section (1) of section 269UD is made in respect of an immovable property, being rights of the nature referred to in sub-clause (*ii*) of clause (*d*) of section 269UA, such order shall have the effect of—

(*a*) vesting such right in the Central Government ; and

(*b*) placing the Central Government in the same position in relation to such rights as the person in whom such a right would have continued to vest if such order had not been made.

(7) Where any rights in respect of any immovable property, being rights in, or with respect to, any land or any building or part of a building which has been constructed or which is to be constructed, have been vested in the Central Government under sub-section (6), the provisions of sub-sections (1), (2), (3) and (4) shall, so far as may be, have effect as if the references to immovable property therein were references to such land or building or part thereof, as the case may be.

Consideration for purchase of immovable property by Central Government.

269UF. (1) Where an order for the purchase of any immovable property by the Central Government is made under sub-section (1) of section 269UD, the Central Government shall pay, by way of consideration for such purchase, an amount equal to the amount of the apparent consideration.

(2) Notwithstanding anything contained in sub-section (1), where, after the agreement for the transfer of the immovable property referred to in that sub-section has been made but before the property vests in the Central Government under section 269UE, the property has been damaged (otherwise than as a result of normal wear and tear), the amount of the consideration payable under that sub-section shall be reduced by such sum as the appropriate authority, for reasons to be recorded in writing, may by order determine.

Payment or deposit of consideration.

269UG. (1) The amount of consideration payable in accordance with the provisions of section 269UF shall be tendered to the person or persons entitled thereto, within a period of one month from the end of the month in which the immovable property concerned becomes vested in the Central Government under sub-section (1), or, as the case may be, sub-section (6), of section 269UE :

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Provided that if any liability for any tax or any other sum remaining payable under this Act, the Wealth-tax Act, 1957 (27 of 1957), the Gift-tax Act, 1958 (18 of 1958), the Estate Duty Act, 1953 (34 of 1953), or the Companies (Profits) Surtax Act, 1964 (7 of 1964), by any person entitled to the consideration payable under section 269UF, the appropriate authority may, in lieu of the payment of the amount of consideration, set off the amount of consideration or any part thereof against such liability or sum, after giving an intimation in this behalf to the person entitled to the consideration.

(2) Notwithstanding anything contained in sub-section (1), if any dispute arises as to the apportionment of the amount of consideration amongst persons claiming to be entitled thereto, the Central Government shall deposit with the appropriate authority the amount of consideration required to be tendered under sub-section (1) within the period specified therein.

(3) Notwithstanding anything contained in sub-section (1), if the person entitled to the amount of consideration does not consent to receive it, or if there is any dispute[91] as to the title[91] to receive the amount of consideration, the Central Government shall deposit with the appropriate authority the amount of consideration required to be tendered under sub-section (1) within the period specified therein :

Provided that nothing herein contained shall affect the liability of any person who may receive the whole or any part of the amount of consideration for any immovable property vested in the Central Government under this Chapter to pay the same to the person lawfully entitled thereto.

(4) Where any amount of consideration has been deposited with the appropriate authority under this section, the appropriate authority may, either of its own motion or on an application made by or on behalf of any person interested or claiming to be interested in such amount, order the same to be invested in such Government or other securities as it may think proper, and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as will, in its opinion, give the parties interested therein the same benefits therefrom as they might have had from the immovable property in respect whereof such amount has been deposited or as near thereto as may be.

Re-vesting of property in the transferor on failure of payment or deposit of consideration.

269UH. (1) If the Central Government fails to tender under sub-section (1) of section 269UG or deposit under sub-section (2) or sub-section (3) of the said section, the whole or any part of the amount of consideration required to be tendered or deposited thereunder within the period specified therein in respect of any immovable property which has vested in the Central Government under sub-section (1) or, as the case may be, sub-section (6) of section 269UE, the order to purchase the immovable property by the Central Government made under sub-section (1) of section 269UD shall stand abrogated and the immovable property shall stand re-vested in the transferor after the expiry of the aforesaid period :

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91. For the meaning of the terms “dispute” and “title”, *see* Taxmann’s Direct Taxes Manual, Vol. 3.

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Provided that where any dispute referred to in sub-section (2) or sub-section (3) of section 269UG is pending in any court for decision, the time taken by the court to pass a final order under the said sub-sections shall be excluded in computing the said period.

(2) Where an order made under sub-section (1) of section 269UD is abrogated and the immovable property re-vested in the transferor under sub-section (1), the appropriate authority shall make, as soon as may be, a declaration in writing to this effect and shall—

(*a*) deliver a copy of the declaration to the persons mentioned in sub-section (2) of section 269UD ; and

(*b*) deliver or cause to be delivered possession of the immovable property back to the transferor, or, as the case may be, to such other person as was in possession of the property at the time of its vesting in the Central Government under section 269UE.

Powers of the appropriate authority.

269UI. The appropriate authority shall have, for the purposes of this Chapter, all the powers that a [92][Chief Commissioner or Commissioner] of Income-tax has for the purposes of this Act under section 131.

Rectification of mistakes.

269UJ. With a view to rectifying any mistake apparent from the record, the appropriate authority may amend any order made by it under this Chapter, either on its own motion or on the mistake being brought to its notice by any person affected by the order :

Provided that if any such amendment is likely to affect any person prejudicially, it shall not be made without giving to such person a reasonable opportunity of being heard :

Provided further that no amendment shall be made under this section after the expiry of six months from the end of the month in which the order sought to be amended was made.

Restrictions on revocation or alteration of certain agreements for the transfer of immovable property or on transfer of certain immovable property.

269UK. (1) Notwithstanding anything contained in any other law for the time being in force, no person shall revoke or alter an agreement for the transfer of an immovable property or transfer such property in respect of which a statement has been furnished under section 269UC unless,—

(*a*) the appropriate authority has not made an order for the purchase of the immovable property by the Central Government under section 269UD and the period specified for the making of such order has expired ; or

(*b*) in a case where an order for the purchase of the immovable property by the Central Government has been made under sub-section (1) of section 269UD, the order stands abrogated under sub-section (1) of section 269UH.

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92. Substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

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(2) Any transfer of any immovable property made in contravention of the provisions of sub-section (1) shall be void.

Restrictions on registration, etc., of documents in respect of transfer of immovable property.

269UL. (1) Notwithstanding anything contained in any other law for the time being in force, no registering officer appointed under the Registration Act, 1908 (16 of 1908), shall register any document which purports to transfer immovable property exceeding the value prescribed under section 269UC unless a certificate from the appropriate authority that it has no objection to the transfer of such property for an amount equal to the apparent consideration therefor as stated in the agreement for transfer of the immovable property in respect of which it has received a statement under sub-section (3) of section 269UC, is furnished along with such document.

(2) Notwithstanding anything contained in any other law for the time being in force, no person shall do anything or omit to do anything which will have the effect of transfer of any immovable property unless the appropriate authority certifies that it has no objection to the transfer of such property for an amount equal to the apparent consideration therefor as stated in the agreement for transfer of the immovable property in respect of which it has received a statement under sub-section (3) of section 269UC.

(3) In a case where the appropriate authority does not make an order under sub-section (1) of section 269UD for the purchase by the Central Government of an immovable property, or where the order made under sub-section (1) of section 269UD stands abrogated under sub-section (1) of section 269UH, the appropriate authority shall issue a certificate of no objection referred to in sub-section (1) or, as the case may be, sub-section (2) and deliver copies thereof to the transferor and the transferee.

Immunity to transferor against claims of transferee for transfer.

269UM. Notwithstanding anything contained in any other law or in any instrument or any agreement for the time being in force, when an order for the purchase of any immovable property by the Central Government is made under this Chapter, no claim by the transferee shall lie against the transferor by reason of such transfer being not in accordance with the agreement for the transfer of the immovable property entered into between the transferor and transferee :

Provided that nothing contained in this section shall apply if the order for the purchase of the immovable property by the Central Government is abrogated under sub-section (1) of section 269UH.

Order of appropriate authority to be final and conclusive.

269UN. Save as otherwise provided in this Chapter, any order made under sub-section (1) of section 269UD or any order made under sub-section (2) of section 269UF shall be final and conclusive and shall not be called in question in any proceeding under this Act or under any other law for the time being in force.

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Chapter not to apply to certain transfers.

269UO. The provisions of this Chapter shall not apply to or in relation to any immovable property where the agreement for transfer of such property is made by a person to his relative on account of natural love and affection, if a recital to that effect is made in the agreement for transfer.]

[93][**Chapter not to apply where transfer of immovable property effected after certain date.**

269UP. The provisions of this Chapter shall not apply to, or in relation to, the transfer of any immovable property effected on or after the 1st day of July, 2002.]

CHAPTER XXI

PENALTIES IMPOSABLE

Failure to furnish information regarding securities, etc.

270. [94][*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.*]

[95][**Failure to furnish returns, comply with notices, concealment of income, etc.**

[96]**271.** (1) If the [97][Assessing] Officer or the [98][***] [99][Commissioner (Appeals)] [1][or the Commissioner] in the course of any proceedings under this Act, is satisfied that any person—

(*a*) [2][* * *]

(*b*) has [3][* * *] failed to comply with a notice [4][under sub-section (2) of section 115WD or under sub-section (2) of section 115WE or] under sub-section (1) of section 142 or sub-section (2) of section 143 [5][or fails to comply with a direction issued under sub-section (2A) of section 142], or

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93. Inserted by the Finance Act, 2002, w.e.f. 1-7-2002.

94. Earlier, section 270 was amended by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 10-9-1986.

95. Restored to its original version by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

96. *See* also relevant extracts of Minutes of 10th Meeting of DTAC held on 23-12-1967, Circular No. 17D of 1965 and Press release No. 13/2008 (No. 402/92/2006-MC), dated 20-3-2008. For details, *see* Taxmann's Master Guide to Income-tax Act.

97. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

98. Words "Deputy Commissioner (Appeals) or the" omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier, "Deputy Commissioner (Appeals)" was substituted for "Appellate Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988 and "or the" was inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

99. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

1. Inserted by the Finance Act, 2002, w.e.f. 1-6-2002.

2. Omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Prior to its omission, clause (*a*) was amended by the Finance Act, 1963, w.e.f. 28-4-1963 and Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 10-9-1986.

3. Words "without reasonable cause" omitted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 10-9-1986.

4. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

5. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

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(*c*) has concealed the particulars of his income or [6][* * *] furnished inaccurate particulars of [7][such income, or][8]

[9][(*d*) has concealed the particulars of the fringe benefits or furnished inaccurate particulars of such fringe benefits,]

he may direct that such person shall pay by way of penalty,—

(*i*) [10][* * *]

[11][(*ii*) in the cases referred to in clause (*b*), [12][in addition to tax, if any, payable] by him, [13][a sum of ten thousand rupees] for each such failure ;]

[14][(*iii*) in the cases referred to in clause (*c*) [15][or clause (*d*)], [16][in addition to tax, if any, payable] by him, a sum which shall not be less than, but which shall not exceed [17][three times], the amount of tax sought to be evaded by reason of the concealment of particulars of his income [18][or fringe benefits] or the furnishing of inaccurate particulars of such income [18][or fringe benefits].

[19][* * *]

[20][*Explanation 1.*—Where in respect of any facts material to the computation of the total income of any person under this Act,—

(*A*) such person fails to offer an explanation or offers an explanation which is found by the [21][Assessing] Officer or the [22][***] [23][Commissioner (Appeals)] [24][or the Commissioner] to be false, or

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6. Word "deliberately" omitted by the Finance Act, 1964, w.e.f. 1-4-1964.

7. Substituted for "such income," by the Finance Act, 2005, w.e.f. 1-4-2006.

8. For the meaning of the expressions "his income", "has concealed . . . of such income" and "inaccurate particulars", *see* Taxmann's Direct Taxes Manual, Vol. 3.

9. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

10. Omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Prior to its omission, clause (*i*) was substituted by the Direct Taxes (Amendment) Act, 1974, w.r.e.f. 1-4-1962 and the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

11. Substituted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

12. Substituted for "in addition to any tax payable" by the Finance Act, 2002, w.e.f. 1-4-2003.

13. Substituted for "a sum which shall not be less than one thousand rupees but which may extend to twenty-five thousand rupees" by the Finance Act, 2001, w.e.f. 1-6-2001.

14. Substituted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976. Original clause (*iii*) was substituted by the Finance Act, 1968, w.e.f. 1-4-1968.

15. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

16. Substituted for "in addition to any tax payable" by the Finance Act, 2002, w.e.f. 1-4-2003.

17. Substituted for "twice" by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

18. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

19. Omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

20. Substituted for *Explanation* by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976. Original *Explanation* was inserted by the Finance Act, 1964, w.e.f. 1-4-1964.

21. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

22. Words "Deputy Commissioner (Appeals) or the" omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier, "Deputy Commissioner (Appeals)" was substituted for "Appellate Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988 and "or the" was inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

23. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

24. Inserted by the Finance Act, 2002, w.e.f. 1-6-2002.

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(*B*) such person offers an explanation which he is not able to substantiate [25][and fails to prove that such explanation is *bona fide* and that all the facts relating to the same and material to the computation of his total income have been disclosed by him],

then, the amount added or disallowed in computing the total income of such person as a result thereof shall, for the purposes of clause (*c*) of this sub-section, be deemed to represent the income in respect of which particulars have been concealed.

[26][* * *]

Explanation 2.—Where the source of any receipt, deposit, outgoing or investment in any assessment year is claimed by any person to be an amount which had been added in computing the income or deducted in computing the loss in the assessment of such person for any earlier assessment year or years but in respect of which no penalty under clause (*iii*) of this sub-section had been levied, that part of the amount so added or deducted in such earlier assessment year immediately preceding the year in which the receipt, deposit, outgoing or investment appears (such earlier assessment year hereafter in this *Explanation* referred to as the first preceding year) which is sufficient to cover the amount represented by such receipt, deposit or outgoing or value of such investment (such amount or value hereafter in this *Explanation* referred to as the utilised amount) shall be treated as the income of the assessee, particulars of which had been concealed or inaccurate particulars of which had been furnished for the first preceding year; and where the amount so added or deducted in the first preceding year is not sufficient to cover the utilised amount, that part of the amount so added or deducted in the year immediately preceding the first preceding year which is sufficient to cover such part of the utilised amount as is not so covered shall be treated to be the income of the assessee, particulars of which had been concealed or inaccurate particulars of which had been furnished for the year immediately preceding the first preceding year and so on, until the entire utilised amount is covered by the amounts so added or deducted in such earlier assessment years.

[27][*Explanation 3.*—Where any person [28][***] fails, without reasonable cause, to furnish within the period specified in sub-section (1) of section 153 a return of his income which he is required to furnish under section 139 in respect of any assessment year commencing on or after the 1st day of April, 1989, and until the expiry of the period aforesaid, no notice has been issued to him under clause (*i*) of sub-section (1) of section 142 or section 148 and the Assessing Officer or the [29][***] Commissioner (Appeals) is satisfied that in respect of such assessment year such person has taxable income, then, such person shall, for the purposes of

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25. Inserted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 10-9-1986.

26. Proviso omitted, *ibid.*

27. Substituted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Prior to its substitution, *Explanation 3* was amended by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

28. Words "who has not previously been assessed under this Act," omitted by the Finance Act, 2002, w.e.f. 1-4-2003.

29. Words "Deputy Commissioner (Appeals) or the" omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

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clause (*c*) of this sub-section, be deemed to have concealed the particulars of his income in respect of such assessment year, notwithstanding that such person furnishes a return of his income at any time after the expiry of the period aforesaid in pursuance of a notice under section 148.]

Explanation 4.—For the purposes of clause (*iii*) of this sub-section, the expression "the amount of tax sought to be evaded",—

[30][(*a*) in any case where the amount of income in respect of which particulars have been concealed or inaccurate particulars have been furnished has the effect of reducing the loss declared in the return or converting that loss into income, means the tax that would have been chargeable on the income in respect of which particulars have been concealed or inaccurate particulars have been furnished had such income been the total income;]

(*b*) in any case to which *Explanation 3* applies, means the tax on the total income assessed [31][as reduced by the amount of advance tax, tax deducted at source, tax collected at source and self-assessment tax paid before the issue of notice under section 148];

(*c*) in any other case, means the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of which particulars have been concealed or inaccurate particulars have been furnished.]

[32][*Explanation 5.*—Where in the course of a [33][search initiated under section 132 before the 1st day of June, 2007], the assessee is found to be the owner of any money, bullion, jewellery or other valuable article or thing (hereafter in this *Explanation* referred to as assets) and the assessee claims that such assets have been acquired by him by utilising (wholly or in part) his income,—

(*a*) for any previous year which has ended before the date of the search, but the return of income for such year has not been furnished before the said date or, where such return has been furnished before the said date, such income has not been declared therein ; or

(*b*) for any previous year which is to end on or after the date of the search,

then, notwithstanding that such income is declared by him in any return of income furnished on or after the date of the search, he shall, for the purposes of imposition of a penalty under clause (*c*) of sub-section (1) of this section, be

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30. Substituted by the Finance Act, 2002, w.e.f. 1-4-2003. Prior to its substitution, clause (*a*) read as under :

"(*a*) in any case where the amount of income in respect of which particulars have been concealed or inaccurate particulars have been furnished exceeds the total income assessed, means the tax that would have been chargeable on the income in respect of which particulars have been concealed or inaccurate particulars have been furnished had such income been the total income ;"

31. Inserted by the Finance Act, 2007, w.r.e.f. 1-4-2003.

32. Inserted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984.

33. Substituted for "search under section 132" by the Finance Act, 2007, w.e.f. 1-6-2007.

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deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income, [34][unless,—

(*1*) such income is, or the transactions resulting in such income are recorded,—

(*i*) in a case falling under clause (*a*), before the date of the search ; and

(*ii*) in a case falling under clause (*b*), on or before such date,

in the books of account, if any, maintained by him for any source of income or such income is otherwise disclosed to the [35][Chief Commissioner or Commissioner] before the said date ; or

(*2*) he, in the course of the search, makes a statement under sub-section (4) of section 132 that any money, bullion, jewellery or other valuable article or thing found in his possession or under his control, has been acquired out of his income which has not been disclosed so far in his return of income to be furnished before the expiry of time specified in [36][* * *] sub-section (1) of section 139, and also specifies in the statement the manner in which such income has been derived and pays the tax, together with interest, if any, in respect of such income.]

[37][*Explanation 5A.*— Where, in the course of a search initiated under section 132 on or after the 1st day of June, 2007, the assessee is found to be the owner of—

(*i*) any money, bullion, jewellery or other valuable article or thing (hereafter in this *Explanation* referred to as assets) and the assessee

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34. Substituted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 10-9-1986.

35. Substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

36. Words "clause (*a*) or clause (*b*) of" omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

37. Substituted by the Finance (No. 2) Act, 2009, w.r.e.f. 1-6-2007. Prior to its substitution, *Explanation 5A,* as inserted by the Finance Act, 2007, w.e.f. 1-6-2007, read as under :

"*Explanation 5A.*—Where in the course of a search initiated under section 132 on or after the 1st day of June, 2007, the assessee is found to be the owner of,—

(*i*) any money, bullion, jewellery or other valuable article or thing (hereinafter in this *Explanation* referred to as assets) and the assessee claims that such assets have been acquired by him by utilizing (wholly or in part) his income for any previous year; or

(*ii*) any income based on any entry in any books of account or other documents or transactions and he claims that such entry in the books of account or other documents or transactions represents his income (wholly or in part) for any previous year,

which has ended before the date of the search and the due date for filing the return of income for such year has expired and the assessee has not filed the return, then, notwithstanding that such income is declared by him in any return of income furnished on or after the date of the search, he shall, for the purposes of imposition of a penalty under clause (*c*) of sub-section (1) of this section, be deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income."

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claims that such assets have been acquired by him by utilising (wholly or in part) his income for any previous year; or

(*ii*) any income based on any entry in any books of account or other documents or transactions and he claims that such entry in the books of account or other documents or transactions represents his income (wholly or in part) for any previous year,

which has ended before the date of search and,—

(*a*) where the return of income for such previous year has been furnished before the said date but such income has not been declared therein; or

(*b*) the due date for filing the return of income for such previous year has expired but the assessee has not filed the return,

then, notwithstanding that such income is declared by him in any return of income furnished on or after the date of search, he shall, for the purposes of imposition of a penalty under clause (*c*) of sub-section (1) of this section, be deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income.]

[38][*Explanation 6.*—Where any adjustment is made in the income or loss declared in the return under the proviso to clause (*a*) of sub-section (1) of section 143 and additional tax charged under that section, the provisions of this sub-section shall not apply in relation to the adjustment so made.]

[39][*Explanation 7.*—Where in the case of an assessee who has entered into an international transaction defined in section 92B, any amount is added or disallowed in computing the total income under sub-section (4) of section 92C, then, the amount so added or disallowed shall, for the purposes of clause (*c*) of this sub-section, be deemed to represent the income in respect of which particulars have been concealed or inaccurate particulars have been furnished, unless the assessee proves to the satisfaction of the Assessing Officer or the Commissioner (Appeals) [40][or the Commissioner] that the price charged or paid in such transaction was computed in accordance with the provisions contained in section 92C and in the manner prescribed under that section, in good faith and with due diligence.]

[41][(1A) Where any penalty is imposable by virtue of *Explanation 2* to sub-section (1), proceedings for the imposition of such penalty may be initiated notwithstanding that any proceedings under this Act in the course of which such penalty proceedings could have been initiated under sub-section (1) have been completed.]

[42][(1B) Where any amount is added or disallowed in computing the total income or loss of an assessee in any order of assessment or reassessment and the said

38. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.
39. Inserted by the Finance Act, 2001, w.e.f. 1-4-2002.
40. Inserted by the Finance Act, 2002, w.e.f. 1-6-2002.
41. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.
42. Inserted by the Finance Act, 2008, w.r.e.f. 1-4-1989.

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order contains a direction for initiation of penalty proceedings under clause (*c*) of sub-section (1), such an order of assessment or reassessment shall be deemed to constitute satisfaction of the Assessing Officer for initiation of the penalty proceedings under the said clause (*c*).]

(2) When the person liable to penalty is a registered firm or an unregistered firm which has been assessed under clause (*b*) of section 183[43], then notwithstanding anything contained in the other provisions of this Act, the penalty imposable under sub-section (1) shall be the same amount as would be imposable on that firm if that firm were an unregistered firm.

(3) [44][*Omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.*]

(4) If the [45][Assessing] Officer or the [46][***] [47][Commissioner (Appeals)] in the course of any proceedings under this Act, is satisfied that the profits of a registered firm have been distributed otherwise than in accordance with the shares of the partners as shown in the instrument of partnership on the basis of which the firm has been registered under this Act, and that any partner has thereby returned his income below its real amount, he may direct that such partner shall, in addition to the tax, if any, payable by him, pay by way of penalty a sum not exceeding one and a half times the amount of tax which has been avoided, or would have been avoided if the income returned by such partner had been accepted as his correct income; and no refund or other adjustment shall be claimable by any other partner by reason of such direction.]

(4A) and (4B) [*Omitted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975. Original sub-sections (4A) and (4B) were inserted by the Income-tax (Amendment) Act, 1965, w.e.f. 12-3-1965. Later on sub-section (4A) was substituted by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.*]

[48][(5) The provisions of this section as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1989 shall apply to and in relation to any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year and references in this section to the other provisions of this Act shall be construed as references to those provisions as for the time being in force and applicable to the relevant assessment year.]

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43. Section 183 has now been omitted by the Finance Act, 1992, w.e.f. 1-4-1993.

44. Prior to its omission, sub-section (3) was amended by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

45. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

46. Words "Deputy Commissioner (Appeals) or the" omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier "Deputy Commissioner (Appeals)" was substituted for "Appellate Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988 and "or the" was inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

47. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

48. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

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[49][(6) Any reference in this section to the income shall be construed as a reference to the income or fringe benefits, as the case may be, and the provisions of this section shall, as far as may be, apply in relation to any assessment in respect of fringe benefits also.]

[50][**Failure to keep, maintain or retain books of account, documents, etc.**

271A. Without prejudice to the provisions of section 271, if any person [51][***] fails to keep and maintain any such books of account and other documents as required by section 44AA or the rules made thereunder, in respect of any previous year or to retain such books of account and other documents for the period specified in the said rules, the [52][Assessing] Officer or the [53][***] [54][Commissioner (Appeals)] may direct that such person shall pay, by way of penalty, [55][a sum of twenty-five thousand rupees].

[56][**Penalty for failure to keep and maintain information and document in respect of international transaction.**

271AA. Without prejudice to the provisions of section 271, if any person fails to keep and maintain any such information and document as required by sub-section (1) or sub-section (2) of section 92D, the Assessing Officer or Commissioner (Appeals) may direct that such person shall pay, by way of penalty, a sum equal to two per cent of the value of each international transaction entered into by such person.]

[57][**Penalty where search has been initiated.**

271AAA. (1) The Assessing Officer may, notwithstanding anything contained in any other provisions of this Act, direct that, in a case where search has been initiated under section 132 on or after the 1st day of June, 2007, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him, a sum

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49. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

50. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

51. Words ", without reasonable cause," omitted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 10-9-1986.

52. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

53. Words "Deputy Commissioner (Appeals) or the" omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier "Deputy Commissioner (Appeals)" was substituted for "Appellate Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988 and "or the" was inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

54. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

55. Substituted for "a sum which shall not be less than two thousand rupees but which may extend to one hundred thousand rupees" by the Finance Act, 2001, w.e.f. 1-6-2001. Earlier, the quoted words were substituted for "a sum which shall not be less than ten per cent but which shall not exceed fifty per cent of the amount of the tax, if any, which would have been avoided if the income returned by such person had been accepted as the correct income" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

56. Inserted by the Finance Act, 2001, w.e.f. 1-4-2002.

57. Inserted by the Finance Act, 2007, w.e.f. 1-4-2007.

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computed at the rate of ten per cent of the undisclosed income of the specified previous year.

(2) Nothing contained in sub-section (1) shall apply if the assessee,—

(*i*) in the course of the search, in a statement under sub-section (4) of section 132, admits the undisclosed income and specifies the manner in which such income has been derived;

(*ii*) substantiates the manner in which the undisclosed income was derived; and

(*iii*) pays the tax, together with interest, if any, in respect of the undisclosed income.

(3) No penalty under the provisions of clause (*c*) of sub-section (1) of section 271 shall be imposed upon the assessee in respect of the undisclosed income referred to in sub-section (1).

(4) The provisions of sections 274 and 275 shall, so far as may be, apply in relation to the penalty referred to in this section.

Explanation.—For the purposes of this section,—

(*a*) "undisclosed income" means—

(*i*) any income of the specified previous year represented, either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of a search under section 132, which has—

(*A*) not been recorded on or before the date of search in the books of account or other documents maintained in the normal course relating to such previous year; or

(*B*) otherwise not been disclosed to the Chief Commissioner or Commissioner before the date of search; or

(*ii*) any income of the specified previous year represented, either wholly or partly, by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course relating to the specified previous year which is found to be false and would not have been found to be so had the search not been conducted;

(*b*) "specified previous year" means the previous year—

(*i*) which has ended before the date of search, but the date of filing the return of income under sub-section (1) of section 139 for such year has not expired before the date of search and the assessee has not furnished the return of income for the previous year before the said date; or

(*ii*) in which search was conducted.]

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[58][**Failure to get accounts audited.**

271B. If any person fails [59][***] to get his accounts audited in respect of any previous year or years relevant to an assessment year or [60][furnish a report of such audit as required under section 44AB], the [61][Assessing] Officer may direct that such person shall pay, by way of penalty, a sum equal to one-half per cent of the total sales, turnover or gross receipts, as the case may be, in business, or of the gross receipts in profession, in such previous year or years or a sum of [61a]**[***one hundred thousand rupees***]**, whichever is less.]

[62][**Penalty for failure to furnish report under section 92E.**

271BA. If any person fails to furnish a report from an accountant as required by section 92E, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of one hundred thousand rupees.]

[63][**Failure to subscribe to the eligible issue of capital.**

271BB. Whoever fails to subscribe any amount of subscription to the units issued under any scheme referred to in sub-section (1) of section 88A[64] to the eligible issue of capital under that sub-section within the period of six months specified therein, may be directed by the [65][Joint] Commissioner to pay, by way of penalty, a sum equal to twenty per cent of such amount.]

[66][**Penalty for failure to deduct tax at source.**

271C. [67][(1) If any person fails to—

(*a*) deduct the whole or any part of the tax as required by or under the provisions of Chapter XVII-B; or

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58. Inserted by the Finance Act, 1984, w.e.f. 1-4-1985.

59. Words ", without reasonable cause," omitted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 10-9-1986.

60. Substituted for "obtain a report of such audit as required under section 44AB or furnish the said report along with the return of his income filed under sub-section (1) of section 139, or along with the return of income furnished in response to a notice under clause (*i*) of sub-section (1) of section 142" by the Finance Act, 1995, w.e.f. 1-7-1995. Earlier certain words were inserted in the quoted portion by the Finance Act, 1988, w.e.f. 1-4-1989.

61. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

61a. Words "one hundred fifty thousand rupees" shall be substituted for "one hundred thousand rupees" by the Finance Act, 2010, w.e.f. **1-4-2011**.

62. Inserted by the Finance Act, 2001, w.e.f. 1-4-2002.

63. Inserted by the Finance Act, 1990, w.e.f. 1-4-1990.

64. Section 88A has now been omitted by the Finance (No. 2) Act, 1996, w.r.e.f. 1-4-1994.

65. Substituted for "Deputy" by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

66. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

67. Substituted by the Finance Act, 1997, w.e.f. 1-6-1997. Prior to its substitution, sub-section (1), as inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989 and amended by the Finance Act, 1990, w.e.f. 1-4-1990, read as under :

"(1) If any person fails to deduct the whole or any part of the tax as required by or under the provisions of Chapter XVII-B, he shall be liable to pay, by way of penalty, a sum equal to the amount of the tax which he failed to deduct as aforesaid."

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(*b*) pay the whole or any part of the tax as required by or under—

(*i*) sub-section (2) of section 115-O; or

(*ii*) the second proviso to section 194B,

then, such person shall be liable to pay, by way of penalty, a sum equal to the amount of tax which such person failed to deduct or pay as aforesaid.]

[68][(2) Any penalty imposable under sub-section (1) shall be imposed by the [69][Joint] Commissioner.]

[70][**Penalty for failure to collect tax at source.**

271CA. (1) If any person fails to collect the whole or any part of the tax as required by or under the provisions of Chapter XVII-BB, then, such person shall be liable to pay, by way of penalty, a sum equal to the amount of tax which such person failed to collect as aforesaid.

(2) Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner.]

[71][**Penalty for failure to comply with the provisions of section 269SS.**

271D. [72][(1)] If a person takes or accepts any loan or deposit in contravention of the provisions of section 269SS, he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit so taken or accepted.]

[73][(2) Any penalty imposable under sub-section (1) shall be imposed by the [74][Joint] Commissioner.]

[75][**Penalty for failure to comply with the provisions of section 269T.**

271E. [76][(1)] If a person repays any [77][loan or] deposit referred to in section 269T otherwise than in accordance with the provisions of that section, he shall be liable to pay, by way of penalty, a sum equal to the amount of the [77][loan or] deposit so repaid.]

[78][(2) Any penalty imposable under sub-section (1) shall be imposed by the [79][Joint] Commissioner.]

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68. Inserted by the Finance Act, 1990, w.e.f. 1-4-1990.

69. Substituted for "Deputy" by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

70. Inserted by the Finance Act, 2006, w.e.f. 1-4-2007.

71. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

72. Numbered as sub-section (1) by the Finance Act, 1990, w.e.f. 1-4-1990.

73. Inserted, *ibid.*

74. Substituted for "Deputy" by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

75. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

76. Numbered as sub-section (1) by the Finance Act, 1990, w.e.f. 1-4-1990.

77. Inserted by the Finance Act, 2003, w.e.f. 1-6-2003.

78. Inserted by the Finance Act, 1990, w.e.f. 1-4-1990.

79. Substituted for "Deputy" by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

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[80][**Penalty for failure to furnish return of income.**

271F. If a person who is required to furnish a return of his income, as required under sub-section (1) of section 139 or by the provisos to that sub-section, fails to furnish such return before the end of the relevant assessment year, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of five thousand rupees.]

[81][**Penalty for failure to furnish annual information return.**

271FA. If a person who is required to furnish an annual information return, as required under sub-section (1) of section 285BA, fails to furnish such return within the time prescribed under that sub-section, the income-tax authority prescribed under the said sub-section may direct that such person shall pay, by way of penalty, a sum of one hundred rupees for every day during which the failure continues.]

[82][**Penalty for failure to furnish return of fringe benefits.**

271FB. If an employer, who is required to furnish a return of fringe benefits, as required under sub-section (1) of section 115WD, fails to furnish such return within the time prescribed under that sub-section, the Assessing Officer may direct that such employer shall pay, by way of penalty, a sum of one hundred rupees for every day during which the failure continues.]

[83][**Penalty for failure to furnish information or document under section 92D.**

271G. If any person who has entered into an international transaction fails to furnish any such information or document as required by sub-section (3) of section 92D, the Assessing Officer or the Commissioner (Appeals) may direct that such person shall pay, by way of penalty, a sum equal to two per cent of the value of the international transaction for each such failure.]

Failure to give notice of discontinuance.

272. [*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.*]

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80. Substituted by the Finance Act, 2002, w.e.f. 1-6-2002. Prior to its substitution, section 271F, as inserted by the Finance Act, 1997, w.e.f. 1-4-1997, substituted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999 and later on amended by the Finance Act, 2001, w.e.f. 1-6-2001, read as under :

"271F. *Penalty for failure to furnish return of income.*—If a person who is required to furnish a return of his income, as required under sub-section (1) of section 139, fails to furnish such return before the end of the relevant assessment year, he shall be liable to pay, by way of penalty, a sum of five thousand rupees :

Provided that a person who is required to furnish a return of his income, as required by the proviso to sub-section (1) of section 139, fails to furnish such return on or before the due date, he shall be liable to pay, by way of penalty, a sum of five thousand rupees."

81. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005.

82. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

83. Inserted by the Finance Act, 2001, w.e.f. 1-4-2002.

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[84][**Penalty for failure to answer questions, sign statements, furnish information, returns or statements, allow inspections, etc.**

272A. (1) If any person,—

(*a*) being legally bound to state the truth of any matter touching the subject of his assessment, refuses to answer any question put to him by an income-tax authority in the exercise of its powers under this Act; or

(*b*) refuses to sign any statement made by him in the course of any proceedings under this Act, which an income-tax authority may legally require him to sign; or

(*c*) to whom a summons is issued under sub-section (1) of section 131 either to attend to give evidence or produce books of account or other documents at a certain place and time omits to attend or produce books of account or documents at the place or time,

(*d*) [85][***]

he shall pay, by way of penalty, [86][a sum of ten thousand rupees] for each such default or failure.

(2) If any person fails—

(*a*) to comply with a notice issued under sub-section (6) of section 94; or

(*b*) to give the notice of discontinuance of his business or profession as required by sub-section (3) of section 176; or

(*c*) to furnish in due time any of the returns, statements or particulars mentioned in section 133 or section 206 [87][***] [88][or section 206C] or section 285B; or

(*d*) to allow inspection of any register referred to in section 134 or of any entry in such register or to allow copies of such register or of any entry therein to be taken; or

[89][(*e*) to furnish the return of income which he is required to furnish under sub-section (4A) or sub-section (4C) of section 139 or to furnish it

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84. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Prior to its substitution, section 272A was inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976 and later on amended by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978, Finance Act, 1982, w.e.f. 1-6-1982, Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 10-9-1986 and the Finance Act, 1987, w.e.f. 1-6-1987.

85. Omitted by the Finance Act, 2002, w.e.f. 1-6-2002. Prior to its omission, clause (*d*) read as under :

"(*d*) fails to comply with the provisions of section 139A,"

86. Substituted for "a sum which shall not be less than five hundred rupees but which may extend to ten thousand rupees" by the Finance Act, 2001, w.e.f. 1-6-2001.

87. Words "or section 206A or section 206B" omitted by the Finance (No. 2) Act, 1996, w.e.f. 1-10-1996.

88. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

89. Substituted by the Finance Act, 2002, w.e.f. 1-4-2003. Prior to its substitution, clause (*e*) read as under :

"(*e*) to furnish the return of income which he is required to furnish under sub-section (4A) of section 139 or to furnish it within the time allowed and in the manner required under that sub-section; or"

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within the time allowed and in the manner required under those sub-sections; or]

(*f*) to deliver or cause to be delivered in due time a copy of the declaration mentioned in section 197A; or

(*g*) to furnish a certificate as required by section 203 [90][or section 206C]; or

(*h*) to deduct and pay tax as required by sub-section (2) of section 226;

[91][(*i*) to furnish a statement as required by sub-section (2C) of section 192;]

[92][*(j)* to deliver or cause to be delivered in due time a copy of the declaration referred to in sub-section (1A) of section 206C;]

[93][(*k*) to deliver or cause to be delivered a copy of the statement within the time specified in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C;]

[94][(*l*) to deliver or cause to be delivered the [95][statements] within the time specified in sub-section (1) of section 206A,]

he shall pay, by way of penalty, a sum [96][of one hundred rupees] for every day during which the failure continues:

[97][**Provided** that the amount of penalty for failures in relation to [98][a declaration mentioned in section 197A, a certificate as required by section 203 and] returns under sections 206 and 206C [99][and statements under sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C] shall not exceed the amount of tax deductible or collectible[1], as the case may be.]

(3) Any penalty imposable under sub-section (1) or sub-section (2) shall be imposed—

(*a*) in a case where the contravention, failure or default in respect of which such penalty is imposable occurs in the course of any proceeding before an income-tax authority not lower in rank than a [2][Joint] Director or a [2][Joint] Commissioner, by such income-tax authority;

(*b*) in a case falling under clause (*f*) of sub-section (2), by the Chief Commissioner or Commissioner; and

(*c*) in any other case, by the [2][Joint] Director or the [2][Joint] Commissioner.

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90. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

91. Inserted by the Finance Act, 2001, w.e.f. 1-4-2002.

92. Inserted by the Taxation Laws (Amendment) Act, 2003, w.e.f. 8-9-2003.

93. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005.

94. Inserted by the Finance Act, 2005, w.e.f. 1-6-2005.

95. Substituted for "quarterly return" by the Finance (No. 2) Act, 2009, w.e.f. 1-10-2009.

96. Substituted for "which shall not be less than one hundred rupees, but which may extend to two hundred rupees," by the Finance Act, 1999, w.e.f. 1-6-1999.

97. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

98. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999.

99. Inserted by the Finance Act, 2006, w.e.f. 1-6-2006.

1. For the meaning of the expression "deductible or collectible", *see* Taxmann's Direct Taxes Manual, Vol. 3.

2. Substituted for "Deputy" by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

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(4) No order under this section shall be passed by any income-tax authority referred to in sub-section (3) unless the person on whom the penalty is proposed to be imposed is given an opportunity of being heard in the matter by such authority.

Explanation.—In this section, "income-tax authority" includes a Director General, Director, [3][Joint] Director and an Assistant Director [4][or Deputy Director] while exercising the powers vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the matters specified in sub-section (1) of section 131.]

[5][**Penalty for failure to comply with the provisions of section 133B.**

272AA. (1) If a person [6][***] fails to comply with the provisions of section 133B, he shall, on an order passed by the [7][Joint Commissioner], [8][Assistant Director] [9][or Deputy Director] or the [10][Assessing] Officer, as the case may be, pay, by way of penalty, a sum which may extend to one thousand rupees.

(2) No order under sub-section (1) shall be passed unless the person on whom the penalty is proposed to be imposed is given an opportunity of being heard in the matter.

[11][**Penalty for failure to comply with the provisions of section 139A.**

272B. (1) If a person fails to comply with the provisions of section 139A, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of ten thousand rupees.

(2) If a person who is required to quote his permanent account number in any document referred to in clause (*c*) of sub-section (5) of section 139A, or to intimate such number as required by sub-section (5A) [12][or sub-section (5C)] of that section, quotes or intimates a number which is false, and which he either knows or believes to be false or does not believe to be true, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of ten thousand rupees.

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3. Substituted for "Deputy" by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

4. Inserted, *ibid*.

5. Inserted by the Finance Act, 1986, w.e.f. 13-5-1986.

6. Words ", without reasonable cause," omitted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 10-9-1986.

7. Substituted for "Deputy Commissioner" by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier, "Deputy Commissioner" was substituted for "Inspecting Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

8. Substituted for "Assistant Director of Inspection" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

9. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

10. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

11. Inserted by the Finance Act, 2002, w.e.f. 1-6-2002. Earlier section 272B was inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976, further amended by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 10-9-1986 and later on omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

12. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005.

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(3) No order under sub-section (1) or sub-section (2) shall be passed unless the person, on whom the penalty is proposed to be imposed, is given an opportunity of being heard in the matter.]

[13][**Penalty for failure to comply with the provisions of section 203A.**

272BB. (1) If a person fails to comply with the provisions of section 203A, he shall, on an order passed by the [14][Assessing] Officer, pay, by way of penalty, [15][a sum of ten thousand rupees].

[16][(1A) If a person who is required to quote his "tax deduction account number" or, as the case may be, "tax collection account number" or "tax deduction and collection account number" in the challans or certificates or statements or other documents referred to in sub-section (2) of section 203A, quotes a number which is false, and which he either knows or believes to be false or does not believe to be true, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of ten thousand rupees.]

(2) No order under sub-section (1) [16][or sub-section (1A)] shall be passed unless the person on whom the penalty is proposed to be imposed is given an opportunity of being heard in the matter.]

[17][**Penalty for failure to comply with the provisions of section 206CA.**

272BBB. (1) If a person fails to comply [18][before the 1st day of October, 2004] with the provisions of section 206CA, he shall, on an order passed by the Assessing Officer, pay, by way of penalty, a sum of ten thousand rupees.

(2) No order under sub-section (1) shall be passed unless the person on whom the penalty is proposed to be imposed, is given an opportunity of being heard in the matter.]

[19][**False estimate of, or failure to pay, advance tax.**

273. [20][(1) If the [21][Assessing] Officer, in the course of any proceedings in connection with the regular assessment[22] for any assessment year, is satisfied that any assessee—

(*a*) has furnished under clause (*a*) of sub-section (1) of section 209A a statement of the advance tax payable by him which he knew or had reason to believe to be untrue, or

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13. Inserted by the Finance Act, 1987, w.e.f. 1-6-1987.

14. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

15. Substituted for "a sum which may extend to five thousand rupees" by the Finance Act, 2001, w.e.f. 1-6-2001.

16. Inserted by the Finance Act, 2006, w.e.f. 1-6-2006.

17. Inserted by the Finance Act, 2002, w.e.f. 1-6-2002.

18. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-10-2004.

19. Substituted by the Finance Act, 1969, w.e.f. 1-4-1970.

20. Inserted by the Finance Act, 1978, w.e.f. 1-6-1978.

21. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

22. For the meaning of the term "regular assessment", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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(*b*) has [23][***] failed to furnish a statement of the advance tax payable by him in accordance with the provisions of clause (*a*) of sub-section (1) of section 209A,

he may direct that such person shall, in addition to the amount of tax, if any, payable by him, pay by way of penalty a sum—

(*i*) which, in the case referred to in clause (*a*), shall not be less than ten per cent but shall not exceed one and a half times the amount by which the tax actually paid during the financial year immediately preceding the assessment year under the provisions of Chapter XVII-C falls short of—

(*1*) seventy-five per cent of the assessed tax as defined in sub-section (5) of section 215, or

(*2*) the amount which would have been payable by way of advance tax if the assessee had furnished a correct and complete statement in accordance with the provisions of clause (*a*) of sub-section (1) of section 209A,

whichever is less;

(*ii*) which, in the case referred to in clause (*b*), shall not be less than ten per cent but shall not exceed one and a half times of seventy-five per cent of the assessed tax as defined in sub-section (5) of section 215]:

[24][**Provided** that in the case of an assessee, being a company, the provisions of this sub-section shall have effect as if for the words "seventy-five per cent", at both the places where they occur, the words "eighty-three and one-third per cent" had been substituted.]

[25][(2)] If the [26][Assessing] Officer, in the course of any proceedings in connection with the regular assessment for the assessment year commencing on the 1st day of April, 1970, or any subsequent assessment year, is satisfied that any assessee—

[27][(*a*) has furnished under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (5) of section 209A, or under sub-section (1) or sub-section (2) of section 212, an estimate of the advance tax payable by him which he knew or had reason to believe to be untrue, or]

[28][(*aa*) has furnished [29][under sub-section (4) of section 209A or] under sub-section (3A) of section 212 an estimate of the advance tax payable by him which he knew or had reason to believe to be untrue, or]

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23. Words ", without reasonable cause," omitted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 10-9-1986.

24. Inserted by the Finance (No. 2) Act, 1980, w.e.f. 1-9-1980.

25. Inserted by the Finance Act, 1978, w.e.f. 1-6-1978.

26. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

27. Substituted by the Finance Act, 1978, w.e.f. 1-6-1978. Earlier, clause (*a*) was amended by the Finance (No. 2) Act, 1977, w.e.f. 1-4-1977.

28. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 1-9-1977.

29. Inserted by the Finance Act, 1978, w.e.f. 1-6-1978.

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(*b*) has [30][***] failed to furnish an estimate of the advance tax payable by him in accordance with the provisions of [31][clause (*b*) of sub-section (1) of section 209A], or

(*c*) has [32][***] failed to furnish an estimate of the advance tax payable by him in accordance with the provisions of [33][sub-section (4) of section 209A or] sub-section (3A) of section 212,

he may direct that such person shall, in addition to the amount of tax, if any, payable by him, pay by way of penalty a sum—

(*i*) which, in the case referred to in clause (*a*), shall not be less than ten per cent but shall not exceed one and a half times the amount by which the tax actually paid during the financial year immediately preceding the assessment year under the provisions of Chapter XVII-C falls short of—

(*1*) seventy-five per cent of the assessed tax as defined in sub-section (5) of section 215, or

[34][(*2*) where a statement under clause (*a*) of sub-section (1) of section 209A was furnished by the assessee or where a notice under section 210 was issued to the assessee, the amount payable under such statement or, as the case may be, such notice,]

whichever is less;

[35][(*ia*) which, in the case referred to in clause (*aa*), shall not be less than ten per cent but shall not exceed one and a half times the amount by which the tax actually paid during the financial year immediately preceding the assessment year under the provisions of Chapter XVII-C falls short of seventy-five per cent of the assessed tax as defined in sub-section (5) of section 215;]

(*ii*) which, in the case referred to in clause (*b*), shall not be less than ten per cent but shall not exceed one and a half times of seventy-five per cent of the assessed tax as defined in sub-section (5) of section 215; and

[36][(*iii*) which, in the case referred to in clause (*c*), shall not be less than ten per cent but shall not exceed one and a half times the amount by which—

(*a*) where the assessee has sent a statement under clause (*a*), or an estimate under clause (*b*) of sub-section (1) of section 209A, or an estimate in lieu of a statement under sub-section (2) of that section, the tax payable in accordance with such statement or estimate; or

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30. Words "without reasonable cause" omitted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 10-9-1986.

31. Substituted for "sub-section (3) of section 212" by the Finance Act, 1978, w.e.f. 1-6-1978.

32. Words "without reasonable cause" omitted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 10-9-1986.

33. Inserted by the Finance Act, 1978, w.e.f. 1-6-1978.

34. Substituted, *ibid.*

35. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 1-9-1977.

36. Substituted by the Finance Act, 1978, w.e.f. 1-6-1978.

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(*b*) where the assessee was required to pay advance tax in accordance with the notice issued to him under section 210, the tax payable under such notice,

falls short of seventy-five per cent of the assessed tax as defined in sub-section (5) of section 215:]]

[37][**Provided** that in the case of an assessee, being a company, the provisions of this sub-section shall have effect as if for the words "seventy-five per cent", wherever they occur, the words "eighty-three and one-third per cent" had been substituted.]

[38][*Explanation* [39][*1*].—For the purposes of clause (*ia*), the amount paid by the assessee on or before the date extended by the [40][Chief Commissioner or Commissioner] under the [41][first] [42][proviso to sub-section (4) of section 209A or, as the case may be,] [41][first] proviso to sub-section (3A) of section 212 shall, where the date so extended falls beyond the financial year immediately preceding the assessment year, also be regarded as tax actually paid during that financial year.]

[43][*Explanation 2.*—When the person liable to penalty is a registered firm or an unregistered firm which has been assessed under clause (*b*) of section 183, then, notwithstanding anything contained in the other provisions of this Act, the penalty imposable under this section shall be the same amount as would be imposable on that firm if that firm were an unregistered firm.]

[44][(3) The provisions of this section shall apply to and in relation to any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year, and references in this section to the other provisions of this Act shall be construed as references to those provisions as for the time being in force and applicable to the relevant assessment year.]

[45][**Power to reduce or waive penalty, etc., in certain cases.**

[46]**273A.** (1) Notwithstanding anything contained in this Act, the [47][[48][***] Commissioner] may, in his discretion, whether on his own motion or otherwise,—

(*i*) [49][***]

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37. Inserted by the Finance (No. 2) Act, 1980, w.e.f. 1-9-1980.

38. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 1-9-1977.

39. Numbered as *Explanation 1* by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-4-1985.

40. Substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

41. Inserted by the Finance Act, 1981, w.e.f. 1-4-1981.

42. Inserted by the Finance Act, 1978, w.e.f. 1-6-1978.

43. Inserted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-4-1985.

44. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

45. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

46. *See* also Instruction No. 1417, dated 29-9-1981 and Circular No. 784, dated 22-11-1999. For details, *see* Taxmann's Master Guide to Income-tax Act.

47. Substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

48. Words "Chief Commissioner or" omitted by the Finance Act, 1993, w.e.f. 1-6-1993.

49. Omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

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(*ii*) reduce or waive the amount of penalty imposed or imposable on a person under clause (*iii*) of sub-section (1) of section 271; *[or]

(*iii*) [50][***]

if he is satisfied that such person—

(*a*) [50][***]

(*b*) in the case referred to in clause (*ii*), has, prior to the detection[51] by the [52][Assessing] Officer, of the concealment of particulars of income or of the inaccuracy of particulars furnished in respect of such income, voluntarily[53] and in good faith,[53] made full and true disclosure[53] of such particulars,

(*c*) [54][***]

and also has, [55][in the case referred to in clause (*b*)], co-operated[53] in any enquiry relating to the assessment of his income and has either paid or made satisfactory arrangements for the payment of any tax or interest payable in consequence of an order passed under this Act in respect of the relevant assessment year.

Explanation [56][***].—For the purposes of this sub-section, a person shall be deemed to have made full and true disclosure of his income or of the particulars relating thereto in any case where the excess of income assessed over the income returned is of such a nature as not to attract the provisions of clause (*c*) of sub-section (1) of section 271.

[56][***]

(2) Notwithstanding anything contained in sub-section (1),—

(*a*) [57][***]

(*b*) if in a case falling under clause (*c*) of sub-section (1) of section 271, the amount of income in respect of which the penalty is imposed or imposable for the relevant assessment year, or, where such disclosure relates to more than one assessment year, the aggregate amount of such income for those years, exceeds a sum of five hundred thousand rupees,

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50. Omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

51. For the meaning of the term "detection", *see* Taxmann's Direct Taxes Manual, Vol. 3.

52. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

53. For the meaning of the terms/expressions "voluntarily", "good faith", "disclosure" and "co-operated", *see* Taxmann's Direct Taxes Manual, Vol. 3.

54. Omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

55. Substituted for "in all the cases referred to in clauses (*a*), (*b*) and (*c*)", *ibid.*

56. "1" and *Explanation 2,* as inserted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984, omitted by the Finance Act, 1985, w.e.f. 24-5-1985.

57. Omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Prior to its omission, clause (*a*) was amended by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984.

*Should be deleted.

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no order reducing or waiving the penalty under sub-section (1) shall be made by [58][the Commissioner except with the previous approval of the Chief Commissioner or Director General, as the case may be].

(3) Where an order has been made under sub-section (1) in favour of any person, whether such order relates to one or more assessment years, he shall not be entitled to any relief under this section in relation to any other assessment year at any time after the making of such order :

[59][**Provided** that where an order has been made in favour of any person under sub-section (1) on or before the 24th day of July, 1991, such person shall be entitled to further relief only once in relation to other assessment year or years if he makes an application to the income-tax authority referred to in sub-section (4) at any time before the 1st day of April, 1992.]

(4) Without prejudice to the powers conferred on him by any other provision of this Act, the [60][[61][***] Commissioner] may, on an application made in this behalf by an assessee, and after recording his reasons for so doing, reduce or waive the amount of any penalty payable by the assessee under this Act or stay or compound any proceeding for the recovery of any such amount, if he is satisfied that—

(*i*) to do otherwise would cause genuine hardship to the assessee, having regard to the circumstances of the case; and

(*ii*) the assessee has co-operated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him:

[62][**Provided** that where the amount of any penalty payable under this Act or, where such application relates to more than one penalty, the aggregate amount of such penalties exceeds one hundred thousand rupees, no order reducing or waiving the amount or compounding any proceeding for its recovery under this sub-section shall be made by [63][the Commissioner except with the previous approval of the Chief Commissioner or Director General, as the case may be].

(5) Every order made under this section shall be final and shall not be called into question by any court or any other authority.]

[64][(6) The provisions of this section [65][as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1989] shall apply to and

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58. Substituted for "the Chief Commissioner or Commissioner except with the previous approval of the Board" by the Finance Act, 1993, w.e.f. 1-6-1993. Earlier, the words "Chief Commissioner or Commissioner" were substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

59. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 27-9-1991.

60. Substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

61. Words "Chief Commissioner or" omitted by the Finance Act, 1993, w.e.f. 1-6-1993.

62. Inserted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984.

63. Substituted for "the Chief Commissioner or Commissioner except with the previous approval of the Board" by the Finance Act, 1993, w.e.f. 1-6-1993. Earlier, the words "Chief Commissioner or Commissioner" were substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

64. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

65. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

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in relation to any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year, and references in this section to the other provisions of this Act shall be construed as references to those provisions as for the time being in force and applicable to the relevant assessment year.]

[66][(7) Notwithstanding anything contained in sub-section (6), the provisions of sub-section (1), sub-section (2), or, as the case may be, sub-section (4) [as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1989 (3 of 1989)], shall apply in the case of reduction or waiver of penalty or interest in relation to any assessment for the assessment year commencing on the 1st day of April, 1988 or any earlier assessment year, with the modifications that the power under the said sub-section (1) shall be exercisable only by the Commissioner and instead of the previous approval of the Board, the Commissioner shall obtain the previous approval of the Chief Commissioner or Director General, as the case may be, while dealing with such case.]

[67][**Power of Commissioner to grant immunity from penalty.**

273AA. (1) A person may make an application to the Commissioner for granting immunity from penalty, if—

(*a*) he has made an application for settlement under section 245C and the proceedings for settlement have abated under section 245HA; and

(*b*) the penalty proceedings have been initiated under this Act.

(2) The application to the Commissioner under sub-section (1) shall not be made after the imposition of penalty after abatement.

(3) The Commissioner may, subject to such conditions as he may think fit to impose, grant to the person immunity from the imposition of any penalty under this Act, if he is satisfied that the person has, after the abatement, co-operated with the income-tax authority in the proceedings before him and has made a full and true disclosure of his income and the manner in which such income has been derived.

(4) The immunity granted to a person under sub-section (3) shall stand withdrawn, if such person fails to comply with any condition subject to which the immunity was granted and thereupon the provisions of this Act shall apply as if such immunity had not been granted.

(5) The immunity granted to a person under sub-section (3) may, at any time, be withdrawn by the Commissioner, if he is satisfied that such person had, in the course of any proceedings, after abatement, concealed any particulars material to the assessment from the income-tax authority or had given false evidence, and thereupon such person shall become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted.]

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66. Inserted by the Finance Act, 1994, w.e.f. 1-6-1994.

67. Inserted by the Finance Act, 2008, w.e.f. 1-4-2008.

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[68][**Penalty not to be imposed in certain cases.**

273B. Notwithstanding anything contained in the provisions of [69][clause (*b*) of sub-section (1) of] [70][section 271, section 271A, [71][section 271AA,] section 271B [72][, section 271BA], [73][section 271BB,] section 271C, [74][section 271CA,] section 271D, section 271E, [75][section 271F, [76][section 271FA,] [77][section 271FB,] [78][section 271G,]] clause (*c*) or clause (*d*) of sub-section (1) or sub-section (2) of section 272A, sub-section (1) of section 272AA] or [79][section 272B or] [80][sub-section (1) [81][or sub-section (1A)] of section 272BB or] [82][sub-section (1) of section 272BBB or] clause (*b*) of sub-section (1) or clause (*b*) or clause (*c*) of sub-section (2) of section 273, no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause[83] for the said failure.]

Procedure.

274. (1) No order imposing a penalty under this Chapter shall be made unless the assessee has been heard, or has been given a reasonable opportunity of being heard.

[84][(2) No order imposing a penalty under this Chapter shall be made—

(*a*) by the Income-tax Officer, where the penalty exceeds ten thousand rupees;

(*b*) by the Assistant Commissioner [85][or Deputy Commissioner], where the penalty exceeds twenty thousand rupees,

except with the prior approval of the [86][Joint] Commissioner.]

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68. Inserted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 10-9-1986.

69. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

70. Substituted for "section 270, clause (*a*) or clause (*b*) of sub-section (1) of section 271, section 271A, section 271B, sub-section (2) of section 272A, sub-section (1) of section 272AA, sub-section (1) of section 272B" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

71. Inserted by the Finance Act, 2001, w.e.f. 1-4-2002.

72. Inserted, *ibid.*

73. Inserted by the Finance Act, 1990, w.e.f. 1-4-1990.

74. Inserted by the Finance Act, 2006, w.e.f. 1-4-2007.

75. Inserted by the Finance Act, 1997, w.e.f. 1-4-1997.

76. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005.

77. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

78. Inserted by the Finance Act, 2001, w.e.f. 1-4-2002.

79. Inserted by the Finance Act, 2002, w.e.f. 1-6-2002.

80. Inserted by the Finance Act, 1987, w.e.f. 1-6-1987.

81. Inserted by the Finance Act, 2006, w.e.f. 1-6-2006.

82. Inserted by the Finance Act, 2002, w.e.f. 1-6-2002.

83. For the meaning of expression "reasonable cause", *see* Taxmann's Direct Taxes Manual, Vol 3.

84. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Original sub-section (2) which was amended by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971, was omitted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1975.

85. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

86. Substituted for "Deputy", *ibid.*

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[87][(3) An income-tax authority on making an order under this Chapter imposing a penalty, unless he is himself the Assessing Officer, shall forthwith send a copy of such order to the Assessing Officer.]

[88][**Bar of limitation for imposing penalties.**

275. [89][(1)] No order imposing a penalty under this Chapter shall be passed—

[90][(*a*) in a case where the relevant assessment or other order is the subject-matter of an appeal to the [91][***] Commissioner (Appeals) under section 246 [92][or section 246A] or an appeal to the Appellate Tribunal under section 253, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed[93], or six months from the end of the month in which the order of the [94][***] Commissioner (Appeals) or, as the case may be, the Appellate Tribunal is received by the Chief Commissioner or Commissioner, whichever period expires later :

[95][**Provided** that in a case where the relevant assessment or other order is the subject-matter of an appeal to the Commissioner (Appeals) under section 246 or section 246A, and the Commissioner (Appeals) passes the order on or after the 1st day of June, 2003 disposing of such appeal, an order imposing penalty shall be passed before the expiry of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed, or within one year from the end of the financial year in which the order of the Commissioner (Appeals) is received by the Chief Commissioner or Commissioner, whichever is later;]

(*b*) in a case where the relevant assessment or other order is the subject-matter of revision under section 263 [95][or section 264], after the expiry of six months from the end of the month in which such order of revision is passed;

(*c*) in any other case, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end

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87. Substituted by the Taxation Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Prior to its substitution, sub-section (3) was substituted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

88. Substituted by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

89. Renumbered by the Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-4-1989.

90. Substituted for clauses (*a*) and (*b*) by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Prior to its substitution, clause (*a*) was amended by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

91. Words "Deputy Commissioner (Appeals) or the" omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

92. Inserted by the Finance Act, 2000, w.e.f. 1-6-2000.

93. For the meaning of term "completed", *see* Taxmann's Direct Taxes Manual, Vol. 3.

94. Words "Deputy Commissioner (Appeals) or the" omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier the quoted words were inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

95. Inserted by the Finance Act, 2003, w.e.f. 1-6-2003.

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of the month in which action for imposition of penalty is initiated, whichever period expires later.]

[96][(1A) In a case where the relevant assessment or other order is the subject-matter of an appeal to the Commissioner (Appeals) under section 246 or section 246A or an appeal to the Appellate Tribunal under section 253 or an appeal to the High Court under section 260A or an appeal to the Supreme Court under section 261 or revision under section 263 or section 264 and an order imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty is passed before the order of the Commissioner (Appeals) or the Appellate Tribunal or the High Court or the Supreme Court is received by the Chief Commissioner or the Commissioner or the order of revision under section 263 or section 264 is passed, an order imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty may be passed on the basis of assessment as revised by giving effect to such order of the Commissioner (Appeals) or, the Appellate Tribunal or the High Court, or the Supreme Court or order of revision under section 263 or section 264:

Provided that no order of imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty shall be passed—

(*a*) unless the assessee has been heard, or has been given a reasonable opportunity of being heard;

(*b*) after the expiry of six months from the end of the month in which the order of the Commissioner (Appeals) or the Appellate Tribunal or the High Court or the Supreme Court is received by the Chief Commissioner or the Commissioner or the order of revision under section 263 or section 264 is passed:

Provided further that the provisions of sub-section (2) of section 274 shall apply in respect of the order imposing or enhancing or reducing penalty under this sub-section.]

[97][(2) The provisions of this section as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1987 (4 of 1988), shall apply to and in relation to any action initiated for the imposition of penalty on or before the 31st day of March, 1989.]

[98][*Explanation.*—In computing the period of limitation for the purposes of this section,—

(*i*) the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129;

(*ii*) any period during which the immunity granted under section 245H remained in force; and

(*iii*) any period during which a proceeding under this Chapter for the levy of penalty is stayed by an order or injunction of any court,

shall be excluded.]]

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96. Inserted by the Taxation Laws (Amendment) Act, 2006, w.e.f. 13-7-2006.

97. Inserted by the Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-4-1989.

98. Substituted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

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CHAPTER XXII

OFFENCES AND PROSECUTIONS

[99][**Contravention of order made under sub-section (3) of section 132.**

275A. Whoever contravenes any order referred to in [1][the second proviso to sub-section (1) or] sub-section (3) of section 132 shall be punishable with rigorous imprisonment which may extend to two years and shall also be liable to fine.]

[2][**Failure to comply with the provisions of clause (iib) of sub-section (1) of section 132.**

275B. If a person who is required to afford the authorised officer the necessary facility to inspect the books of account or other documents, as required under clause (*iib*) of sub-section (1) of section 132, fails to afford such facility to the authorised officer, he shall be punishable with rigorous imprisonment for a term which may extend to two years and shall also be liable to fine.]

[3][**Removal, concealment, transfer or delivery of property to thwart tax recovery.**

276. Whoever fraudulently removes, conceals, transfers or delivers to any person[4], any property or any interest therein, intending thereby to prevent that property or interest therein from being taken in execution of a certificate under the provisions of the Second Schedule shall be punishable with rigorous imprisonment for a term which may extend to two years and shall also be liable to fine.]

[5][**Failure to comply with the provisions of sub-sections (1) and (3) of section 178.**

276A. If a person [6][***]—

(*i*) fails to give the notice in accordance with sub-section (1) of section 178; or

(*ii*) fails to set aside the amount as required by sub-section (3) of that section; or

(*iii*) parts with any of the assets of the company or the properties in his hands in contravention of the provisions of the aforesaid sub-section,

he shall be punishable with rigorous imprisonment for a term which may extend to two years :

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than six months.]

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99. Inserted by the Income-tax (Amendment) Act, 1965, w.e.f. 12-3-1965.

1. Inserted by the Finance Act, 1990, w.e.f. 1-4-1990.

2. Inserted by the Finance Act, 2002, w.e.f. 1-6-2002.

3. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Original section, dealing with failure to make payment or deliver return, etc., as amended by the Finance Act, 1968, w.e.f. 1-4-1968 and the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971, was omitted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

4. For the meaning of the term "person", *see* Taxmann's Direct Taxes Manual, Vol. 3.

5. Inserted by the Finance Act, 1965, w.e.f. 1-4-1965.

6. Words ", without reasonable cause or excuse," omitted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 10-9-1986.

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Failure to comply with the provisions of section 269AB or section 269-I.

276AA. [*Omitted by the Finance Act, 1986, w.e.f. 1-10-1986. Original section was inserted by the Income-tax (Amendment) Act, 1981, w.e.f. 1-7-1982.*]

[7][**Failure to comply with the provisions of sections 269UC, 269UE and 269UL.**

276AB. Whoever [8][***] fails to comply with the provisions of section 269UC or fails to surrender or deliver possession of the property under sub-section (2) of section 269UE or contravenes the provisions of sub-section (2) of section 269UL shall be punishable with rigorous imprisonment for a term which may extend to two years and shall also be liable to fine :

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than six months.]

[9][**Failure to pay tax to the credit of Central Government under Chapter XII-D or XVII-B.**

276B. If a person fails to pay to the credit of the Central Government,—

(*a*) the tax deducted at source by him as required by or under the provisions of Chapter XVII-B; or

(*b*) the tax payable by him, as required by or under—

(*i*) sub-section (2) of section 115-O; or

(*ii*) the second proviso to section 194B,

he shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine.]

[10][**Failure to pay the tax collected at source.**

276BB. If a person fails to pay to the credit of the Central Government, the tax collected by him as required under the provisions of section 206C, he shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine.]

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7. Inserted by the Finance Act, 1986, w.e.f. 13-5-1986.

8. Words ", without reasonable cause or excuse," omitted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 10-9-1986.

9. Substituted by the Finance Act, 1997, w.e.f. 1-6-1997. Prior to its substitution, section 276B, as inserted by the Finance Act, 1968, w.e.f. 1-4-1968 and later on substituted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975 and amended by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 10-9-1986 and further substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989, read as under : "276B. *Failure to pay the tax deducted at source.*—If a person fails to pay to the credit of the Central Government, the tax deducted at source by him as required by or under the provisions of Chapter XVII-B, he shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine."

10. Inserted by the Finance Act, 1988, w.e.f. 1-6-1988.

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[11][**Wilful attempt to evade tax, etc.**

276C. (1) If a person wilfully attempts in any manner whatsoever to evade[12] any tax, penalty or interest chargeable or imposable under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable,—

(*i*) in a case where the amount sought to be evaded exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(*ii*) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.

(2) If a person wilfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and shall, in the discretion of the court, also be liable to fine.

Explanation.—For the purposes of this section, a wilful attempt to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof shall include a case where any person—

(*i*) has in his possession or control any books of account or other documents (being books of account or other documents relevant to any proceeding under this Act) containing a false entry or statement; or

(*ii*) makes or causes to be made any false entry or statement in such books of account or other documents; or

(*iii*) wilfully omits or causes to be omitted any relevant entry or statement in such books of account or other documents; or

(*iv*) causes any other circumstance to exist which will have the effect of enabling such person to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof.]

[13][**Failure to furnish returns of income.**

276CC. If a person wilfully fails to furnish in due time [14][the return of fringe benefits which he is required to furnish under sub-section (1) of section 115WD or by notice given under sub-section (2) of the said section or section 115WH or] the return of income which he is required to furnish under sub-

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11. Substituted for section 276C by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975. Original section 276C was inserted by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

12. For the meaning of the term "evade", *see* Taxmann's Direct Taxes Manual, Vol. 3.

13. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

14. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

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section (1) of section 139 or by notice given under [15][clause (*i*) of sub-section (1) of section 142] or section 148 [16][or section 153A], he shall be punishable,—

(*i*) in a case where the amount of tax, which would have been evaded if the failure had not been discovered[17], exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(*ii*) in any other case, with imprisonment for a term which shall not be less than three months but which may extend to three years and with fine:

Provided that a person shall not be proceeded against under this section for failure to furnish in due time the [18][return of fringe benefits under sub-section (1) of section 115WD or] return of income under sub-section (1) of section 139—

(*i*) for any assessment year commencing prior to the 1st day of April, 1975; or

(*ii*) for any assessment year commencing on or after the 1st day of April, 1975, if—

(*a*) the return is furnished by him before the expiry of the assessment year; or

(*b*) the tax payable by him on the total income determined on regular assessment, as reduced by the advance tax, if any, paid, and any tax deducted at source, does not exceed three thousand rupees.]

[19][**Failure to furnish return of income in search cases.**

276CCC. If a person wilfully fails to furnish in due time the return of total income which he is required to furnish by notice given under clause (*a*) of section 158BC, he shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to three years and with fine :

Provided that no person shall be punishable for any failure under this section in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, after the 30th day of June, 1995 but before the 1st day of January, 1997.]

[20][**Failure to produce accounts and documents.**

276D. If a person wilfully fails to produce, or cause to be produced, on or before the date specified in any notice served on him under sub-section (1) of section 142, such accounts and documents as are referred to in the notice [21][or wilfully fails to comply with a direction issued to him under sub-section (2A) of that section], he shall be punishable with rigorous imprisonment for a term which

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15. Substituted for "sub-section (2) of section 139" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

16. Inserted by the Finance Act, 2003, w.e.f. 1-6-2003.

17. For the meaning of the expression "if the failure had not been discovered", *see* Taxmann's Direct Taxes Manual, Vol. 3.

18. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

19. Inserted by the Income-tax (Amendment) Act, 1997, w.e.f. 1-1-1997.

20. Inserted by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

21. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

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may extend to one year or with fine equal to a sum calculated at a rate which shall not be less than four rupees or more than ten rupees for every day during which the default continues, or with both.]

Failure to comply with the provisions of section 269SS.

276DD. [22][*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.*]

Failure to comply with the provisions of section 269T.

276E. [23][*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.*]

[24][**False statement in verification, etc.**

277. If a person[25] makes a statement in any verification under this Act or under any rule made thereunder, or delivers an account or statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable,—

(*i*) in a case where the amount of tax, which would have been evaded if the statement or account had been accepted as true, exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(*ii*) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.]

[26][**Falsification of books of account or document, etc.**

277A. If any person (hereafter in this section referred to as the first person) wilfully and with intent to enable any other person (hereafter in this section referred to as the second person) to evade any tax or interest or penalty chargeable and imposable under this Act, makes or causes to be made any entry or statement which is false and which the first person either knows to be false or does not believe to be true, in any books of account or other document relevant to or useful in any proceedings against the first person or the second person, under this Act, the first person shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.

Explanation.—For the purposes of establishing the charge under this section, it shall not be necessary to prove that the second person has actually evaded any tax, penalty or interest chargeable or imposable under this Act.]

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22. Prior to its omission, section 276DD was inserted by the Finance Act, 1984, w.e.f. 1-4-1984 and later on amended by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 10-9-1986.

23. Prior to its omission, section 276E was inserted by the Income-tax (Second Amendment) Act, 1981, w.e.f. 11-7-1981 and later on amended by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 10-9-1986.

24. Substituted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

25. For the meaning of the term "person", *see* Taxmann's Direct Taxes Manual, Vol. 3.

26. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-10-2004.

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[27][**Abetment of false return, etc.**

278. If a person abets or induces in any manner another person to make and deliver an account or a statement or declaration relating to any income [28][or any fringe benefits] chargeable to tax which is false and which he either knows to be false or does not believe to be true or to commit an offence under sub-section (1) of section 276C, he shall be punishable,—

(*i*) in a case where the amount of tax, penalty or interest which would have been evaded, if the declaration, account or statement had been accepted as true, or which is wilfully attempted to be evaded, exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(*ii*) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.]

[29][**Punishment for second and subsequent offences.**

278A. If any person convicted of an offence under section 276B or sub-section (1) of section 276C or section 276CC [30][or section 276DD] [31][or section 276E] or section 277 or section 278 is again convicted of an offence under any of the aforesaid provisions, he shall be punishable for the second and for every subsequent offence with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine.]

[32][**Punishment not to be imposed in certain cases.**

278AA. Notwithstanding anything contained in the provisions of section 276A, section 276AB, [33][or section 276B,] no person shall be punishable for any failure referred to in the said provisions if he proves that there was reasonable cause[34] for such failure.]

[35][**Power of Commissioner to grant immunity from prosecution.**

278AB. (1) A person may make an application to the Commissioner for granting immunity from prosecution, if he has made an application for settlement under section 245C and the proceedings for settlement have abated under section 245HA.

(2) The application to the Commissioner under sub-section (1) shall not be made after institution of the prosecution proceedings after abatement.

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27. Substituted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

28. Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

29. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

30. Inserted by the Finance Act, 1985, w.e.f. 24-5-1985.

31. Inserted by the Income-tax (Second Amendment) Act, 1981, w.e.f. 11-7-1981.

32. Inserted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 10-9-1986.

33. Substituted for "section 276B, section 276DD or section 276E," by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

34. For the meaning of the expression "reasonable cause", *see* Taxmann's Direct Taxes Manual, Vol. 3.

35. Inserted by the Finance Act, 2008, w.e.f. 1-4-2008.

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(3) The Commissioner may, subject to such conditions as he may think fit to impose, grant to the person immunity from prosecution for any offence under this Act, if he is satisfied that the person has, after the abatement, co-operated with the income-tax authority in the proceedings before him and has made a full and true disclosure of his income and the manner in which such income has been derived :

Provided that where the application for settlement under section 245C had been made before the 1st day of June, 2007, the Commissioner may grant immunity from prosecution for any offence under this Act or under the Indian Penal Code (45 of 1860) or under any other Central Act for the time being in force.

(4) The immunity granted to a person under sub-section (3) shall stand withdrawn, if such person fails to comply with any condition subject to which the immunity was granted and thereupon the provisions of this Act shall apply as if such immunity had not been granted.

(5) The immunity granted to a person under sub-section (3) may, at any time, be withdrawn by the Commissioner, if he is satisfied that such person had, in the course of any proceedings, after abatement, concealed any particulars material to the assessment from the income-tax authority or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the proceedings.]

[36][**Offences by companies.**

278B. (1) Where an offence under this Act has been committed by a company[37], every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

[38][(3) Where an offence under this Act has been committed by a person, being a company, and the punishment for such offence is imprisonment and fine, then, without prejudice to the provisions contained in sub-section (1) or sub-section (2), such company shall be punished with fine and every person, referred to in sub-section (1), or the director, manager, secretary or other officer of the company

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36. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

37. For the meaning of the term "company", *see* Taxmann's Direct Taxes Manual, Vol. 3.

38. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-10-2004.

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referred to in sub-section (2), shall be liable to be proceeded against and punished in accordance with the provisions of this Act.]

Explanation.—For the purposes of this section,—

(*a*) "company" means a body corporate, and includes—

(*i*) a firm; and

(*ii*) an association of persons or a body of individuals whether incorporated or not; and

(*b*) "director", in relation to—

(*i*) a firm, means a partner in the firm;

(*ii*) any association of persons or a body of individuals, means any member controlling the affairs thereof.]

[39][**Offences by Hindu undivided families.**

278C. (1) Where an offence under this Act has been committed by a Hindu undivided family, the karta thereof shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render the karta liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act, has been committed by a Hindu undivided family and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any member of the Hindu undivided family, such member shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.]

[40][**Presumption as to assets, books of account, etc., in certain cases.**

278D. (1) Where during the course of any search made under section 132, any money, bullion, jewellery or other valuable article or thing (hereafter in this section referred to as the assets) or any books of account or other documents has or have been found in the possession or control of any person and such assets or books of account or other documents are tendered by the prosecution in evidence against such person or against such person and the person referred to in section 278 for an offence under this Act, the provisions of sub-section (4A) of section 132 shall, so far as may be, apply in relation to such assets or books of account or other documents.

(2) Where any assets or books of account or other documents taken into custody, from the possession or control of any person, by the officer or authority referred to in clause (*a*) or clause (*b*) or clause (*c*), as the case may be, of sub-section (1) of section 132A are delivered to the requisitioning officer under sub-section (2) of that section and such assets, books of account or other documents are tendered by the prosecution in evidence against such person or against such person and the person referred to in section 278 for an offence under this Act, the provisions of sub-section (4A) of section 132 shall, so

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39. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

40. Inserted, *ibid.*

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far as may be, apply in relation to such assets or books of account or other documents.]

[41][**Presumption as to culpable mental state.**

278E. (1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.—In this sub-section, "culpable mental state" includes intention, motive or knowledge of a fact or belief in, or reason to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.]

Prosecution to be at instance of [42][**Chief Commissioner or Commissioner**]**.**

[43]**279.** [44][(1) A person shall not be proceeded against for an offence under section 275A [45][, section 275B], section 276, section 276A, section 276B, section 276BB, section 276C, section 276CC, section 276D, section 277 [46][, section 277A] or section 278 except with the previous sanction of the Commissioner or Commissioner (Appeals) or the appropriate authority:

Provided that the Chief Commissioner or, as the case may be, Director General may issue such instructions or directions to the aforesaid income-tax authorities as he may deem fit for institution of proceedings under this sub-section.

Explanation.—For the purposes of this section, "appropriate authority" shall have the same meaning as in clause (*c*) of section 269UA.]

[47][(1A) A person shall not be proceeded against for an offence under section 276C or section 277 in relation to the assessment for an assessment year in respect of which the penalty imposed or imposable on him under clause (*iii*) of sub-section (1) of section 271 has been reduced or waived by an order under section 273A.]

[48][(2) Any offence under this Chapter may, either before or after the institution of proceedings, be compounded by the Chief Commissioner or a Director General.]

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41. Inserted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 10-9-1986.

42. Substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

43. *See* also Letter [F. No. 4/7/69-IT(Inv.)], dated 21-3-1969 and Instruction No. 1317 of 1980. For details, *see* Taxmann's Master Guide to Income-tax Act.

44. Substituted by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

45. Inserted by the Finance Act, 2002, w.e.f. 1-6-2002.

46. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-10-2004.

47. Substituted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975. Original sub-section was inserted by the Income-tax (Amendment) Act, 1965, w.e.f. 12-3-1965.

48. Substituted by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991. Earlier, sub-section (2) was substituted by the Finance Act, 1988, w.e.f. 1-4-1989.

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[49][(3) Where any proceeding has been taken against any person under sub-section (1), any statement made or account or other document produced by such person before any of the income-tax authorities specified in [50][clauses (*a*) to (*g*)] of section 116 shall not be inadmissible as evidence for the purpose of such proceedings merely on the ground that such statement was made or such account or other document was produced in the belief that the penalty imposable would be reduced or waived, [51][under section 273A] or that the offence in respect of which such proceeding was taken would be compounded.]

[52][*Explanation.*—For the removal of doubts, it is hereby declared that the power of the Board to issue orders, instructions or directions under this Act shall include and shall be deemed always to have included the power to issue instructions or directions (including instructions or directions to obtain the previous approval of the Board) to other income-tax authorities for the proper composition of offences under this section.]

[53][**Certain offences to be non-cognizable.**

279A. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under section 276B or section 276C or section 276CC or section 277 or section 278 shall be deemed to be non-cognizable within the meaning of that Code.]

[54][**Proof of entries in records or documents.**

279B. Entries in the records or other documents in the custody of an income-tax authority shall be admitted in evidence in any proceedings for the prosecution of any person for an offence under this Chapter, and all such entries may be proved either by the production of the records or other documents in the custody of the income-tax authority containing such entries, or by the production of a copy of the entries certified by the income-tax authority having custody of the records or other documents under its signature and stating that it is a true copy of the original entries and that such original entries are contained in the records or other documents in its custody.]

Disclosure of particulars by public servants.

280. (1) If a public servant [55][furnishes any information or produces any document in contravention of the provisions of sub-section (2) of section 138], he shall be punishable with imprisonment which may extend to six months, and shall also be liable to fine.

(2) No prosecution shall be instituted under this section except with the previous sanction of the Central Government.

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49. Inserted by the Income-tax (Amendment) Act, 1965, w.e.f. 12-3-1965.

50. Substituted for "clauses (*a*), (*b*), (*c*), (*d*) and (*e*)" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

51. Substituted for "under sub-section (4A) of section 271" by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

52. Inserted by the Finance (No. 2) Act, 1991, w.r.e.f. 1-4-1962.

53. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

54. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

55. Substituted for "discloses any particulars, the disclosure of which is prohibited by section 137" by the Finance Act, 1964, w.e.f. 1-4-1964.

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CHAPTER XXII-A

ANNUITY DEPOSITS

[*Chapter XXII-A, consisting of sections 280A, 280B, 280C, 280D, 280E, 280F, 280G, 280H, 280-I, 280J, 280K, 280L, 280M, 280N, 280-O, 280P, 280Q, 280R, 280S, 280T, 280U, 280V, 280W and 280X, omitted by the Finance Act, 1988, w.e.f. 1-4-1988. The Chapter was inserted by the Finance Act, 1964, w.e.f. 1-4-1964 and has not been in operation since 1-4-1969 when the requirement as to annuity deposit was discontinued by the Finance Act, 1968, w.e.f. 1-4-1968 through an amendment made in section 280C.*]

CHAPTER XXII-B

TAX CREDIT CERTIFICATES

[*Chapter XXII-B, consisting of sections 280Y, 280Z, 280ZA, 280ZB, 280ZC, 280ZD and 280ZE, omitted by the Finance Act, 1990, w.e.f. 1-4-1990. No tax credit certificate granted under section 280Z or section 280ZC shall be produced before the Assessing Officer after the 31st day of March, 1991 for the purposes of sub-section (6) of section 280Z or, as the case may be, sub-section (4) of section 280ZC. Earlier Chapter XXII-B was inserted by the Finance Act, 1965, w.e.f. 1-4-1965.*]

Definitions.

280Y. [*Omitted by the Finance Act, 1990, w.e.f. 1-4-1990.*]

Tax credit certificates to certain equity shareholders.

280Z. [56][*Omitted by the Finance Act, 1990, w.e.f. 1-4-1990.*]

Tax credit certificates for shifting of industrial undertaking from urban area.

280ZA. [57][*Omitted by the Finance Act, 1987, w.e.f. 1-4-1988. Original section was inserted by the Finance Act, 1965, w.e.f. 1-4-1965.*]

Tax credit certificate to certain manufacturing companies in certain cases.

280ZB. [58][*Omitted by the Finance Act, 1990, w.e.f. 1-4-1990.*]

Tax credit certificate in relation to exports.

280ZC. [59][*Omitted by the Finance Act, 1990, w.e.f. 1-4-1990.*]

Tax credit certificates in relation to increased production of certain goods.

280ZD. [60][*Omitted by the Finance Act, 1990, w.e.f. 1-4-1990.*]

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56. Prior to omission, section 280Z was amended by the Finance Act, 1968, w.e.f. 1-4-1968 and the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

57. Section 280ZA was amended by the Finance Act, 1968, w.e.f. 1-4-1968, the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971 and the Finance Act, 1983, w.e.f. 1-4-1984.

58. Prior to omission, section 280ZB was amended by the Finance Act, 1966, w.e.f. 1-4-1966, the Finance Act, 1968, w.e.f. 1-4-1968, the Finance Act, 1987, w.e.f. 1-4-1988 and the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

59. Prior to omission, section 280ZC was amended by the Finance (No. 2) Act, 1965, w.r.e.f. 1-4-1964/w.e.f. 11-9-1965 and the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

60. Prior to omission, section 280ZD was amended by the Finance Act, 1968, w.e.f. 1-4-1968 and the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

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Tax credit certificate scheme.

280ZE. [*Omitted by the Finance Act, 1990, w.e.f. 1-4-1990.*]

CHAPTER XXIII

MISCELLANEOUS

[61][**Certain transfers to be void.**

281. (1) Where, during the pendency of any proceeding under this Act or after the completion thereof, but before the service of notice under rule 2 of the Second Schedule, any assessee creates a charge on, or parts with the possession (by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever) of, any of his assets in favour of any other person, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the assessee as a result of the completion of the said proceeding or otherwise :

Provided that such charge or transfer shall not be void if it is made—

(*i*) for adequate consideration and without notice of the pendency of such proceeding or, as the case may be, without notice of such tax or other sum payable by the assessee ; or

(*ii*) with the previous permission of the [62][Assessing] Officer.

(2) This section applies to cases where the amount of tax or other sum payable or likely to be payable exceeds five thousand rupees and the assets charged or transferred exceed ten thousand rupees in value.

Explanation.—In this section, "assets" means land, building, machinery, plant, shares, securities and fixed deposits in banks, to the extent to which any of the assets aforesaid does not form part of the stock-in-trade of the business of the assessee.]

Effect of failure to furnish information in respect of properties held benami.

281A. [63][*Repealed by the Benami Transactions (Prohibition) Act, 1988, w.e.f. 19-5-1988.*]

[64][**Provisional attachment to protect revenue in certain cases.**[65]

281B. (1) Where, during the pendency of any proceeding for the assessment of any income or for the assessment or reassessment of any income which has escaped assessment, the [66][Assessing] Officer is of the opinion that for the purpose of protecting the interests of the revenue it is necessary so to do, he

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61. Substituted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

62. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

63. Prior to its repeal, section 281A was inserted by the Taxation Laws (Amendment) Act, 1972, w.e.f. 15-11-1972 and later amended by the Finance Act, 1984, w.e.f. 1-4-1984.

64. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

65. *See* Instruction No. 8/2004, dated 2-9-2004 and Circular F. No. 404/22/2004-ITCC, dated 5-11-2004. For details, *see* Taxmann's Master Guide to Income-tax Act.

66. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

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may, with the previous approval of the [67][Chief Commissioner, Commissioner, Director General or Director], by order in writing, attach provisionally any property belonging to the assessee in the manner provided in the Second Schedule.

[68][*Explanation.*—For the purposes of this sub-section, proceedings under sub-section (5) of section 132 shall be deemed to be proceedings for the assessment of any income or for the assessment or reassessment of any income which has escaped assessment.]

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the order made under sub-section (1) :

Provided that the [69][Chief Commissioner, Commissioner, Director General or Director] may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, so, however, that the total period of extension shall not in any case exceed two years :

[70][**Provided further** that where an application for settlement under section 245C is made, the period commencing from the date on which such application is made and ending with the date on which an order under sub-section (1) of section 245D is made shall be excluded from the period specified in the preceding proviso:]

[71][**Provided also** that the period during which the proceedings for assessment or reassessment are stayed by an order or injunction of any court shall be excluded from the period specified in the first proviso.]

[72][**Service of notice generally.**

282. (1) The service of a notice or summon or requisition or order or any other communication under this Act (hereafter in this section referred to as

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67. Substituted for "Chief Commissioner or Commissioner" by the Finance Act, 1997, w.r.e.f. 1-10-1996. Earlier, "Chief Commissioner or Commissioner" was substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

68. Inserted by the Finance Act, 1988, w.e.f. 1-4-1988.

69. Substituted for "Chief Commissioner or Commissioner" by the Finance Act, 1997, w.r.e.f. 1-10-1996. Earlier, "Chief Commissioner or Commissioner" was substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

70. Inserted by the Finance Act, 1988, w.e.f. 1-4-1988.

71. Inserted by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-1988.

72. Substituted, *ibid.*, w.e.f. 1-10-2009. Prior to its substitution, section 282, read as under :

"282. *Service of notice generally.*—(1) A notice or requisition under this Act may be served on the person therein named either by post or as if it were a summons issued by a court under the Code of Civil Procedure, 1908 (5 of 1908).

(2) Any such notice or requisition may be addressed—

(*a*) in the case of a firm or a Hindu undivided family, to any member of the firm or to the manager or any adult member of the family ;

(*b*) in the case of a local authority or company, to the principal officer thereof ;

(*c*) in the case of any other association or body of individuals, to the principal officer or any member thereof ;

(*d*) in the case of any other person (not being an individual), to the person who manages or controls his affairs."

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"communication") may be made by delivering or transmitting a copy thereof, to the person therein named,—

(*a*) by post or by such courier services as may be approved by the Board; or

(*b*) in such manner as provided under the Code of Civil Procedure, 1908 (5 of 1908) for the purposes of service of summons; or

(*c*) in the form of any electronic record as provided in Chapter IV of the Information Technology Act, 2000 (21 of 2000); or

(*d*) by any other means of transmission of documents as provided by rules made by the Board in this behalf.

(2) The Board may make rules providing for the addresses (including the address for electronic mail or electronic mail message) to which the communication referred to in sub-section (1) may be delivered or transmitted to the person therein named.

Explanation.—For the purposes of this section, the expressions "electronic mail" and "electronic mail message" shall have the meanings as assigned to them in *Explanation* to section 66A of the Information Technology Act, 2000 (21 of 2000) [73].]

[74][**Authentication of notices and other documents.**

282A. (1) Where this Act requires a notice or other document to be issued by any income-tax authority, such notice or other document shall be signed in manuscript by that authority.

(2) Every notice or other document to be issued, served or given for the purposes of this Act by any income-tax authority, shall be deemed to be authenticated if the name and office of a designated income-tax authority is printed, stamped or otherwise written thereon.

(3) For the purposes of this section, a designated income-tax authority shall mean any income-tax authority authorised by the Board to issue, serve or give such notice or other document after authentication in the manner as provided in sub-section (2).]

[75][**Allotment of Document Identification Number.**

282B. *(1) Every income-tax authority shall* [75a]**[***, on or after the 1st day of July, 2011,***]** *allot a computer generated Document Identification Number in respect of every notice, order, letter or any correspondence issued by him to any other income-tax authority or assessee or any other person and such number shall be quoted thereon.*

(2) Where the notice, order, letter or any correspondence, issued by any income-tax authority, does not bear a Document Identification Number referred to in sub-section (1), such notice, order, letter or any correspondence shall be treated as invalid and shall be deemed never to have been issued.

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73. For the text of *Explanation* to section 66A, *see* **Appendix**.

74. Inserted by the Finance Act, 2008, w.e.f. 1-6-2008.

75. Inserted by the Finance (No. 2) Act, 2009, w.e.f. **1-10-2010.**

75a. Inserted by the Finance Act, 2010, w.e.f. **1-10-2010**.

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(3) Every document, letter or any correspondence, received [75b]**[***, on or after the 1st day of July, 2011,***]** *by an income-tax authority or on behalf of such authority, shall be accepted only after allotting and quoting of a computer generated Document Identification Number.*

(4) Where the document, letter or any correspondence received by any income-tax authority or on behalf of such authority does not bear the Document Identification Number referred to in sub-section (3), such document, letter or any correspondence shall be treated as invalid and shall be deemed never to have been received.]

Service of notice when family is disrupted or firm, etc., is dissolved.

283. (1) After a finding of total partition has been recorded by the [76][Assessing] Officer under section 171 in respect of any Hindu family, notices under this Act in respect of the income of the Hindu family shall be served on the person who was the last manager of the Hindu family, or, if such person is dead, then on all adults who were members of the Hindu family immediately before the partition.

(2) Where a firm or other association of persons is dissolved, notices under this Act in respect of the income of the firm or association may be served on any person who was a partner (not being a minor) or member of the association, as the case may be, immediately before its dissolution.

Service of notice in the case of discontinued business.

284. Where an assessment is to be made under section 176, the [76][Assessing] Officer may serve on the person whose income is to be assessed, or, in the case of a firm or an association of persons, on any person who was a member of such firm or association at the time of its discontinuance or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 139, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that section.

Information by persons responsible for paying interest.

285. [*Omitted by the Finance Act, 1987, w.e.f. 1-6-1987.*]

Information by contractors in certain cases.

285A. [77][*Omitted by the Finance Act, 1988, w.e.f. 1-4-1988. Section 285A was inserted by the Direct Taxes (Amendment) Act, 1964, w.e.f. 6-10-1964.*]

[78][**Submission of statements by producers of cinematograph films.**

285B. [79]Any person carrying on the production of a cinematograph film during the whole or any part of any financial year shall, in respect of the period during which such production is carried on by him in such financial year, prepare

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75b. Inserted by the Finance Act, 2010, w.e.f. **1-10-2010**.

76. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

77. Prior to its omission, section 285A was amended by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

78. Inserted, *ibid.*

79. *See* rule 121A and Form No. 52A for Form of Statement to be furnished by producer of films.

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and deliver or cause to be delivered to the [80][Assessing] Officer, within thirty days from the end of such financial year or within thirty days from the date of the completion of the production of the film, whichever is earlier, a statement in the prescribed form containing particulars of all payments of over [81][fifty] thousand rupees in the aggregate made by him or due from him to each such person as is engaged by him in such production [82][***].]

[83][**Obligation to furnish annual information return**[84].

285BA. (1) Any person, being—

(*a*) an assessee; or

(*b*) the prescribed person in the case of an office of Government; or

(*c*) a local authority or other public body or association; or

(*d*) the Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908 (16 of 1908); or

(*e*) the registering authority empowered to register motor vehicles under Chapter IV of the Motor Vehicles Act, 1988 (59 of 1988); or

(*f*) the Post Master General as referred to in clause (*j*) of section 2 of the Indian Post Office Act, 1898 (6 of 1898); or

(*g*) the Collector referred to in clause (*c*) of section 3 of the Land Acquisition Act, 1894 (1 of 1894); or

(*h*) the recognised stock exchange[85] referred to in clause (*f*) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956); or

(*i*) an officer of the Reserve Bank of India, constituted under section 3 of the Reserve Bank of India Act, 1934 (2 of 1934); or

(*j*) a depository referred to in clause (*e*) of sub-section (1) of section 2 of the Depositories Act, 1996 (22 of 1996)[85],

who is responsible for registering, or, maintaining books of account or other document containing a record of any specified financial transaction, under any law for the time being in force, shall furnish an annual information return[86], in respect of such specified financial transaction which is registered or recorded by him during any financial year beginning on or after the 1st day of April, 2004 and information relating to which is relevant and required for the purposes of this

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80. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

81. Substituted for "twenty-five" by the Finance Act, 2000, w.e.f. 1-4-2001. Earlier "twenty-five" was substituted for "five" by the Finance (No. 2) Act, 1998, w.e.f. 1-4-1999.

82. Words "as employee or otherwise" omitted by the Finance Act, 1989, w.e.f. 1-6-1989.

83. Substituted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005. Prior to its substitution, section 285BA, as inserted by the Finance Act, 2003, w.e.f. 1-4-2004, read as under :

"285BA. *Annual information return.*—Any assessee, who enters into any financial transaction, as may be prescribed, with any other person, shall furnish, within the prescribed time, an annual information return in such form and manner, as may be prescribed, in respect of such financial transaction entered into by him during any previous year."

84. For clarifications regarding furnishing of Annual Information Return, *see* Circular No. 7/2005, dated 24-8-2005. For details, *see* Taxmann's Master Guide to Income-tax Act.

85. For definition of "recognised stock exchange" and "depository", *see* **Appendix**.

86. *See* rule 114E and Form No. 61A.

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Act, to the prescribed income-tax authority[87] or such other authority or agency as may be prescribed[88].

(2) The annual information return referred to in sub-section (1) shall be furnished within the prescribed time[89] after the end of such financial year, in such form and manner (including on a floppy, diskette, magnetic cartridge tape, CD-ROM or any computer readable media) as may be prescribed[90].

(3) For the purposes of sub-section (1), "specified financial transaction" means any—

(*a*) transaction of purchase, sale or exchange of goods or property or right or interest in a property; or

(*b*) transaction for rendering any service; or

(*c*) transaction under a works contract; or

(*d*) transaction by way of an investment made or an expenditure incurred; or

(*e*) transaction for taking or accepting any loan or deposit,

which may be prescribed[90] :

Provided that the Board may prescribe different values for different transactions in respect of different persons having regard to the nature of such transaction :

Provided further that the value or, as the case may be, the aggregate value of such transactions during a financial year so prescribed shall not be less than fifty thousand rupees.

(4) Where the prescribed income-tax authority considers that the annual information return furnished under sub-section (1) is defective, he may intimate the defect to the person who has furnished such return and give him an opportunity of rectifying the defect within a period of one month from the date of such intimation or within such further period which, on an application made in this behalf, the prescribed income-tax authority may, in his discretion, allow; and if the defect is not rectified within the said period of one month or, as the case may be, the further period so allowed, then, notwithstanding anything contained in any other provision of this Act, such return shall be treated as an invalid return and the provisions of this Act shall apply as if such person had failed to furnish the annual information return.

(5) Where a person who is required to furnish an annual information return under sub-section (1) has not furnished the same within the prescribed time, the prescribed income-tax authority may serve upon such person a notice requiring him to furnish such return within a period not exceeding sixty days from the date of service of such notice and he shall furnish the annual information return within the time specified in the notice.]

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87. Prescribed authority is Director of Income-tax (Central Information Branch).

88. NSDL.

89. Return shall be furnished on or before 31st August, immediately following the financial year in which transaction is registered or recorded.

90. *See* rule 114E and Form No. 61A.

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Information by companies respecting shareholders to whom dividends have been paid.

286. [*Omitted by the Finance Act, 1987, w.e.f. 1-6-1987.*]

[91][**Publication of information respecting assessees in certain cases.**

287. (1) If the Central Government is of opinion that it is necessary or expedient in the public interest to publish the names of any assessees and any other particulars relating to any proceedings [92][or prosecutions] under this Act in respect of such assessees, it may cause to be published such names and particulars in such manner as it thinks fit.

[93][(2) No publication under this section shall be made in relation to any penalty imposed under this Act until the time for presenting an appeal to the [94][* * *] [95][Commissioner (Appeals)] has expired without an appeal having been presented or the appeal, if presented, has been disposed of.]

Explanation.—In the case of a firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers, or managers of the company, or the members of the association, as the case may be, may also be published if, in the opinion of the Central Government, the circumstances of the case justify it.]

[96][**Appearance by registered valuer in certain matters.**

287A. Any assessee who is entitled or required to attend before any income-tax authority or the Appellate Tribunal in connection with any matter relating to the valuation of any asset, otherwise than when required under section 131 to attend personally for examination on oath or affirmation, may attend by a registered valuer.

Explanation.—In this section, "registered valuer" has the same meaning as in clause (*oaa*) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).]

[97]**Appearance by authorised representative.**[98]

[99]**288.** (1) Any assessee who is entitled or required to attend before any income-tax authority or the Appellate Tribunal in connection with any proceeding under this Act otherwise than when required under section 131 to

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91. Substituted by the Finance Act, 1964, w.e.f. 1-4-1964.

92. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

93. Substituted, *ibid.*

94. Words "Deputy Commissioner (Appeals) or, as the case may be, the" omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier, "Deputy Commissioner (Appeals)" was substituted for "Appellate Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988 and "or, as the case may be, the" was inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

95. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

96. Inserted by the Taxation Laws (Amendment) Act, 1972, w.e.f. 1-1-1973.

97. For notifications issued by the Appellate Tribunal under this section, *see* Taxmann's Master Guide to Income-tax Act.

98. *See* rules 49 to 66 and Form Nos. 38 to 40.

99. *See* also Circular No. 19-D (XL-62), dated 3-7-1964 and Letter [F. No. 21/4/63-IT], dated 14-6-1963. For details, *see* Taxmann's Master Guide to Income-tax Act.

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attend personally for examination on oath or affirmation, may, subject to the other provisions of this section, attend by an authorised representative.

[1](2) For the purposes of this section, "authorised representative" means a person authorised by the assessee in writing to appear on his behalf, being—

(*i*) a person related to the assessee in any manner, or a person regularly employed by the assessee; or

(*ii*) any officer of a Scheduled Bank with which the assessee maintains a current account or has other regular dealings; or

(*iii*) any legal practitioner who is entitled to practise in any civil court in India; or

(*iv*) an accountant; or

(*v*) any person who has passed any accountancy examination recognised in this behalf by the Board[2]; or

(*vi*) any person who has acquired such educational qualifications as the Board may prescribe[3] for this purpose; or

[4][(*via*) any person who, before the coming into force of this Act in the Union territory of Dadra and Nagar Haveli, Goa†, Daman and Diu, or Pondicherry, attended before an income-tax authority in the said territory on behalf of any assessee otherwise than in the capacity of an employee or relative of that assessee; or]

(*vii*) any other person who, immediately before the commencement of this Act, was an income-tax practitioner within the meaning of clause (*iv*) of sub-section (2) of section 61 of the Indian Income-tax Act, 1922 (11 of 1922), and was actually practising as such.

Explanation.—In this section, "accountant" means a [5]chartered accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949), and includes, in relation to any State, any person who by virtue of the provisions of

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1. *See* rule 12A. Particulars to be furnished by authorised representative who has prepared the assessee's return, are as follows :

   (*a*) particulars of accounts, statements or other documents supplied to him by the assessee for the preparation of the return of income; and

   (*b*) where the authorised representative has for the purpose of preparation of the return of income carried out any examination of such accounts, statements or documents, a report on the scope and results of such examination.

   See rule 54 and Form No. 39 for application for registration as authorised income-tax practitioner and rule 55 and Form No. 40 for Form of Certificate by Commissioner for registration of authorised representative.

2. *See* rule 50.

3. *See* rule 51.

4. Inserted by the Taxation Laws (Extension to Union Territories) Regulation, 1963, w.e.f. 1-4-1963.

5. Clause (1)(*b*) of section 2 of the Chartered Accountants Act, 1949 defines "chartered accountant" as under :

   '(*b*) "chartered accountant" means a person who is a member of the *Institute;'

   *Clause (1)(*e*) of section 2 defines the "Institute" as the Institute of Chartered Accountants of India constituted under this Act.

†Goa has now become a State.

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sub-section (2) of section 226[6] of the Companies Act, 1956 (1 of 1956), is entitled to be appointed to act as an auditor of companies registered in that State.

(3) [7][***]

(4) No person—

(*a*) who has been dismissed or removed from Government service after the 1st day of April, 1938; or

(*b*) who has been convicted of an offence connected with any income-tax proceeding or on whom a penalty has been imposed under this Act, other than a penalty imposed on him under [8][clause (*ii*) of sub-section (1) of] section 271; or

(*c*) who has become an insolvent,

shall be qualified to represent an assessee under sub-section (1), for all times in the case of a person referred to in sub-clause (*a*)*, for such time as the [9][Chief Commissioner or Commissioner] may by order determine in the case of a person referred to in sub-clause (*b*)*, and for the period during which the insolvency continues in the case of a person referred to in sub-clause (*c*)*.

(5) If any person—

(*a*) who is a legal practitioner or an accountant is found guilty of misconduct in his professional capacity by any authority entitled to institute disciplinary proceedings against him, an order passed by that authority shall have effect in relation to his right to attend before an income-tax authority as it has in relation to his right to practise as a legal practitioner or accountant, as the case may be;

[10](*b*) who is not a legal practitioner or an accountant, is found guilty of misconduct in connection with any income-tax proceedings by the prescribed authority, the prescribed authority[11] may direct that he shall thenceforth be disqualified to represent an assessee under sub-section (1).

(6) Any order or direction under clause (*b*) of sub-section (4) or clause (*b*) of sub-section (5) shall be subject to the following conditions, namely :—

(*a*) no such order or direction shall be made in respect of any person unless he has been given a reasonable opportunity of being heard;

(*b*) any person against whom any such order or direction is made may, within one month of the making of the order or direction, appeal to the Board to have the order or direction cancelled; and

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6. For text of section 226(2) of the Companies Act, 1956, *see* **Appendix**.

7. Omitted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984.

8. Inserted by the Finance Act, 1990, w.e.f. 1-4-1990. Earlier, it was amended by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

9. Substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

10. *See* rules 52 and 59 to 66.

11. The prescribed authority under rule 52 is the Chief Commissioner or Commissioner having requisite jurisdiction.

*Should be read as clause.

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(*c*) no such order or direction shall take effect until the expiration of one month from the making thereof, or, where an appeal has been preferred, until the disposal of the appeal.

(7) A person disqualified to represent an assessee by virtue of the provisions of sub-section (3) of section 61 of the Indian Income-tax Act, 1922 (11 of 1922), shall be disqualified to represent an assessee under sub-section (1).

[12][**Rounding off of income.**

288A. [13][The amount of total income] computed in accordance with the foregoing provisions of this Act shall be rounded off to the nearest multiple of ten rupees and for this purpose any part of a rupee consisting of *paise* shall be ignored and thereafter if such amount is not a multiple of ten, then, if the last figure in that amount is five or more, the amount shall be increased to the next higher amount which is a multiple of ten and if the last figure is less than five, the amount shall be reduced to the next lower amount which is a multiple of ten; and the amount so rounded off shall be deemed to be the total income of the assessee for the purposes of this Act.]

[14][***]

[15][**Rounding off amount payable and refund due.**

288B. Any amount payable, and the amount of refund due, under the provisions of this Act shall be rounded off to the nearest multiple of ten rupees and for this purpose any part of a rupee consisting of paise shall be ignored and thereafter if such amount is not a multiple of ten, then, if the last figure in that amount is five or more, the amount shall be increased to the next higher amount which is a multiple of ten and if the last figure is less than five, the amount shall be reduced to the next lower amount which is a multiple of ten.]

Receipt to be given.

289. A receipt shall be given for any money paid or recovered under this Act.

Indemnity.

290. Every person deducting, retaining, or paying any tax in pursuance of this Act in respect of income belonging to another person is hereby indemnified for the deduction, retention, or payment thereof.

Power to tender immunity from prosecution.

291. (1) The Central Government may, if it is of opinion (the reasons for such opinion being recorded in writing) that with a view to obtaining the

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12. Inserted by the Finance Act, 1966, w.e.f. 1-4-1966.

13. Substituted for "(1) Subject to the provisions of sub-section (2), the amount of total income" by the Finance Act, 1968, w.e.f. 1-4-1969.

14. Sub-section (2) and *Explanation*, omitted, *ibid*.

15. Substituted by the Taxation Laws (Amendment) Act, 2006, w.e.f. 13-7-2006. Prior to its substitution, section 288B, as amended by the Finance Act, 1966, w.e.f. 1-4-1966, read as under:

"288B. *Rounding off of tax, etc.*—The amount of tax (including tax deductible at source or payable in advance), interest, penalty, fine or any other sum payable, and the amount of refund due, under the provisions of this Act shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee consisting of *paise* then, if such part is fifty *paise* or more, it shall be increased to one rupee and if such part is less than fifty *paise* it shall be ignored."

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evidence of any person appearing to have been directly or indirectly concerned in or privy to the concealment of income or to the evasion of payment of tax on income [16][it is necessary or expedient so to do], tender to such person immunity from prosecution for any offence under this Act or under the Indian Penal Code (45 of 1860), or under any other Central Act for the time being in force and also from the imposition of any penalty under this Act on condition of his making a full and true disclosure of the whole circumstances relating to the concealment of income or evasion of payment of tax on income.

(2) A tender of immunity made to, and accepted by, the person concerned, shall, to the extent to which the immunity extends, render him immune from prosecution for any offence in respect of which the tender was made or from the imposition of any penalty under this Act.

(3) If it appears to the Central Government that any person to whom immunity has been tendered under this section has not complied with the condition on which the tender was made or is wilfully concealing anything or is giving false evidence, the Central Government may record a finding to that effect, and thereupon the immunity shall be deemed to have been withdrawn, and any such person may be tried for the offence in respect of which the tender of immunity was made or for any other offence of which he appears to have been guilty in connection with the same matter and shall also become liable to the imposition of any penalty under this Act to which he would otherwise have been liable.

Cognizance of offences.

292. No court inferior to that of a presidency magistrate or a magistrate of the first class shall try any offence under this Act.

[17][**Section 360 of the Code of Criminal Procedure, 1973, and the Probation of Offenders Act, 1958, not to apply.**

292A. Nothing contained in section 360[18] of the Code of Criminal Procedure, 1973 (2 of 1974), or in the Probation of Offenders Act, 1958 (20 of 1958), shall apply to a person convicted of an offence under this Act unless that person is under eighteen years of age.]

[19][**Return of income, etc., not to be invalid on certain grounds.**

292B. No return of income, assessment, notice, summons or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.]

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16. Inserted by the Finance Act, 1963, w.e.f. 28-4-1963.

17. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

18. For text of section 360 of the Code of Criminal Procedure, 1973, *see* **Appendix**.

19. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

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[20][**Notice deemed to be valid in certain circumstances.**

292BB. Where an assessee has appeared in any proceeding or co-operated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of this Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was—

(*a*) not served upon him; or

(*b*) not served upon him in time; or

(*c*) served upon him in an improper manner:

Provided that nothing contained in this section shall apply where the assessee has raised such objection before the completion of such assessment or reassessment.]

[21][**Presumption as to assets, books of account, etc.**

292C. [22][(1)] Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search under section 132 [23][or survey under section 133A], it may, in any proceeding under this Act, be presumed—

(*i*) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;

(*ii*) that the contents of such books of account and other documents are true; and

(*iii*) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.]

[24][(2) Where any books of account, other documents or assets have been delivered to the requisitioning officer in accordance with the provisions of section 132A, then, the provisions of sub-section (1) shall apply as if such books of account, other documents or assets which had been taken into custody from the person referred to in clause (*a*) or clause (*b*) or clause (*c*), as the case may be, of sub-section (1) of section 132A, had been found in the possession or control of that person in the course of a search under section 132.]

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20. Inserted by the Finance Act, 2008, w.e.f. 1-4-2008.

21. Inserted by the Finance Act, 2007, w.r.e.f. 1-10-1975.

22. Renumbered as sub-section (1) by the Finance Act, 2008, w.r.e.f. 1-10-1975.

23. Inserted, *ibid.*, w.r.e.f. 1-6-2002.

24. Inserted, *ibid.*, w.r.e.f. 1-10-1975.

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Bar of suits in civil courts.

293. No suit shall be brought in any civil court to set aside or modify any [25][***] [26][proceeding taken[27] or] order made under this Act; and no prosecution, suit or other proceeding shall lie against [28][the Government or] any officer of the Government for anything in good faith done or intended to be done under this Act.

[29][**Power to make exemption, etc., in relation to participation in the business of prospecting for, extraction, etc., of mineral oils.**

293A. (1) If the Central Government is satisfied that it is necessary or expedient so to do in the public interest, it may, by notification[30] in the Official Gazette, make an exemption, reduction in rate or other modification in respect of income-tax in favour of any class of persons specified in sub-section (2) or in regard to the whole or any part of the income of such class of persons [31][or in regard to the status in which such class of persons or the members thereof are to be assessed on their income from the business referred to in clause (*a*) of sub-section (2) :

Provided that the notification for modification in respect of the status may be given effect from an assessment year beginning on or after the 1st day of April, 1993.]

(2) The persons referred to in sub-section (1) are the following, namely :—

(*a*) persons with whom the Central Government has entered into agreements for the association or participation of that Government or any person authorised by that Government in any business consisting of the prospecting for or extraction or production of mineral oils;

(*b*) persons providing any services or facilities or supplying any ship, aircraft, machinery or plant (whether by way of sale or hire) in connection with any business consisting of the prospecting for or extraction or production of mineral oils carried on by that Government or any person specified by that Government in this behalf by notification in the Official Gazette; and

(*c*) employees of the persons referred to in clause (*a*) or clause (*b*).

(3) Every notification issued under this section shall be laid before each House of Parliament.

[32][*Explanation*.—For the purposes of this section,—

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25. Word "assessment" omitted by the Finance Act, 1987, w.r.e.f. 1-3-1987.

26. Inserted by the Finance Act, 1988, w.r.e.f. 1-3-1988.

27. For the meaning of the expression "proceeding taken", *see* Taxmann's Direct Taxes Manual, Vol. 3.

28. Inserted by the Finance Act, 1964, w.e.f. 1-4-1964.

29. Inserted by the Finance Act, 1981, w.e.f. 1-4-1981.

30. For notifications issued under this section, *see* Taxmann's Master Guide to Income-tax Act.

31. Inserted by the Finance Act, 1995, w.r.e.f. 1-4-1993.

32. Substituted by the Finance Act, 1995, w.r.e.f. 1-4-1993. Prior to its substitution, the *Explanation*, as inserted by the Finance Act, 1981, w.e.f. 1-4-1981, read as under :

'*Explanation*.—For the purposes of this section, "mineral oil" includes petroleum and natural gas.'

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(*a*) "mineral oil" includes petroleum and natural gas;

(*b*) "status" means the category under which the assessee is assessed as "individual", "Hindu undivided family" and so on.]]

[33][**Power of Central Government or Board to condone delays in obtaining approval.**

293B. Where, under any provision of this Act, the approval of the Central Government or the Board is required to be obtained before a specified date, it shall be open to the Central Government or, as the case may be, the Board to condone, for sufficient cause, any delay in obtaining such approval.]

[34][**Power to withdraw approval.**

293C. Where the Central Government or the Board or an income-tax authority, who has been conferred upon the power under any provision of this Act to grant any approval to any assessee, the Central Government or the Board or such authority may, notwithstanding that a provision to withdraw such approval has not been specifically provided for in such provision, withdraw such approval at any time :

Provided that the Central Government or Board or income-tax authority shall, after giving a reasonable opportunity of showing cause against the proposed withdrawal to the assessee concerned, at anytime, withdraw the approval after recording the reasons for doing so.]

Act to have effect pending legislative provision for charge of tax.

294. If on the 1st day of April in any assessment year provision has not yet been made by a Central Act for the charging of income-tax [35][***] for that assessment year, this Act shall nevertheless have effect until such provision is so made as if the provision in force in the preceding assessment year or the provision proposed in the Bill then before Parliament, whichever is more favourable to the assessee, were actually in force.

[36][**Power to make exemption, etc., in relation to certain Union territories.**

294A. If the Central Government considers it necessary or expedient so to do for avoiding any hardship or anomaly or removing any difficulty that may arise as a result of the application of this Act to the Union territories of Dadra and Nagar Haveli, Goa*, Daman and Diu, and Pondicherry, or in the case of the Union territory of Pondicherry, for implementing any provision of the Treaty of Cession concluded between France and India on the 28th day of May, 1956, that Government may, by general or special order, make an exemption, reduction in rate or other modification in respect of income-tax or super-tax in favour of any assessee or class of assessees or in regard to the whole or any part of the income of any assessee or class of assessees :

Provided that the power conferred by this section shall not be exercisable after the 31st day of March, 1967, except for the purpose of rescinding an exemption, reduction or modification already made.]

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33. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

34. Inserted by the Finance (No. 2) Act, 2009, w.e.f. 1-10-2009.

35. Words "or super-tax" omitted by the Finance Act, 1965, w.e.f. 1-4-1965.

36. Inserted by the Taxation Laws (Extension to Union Territories) Regulation, 1963, w.e.f. 1-4-1963.

*Goa has now become a State.

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Power to make rules.

295. (1) The Board may, subject to the control of the Central Government, by notification in the Gazette of India, make rules for the whole or any part of India for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters :—

(*a*) the ascertainment and determination of any class of income;

(*b*) the manner in which and the procedure by which the income shall be arrived at in the case of—

(*i*) income derived in part from agriculture and in part from business;

(*ii*) persons residing outside India;

[37][(*iii*) an individual who is liable to be assessed under the provisions of sub-section (2) of section 64;]

(*c*) the determination of the value of any perquisite chargeable to tax under this Act in such manner and on such basis as appears to the Board to be proper and reasonable;

(*d*) the percentage on the written down value which may be allowed as depreciation in respect of buildings, machinery, plant or furniture;

[38][(*dd*) the extent to which, and the conditions subject to which, any expenditure referred to in sub-section (3) of section 37 may be allowed;]

[39][(*dda*) the matters specified in sub-sections (2) and (3) of section 44AA;]

(*e*) [40][***]

[41][(*ee*) the conditions or limitations subject to which any payment of rent made by an assessee shall be deducted under section 80GG;

(*eea*) the cases, the nature and value of assets, the limits and heads of expenditure and the outgoings, which are required to be prescribed under sub-section (6) of section 139;

(*eeb*) the time within which any person may apply for the allotment of a permanent account number, the form and the manner in which such application may be made and the particulars which such application shall contain and the transactions with respect to which permanent account numbers shall be quoted on documents relating to such transactions under section 139A;

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37. Inserted by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

38. Inserted by the Finance Act, 1964, w.e.f. 1-4-1964.

39. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

40. Omitted by the Finance Act, 2005, w.e.f. 1-4-2006. Prior to its omission, clause (*e*), as amended by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968, read as under :

"(*e*) the percentage or the amount to be prescribed under clause (*i*) of sub-section (4) of section 80C;"

41. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

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[42][(*eeba*) the documents, statements, receipts, certificates or audited reports which may not be furnished along with the return but shall be produced before the Assessing Officer on demand under section 139C;

(*eebb*) the class or classes of persons who shall be required to furnish the return of income in electronic form; the form and the manner of furnishing the said return in electronic form; documents, statements, receipts, certificates or reports which shall not be furnished with the return in electronic form and the computer resource or electronic record to which such return may be transmitted under section 139D;]

(*eec*) the form of the report of audit and the particulars which such report shall contain under sub-section (2A) of section 142;]

(*f*) the manner in which and the period to which any such income as is referred to in section 180 may be allocated;

[43][(*fa*) the form and manner in which the information relating to payment of any sum may be furnished under sub-section (6) of section 195;]

(*g*) the authority to be prescribed for any of the purposes of this Act;

(*h*) the procedure for giving effect to the terms of any agreement for the granting of relief in respect of double taxation or for the avoidance of double taxation which may be entered into by the Central Government under this Act;

(*i*) the form and manner in which any application, claim, return or information may be made or furnished and the fees that may be levied in respect of any application or claim;

(*j*) the manner in which any document required to be filed under this Act may be verified;

(*k*) the procedure to be followed on applications for refunds;

[44][(*kk*) the procedure to be followed in calculating interest payable by assessees or interest payable by Government to assessees under any provision of this Act, including the rounding off of the period for which such interest is to be calculated in cases where such period includes a fraction of a month, and specifying the circumstances in which and the extent to which petty amounts of interest payable by assessees may be ignored;]

(*l*) the regulation of any matter for which provision is made in section 230;

(*m*) the form and manner in which any appeal or cross-objection may be filed under this Act, the fee payable in respect thereof and the manner in which intimation of any such order as is referred to in clause (*c*) of sub-section (2) of section 249 may be served;

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42. Inserted by the Finance Act, 2007, w.r.e.f. 1-6-2006.

43. Inserted by the Finance Act, 2008, w.e.f. 1-4-2008.

44. Inserted by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

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[45][(*mm*) the circumstances in which, the conditions subject to which and the manner in which, the [46][* * *] [47][Commissioner (Appeals)] may permit an appellant to produce evidence which he did not produce or which he was not allowed to produce before the [48][Assessing] Officer;]

[49][(*mma*) the form in which the statement under section 285B shall be delivered to the [48][Assessing] Officer;]

(*n*) the maintenance of a register of persons other than legal practitioners or accountants as defined in sub-section (2) of section 288 practising before income-tax authorities and for the constitution of and the procedure to be followed by the authority referred to in sub-section (5) of that section;

(*o*) the issue of certificate verifying the payment of tax by assessees;

(*p*) any other matter which by this Act is to be, or may be, prescribed.

(3) In cases coming under clause (*b*) of sub-section (2), where the income liable to tax cannot be definitely ascertained, or can be ascertained only with an amount of trouble and expense to the assessee which in the opinion of the Board is unreasonable, the rules made under this section may—

(*a*) prescribe methods by which an estimate of such income may be made; and

(*b*) in cases coming under sub-clause (*i*) of clause (*b*) of sub-section (2) specify the proportion of the income which shall be deemed to be income liable to tax,

and an assessment based on such estimate or proportion shall be deemed to be duly made in accordance with the provisions of this Act.

[50][(4) The power to make rules conferred by this section shall include the power to give retrospective effect, from a date not earlier than the date of commencement of this Act, to the rules or any of them and, unless the contrary is permitted (whether expressly or by necessary implication), no retrospective effect shall be given to any rule so as to prejudicially affect the interests of assessees.]

[51][[52][**Rules and certain notifications to be placed before Parliament.**

296. The Central Government shall cause every rule made under this Act [53][, the rules of procedure framed by the Settlement Commission under

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45. Inserted by the Finance Act, 1972, w.e.f. 1-4-1972.

46. Words "Deputy Commissioner (Appeals) or the" omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier, "Deputy Commissioner (Appeals)" was substituted for "Appellate Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988 and "or the" was inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

47. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

48. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

49. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

50. Inserted by the Direct Taxes (Amendment) Act, 1974, w.e.f. 18-8-1974.

51. Restored to its original provision by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Earlier, it was substituted by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date.

52. Substituted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

53. Inserted by the Finance Act, 1994, w.e.f. 1-6-1994.

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sub-section (7) of section 245F, the Authority for Advance Rulings under section 245V and the Appellate Tribunal under sub-section (5) of section 255] and [54][every notification issued before the 1st day of June, 2007 under sub-clause (*iv*) of clause (*23C*) of section 10] to be laid as soon as may be after the rule is made or the notification is issued before each House of Parliament while it is in session, for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made or issued, that rule or notification shall thereafter have effect, only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.]]

Repeals and savings.

297. (1) The Indian Income-tax Act, 1922 (11 of 1922), is hereby repealed.

(2) Notwithstanding the repeal of the Indian Income-tax Act, 1922 (11 of 1922) (hereinafter referred to as the repealed Act),—

(*a*) where a return of income has been filed before the commencement of this Act by any person for any assessment year, proceedings for the assessment[55] of that person for that year may be taken and continued as if this Act had not been passed;

(*b*) where a return of income is filed after the commencement of this Act otherwise than in pursuance of a notice under section 34 of the repealed Act by any person for the assessment year ending on the 31st day of March, 1962, or any earlier year, the assessment of that person for that year shall be made in accordance with the procedure specified in this Act;

(*c*) any proceeding pending on the commencement of this Act before any income-tax authority, the Appellate Tribunal or any court, by way of appeal, reference, or revision, shall be continued and disposed of as if this Act had not been passed;

(*d*) where in respect of any assessment year after the year ending on the 31st day of March, 1940,—

(*i*) a notice under section 34 of the repealed Act had been issued before the commencement of this Act, the proceedings in pursuance of such notice may be continued and disposed of as if this Act had not been passed;

(*ii*) any income chargeable to tax had escaped assessment within the meaning of that expression in section 147 and no proceedings under section 34 of the repealed Act in respect of any such income

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54. Substituted for "every notification issued under sub-clause (*iv*) of clause (*23C*) of section 10" by the Finance Act, 2007, w.e.f. 1-6-2007.

55. For the meaning of the expression "proceedings for the reassessment", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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are pending at the commencement of this Act, a notice under section 148 may, subject to the provisions contained in section 149 or section 150, be issued with respect to that assessment year and all the provisions of this Act shall apply accordingly[56];

(*e*) [57][subject to the provisions of clause (*g*) and clause (*j*) of this sub-section,] section 23A of the repealed Act shall continue to have effect in relation to the assessment of any company or its shareholders for the assessment year ending on the 31st day of March, 1962 or any earlier year, and the provisions of the repealed Act shall apply to all matters arising out of such assessment as fully and effectually as if this Act had not been passed;

(*f*) any proceeding for the imposition of a penalty in respect of any assessment completed before the first day of April, 1962, may be initiated and any such penalty may be imposed as if this Act had not been passed;

(*g*) any proceeding for the imposition of a penalty in respect of any assessment for the year ending on the 31st day of March, 1962, or any earlier year, which is completed on or after the 1st day of April, 1962, may be initiated and any such penalty may be imposed under this Act;

(*h*) any election or declaration made or option exercised by an assessee under any provision of the repealed Act and in force immediately before the commencement of this Act shall be deemed to have been an election or declaration made or option exercised under the corresponding provision of this Act;

(*i*) where, in respect of any assessment completed before the commencement of this Act, a refund falls due after such commencement or default is made after such commencement in the payment of any sum due under such completed assessment,[58] the provisions of this Act relating to interest payable by the Central Government on refunds and interest payable by the assessee for default shall apply;

(*j*) any sum payable by way of income-tax, super-tax, interest, penalty or otherwise under the repealed Act may be recovered under this Act, but without prejudice to any action already taken for the recovery of such sum under the repealed Act;

(*k*) any agreement entered into, appointment made, approval given, recognition granted, direction, instruction, notification, order or rule issued under any provision of the repealed Act shall, so far as it is not inconsistent with the corresponding provision of this Act, be deemed to have been entered into, made, granted, given or issued under the

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56. For the meaning of the expression "all the provisions of this Act shall apply accordingly", *see* Taxmann's Direct Taxes Manual, Vol. 3.

57. Inserted by the Finance Act, 1963, w.r.e.f. 1-4-1962.

58. For the meaning of the expression "completed assessment", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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corresponding provision aforesaid and shall continue in force accordingly;

(*l*) [59]any notification issued under sub-section (1) of section 60 [60][or section 60A] of the repealed Act and in force immediately before the commencement of this Act shall, to the extent to which provision has not been made under this Act, continue in force [61][***]:

[62][**Provided** that the Central Government may rescind any such notification or amend it so as to rescind any exemption, reduction in rate or other modification made thereunder;]

(*m*) where the period prescribed for any application, appeal, reference or revision under the repealed Act had expired on or before the commencement of this Act, nothing in this Act shall be construed as enabling any such application, appeal, reference or revision to be made under this Act by reason only of the fact that a longer period therefor is prescribed or provision is made for extension of time in suitable cases by the appropriate authority.

Power to remove difficulties.

298. (1) If any difficulty arises in giving effect to the provisions of this Act the Central Government may, by general or special order, do anything not inconsistent with such provisions which appears to it to be necessary or expedient for the purpose of removing the difficulty.

(2) In particular, and without prejudice to the generality of the foregoing power, any such order may provide for the adaptations or modifications subject to which the repealed Act shall apply in relation to the assessments for the assessment year ending on the 31st day of March, 1962, or any earlier year.

[63][(3) If any difficulty arises in giving effect to the provisions of this Act as amended by the Direct Tax Laws (Amendment) Act, 1987, the Central Government may, by order, do anything not inconsistent with such provisions for the purpose of removing the difficulty:

Provided that no such order shall be made after the expiration of three years from the 1st day of April, 1988.

(4) Every order made under sub-section (3) shall be laid before each House of Parliament.]

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59. For exemptions notified under section 60(1) of the 1922 Act, which continued to be in force under this clause, *see* Taxmann's Direct Taxes Circulars.

60. Inserted by the Finance Act, 1966, w.r.e.f. 1-4-1962.

61. Words "until rescinded by the Central Government" omitted by the Rulers of Indian States (Abolition of Privileges) Act, 1972, w.e.f. 9-9-1972.

62. Inserted, *ibid.*

63. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

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THE FIRST SCHEDULE

INSURANCE BUSINESS

[*See* section 44]

A.—Life insurance business

Profits of life insurance business to be computed separately.

1. In the case of a person who carries on or at any time in the previous year carried on life insurance business, the profits and gains of such person from that business shall be computed separately from his profits and gains from any other business.

[64][**Computation of profits of life insurance business.**

2. The profits and gains of life insurance business shall be taken to be the annual average of the surplus arrived at by adjusting the surplus or deficit disclosed by the actuarial valuation made in accordance with the Insurance Act, 1938 (4 of 1938), in respect of the last inter-valuation period ending before the commencement of the assessment year, so as to exclude from it any surplus or deficit included therein which was made in any earlier inter-valuation period.]

Deductions.

3. [*Omitted by the Finance Act, 1976, w.e.f. 1-4-1977. Earlier, the rule was first amended by the Finance Act, 1966, w.e.f. 1-4-1966 and by the Finance Act, 1965, w.e.f. 1-4-1965.*]

Adjustment of tax paid by deduction at source.

4. Where for any year an assessment of the profits of life insurance business is made in accordance with the annual average of a surplus disclosed by a valuation for an inter-valuation period exceeding twelve months, then, in computing the income-tax payable for that year, credit shall not be given in accordance with section 199 for the income-tax paid in the previous year, but credit shall be given for the annual average of the income-tax paid by deduction at source from interest on securities or otherwise during such period.

B.—Other insurance business

Computation of profits and gains of other insurance business.

5. The profits and gains of any business of insurance other than life insurance shall be taken to be the [65]**[***balance of the profits disclosed by the annual accounts, copies of which are required under the Insurance Act, 1938 (4 of 1938),*

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64. Substituted by the Finance Act, 1976, w.e.f. 1-4-1977.

65. Words "profit before tax and appropriations as disclosed in the profit and loss account prepared in accordance with the provisions of the Insurance Act, 1938 (4 of 1938) or the rules made thereunder or the provisions of the Insurance Regulatory and Development Authority Act, 1999 (4 of 1999) or regulations made thereunder," shall be substituted for the words "balance of the profits disclosed by the annual accounts, copies of which are required under the Insurance Act, 1938 (4 of 1938), to be furnished to the Controller of Insurance," by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2011**.

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to be furnished to the Controller of Insurance,**]** subject to the following adjustments:—

(*a*) subject to the other provisions of this rule, any expenditure or allowance [66][including any amount debited to the profit and loss account either by way of a provision for any tax, dividend, reserve or any other provision as may be prescribed] which is not admissible under the provisions of sections 30 to [67][43B] in computing the profits and gains of a business shall be added back;

(*b*) [68][***]

The following clause (*b*) shall be substituted for existing clause (b) by the Finance Act, 2010, w.e.f. 1-4-2011 :

[68a]**[**(b) *(i) any gain or loss on realisation of investments shall be added or deducted, as the case may be, if such gain or loss is not credited or debited to the profit and loss account;*

(ii) *any provision for diminution in the value of investment debited to the profit and loss account, shall be added back;***]**

[69](*c*) such amount carried over to a reserve for unexpired risks as may be prescribed in this behalf shall be allowed as a deduction.

C.—Other provisions

Profits and gains of non-resident person.

6. (1) The profits and gains of the branches in India of a person not resident in India and carrying on any business of insurance, may, in the absence of more reliable data, be deemed to be that proportion of the world income of such person which corresponds to the proportion which his premium income derived from India bears to his total premium income.

(2) For the purposes of this rule, the world income in relation to life insurance business of a person not resident in India shall be computed in the manner laid down in this Act for the computation of the profits and gains of life insurance business carried on in India.

66. Inserted by the Finance (No. 2) Act, 1998, w.r.e.f. 1-4-1989.

67. Substituted for "43A" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Earlier, "43A" was substituted for "43" by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

68. Omitted by the Finance Act, 1988, w.e.f. 1-4-1989.

68a. Prior to its substitution clause (*b*), as inserted by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2011**, read as under :

"(*b*) (*i*) deduction in respect of any amount either written off or provided in the accounts to meet diminution in or loss on realisation of investments in accordance with the regulations made by Insurance Regulatory and Development Authority;

(*ii*) increase in respect of any amount taken credit for in the accounts on account of appreciation of or gains on realisation of investments in accordance with the regulations made by Insurance Regulatory and Development Authority;"

69. See rule 6E for limits prescribed for amount that can be carried over to a "reserve for unexpired risk" : (50 per cent of net premium in case of fire or miscellaneous insurance business ; 100 per cent of net premium in case of marine insurance business and 100 per cent of net premium where insurance business relates to fire insurance or engineering insurance and which provides insurance for terrorism risks.)

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Interpretation.

7. (1) For the purposes of these rules—

(*i*) [70][***]

(*ii*) "investments" includes securities, stocks and shares;

(*iii*) [71][***]

(*iv*) "life insurance business"[72] means life insurance business as defined in clause (*11*) of section 2 of the Insurance Act, 1938 (4 of 1938) ;

(*v*) "rule" means a rule contained in this Schedule.

(2) References in these rules to the Insurance Act, 1938 (4 of 1938), or any provision thereof, shall, in relation to the Life Insurance Corporation of India, be construed as references to that Act or provision as read with section 43[73] of the Life Insurance Corporation Act, 1956 (31 of 1956).

THE SECOND SCHEDULE

PROCEDURE FOR RECOVERY OF TAX

[74][[*See* sections 222 and 276]]

PART I

GENERAL PROVISIONS

Definitions.

1. In this Schedule, unless the context otherwise requires,—

[75][(*a*) "certificate", except in rules 7, 44, 65 and sub-rule (2) of rule 66, means the certificate drawn up by the Tax Recovery Officer under section 222 in respect of any assessee referred to in that section;]

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70. Omitted by the Finance Act, 1976, w.e.f. 1-4-1977. Earlier, clause (*i*) was amended by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1967.

71. Omitted by the Finance Act, 1976, w.e.f. 1-4-1977.

72. Clause (*11*) of section 2 of the Insurance Act, 1938 defines "life insurance business" as follows :

'(*11*) "life insurance business" means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include—

(*a*) the granting of disability and double or triple indemnity accident benefits, if so provided in the contract of insurance,

(*b*) the granting of annuities upon human life, and

(*c*) the granting of superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment or of the dependants of such person;'

73. For text of section 43 of the Life Insurance Corporation Act, 1956, *see* **Appendix**.

74. Substituted for "[*See* section 222]" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

75. Substituted, *ibid*. Earlier, it was amended by the Direct Tax Laws (Amendment) Act, 1989, w.r.e.f. 1-4-1988.

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(*b*) "defaulter" means the assessee mentioned in the certificate;

(*c*) "execution", in relation to a certificate, means recovery of arrears in pursuance of the certificate;

(*d*) "movable property" includes growing crops;

(*e*) "officer" means a person authorised to make an attachment or sale under this Schedule;

(*f*) "rule" means a rule contained in this Schedule; and

(*g*) "share in a corporation" includes stock, debenture-stock, debentures or bonds.

Issue of notice.

2. [76][When a certificate has been drawn up by the Tax Recovery Officer] for the recovery of arrears under this Schedule, the Tax Recovery Officer shall cause to be served upon the defaulter a notice requiring the defaulter to pay the amount specified in the certificate within fifteen days from the date of service of the notice and intimating that in default steps would be taken to realise the amount under this Schedule.

When certificate may be executed.

3. No step in execution of a certificate shall be taken until the period of fifteen days has elapsed since the date of the service of the notice required by the preceding rule :

Provided that, if the Tax Recovery Officer is satisfied that the defaulter is likely to conceal, remove or dispose of the whole or any part of such of his movable property as would be liable to attachment in execution of a decree of a civil court and that the realisation of the amount of the certificate would in consequence be delayed or obstructed, he may at any time direct, for reasons to be recorded in writing, an attachment of the whole or any part of such property:

Provided further that if the defaulter whose property has been so attached furnishes security to the satisfaction of the Tax Recovery Officer, such attachment shall be cancelled from the date on which such security is accepted by the Tax Recovery Officer.

Mode of recovery.

4. If the amount mentioned in the notice is not paid within the time specified therein or within such further time as the Tax Recovery Officer may grant in his discretion, the Tax Recovery Officer shall proceed to realise the amount by one or more of the following modes :—

(*a*) by attachment and sale of the defaulter's movable property;

(*b*) by attachment and sale of the defaulter's immovable property;

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76. Substituted for "When a certificate has been received by the Tax Recovery Officer from the **Assessing* Officer" by the Direct Tax Laws (Amendment) Act, 1989, w.r.e.f. 1-4-1988. *Substituted for "Income-tax", *ibid.*

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(*c*) by arrest of the defaulter and his detention in prison;

(*d*) by appointing a receiver for the management of the defaulter's movable and immovable properties.

Interest, costs and charges recoverable.

5. There shall be recoverable, in the proceedings in execution of every certificate,—

(*a*) such interest upon the amount of tax or penalty or other sum to which the certificate relates as is payable in accordance with sub-section (2) of section 220, and

(*b*) all charges incurred in respect of—

(*i*) the service of notice upon the defaulter to pay the arrears, and of warrants and other processes, and

(*ii*) all other proceedings taken for realising the arrears.

Purchaser's title.

6. (1) Where property is sold in execution of a certificate, there shall vest in the purchaser merely the right, title and interest of the defaulter at the time of the sale, even though the property itself be specified.

(2) Where immovable property is sold in execution of a certificate, and such sale has become absolute, the purchaser's right, title and interest shall be deemed to have vested in him from the time when the property is sold, and not from the time when the sale becomes absolute.

Suit against purchaser not maintainable on ground of purchase being made on behalf of plaintiff.

7. (1) No suit shall be maintained against any person claiming title under a purchase certified by the Tax Recovery Officer in the manner laid down in this Schedule, on the ground that the purchase was made on behalf of the plaintiff or on behalf of some one through whom the plaintiff claims.

(2) Nothing in this section shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser, or interfere with the right of a third person to proceed against that property, though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner.

[77][**Disposal of proceeds of execution.**

8. (1) Whenever assets are realised by sale or otherwise in execution of a certificate, the proceeds shall be disposed of in the following manner, namely :—

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77. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Earlier, rule 8 was amended by the Direct Tax Laws (Amendment) Act, 1989, w.r.e.f. 1-4-1988.

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(*a*) they shall first be adjusted towards the amount due under the certificate in execution of which the assets were realised and the costs incurred in the course of such execution;

(*b*) if there remains a balance after the adjustment referred to in clause (*a*), the same shall be utilised for satisfaction of any other amount recoverable from the assessee under this Act which may be due on the date on which the assets were realised; and

(*c*) the balance, if any, remaining after the adjustments under clauses (*a*) and (*b*) shall be paid to the defaulter.

(2) If the defaulter disputes any adjustment under clause (*b*) of sub-rule (1), the Tax Recovery Officer shall determine the dispute.]

General bar to jurisdiction of civil courts, save where fraud alleged.

9. Except as otherwise expressly provided in this Act, every question arising between the [78][Tax Recovery] Officer and the defaulter or their representatives, relating to the execution, discharge or satisfaction of a certificate [79][***], or relating to the confirmation or setting aside by an order under this Act of a sale held in execution of such certificate, shall be determined, not by suit, but by order of the Tax Recovery Officer before whom such question arises :

Provided that a suit may be brought in a civil court in respect of any such question upon the ground of fraud.

Property exempt from attachment.

10. (1) All such property as is by the Code of Civil Procedure, 1908 (5 of 1908), exempted from attachment and sale in execution of a decree of a civil court shall be exempt from attachment and sale under this Schedule.

(2) The Tax Recovery Officer's decision as to what property is so entitled to exemption shall be conclusive.

Investigation by Tax Recovery Officer.

11. (1) Where any claim is preferred to, or any objection is made to the attachment or sale of, any property in execution of a certificate, on the ground that such property is not liable to such attachment or sale, the Tax Recovery Officer shall proceed to investigate the claim or objection :

Provided that no such investigation shall be made where the Tax Recovery Officer considers that the claim or objection was designedly or unnecessarily delayed.

(2) Where the property to which the claim or objection applies has been advertised for sale, the Tax Recovery Officer ordering the sale may postpone it pending the investigation of the claim or objection, upon such terms as to security or otherwise as the Tax Recovery Officer shall deem fit.

(3) The claimant or objector must adduce evidence to show that—

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78. Substituted for "*Assessing" by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

*Substituted for "Income-tax", *ibid.*, w.r.e.f. 1-4-1988.

79. Words "duly filed under this Act" omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

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(*a*) (in the case of immovable property) at the date of the service of the notice issued under this Schedule to pay the arrears, or

(*b*) (in the case of movable property) at the date of the attachment,

he had some interest in, or was possessed[80] of, the property in question.

(4) Where, upon the said investigation, the Tax Recovery Officer is satisfied that, for the reason stated in the claim or objection, such property was not, at the said date, in the possession of the defaulter or of some person in trust for him or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the defaulter at the said date, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Tax Recovery Officer shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or sale.

(5) Where the Tax Recovery Officer is satisfied that the property was, at the said date, in the possession of the defaulter as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Tax Recovery Officer shall disallow the claim.

(6) Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in a civil court to establish the right which he claims to the property in dispute; but, subject to the result of such suit (if any), the order of the Tax Recovery Officer shall be conclusive.

Removal of attachment on satisfaction or cancellation of certificate.

12. Where—

(*a*) the amount due, with costs and all charges and expenses resulting from the attachment of any property or incurred in order to hold a sale, are paid to the Tax Recovery Officer, or

(*b*) the certificate is cancelled,

the attachment shall be deemed to be withdrawn and, in the case of immovable property, the withdrawal shall, if the defaulter so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner provided by this Schedule for a proclamation of sale of immovable property.

Officer entitled to attach and sell.

13. The attachment and sale of movable property and the attachment and sale of immovable property may be made by such persons as the Tax Recovery Officer may from time to time direct.

Defaulting purchaser answerable for loss on resale.

14. Any deficiency of price which may happen on a resale by reason of the purchaser's default, and all expenses attending such resale, shall be certified to the Tax Recovery Officer by the officer holding the sale, and shall, at the instance of either the [81][Tax Recovery] Officer or the defaulter, be recoverable

80. For the meaning of the term "possessed", *see* Taxmann's Direct Taxes Manual, Vol. 3.

81. Substituted for "*Assessing" by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

*Substituted for "Income-tax", *ibid.,* w.r.e.f. 1-4-1988.

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from the defaulting purchaser under the procedure provided by this Schedule:

Provided that no such application shall be entertained unless filed within fifteen days from the date of resale.

Adjournment or stoppage of sale.

15. (1) The Tax Recovery Officer may, in his discretion, adjourn any sale hereunder to a specified day and hour; and the officer conducting any such sale may, in his discretion, adjourn the sale, recording his reasons for such adjournment :

Provided that, where the sale is made in, or within the precincts of, the office of the Tax Recovery Officer, no such adjournment shall be made without the leave of the Tax Recovery Officer.

(2) Where a sale of immovable property is adjourned under sub-rule (1) for a longer period than one calendar month, a fresh proclamation of sale under this Schedule shall be made unless the defaulter consents to waive it.

(3) Every sale shall be stopped if, before the lot is knocked down, the arrears and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such arrears and costs has been paid to the Tax Recovery Officer who ordered the sale.

Private alienation to be void in certain cases.

16. (1) Where a notice has been served on a defaulter under rule 2, the defaulter or his representative in interest shall not be competent to mortgage, charge, lease or otherwise deal with any property[82] belonging to him except with the permission of the Tax Recovery Officer, nor shall any civil court issue any process against such property in execution of a decree for the payment of money.

(2) Where an attachment has been made under this Schedule, any private transfer or delivery of the property attached or of any interest therein and any payment to the defaulter of any debt, dividend or other moneys contrary to such attachment, shall be void as against all claims enforceable under the attachment.

Prohibition against bidding or purchase by officer.

17. No officer or other person having any duty to perform in connection with any sale under this Schedule shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

Prohibition against sale on holidays.

18. No sale under this Schedule shall take place on a Sunday or other general holiday recognised by the State Government or on any day which has been notified by the State Government to be a local holiday for the area in which the sale is to take place.

Assistance by police.

19. Any officer authorised to attach or sell any property or to arrest the defaulter or charged with any duty to be performed under this Schedule, may apply

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82. For the meaning of the expression "otherwise deal with any property", *see* Taxmann's Direct Taxes Manual, Vol. 3.

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to the officer-in-charge of the nearest police station for such assistance as may be necessary in the discharge of his duties, and the authority to whom such application is made shall depute a sufficient number of police officers for furnishing such assistance.

[83][**Entrustment of certain functions by Tax Recovery Officer.**

19A. A Tax Recovery Officer may, with the previous approval of the [84][Joint] Commissioner, entrust any of his functions as the Tax Recovery Officer to any other officer lower than him in rank (not being lower in rank than an Inspector of Income-tax) and such officer shall, in relation to the functions so entrusted to him, be deemed to be a Tax Recovery Officer.]

PART II

ATTACHMENT AND SALE OF MOVABLE PROPERTY

Attachment

Warrant.

20. Except as otherwise provided in this Schedule, when any movable property is to be attached, the officer shall be furnished by the Tax Recovery Officer (or other officer empowered by him in that behalf) a warrant in writing and signed with his name specifying the name of the defaulter and the amount to be realised.

Service of copy of warrant.

21. The officer shall cause a copy of the warrant to be served on the defaulter.

Attachment.

22. If, after service of the copy of the warrant, the amount is not paid forthwith, the officer shall proceed to attach the movable property of the defaulter.

Property in defaulter's possession.

23. Where the property to be attached is movable property (other than agricultural produce) in the possession of the defaulter, the attachment shall be made by actual seizure, and the officer shall keep the property in his own custody or the custody of one of his subordinates and shall be responsible for due custody thereof:

Provided that when the property seized is subject to speedy and natural decay or when the expense of keeping it in custody is likely to exceed its value, the officer may sell it at once.

Agricultural produce.

24. Where the property to be attached is agricultural produce the attachment shall be made by affixing a copy of the warrant of attachment—

(*a*) where such produce is growing crop,—on the land on which such crop has grown, or

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83. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Prior to its substitution, rule 19A was inserted by the Finance Act, 1963, w.r.e.f. 1-4-1962 and later on amended by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

84. Substituted for "Deputy" by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

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(*b*) where such produce has been cut or gathered,—on the threshing floor or place for treading out grain or the like, or fodder-stack, on or in which it is deposited,

and another copy on the outer door or on some other conspicuous part of the house in which the defaulter ordinarily resides, or with the leave of the Tax Recovery Officer, on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain, or in which he is known to have last resided or carried on business or personally worked for gain. The produce shall, thereupon, be deemed to have passed into the possession of the Tax Recovery Officer.

Provisions as to agricultural produce under attachment.

25. (1) Where agricultural produce is attached, the Tax Recovery Officer shall make such arrangements for the custody, watching, tending, cutting and gathering thereof as he may deem sufficient; [85][and he shall have power to defray the cost of such arrangements].

(2) Subject to such conditions as may be imposed by the Tax Recovery Officer in this behalf, either in the order of attachment or in any subsequent order, the defaulter may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it; and, if the defaulter fails to do all or any of such acts, any person appointed by the Tax Recovery Officer in this behalf may, subject to the like conditions, do all or any of such acts, and the costs incurred by such person shall be recoverable from the defaulter as if they were included in the certificate.

(3) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require reattachment merely because it has been severed from the soil.

(4) Where an order for the attachment of a growing crop has been made at a considerable time before the crop is likely to be fit to be cut or gathered, the Tax Recovery Officer may suspend the execution of the order for such time as he thinks fit, and may, in his discretion, make a further order prohibiting the removal of the crop pending the execution of the order of attachment.

(5) A growing crop which from its nature does not admit of being stored shall not be attached under this rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

Debts and shares, etc.

26. (1) In the case of—

(*a*) a debt not secured by a negotiable instrument,

(*b*) a share in a corporation, or

(*c*) other movable property not in the possession of the defaulter except property deposited in, or in the custody of, any court,

the attachment shall be made by a written order prohibiting,—

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85. Substituted for "and the **Assessing* Officer shall bear such sum as the Tax Recovery Officer shall require in order to defray the cost of such arrangement" by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

*Substituted for "Income-tax", *ibid.,* w.r.e.f. 1-4-1988.

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(*i*) in the case of the debt—the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Tax Recovery Officer;

(*ii*) in the case of the share—the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;

(*iii*) in the case of the other movable property (except as aforesaid)—the person in possession of the same from giving it over to the defaulter.

(2) A copy of such order shall be affixed on some conspicuous part of the office of the Tax Recovery Officer, and another copy shall be sent, in the case of the debt, to the debtor, in the case of the share, to the proper officer of the corporation, and in the case of the other movable property (except as aforesaid), to the person in possession of the same.

(3) A debtor prohibited under clause (*i*) of sub-rule (1) may pay the amount of his debt to the Tax Recovery Officer, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

Attachment of decree.

27. (1) The attachment of a decree of a civil court for the payment of money or for sale in enforcement of a mortgage or charge shall be made by the issue to the civil court of a notice requesting the civil court to stay the execution of the decree unless and until—

(*i*) the Tax Recovery Officer cancels the notice, or

(*ii*) the [86][Tax Recovery] Officer or the defaulter applies to the court receiving such notice to execute the decree.

(2) Where a civil court receives an application under clause (*ii*) of sub-rule (1), it shall, on the application of the [86][Tax Recovery] Officer or the defaulter and subject to the provisions of the Code of Civil Procedure, 1908 (5 of 1908), proceed to execute the attached decree and apply the net proceeds in satisfaction of the certificate.

(3) The [86][Tax Recovery] Officer shall be deemed to be the representative of the holder of the attached decree, and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

Share in movable property.

28. Where the property to be attached consists of the share or interest of the defaulter in movable property belonging to him and another as co-owners, the attachment shall be made by a notice to the defaulter prohibiting him from transferring the share or interest or charging it in any way.

Salary of Government servants.

29. Attachment of the salary or allowances of servants of the Government or a local authority may be made in the manner provided by rule 48 of Order 21

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86. Substituted for "*Assessing" by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

*Substituted for "Income-tax", *ibid.,* w.r.e.f. 1-4-1988.

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of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), and the provisions of the said rule shall, for the purposes of this rule, apply subject to such modifications as may be necessary.

Attachment of negotiable instrument.

30. Where the property is a negotiable instrument not deposited in a court nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought before the Tax Recovery Officer and held subject to his orders.

Attachment of property in custody of court or public officer.

31. Where the property to be attached is in the custody of any court or public officer, the attachment shall be made by a notice to such court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Tax Recovery Officer by whom the notice is issued:

Provided that, where such property is in the custody of a court, any question of title or priority arising between the [87][Tax Recovery] Officer and any other person, not being the defaulter, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such court.

Attachment of partnership property.

32. (1) Where the property to be attached consists of an interest of the defaulter, being a partner, in the partnership property, the Tax Recovery Officer may make an order charging the share of such partner in the partnership property and profits with payment of the amount due under the certificate, and may, by the same or subsequent order, appoint a receiver of the share of such partner in the profits, whether already declared or accruing and of any other money which may become due to him in respect of the partnership, and direct accounts and inquiries and make an order for the sale of such interest or such other order as the circumstances of the case may require.

(2) The other persons shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase the same.

Inventory.

33. In the case of attachment of movable property by actual seizure, the officer shall, after attachment of the property, prepare an inventory of all the property attached, specifying in it the place where it is lodged or kept, and shall forward the same to the Tax Recovery Officer and a copy of the inventory shall be delivered by the officer to the defaulter.

Attachment not to be excessive.

34. The attachment by seizure shall not be excessive, that is to say, the property attached shall be as nearly as possible proportionate to the amount specified in the warrant.

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87. Substituted for "*Assessing" by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

*Substituted for "Income-tax", *ibid.,* w.r.e.f. 1-4-1988.

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Seizure between sunrise and sunset.

35. Attachment by seizure shall be made after sunrise and before sunset and not otherwise.

Power to break open doors, etc.

36. The officer may break open any inner or outer door or window of any building and enter any building in order to seize any movable property if the officer has reasonable grounds to believe that such building contains movable property liable to seizure under the warrant and the officer has notified his authority and intention of breaking open if admission is not given. He shall, however, give all reasonable opportunity to women to withdraw.

Sale

Sale.

37. The Tax Recovery Officer may direct that any movable property attached under this Schedule or such portion thereof as may seem necessary to satisfy the certificate shall be sold.

Issue of proclamation.

38. When any sale of movable property is ordered by the Tax Recovery Officer, the Tax Recovery Officer shall issue a proclamation, in the language of the district, of the intended sale, specifying the time and place of sale and whether the sale is subject to confirmation or not.

Proclamation how made.

39. (1) Such proclamation shall be made by beat of drum or other customary mode,—

(*a*) in the case of property attached by actual seizure—

(*i*) in the village in which the property was seized, or, if the property was seized in a town or city, then, in the locality in which it was seized; and

(*ii*) at such other places as the Tax Recovery Officer may direct;

(*b*) in the case of property attached otherwise than by actual seizure, in such places, if any, as the Tax Recovery Officer may direct.

(2) A copy of the proclamation shall also be affixed in a conspicuous part of the office of the Tax Recovery Officer.

Sale after fifteen days.

40. Except where the property is subject to speedy and natural decay or when the expense of keeping it in custody is likely to exceed its value, no sale of movable property under this Schedule shall, without the consent in writing of the defaulter, take place until after the expiry of at least fifteen days calculated from the date on which a copy of the sale proclamation was affixed in the office of the Tax Recovery Officer.

Sale of agricultural produce.

41. (1) Where the property to be sold is agricultural produce, the sale shall be held,—

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(*a*) if such produce is a growing crop—on or near the land on which such crop has grown, or

(*b*) if such produce has been cut or gathered—at or near the threshing floor or place for treading out grain or the like, or fodder-stack, on or in which it is deposited:

Provided that the Tax Recovery Officer may direct the sale to be held at the nearest place of public resort, if he is of opinion that the produce is thereby likely to sell to greater advantage.

(2) Where, on the produce being put up for sale,—

(*a*) a fair price, in the estimation of the person holding the sale, is not offered for it, and

(*b*) the owner of the produce, or a person authorised to act on his behalf, applies to have the sale postponed till the next day or, if a market is held at the place of sale, the next market day,

the sale shall be postponed accordingly, and shall be then completed, whatever price may be offered for the produce.

Special provisions relating to growing crops.

42. (1) Where the property to be sold is a growing crop and the crop from its nature admits of being stored but has not yet been stored, the day of the sale shall be so fixed as to admit of the crop being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut or gathered and is ready for storing.

(2) Where the crop from its nature does not admit of being stored or can be sold to a greater advantage in an unripe stage (*e.g.,* as green wheat), it may be sold before it is cut and gathered, and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending or cutting or gathering the crop.

Sale to be by auction.

43. The property shall be sold by public auction in one or more lots as the officer may consider advisable, and if the amount to be realised by sale is satisfied by the sale of a portion of the property, the sale shall be immediately stopped with respect to the remainder of the lots.

Sale by public auction.

44. (1) Where movable property is sold by public auction, the price of each lot shall be paid at the time of sale or as soon after as the officer holding the sale directs and in default of payment, the property shall forthwith be resold.

(2) On payment of the purchase-money, the officer holding the sale shall grant a certificate specifying the property purchased, the price paid and the name of the purchaser, and the sale shall become absolute.

(3) Where the movable property to be sold is a share in goods belonging to the defaulter and a co-owner, and two or more persons, of whom one is such co-owner, respectively bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.

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Irregularity not to vitiate sale, but any person injured may sue.

45. No irregularity in publishing or conducting the sale of movable property shall vitiate the sale, but any person sustaining substantial injury by reason of such irregularity at the hand of any other person may institute a suit in a civil court against him for compensation, or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

Negotiable instruments and shares in a corporation.

46. Notwithstanding anything contained in this Schedule, where the property to be sold is a negotiable instrument or a share in a corporation, the Tax Recovery Officer may, instead of directing the sale to be made by public auction, authorise the sale of such instrument or share through a broker.

Order for payment of coin or currency notes to the [88][Assessing] Officer.

47. Where the property attached is current coin or currency notes, the Tax Recovery Officer may, at any time during the continuance of the attachment, [89][direct that such coins or notes shall be credited to the Central Government and the amount so credited shall be dealt with in the manner specified in rule 8].

PART III

ATTACHMENT AND SALE OF IMMOVABLE PROPERTY

Attachment

Attachment.

48. Attachment of the immovable property of the defaulter shall be made by an order prohibiting the defaulter from transferring or charging the property in any way and prohibiting all persons from taking any benefit under such transfer or charge.

Service of notice of attachment.

49. A copy of the order of attachment shall be served on the defaulter.

Proclamation of attachment.

50. The order of attachment shall be proclaimed at some place on or adjacent to the property attached by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and on the notice board of the office of the Tax Recovery Officer.

Attachment to relate back from the date of service of notice.

51. Where any immovable property is attached under this Schedule, the attachment shall relate back to, and take effect from, the date on which the

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88. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1989, w.r.e.f. 1-4-1988.

89. Substituted for "direct that such coins or notes, or a part thereof sufficient to satisfy the certificate, be paid over to the **Assessing* Officer" by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

*Substituted for "Income-tax", *ibid.,* w.r.e.f. 1-4-1988.

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notice to pay the arrears, issued under this Schedule, was served upon the defaulter.

Sale

Sale and proclamation of sale.

52. (1) The Tax Recovery Officer may direct that any immovable property which has been attached, or such portion thereof as may seem necessary to satisfy the certificate, shall be sold.

(2) Where any immovable property is ordered to be sold, the Tax Recovery Officer shall cause a proclamation of the intended sale to be made in the language of the district.

Contents of proclamation.

53. A proclamation of sale of immovable property shall be drawn up after notice to the defaulter, and shall state the time and place of sale, and shall specify, as fairly and accurately as possible,—

(*a*) the property to be sold;

(*b*) the revenue, if any, assessed upon the property or any part thereof;

(*c*) the amount for the recovery of which the sale is ordered; [90][***]

[91][(*cc*) the reserve price, if any, below which the property may not be sold; and]

(*d*) any other thing which the Tax Recovery Officer considers it material for a purchaser to know, in order to judge the nature and value of the property.

Mode of making proclamation.

54. (1) Every proclamation for the sale of immovable property shall be made at some place on or near such property by beat of drum or other customary mode, and a copy of the proclamation shall be affixed on a conspicuous part of the property and also upon a conspicuous part of the office of the Tax Recovery Officer.

(2) Where the Tax Recovery Officer so directs, such proclamation shall also be published in the Official Gazette or in a local newspaper, or in both; and the cost of such publication shall be deemed to be costs of the sale.

(3) Where the property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot, unless proper notice of the sale cannot, in the opinion of the Tax Recovery Officer, otherwise be given.

Time of sale.

55. No sale of immovable property under this Schedule shall, without the consent in writing of the defaulter, take place until after the expiration of at least thirty days calculated from the date on which a copy of the proclamation

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90. Word "and" omitted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

91. Inserted, *ibid.*

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of sale has been affixed on the property or in the office of the Tax Recovery Officer, whichever is later.

Sale to be by auction.

56. The sale shall be by public auction to the highest bidder and shall be subject to confirmation by the Tax Recovery Officer :

[92][**Provided** that no sale under this rule shall be made if the amount bid by the highest bidder is less than the reserve price, if any, specified under clause (*cc*) of rule 53.]

Deposit by purchaser and resale in default.

57. (1) On every sale of immovable property, the person declared to be the purchaser shall pay, immediately after such declaration, a deposit of twenty-five per cent on the amount of his purchase money, to the officer conducting the sale; and, in default of such deposit, the property shall forthwith be resold.

(2) The full amount of purchase money payable shall be paid by the purchaser to the Tax Recovery Officer on or before the fifteenth day from the date of the sale of the property.

Procedure in default of payment.

58. In default of payment within the period mentioned in the preceding rule, the deposit may, if the Tax Recovery Officer thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be resold, and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold.

Authority to bid.

59. [93][(1) Where the sale of a property, for which a reserve price has been specified under clause (*cc*) of rule 53, has been postponed for want of a bid of an amount not less than such reserve price, it shall be lawful for an [94][Assessing] Officer, if so authorised by the [95][Chief Commissioner or Commissioner] in this behalf, to bid for the property on behalf of the Central Government at any subsequent sale.]

[96][(2)] All persons bidding at the sale shall be required to declare, if they are bidding on their own behalf or on behalf of their principals. In the latter case, they shall be required to deposit their authority, and in default their bids shall be rejected.

[97][(3) Where the [94][Assessing] Officer referred to in sub-rule (1) is declared to be the purchaser of the property at any subsequent sale, nothing contained in rule

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92. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

93. Inserted, *ibid.*

94. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1989, w.r.e.f. 1-4-1988.

95. Substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

96. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

97. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

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57 shall apply to the case and the amount of the purchase price shall be adjusted towards the amount specified in the certificate.]

Application to set aside sale of immovable property on deposit.

60. (1) Where immovable property has been sold in execution of a certificate, the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale, on his depositing—

[98](*a*) [99][***] the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, with interest thereon at the rate of [1][one and one-fourth per cent for every month or part of a month], calculated from the date of the proclamation of sale to the date when the deposit is made; and

(*b*) for payment to the purchaser, as penalty, a sum equal to five per cent of the purchase money, but not less than one rupee.

(2) Where a person makes an application under rule 61 for setting aside the sale of his immovable property, he shall not, unless he withdraws that application, be entitled to make or prosecute an application under this rule.

Application to set aside sale of immovable property on ground of non-service of notice or irregularity.

61. Where immovable property has been sold in execution of a certificate, [2][such Income-tax Officer as may be authorised by the Chief Commissioner or Commissioner in this behalf], the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale of the immovable property on the ground that notice was not served on the defaulter to pay the arrears as required by this Schedule or on the ground of a material irregularity in publishing or conducting the sale:

Provided that—

(*a*) no sale shall be set aside on any such ground unless the Tax Recovery Officer is satisfied that the applicant has sustained substantial injury by reason of the non-service or irregularity; and

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98. *See* rule 119A.

99. Words "for payment to the **Assessing* Officer" omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

*Substituted for "Income-tax", *ibid.,* w.r.e.f. 1-4-1988.

1. Substituted for "fifteen per cent per annum" by the Finance Act, 2007, w.e.f. 1-4-2008. Earlier "fifteen" was substituted for "twelve" by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984; section 84 of the Amendment Act has clarified that the increase in the rate of interest will apply in respect of any period falling after 30-9-1984 and also in cases where the interest became chargeable or payable from an earlier date. Earlier, "twelve" was substituted for "nine" by the Finance Act, 1972, w.e.f. 1-4-1972 and "nine" was substituted for "six" by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

2. Substituted for "**Assessing* Officer" by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

*Substituted for "Income-tax", *ibid.,* w.r.e.f. 1-4-1988.

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(*b*) an application made by a defaulter under this rule shall be disallowed unless the applicant deposits the amount recoverable from him in the execution of the certificate.

Setting aside sale where defaulter has no saleable interest.

62. At any time within thirty days of the sale, the purchaser may apply to the Tax Recovery Officer to set aside the sale on the ground that the defaulter had no saleable interest in the property sold.

Confirmation of sale.

63. (1) Where no application is made for setting aside the sale under the foregoing rules or where such an application is made and disallowed by the Tax Recovery Officer, the Tax Recovery Officer shall (if the full amount of the purchase money has been paid) make an order confirming the sale, and, thereupon, the sale shall become absolute.

(2) Where such application is made and allowed, and where, in the case of an application made to set aside the sale on deposit of the amount and penalty and charges, the deposit is made within thirty days from the date of the sale, the Tax Recovery Officer shall make an order setting aside the sale :

Provided that no order shall be made unless notice of the application has been given to the persons affected thereby.

Return of purchase money in certain cases.

64. Where a sale of immovable property is set aside, any money paid or deposited by the purchaser on account of the purchase, together with the penalty, if any, deposited for payment to the purchaser, and such interest as the Tax Recovery Officer may allow, shall be paid to the purchaser.

Sale certificate.

65. (1) Where a sale of immovable property has become absolute, the Tax Recovery Officer shall grant a certificate specifying the property sold, and the name of the person who at the time of sale is declared to be the purchaser.

(2) Such certificate shall state the date on which the sale became absolute.

Postponement of sale to enable defaulter to raise amount due under certificate.

66. (1) Where an order for the sale of immovable property has been made, if the defaulter can satisfy the Tax Recovery Officer that there is reason to believe that the amount of the certificate may be raised by the mortgage or lease or private sale of such property, or some part thereof, or of any other immovable property of the defaulter, the Tax Recovery Officer may, on his application, postpone the sale of the property comprised in the order for sale, on such terms, and for such period as he thinks proper, to enable him to raise the amount.

(2) In such case, the Tax Recovery Officer shall grant a certificate to the defaulter, authorising him, within a period to be mentioned therein, and notwithstanding anything contained in this Schedule, to make the proposed mortgage, lease or sale:

Provided that all moneys payable under such mortgage, lease or sale shall be paid, not to the defaulter, but to the Tax Recovery Officer:

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Provided also that no mortgage, lease or sale under this rule shall become absolute until it has been confirmed by the Tax Recovery Officer.

Fresh proclamation before re-sale.

67. Every re-sale of immovable property, in default of payment of the purchase money within the period allowed for such payment, shall be made after the issue of a fresh proclamation in the manner and for the period hereinbefore provided for the sale.

Bid of co-sharer to have preference.

68. Where the property sold is a share of undivided immovable property, and two or more persons, of whom one is a co-sharer, respectively bid the same sum for such property or for any lot, the bid shall be deemed to be the bid of the co-sharer.

[3][**Acceptance of property in satisfaction of amount due from the defaulter.**

68A. (1) Without prejudice to the provisions contained in this Part, an [4][Assessing] Officer, duly authorised by the [5][Chief Commissioner or Commissioner] in this behalf, may accept in satisfaction of the whole or any part of the amount due from the defaulter the property, the sale of which has been postponed for the reason mentioned in sub-rule (1) of rule 59, at such price as may be agreed upon between the [6][Assessing] Officer and the defaulter.

(2) Where any property is accepted under sub-rule (1), the defaulter shall deliver possession of such property to the [7][Assessing] Officer and on the date the possession of the property is delivered to the [7][Assessing] Officer, the property shall vest in the Central Government and the Central Government shall, where necessary, intimate the concerned Registering Officer appointed under the Registration Act, 1908 (16 of 1908), accordingly.

(3) Where the price of the property agreed upon under sub-rule (1) exceeds the amount due from the defaulter, such excess shall be paid by the [7][Assessing] Officer to the defaulter within a period of three months from the date of delivery of possession of the property and where the [7][Assessing] Officer fails to pay such excess within the period aforesaid, the Central Government shall, for the period commencing on the expiry of such period and ending with the date of payment of the amount remaining unpaid, pay simple interest at [8][one-half per cent for every month or part of a month] to the defaulter on such amount.]

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3. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

4. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1989, w.r.e.f. 1-4-1988.

5. Substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

6. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1989, w.r.e.f. 1-4-1988.

7. Substituted for "Income-tax", *ibid.*

8. Substituted for "six per cent per annum" by the Finance Act, 2007, w.e.f. 1-4-2008. Earlier "six" was substituted for "eight" by the Taxation Laws (Amendment) Act, 2003, w.e.f. 8-9-2003, "eight" was substituted for "nine" by the Finance Act, 2002, w.e.f. 1-6-2002 and "nine" was substituted for "twelve" by the Finance Act, 2001, w.e.f. 1-6-2001.

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[9][**Time limit for sale of attached immovable property.**

68B. (1) No sale of immovable property shall be made under this Part after the expiry of three years[10] from the end of the financial year in which the order giving rise to a demand of any tax, interest, fine, penalty or any other sum, for the recovery of which the immovable property has been attached, has become conclusive under the provisions of section 245-I or, as the case may be, final in terms of the provisions of Chapter XX:

Provided that where the immovable property is required to be re-sold due to the amount of highest bid being less than the reserve price or under the circumstances mentioned in rule 57 or rule 58 or where the sale is set aside under rule 61, the aforesaid period of limitation for the sale of the immovable property shall stand extended by one year.

(2) In computing the period of limitation under sub-rule (1), the period—

(*i*) during which the levy of the aforesaid tax, interest, fine, penalty or any other sum is stayed by an order or injunction of any court; or

(*ii*) during which the proceedings of attachment or sale of the immovable property are stayed by an order or injunction of any court; or

(*iii*) commencing from the date of the presentation of any appeal against the order passed by the Tax Recovery Officer under this Schedule and ending on the day the appeal is decided,

shall be excluded :

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation for the sale of the immovable property is less than 180 days, such remaining period shall be extended to 180 days and the aforesaid period of limitation shall be deemed to be extended accordingly.

(3) Where any immovable property has been attached under this Part before the 1st day of June, 1992, and the order giving rise to a demand of any tax, interest, fine, penalty or any other sum, for the recovery of which the immovable property has been attached, has also become conclusive or final before the said date, that date shall be deemed to be the date on which the said order has become conclusive or, as the case may be, final.

(4) Where the sale of immovable property is not made in accordance with the provisions of sub-rule (1), the attachment order in relation to the said property shall be deemed to have been vacated on the expiry of the time of limitation specified under this rule.]

PART IV

APPOINTMENT OF RECEIVER

Appointment of receiver for business.

69. (1) Where the property of a defaulter consists of a business, the Tax Recovery Officer may attach the business and appoint a person as receiver to manage the business.

9. Inserted by the Finance Act, 1992, w.e.f. 1-6-1992.

10. Period is extended to 4 years, *see* SO 164(E), dated 1-3-1996. For details, *see* Taxmann's Master Guide to Income-tax Act. Extension of period to 4 years is not valid - *see S.V. Gopala Rao* v. *CIT* [2004] 270 ITR 433 (AP).

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(2) Attachment of a business under this rule shall be made by an order prohibiting the defaulter from transferring or charging the business in any way and prohibiting all persons from taking any benefit under such transfer or charge, and intimating that the business has been attached under this rule. A copy of the order of attachment shall be served on the defaulter, and another copy shall be affixed on a conspicuous part of the premises in which the business is carried on and on the notice board of the office of the Tax Recovery Officer.

Appointment of receiver for immovable property.

70. Where immovable property is attached, the Tax Recovery Officer may, instead of directing a sale of the property, appoint a person as receiver to manage such property.

Powers of receiver.

71. (1) Where any business or other property is attached and taken under management under the foregoing rules, the receiver shall, subject to the control of the Tax Recovery Officer, have such powers as may be necessary for the proper management of the property and the realisation of the profits, or rents and profits, thereof.

(2) The profits, or rents and profits, of such business or other property, shall, after defraying the expenses of management, be adjusted towards discharge of the arrears, and the balance, if any, shall be paid to the defaulter.

Withdrawal of management.

72. The attachment and management under the foregoing rules may be withdrawn at any time at the discretion of the Tax Recovery Officer, or if the arrears are discharged by receipt of such profits and rents or are otherwise paid.

PART V

ARREST AND DETENTION OF THE DEFAULTER

Notice to show cause.

73. (1) No order for the arrest and detention in civil prison of a defaulter shall be made unless the Tax Recovery Officer has issued and served a notice upon the defaulter calling upon him to appear before him on the date specified in the notice and to show cause why he should not be committed to the civil prison, and unless the Tax Recovery Officer, for reasons recorded in writing, is satisfied—

(*a*) that the defaulter, with the object or effect of obstructing the execution of the certificate, has, after [11][the drawing up of the certificate by the Tax Recovery Officer], dishonestly transferred, concealed, or removed any part of his property, or

(*b*) that the defaulter has, or has had since [11][the drawing up of the certificate by the Tax Recovery Officer], the means to pay the arrears

11. Substituted for "the receipt of the certificate in the office of the Tax Recovery Officer" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

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or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same.

(2) Notwithstanding anything contained in sub-rule (1), a warrant for the arrest of the defaulter may be issued by the Tax Recovery Officer if the Tax Recovery Officer is satisfied, by affidavit or otherwise, that with the object or effect of delaying the execution of the certificate, the defaulter is likely to abscond or leave the local limits of the jurisdiction of the Tax Recovery Officer.

(3) Where appearance is not made in obedience to a notice issued and served under sub-rule (1), the Tax Recovery Officer may issue a warrant for the arrest of the defaulter.

[12][(3A) A warrant of arrest issued by a Tax Recovery Officer under sub-rule (2) or sub-rule (3) may also be executed by any other Tax Recovery Officer within whose jurisdiction the defaulter may for the time being be found.]

(4) Every person arrested in pursuance of a warrant of arrest under [13][this rule] shall be brought before the Tax Recovery Officer [14][issuing the warrant] as soon as practicable and in any event within twenty-four hours of his arrest (exclusive of the time required for the journey):

Provided that, if the defaulter pays the amount entered in the warrant of arrest as due and the costs of the arrest to the officer arresting him, such officer shall at once release him.

[15][*Explanation.*—For the purposes of this rule, where the defaulter is a Hindu undivided family, the karta thereof shall be deemed to be the defaulter.]

Hearing.

74. When a defaulter appears before the Tax Recovery Officer in obedience to a notice to show cause or is brought before the Tax Recovery Officer under rule 73, [16][the Tax Recovery Officer shall give the defaulter] an opportunity of showing cause why he should not be committed to the civil prison.

Custody pending hearing.

75. Pending the conclusion of the inquiry, the Tax Recovery Officer may, in his discretion, order the defaulter to be detained in the custody of such officer as the Tax Recovery Officer may think fit or release him on his furnishing security to the satisfaction of the Tax Recovery Officer for his appearance when required.

Order of detention.

76. (1) Upon the conclusion of the inquiry, the Tax Recovery Officer may make an order for the detention of the defaulter in the civil prison and shall in that event cause him to be arrested if he is not already under arrest:

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12. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

13. Substituted for "sub-rule (2) or sub-rule (3)", *ibid.*

14. Inserted, *ibid.*

15. Inserted, *ibid.*

16. Substituted for "the Tax Recovery Officer shall proceed to hear the **Assessing* Officer and take all such evidence as may be produced by him in support of execution by arrest, and shall then give the defaulter" by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

*Substituted for "Income-tax", *ibid.,* w.r.e.f. 1-4-1988.

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Provided that in order to give the defaulter an opportunity of satisfying the arrears, the Tax Recovery Officer may, before making the order of detention, leave the defaulter in the custody of the officer arresting him or of any other officer for a specified period not exceeding 15 days, or release him on his furnishing security to the satisfaction of the Tax Recovery Officer for his appearance at the expiration of the specified period if the arrears are not so satisfied.

(2) When the Tax Recovery Officer does not make an order of detention under sub-rule (1) he shall, if the defaulter is under arrest, direct his release.

Detention in and release from prison.

77. (1) Every person detained in the civil prison in execution of a certificate may be so detained,—

(*a*) where the certificate is for a demand of an amount exceeding two hundred and fifty rupees—for a period of six months, and

(*b*) in any other case—for a period of six weeks:

Provided that he shall be released from such detention—

(*i*) on the amount mentioned in the warrant for his detention being paid to the officer-in-charge of the civil prison, or

[17][(*ii*) on the request of the Tax Recovery Officer on any ground other than the grounds mentioned in rules 78 and 79.]

[18][***]

(2) A defaulter released from detention under this rule shall not, merely by reason of his release, be discharged from his liability for the arrears; but he shall not be liable to be rearrested under the certificate in execution of which he was detained in the civil prison.

Release.

78. (1) The Tax Recovery Officer may order the release of a defaulter who has been arrested in execution of a certificate upon being satisfied that he has disclosed the whole of his property and has placed it at the disposal of the Tax Recovery Officer and that he has not committed any act of bad faith.

(2) If the Tax Recovery Officer has ground for believing the disclosure made by a defaulter under sub-rule (1) to have been untrue, he may order the rearrest of the defaulter in execution of the certificate, but the period of his detention in the civil prison shall not in the aggregate exceed that authorised by rule 77.

Release on ground of illness.

79. (1) At any time after a warrant for the arrest of a defaulter has been issued, the Tax Recovery Officer may cancel it on the ground of his serious illness.

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17. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Earlier, it was amended by the Direct Tax Laws (Amendment) Act, 1989, w.r.e.f. 1-4-1988.

18. Omitted, *ibid.* Prior to its omission, proviso was amended by the Direct Tax Laws (Amendment) Act, 1989, w.r.e.f. 1-4-1988.

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(2) Where a defaulter has been arrested, the Tax Recovery Officer may release him if, in the opinion of the Tax Recovery Officer, he is not in a fit state of health to be detained in the civil prison.

(3) Where a defaulter has been committed to the civil prison, he may be released therefrom by the Tax Recovery Officer on the ground of the existence of any infectious or contagious disease, or on the ground of his suffering from any serious illness.

(4) A defaulter released under this rule may be rearrested, but the period of his detention in the civil prison shall not in the aggregate exceed that authorised by rule 77.

Entry into dwelling house.

80. For the purpose of making an arrest under this Schedule—

(*a*) no dwelling house shall be entered after sunset and before sunrise;

(*b*) no outer door of a dwelling house shall be broken open unless such dwelling house or a portion thereof is in the occupancy of the defaulter and he or other occupant of the house refuses or in any way prevents access thereto; but, when the person executing any such warrant has duly gained access to any dwelling house, he may break open the door of any room or apartment if he has reason to believe that the defaulter is likely to be found there;

(*c*) no room, which is in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, shall be entered into unless the officer authorised to make the arrest has given notice to her that she is at liberty to withdraw and has given her reasonable time and facility for withdrawing.

Prohibition against arrest of women or minors, etc.

81. The Tax Recovery Officer shall not order the arrest and detention in the civil prison of—

(*a*) a woman, or

(*b*) any person who, in his opinion, is a minor or of unsound mind.

PART VI

MISCELLANEOUS

Officers deemed to be acting judicially.

82. Every [19][Chief Commissioner or Commissioner], Tax Recovery Officer or other officer acting under this Schedule shall, in the discharge of his functions under this Schedule, be deemed to be acting judicially within the meaning of the Judicial Officers Protection Act, 1850 (18 of 1850).

Power to take evidence.

83. Every [19][Chief Commissioner or Commissioner], Tax Recovery Officer or other officer acting under the provisions of this Schedule shall have the

19. Substituted for "Tax Recovery Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Earlier, it was inserted by the Finance (No. 2) Act, 1971, w.e.f. 1-1-1972.

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powers of a civil court while trying a suit for the purpose of receiving evidence, administering oaths, enforcing the attendance of witnesses and compelling the production of documents.

Continuance of certificate.

84. No certificate shall cease to be in force by reason of the death of the defaulter.

Procedure on death of defaulter.

85. [20][If at any time after the certificate is drawn up by the Tax Recovery Officer] the defaulter dies, the proceedings under this Schedule (except arrest and detention) may be continued against the legal representative of the defaulter, and the provisions of this Schedule shall apply as if the legal representative were the defaulter.

Appeals.

86. [21][(1) An appeal from any original order passed by the Tax Recovery Officer under this Schedule, not being an order which is conclusive, shall lie to the Chief Commissioner or Commissioner.]

(2) Every appeal under this rule must be presented within thirty days from the date of the order appealed against.

(3) Pending the decision of any appeal, execution of the certificate may be stayed if the appellate authority so directs, but not otherwise.

[22][(4) Notwithstanding anything contained in sub-rule (1), where a Chief Commissioner or Commissioner is authorised to exercise powers as such in respect of any area, then, all appeals against the orders passed before the date of such authorisation by any Tax Recovery Officer authorised to exercise powers as such in respect of that area, or an area which is included in that area, shall lie to such Chief Commissioner or Commissioner.]

Review.

87. Any order passed under this Schedule may, after notice to all persons interested, be reviewed by the [23][Chief Commissioner or Commissioner], Tax Recovery Officer or other officer who made the order, or by his successor in office, on account of any mistake apparent from the record.

Recovery from surety.

88. Where any person has under this Schedule become surety for the amount due by the defaulter, he may be proceeded against under this Schedule as if he were the defaulter.

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20. Substituted for "If at any time after the issue of the certificate by the **Assessing* Officer to the Tax Recovery Officer" by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

*Substituted for "Income-tax", *ibid.,* w.r.e.f. 1-4-1988.

21. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Prior to its substitution, rule 86 was substituted by the Finance Act, 1963, w.r.e.f. 1-4-1962 and Finance (No. 2) Act, 1971, w.e.f. 1-1-1972.

22. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Prior to its substitution, sub-rule (4) was inserted by the Finance (No. 2) Act, 1971, w.e.f. 1-1-1972.

23. Substituted for "Tax Recovery Commissioner", *ibid*. Earlier, it was inserted by the Finance (No. 2) Act, 1971, w.e.f. 1-1-1972.

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Penalties.

89. [*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.*]

Subsistence allowance.

90. (1) When a defaulter is arrested or detained in the civil prison, the sum payable for the subsistence of the defaulter from the time of arrest until he is released shall be borne by the [24][Tax Recovery Officer].

(2) Such sum shall be calculated on the scale fixed by the State Government for the subsistence of judgment-debtors arrested in execution of a decree of a civil court.

(3) Sums payable under this rule shall be deemed to be costs in the proceeding:

Provided that the defaulter shall not be detained in the civil prison or arrested on account of any sum so payable.

Forms.

91. The Board may prescribe the form to be used for any order, notice, warrant, or certificate to be issued under this Schedule.

Power to make rules.

92. (1) The Board may make rules, consistent with the provisions of this Act, regulating the procedure to be followed by [25][Chief Commissioners, Commissioners], Tax Recovery Officers and other officers acting under this Schedule.

(2) In particular, and without prejudice to the generality of the power conferred by sub-rule (1), such rules may provide for all or any of the following matters, namely:—

(*a*) the area within which [25][Chief Commissioners, Commissioners] or Tax Recovery Officers may exercise jurisdiction;

(*b*) the manner in which any property sold under this Schedule may be delivered;

(*c*) the execution of a document or the endorsement of a negotiable instrument or a share in a corporation, by or on behalf of the Tax Recovery Officer, where such execution or endorsement is required to transfer such negotiable instrument or share to a person who has purchased it under a sale under this Schedule;

(*d*) the procedure for dealing with resistance or obstruction offered by any person to a purchaser of any immovable property sold under this Schedule, in obtaining possession of the property;

(*e*) the fees to be charged for any process issued under this Schedule;

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24. Substituted for "**Assessing* Officer" by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

*Substituted for "Income-tax", *ibid.,* w.r.e.f. 1-4-1988.

25. Substituted for "Tax Recovery Commissioners" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Earlier, it was inserted by the Finance (No. 2) Act, 1971, w.e.f. 1-1-1972.

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(*f*) the scale of charges to be recovered in respect of any other proceeding taken under this Schedule;

(*g*) recovery of poundage fee;

(*h*) the maintenance and custody, while under attachment, of livestock or other movable property, the fees to be charged for such maintenance and custody, the sale of such livestock or property, and the disposal of proceeds of such sale;

(*i*) the mode of attachment of business.

Saving regarding charge.

93. Nothing in this Schedule shall affect any provision of this Act whereunder the tax is a first charge upon any asset.

[26][**Continuance of certain pending proceedings and power to remove difficulties.**

94. All proceedings for the recovery of tax pending immediately before the coming into force of the amendments to this Schedule by the Direct Tax Laws (Amendment) Act, 1987 shall be continued under this Schedule as amended by that Act from the stage they had reached, and, for this purpose, every certificate issued by the [27][Assessing] Officer under section 222 before such amendment shall be deemed to be a certificate drawn up by the Tax Recovery Officer under that section after such amendment, and, if any difficulty arises in continuing the said proceedings, the Board may issue (whether by way of modification, not affecting the substance, of any rule in this Schedule or otherwise) general or special orders which appear to it to be necessary or expedient for the purpose of removing the difficulty.]

THE THIRD SCHEDULE

PROCEDURE FOR DISTRAINT BY [28][ASSESSING OFFICER]
[29][OR TAX RECOVERY OFFICER]

[*See* section 226(5)]

Distraint and sale.

Where any distraint and sale of movable property are to be effected by any [28][Assessing Officer] [29][or Tax Recovery Officer] authorised for the purpose, such distraint and sale shall be made, as far as may be, in the same manner as attachment and sale of any movable property attachable by actual seizure, and the provisions of the Second Schedule relating to attachment and sale shall, so far as may be, apply in respect of such distraint and sale.

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26. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

27. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1989, w.r.e.f. 1-4-1988.

28. Substituted for "Income-tax Officer", *ibid*.

29. Inserted, *ibid.*, w.e.f. 1-4-1989.

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THE FOURTH SCHEDULE

PART A[30]

RECOGNISED PROVIDENT FUNDS[31]

[*See* sections 2(*38*), 10(*12*), 10(*25*), 36(1)(*iv*), [32]87(1)(*d*), 111, 192(4)]

Application of Part.

1. This Part shall not apply to any provident fund to which the Provident Funds Act, 1925 (19 of 1925), applies.

Definitions.

2. In this Part, unless the context otherwise requires,—

(*a*) "employer" means any person who maintains a provident fund for the benefit of his or its employees, being—

(*i*) a Hindu undivided family, company, firm or other association of persons, or

(*ii*) an individual engaged in a business or profession the profits and gains whereof are assessable to income-tax under the head "Profits and gains of business or profession";

(*b*) "employee" means an employee participating in a provident fund, but does not include a personal or domestic servant;

(*c*) "contribution" means any sum credited by or on behalf of any employee out of his salary, or by an employer out of his own moneys, to the individual account of an employee, but does not include any sum credited as interest;

(*d*) "balance to the credit of an employee" means the total amount to the credit of his individual account in a provident fund at any time;

(*e*) "annual accretion", in relation to the balance to the credit of an employee, means the increase to such balance in any year, arising from contributions and interest;

(*f*) "accumulated balance due to an employee" means the balance to his credit, or such portion thereof as may be claimable by him under the regulations of the fund, on the day he ceases to be an employee of the employer maintaining the fund;

(*g*) "regulations of a fund" means the special body of regulations governing the constitution and administration of a particular provident fund; and

(*h*) "salary" includes dearness allowance, if the terms of employment so provide, but excludes all other allowances and perquisites.

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30. *See* also Circular No. 188, dated 16-1-1976. For details, *see* Taxmann's Master Guide to Income-tax Act.

31. *See* rules 67 to 81 and Form Nos. 40A, 40B, 40C, 41 and 42.

32. "88(2)(*vi*)" should now be substituted for "87(1)(*d*)".

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According and withdrawal of recognition.

3. (1) The [33][Chief Commissioner or Commissioner] may accord recognition to any provident fund which, in his opinion, satisfies the conditions prescribed in rule 4 and the rules made by the Board in this behalf, and may, at any time, withdraw such recognition if, in his opinion, the provident fund contravenes any of those conditions :

[34][**Provided** that in a case where recognition has been accorded to any provident fund on or before the 31st day of March, 2006 and such provident fund does not satisfy the conditions set out in clause (*ea*) of rule 4, the recognition to such fund shall be withdrawn, if such fund does not satisfy, on or before the [35][31st day of December, 2010], the conditions set out in the said clause and any other condition which the Board may, by rules specify, in this behalf :]

[36][**Provided further** that nothing contained in the first proviso shall apply to the provident fund of an establishment in respect of which a notification has been issued by the Central Government under sub-section (2) of section 16 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952).]

(2) An order according recognition shall take effect on such date as the [37][Chief Commissioner or Commissioner] may fix in accordance with any rules the Board may make in this behalf, such date not being later than the last day of the financial year in which the order is made.

(3) An order withdrawing recognition shall take effect from the date on which it is made.

(4) An order according recognition to a provident fund shall not, unless the [37][Chief Commissioner or Commissioner] otherwise directs, be affected by the fact that the fund is subsequently amalgamated with another provident fund on the occurrence of an amalgamation of the undertakings in connection with which the two funds are maintained, or that it subsequently absorbs the whole or a part of another provident fund belonging to an undertaking which is wholly or in part transferred to or merged in the undertaking of the employer maintaining the first-mentioned fund.

Conditions to be satisfied by recognised provident funds.

4. In order that a provident fund may receive and retain recognition, it shall, subject to the provisions of rule 5, satisfy the conditions set out below and any other conditions which the Board may, by rules, specify—

(*a*) all employees shall be employed in India, or shall be employed by an employer whose principal place of business is in India;

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33. Substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

34. Inserted by the Finance Act, 2006, w.e.f. 1-4-2007.

35. Substituted for "31st day of March, 2009" by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-2009. Earlier, it was amended by the Finance Act, 2008, w.e.f. 1-4-2008 and Finance Act, 2007, w.e.f. 1-4-2007.

36. Inserted by the Finance Act, 2007, w.e.f. 1-4-2007.

37. Substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

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(*b*) the contributions of an employee in any year shall be a definite proportion of his salary for that year, and shall be deducted by the employer from the employee's salary in that proportion, at each periodical payment of such salary in that year, and credited to the employee's individual account in the fund;

(*c*) the contributions of an employer to the individual account of an employee in any year shall not exceed the amount of the contributions of the employee in that year, and shall be credited to the employee's individual account at intervals not exceeding one year;

(*d*) the fund shall be vested in two or more trustees or in the Official Trustee under a trust which shall not be revocable, save with the consent of all the beneficiaries;

(*e*) the fund shall consist of contributions as above specified, received by the trustees, of accumulations thereof, and of interest credited in respect of such contributions and accumulations, and of securities purchased therewith and of any capital gains arising from the transfer of capital assets of the fund, and of no other sums;

[38][(*ea*) the fund shall be a fund of an establishment to which the provisions of sub-section (3) of section 1 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952)[39] apply or of an establishment which has been notified by the Central Provident Fund Commissioner under sub-section (4) of section 1 of the said Act, and such establishment shall obtain exemption under section 17 of the said Act from the operation of all or any of the provisions of any scheme referred to in that section;]

(*f*) the employer shall not be entitled to recover any sum whatsoever from the fund, save in cases where the employee is dismissed for misconduct or voluntarily leaves his employment otherwise than on account of ill-health or other unavoidable cause before the expiration of the term of service specified in this behalf in the regulations of the fund :

Provided that in such cases the recoveries made by the employer shall be limited to the contributions made by him to the individual account of the employee, and to interest credited in respect of such contributions in accordance with the regulations of the fund and the accumulations thereof;

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38. Substituted by the Finance Act, 2007, w.e.f. 1-4-2007. Prior to its substitution, clause (*ea*) as inserted by the Finance Act, 2006, w.e.f. 1-4-2007, read as under :

"(*ea*) the fund of an establishment to which the provisions of sub-section (3) or sub-section (4) of section 1 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) apply, and such establishment has been exempted under section 17 of the said Act from the operation of all or any of the provisions of any Scheme referred to in that section;"

39. For text of section 1(3)/(4) of Employees' Provident Funds & Miscellaneous Provisions Act, 1952, *see* **Appendix**.

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(*g*) the accumulated balance due to an employee shall be payable on the day he ceases to be an employee of the employer maintaining the fund;

(*h*) save as provided in clause (*g*) or in accordance with such conditions and restrictions as the Board may, by rules, specify, no portion of the balance to the credit of an employee shall be payable to him.

Relaxation of conditions.

5. (1) Notwithstanding anything contained in clause (*a*) of rule 4, the [40][Chief Commissioner or Commissioner] may, if he thinks fit and subject to such conditions, if any, as he thinks proper to attach to the recognition, accord recognition to a fund maintained by an employer whose principal place of business is not in India, provided the proportion of employees employed outside India does not exceed ten per cent.

(2) Notwithstanding anything contained in clause (*b*) of rule 4, an employee who retains his employment while serving in the armed forces of the Union or when taken into or employed in the national service under any law for the time being in force, may, whether he receives from the employer any salary or not, contribute to the fund during his service in the armed forces of the Union or while so taken into or employed in the national service a sum not exceeding the amount he would have contributed had he continued to serve the employer.

(3) Notwithstanding anything contained in clause (*e*) or clause (*g*) of rule 4,—

(*a*) at the request made in writing by the employee who ceases to be an employee of the employer maintaining the fund, the trustees of the fund may consent to retain the whole or any part of the accumulated balance due to the employee to be drawn by him at any time on demand;

(*b*) where the accumulated balance due to an employee who has ceased to be an employee is retained in the fund in accordance with the preceding clause, the fund may consist also of interest in respect of such accumulated balance;

[41][(*c*) the fund may also consist of any amount transferred from the individual account of an employee in any recognised provident fund maintained by his former employer and the interest in respect thereof.]

(4) Subject to any rules[42] which the Board may make in this behalf, the [43][Chief Commissioner or Commissioner] may, in respect of any particular fund, relax the provisions of clause (*c*) of rule 4,—

(*a*) so as to permit the payment of larger contributions by an employer to the individual accounts of employees whose salaries do not in each case exceed five hundred rupees per mensem; and

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40. Substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

41. Inserted by the Finance Act, 1974, w.e.f. 1-4-1974.

42. *See* rule 75.

43. Substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

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(*b*) so as to permit the crediting by employers to the individual accounts of employees of periodical bonuses or other contributions of a contingent nature, where the calculation and payment of such bonuses or other contributions is provided for on definite principles by the regulations of the fund.

(5) Notwithstanding anything contained in clause (*h*) of rule 4, in order to enable an employee to pay the amount of tax assessed on his total income as determined under sub-rule (4) of rule 11, he shall be entitled to withdraw from the balance to his credit in the recognised provident fund a sum not exceeding the difference between such amount and the amount to which he would have been assessed if the transferred balance referred to in sub-rule (2) of rule 11 had not been included in his total income.

Employer's annual contributions, when deemed to be income received by employee.

6. That portion of the annual accretion in any previous year to the balance at the credit of an employee participating in a recognised provident fund as consists of—

(*a*) contributions made by the employer in excess of [44][twelve] per cent of the salary of the employee, and

(*b*) interest credited on the balance to the credit of the employee in so far as it [45][***] is allowed at a rate exceeding such rate as may be fixed by the Central Government in this behalf by notification in the Official Gazette,

shall be deemed to have been received by the employee in that previous year and shall be included in his total income for that previous year, and shall be liable to income-tax [46][***].

[47][**Exemption for employee's contributions.**

7. An employee participating in a recognised provident fund shall, in respect of his own contributions to his individual account in the fund in the previous year, be entitled to a deduction in the computation of his total income of an amount determined in accordance with [48][section 80C].]

Exclusion from total income of accumulated balance.

8. The accumulated balance due and becoming payable to an employee participating in a recognised provident fund shall be excluded from the computation of his total income—

(*i*) if he has rendered continuous service with his employer for a period of five years or more, or

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44. Substituted for "ten" by the Finance Act, 1997, w.e.f. 1-4-1998.

45. Words "exceeds one-third of the salary of the employee or" omitted by the Finance (No. 2) Act, 1980, w.e.f. 1-4-1981.

46. Words "and super-tax" omitted by the Finance Act, 1965, w.e.f. 1-4-1965.

47. Substituted, *ibid.*

48. Substituted for "section 80A or, as the case may be, to a deduction from the amount of income-tax with which he is chargeable on his total income of an amount of income-tax determined in accordance with section 87" by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968.

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(*ii*) if, though he has not rendered such continuous service, the service has been terminated by reason of the employee's ill-health, or by the contraction or discontinuance of the employer's business or other cause beyond the control of the employee, [49][or]

[49][(*iii*) if, on the cessation of his employment, the employee obtains employment with any other employer, to the extent the accumulated balance due and becoming payable to him is transferred to his individual account in any recognised provident fund maintained by such other employer.

Explanation.—Where the accumulated balance due and becoming payable to an employee participating in a recognised provident fund maintained by his employer includes any amount transferred from his individual account in any other recognised provident fund or funds maintained by his former employer or employers, then, in computing the period of continuous service for the purposes of clause (*i*) or clause (*ii*) the period or periods for which such employee rendered continuous service under his former employer or employers aforesaid shall be included.]

Tax on accumulated balance.

9. (1) Where the accumulated balance due to an employee participating in a recognised provident fund is included in his total income owing to the provisions of rule 8 not being applicable, the [50][Assessing] Officer shall calculate the total of the various sums of [51][tax] which would have been payable by the employee in respect of his total income for each of the years concerned if the fund had not been a recognised provident fund, and the amount by which such total exceeds the total of all sums paid by or on behalf of such employee by way of tax for such years shall be payable by the employee in addition to any other [51][tax] for which he may be liable for the previous year in which the accumulated balance due to him becomes payable.

(2) Where the accumulated balance due to an employee participating in a recognised provident fund which is not included in his total income under the provisions of rule 8 becomes payable, an amount equal to the aggregate of the amounts of super-tax on annual accretions that would have been payable under section 58E of the Indian Income-tax Act, 1922 (11 of 1922), for any assessment year up to and including the assessment year 1932-33, if the Indian Income-tax (Second Amendment) Act, 1933 (18 of 1933), had come into force on the 15th day of March, 1930, shall be payable by the employee in addition to any other tax payable by him for the previous year in which such balance becomes payable.

Deduction at source of tax payable on accumulated balance.

10. The trustees of a recognised provident fund, or any person authorised by the regulations of the fund to make payment of accumulated balances due

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49. Inserted by the Finance Act, 1974, w.e.f. 1-4-1975.

50. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

51. Substituted for "income-tax and super tax" by the Finance Act, 1965, w.e.f. 1-4-1965.

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to employees, shall, in cases where sub-rule (1) of rule 9 applies, at the time an accumulated balance due to an employee is paid, deduct therefrom the amount payable under that rule and all the provisions of Chapter XVII-B shall apply as if the accumulated balance were income chargeable under the head "Salaries".

Treatment of balance in newly recognised provident fund.

11. (1) Where recognition is accorded to a provident fund with existing balances, an account shall be made of the fund up to the day immediately preceding the day on which the recognition takes effect, showing the balance to the credit of each employee on such day, and containing such further particulars as the Board may prescribe.

(2) The account shall also show in respect of the balance to the credit of each employee the amount thereof which is to be transferred to that employee's account in the recognised provident fund, and such amount (hereinafter called his transferred balance) shall be shown as the balance to his credit in the recognised provident fund on the date on which the recognition of the fund takes effect, and sub-rule (4) of this rule and sub-rule (5) of rule 5 shall apply thereto.

(3) Any portion of the balance to the credit of an employee in the existing fund which is not transferred to the recognised fund shall be excluded from the accounts of the recognised fund and shall be liable to income-tax [52][***] in accordance with the provisions of this Act, other than this Part.

(4) Subject to such rules as the Board may make in this behalf, the [53][Assessing] Officer shall make a calculation of the aggregate of all sums comprised in a transferred balance which would have been liable to income-tax if this Part had been in force from the date of the institution of the fund, without regard to any tax which may have been paid on any sum, and such aggregate (if any) shall be deemed to be income received by the employee in the previous year in which the recognition of the fund takes effect and shall be included in the employee's total income for that previous year, and, for the purposes of assessment, the remainder of the transferred balance shall be disregarded, but no other exemption or relief, by way of refund or otherwise, shall be granted in respect of any sum comprised in such transferred balance :

Provided that, in cases of serious accounting difficulty, the [54][Chief Commissioner or Commissioner] may, subject to the said rules, make a summary calculation of such aggregate.

(5) Nothing in this rule shall affect the rights of the persons administering an unrecognised provident fund or dealing with it, or with the balance to the credit of any individual employee before recognition is accorded, in any manner which may be lawful.

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52. Words "and super-tax" omitted by the Finance Act, 1965, w.e.f. 1-4-1965.

53. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

54. Substituted for "Commissioner", *ibid.*

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Accounts of recognised provident funds.

12. (1) The accounts of a recognised provident fund shall be maintained by the trustees of the fund and shall be in such form and for such periods, and shall contain such particulars, as the Board may prescribe.

(2) The accounts shall be open to inspection at all reasonable times by income-tax authorities, and the trustees shall furnish to the [55][Assessing] Officer such abstracts thereof as the Board may prescribe.

Appeals.

13. (1) An employer objecting to an order of the [56][Chief Commissioner or Commissioner] refusing to recognise or an order withdrawing recognition from a provident fund may appeal, within sixty days of such order, to the Board.

(2) The appeal shall be in such form and shall be verified in such manner and shall be subject to the payment of such fee as the Board may prescribe.

Treatment of fund transferred by employer to trustee.

14. (1) Where an employer, who maintains a provident fund (whether recognised or not) for the benefit of his employees and has not transferred the fund or any portion of it, transfers such fund or portion to trustees in trust for the employees participating in the fund, the amount so transferred shall be deemed to be of the nature of capital expenditure.

(2) When an employee participating in such fund is paid the accumulated balance due to him therefrom, any portion of such balance as represents his share in the amount so transferred to the trustees (without addition of interest, and exclusive of the employee's contributions and interest thereon) shall, if the employer has made effective arrangements to secure that tax shall be deducted at source from the amount of such share when paid to the employee, be deemed to be an expenditure by the employer within the meaning of section 37, incurred in the previous year in which the accumulated balance due to the employee is paid.

[57]**Provisions relating to rules.**

15. (1) In addition to any power conferred by this Part, the Board may make rules—

(*a*) prescribing the statements and other information to be submitted along with an application for recognition;

(*b*) limiting the contributions to a recognised provident fund by employees of a company who are shareholders in the company;

[58][(*bb*) regulating the investment or deposit of the moneys of a recognised provident fund :

Provided that no rule made under this clause shall require the investment of more than fifty per cent of the moneys of such fund in

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55. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

56. Substituted for "Commissioner", *ibid.*

57. *See* rules 67 to 81.

58. Inserted by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

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Government securities[59] as defined in section 2 of the Public Debt Act, 1944 (18 of 1944);]

(*c*) providing for the assessment by way of penalty of any consideration received by an employee for an assignment of, or creation of a charge upon, his beneficial interest in a recognised provident fund;

(*d*) determining the extent to and the manner in which exemption from payment of [60][tax] may be granted in respect of contributions and interest credited to the individual accounts of employees in a provident fund from which recognition has been withdrawn; and

(*e*) generally, to carry out the purposes of this Part and to secure such further control over the recognition of provident funds and the administration of recognised provident funds as it may deem requisite.

(2) All rules made under this Part shall be subject to the provisions of section 296.

PART B

APPROVED SUPERANNUATION FUNDS[61]

[*See* sections 2(*6*), 10(*13*), 10(*25*)(*iii*), 36(1)(*iv*), [62]87(1)(*e*), 192(5), [63][206]]

Definitions.

1. In this Part, unless the context otherwise requires, "employer", "employee", "contribution" and "salary" have, in relation to superannuation funds, the meanings assigned to those expressions in rule 2 of Part A in relation to provident funds.

Approval and withdrawal of approval.

2. (1) The [64][Chief Commissioner or Commissioner] may accord approval to any superannuation fund or any part of a superannuation fund which, in his opinion, complies with the requirements of rule 3, and may at any time withdraw such approval, if, in his opinion, the circumstances of the fund or part cease to warrant the continuance of the approval.

(2) The [64][Chief Commissioner or Commissioner] shall communicate in writing to the trustees of the fund the grant of approval with the date on which the approval is to take effect, and, where the approval is granted subject to conditions, those conditions.

(3) The [64][Chief Commissioner or Commissioner] shall communicate in writing to the trustees of the fund any withdrawal of approval with the reasons for such withdrawal and the date on which the withdrawal is to take effect.

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59. For definition of "Government security", *see* footnote 12 on p. 1.488 *ante.*

60. Substituted for "income-tax and super-tax" by the Finance Act, 1965, w.e.f. 1-4-1965.

61. *See* rules 82 to 97 and Form No. 43 for form of appeal.

62. "88(2)(*vii*)" should now be substituted for "87(1)(*e*)".

63. Substituted for "206(2)" by the Finance Act, 1987, w.e.f. 1-6-1987.

64. Substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

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(4) The [65][Chief Commissioner or Commissioner] shall neither refuse nor withdraw approval to any superannuation fund or any part of a superannuation fund unless he has given the trustees of that fund a reasonable opportunity of being heard in the matter.

Conditions for approval.

3. In order that a superannuation fund may receive and retain approval, it shall satisfy the conditions set out below and any other conditions which the Board may, by rules, prescribe—

[66](*a*) the fund shall be a fund established under an irrevocable trust in connection with a trade or undertaking carried on in India, and not less than ninety per cent of the employees shall be employed in India;

(*b*) the fund shall have for its sole purpose the provision of annuities for employees in the trade or undertaking on their retirement at or after a specified age or on their becoming incapacitated prior to such retirement, or for the widows, children or dependants of persons who are or have been such employees on the death of those persons ;

(*c*) the employer in the trade or undertaking shall be a contributor to the fund ; and

(*d*) all annuities, pensions and other benefits granted from the fund shall be payable only in India.

Application for approval.

4. (1) An application for approval of a superannuation fund or part of a superannuation fund shall be made in writing by the trustees of the fund to the [67][Assessing] Officer by whom the employer is assessable, and shall be accompanied by a copy of the instrument under which the fund is established and by two copies of the rules [68][and, where the fund has been in existence during any year or years prior to the financial year in which the application for approval is made, also two copies of the accounts of the fund relating to such prior year or years (not being more than three years immediately preceding the year in which the said application is made)] for which such accounts have been made up, but the [69][Chief Commissioner or Commissioner] may require such further information to be supplied as he thinks proper.

(2) If any alteration in the rules, constitution, objects or conditions of the fund is made at any time after the date of the application for approval, the trustees of the fund shall forthwith communicate such alteration to the [70][Assessing]

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65. Substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

66. *See* also Circular No. 500, dated 9-12-1987, Circular No. 444, dated 13-12-1985, Circular No. 482, dated 26-3-1987 and Circular No. 595, dated 5-3-1991. For details, *see* Taxmann's Master Guide to Income-tax Act.

67. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

68. Substituted for "and of the accounts of the fund for the last year" by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

69. Substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

70. Substituted for "Income-tax", *ibid*.

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Officer mentioned in sub-rule (1), and in default of such communication any approval given shall, unless the [71][Chief Commissioner or Commissioner] otherwise orders, be deemed to have been withdrawn from the date on which the alteration took effect.

Contributions by employer when deemed to be income of employer.

5. Where any contributions by an employer (including the interest thereon, if any) are repaid to the employer, the amount so repaid shall be deemed for the purpose of income-tax [72][***] to be the income of the employer of the previous year in which it is so repaid.

Deduction of tax on contributions paid to an employee.

[73]**6.** Where any contributions made by an employer, including interest on contributions, if any, are paid to an employee during his lifetime [74][in circumstances other than those referred to in clause (*13*) of section 10], [75][tax] on the amounts so paid shall be deducted at the average rate of [75][tax] at which the employee was liable to [75][tax] during the preceding three years or during the period, if less than three years, when he was a member of the fund, and shall be paid by the trustees to the credit of the Central Government within the prescribed time and in such manner as the Board may direct.

Deduction from pay of and contributions on behalf of employee to be included in return.

7. Where an employer deducts from the emoluments paid to an employee or pays on his behalf any contributions of that employee to an approved superannuation fund, he shall include all such deductions or payments in the return which he is required to furnish under [76][***] section 206.

Appeals.

8. (1) An employer objecting to an order of the [77][Chief Commissioner or Commissioner] refusing to accord approval to a superannuation fund or an order withdrawing such approval may appeal, within sixty days of such order, to the Board.

(2) The appeal shall be in such form and shall be verified in such manner and shall be subject to the payment of such fee as may be prescribed.[78]

Liability of trustees on cessation of approval.

9. If a fund or a part of a fund for any reason ceases to be an approved superannuation fund, the trustees of the fund shall nevertheless remain liable to tax on any sum paid on account of returned contributions (including interest

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71. Substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

72. Words "and super-tax" omitted by the Finance Act, 1965, w.e.f. 1-4-1965.

73. *See* rule 33 and Form No. 22.

74. Inserted by the Finance Act, 1965, w.e.f. 1-4-1965.

75. Substituted for "income-tax and super-tax", *ibid*.

76. Words "sub-section (1) of" omitted by the Finance Act, 1987, w.e.f. 1-6-1987.

77. Substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

78. *See* rule 97 and Form No. 43.

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on contributions, if any), in so far as the sum so paid is in respect of contributions made before the fund or part of the fund ceased to be an approved superannuation fund under the provisions of this Part.

Particulars to be furnished in respect of superannuation funds.

10. The trustees of an approved superannuation fund and any employer who contributes to an approved superannuation fund shall, when required by notice from the [79][Assessing] Officer, within such period, not being less than twenty-one days from the date of the notice, as may be specified in the notice, furnish such return, statement, particulars or information, as the [79][Assessing] Officer may require.

Provisions relating to rules.

11. (1) In addition to any power conferred by this Part, the Board may make rules—

(*a*) prescribing the statements and other information to be submitted along with an application for approval ;

(*b*) prescribing the returns, statements, particulars, or information which the [79][Assessing] Officer may require from the trustees of an approved superannuation fund or from the employer ;

(*c*) limiting the ordinary annual contribution and any other contributions to an approved superannuation fund by an employer ;

[80][(*cc*) regulating the investment or deposit of the moneys of an approved superannuation fund :

Provided that no rule made under this clause shall require the investment of more than fifty per cent of the moneys of such fund in [81]Government securities as defined in section 2 of the Public Debt Act, 1944 (18 of 1944) ;]

(*d*) providing for the assessment by way of penalty of any consideration received by an employee for an assignment of, or creation of a charge upon, his beneficial interest in an approved superannuation fund ;

(*e*) determining the extent to, and the manner in, which exemption from payment of [82][tax] may be granted in respect of any payment made from a superannuation fund from which approval has been withdrawn ;

(*f*) providing for the withdrawal of approval in the case of a fund which ceases to satisfy the requirements of this Part or of the rules made thereunder ; and

(*g*) generally, to carry out the purposes of this Part and to secure such further control over the approval of the superannuation funds and the administration of approved superannuation funds as it may deem requisite.

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79. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

80. Inserted by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

81. For definition of "Government security", *see* footnote 12 on p. 1.488 *ante.*

82. Substituted for "income-tax and super-tax" by the Finance Act, 1965, w.e.f. 1-4-1965.

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(2) All rules made under this Part shall be subject to the provisions of section 296.

PART C

APPROVED GRATUITY FUNDS[83]

[*See* sections 2(*5*), [84][10(*25*)(*iv*),] 17(*1*)(*iii*), 36(1)(*v*)]

Definitions.

1. In this Part, unless the context otherwise requires "employer", "employee", "contribution" and "salary" have, in relation to gratuity funds, the meanings assigned to those expressions in rule 2 of Part A in relation to provident funds.

Approval and withdrawal of approval.

2. (1) The [85][Chief Commissioner or Commissioner] may accord approval to any gratuity fund which, in his opinion, complies with the requirements of rule 3 and may at any time withdraw such approval if, in his opinion, the circumstances of the fund cease to warrant the continuance of the approval.

(2) The [86][Chief Commissioner or Commissioner] shall communicate in writing to the trustees of the fund the grant of approval with the date on which the approval is to take effect and where the approval is granted subject to conditions, those conditions.

(3) The [86][Chief Commissioner or Commissioner] shall communicate in writing to the trustees of the fund any withdrawal of approval with the reasons for such withdrawal and the date on which the withdrawal is to take effect.

(4) The [86][Chief Commissioner or Commissioner] shall neither refuse nor withdraw approval to any gratuity fund unless he has given the trustees of that fund a reasonable opportunity of being heard in the matter.

Conditions for approval.

3. In order that a gratuity fund may receive and retain approval, it shall satisfy the conditions set out below and any other conditions which the Board may, by rules, prescribe—

(*a*) the fund shall be a fund established under an irrevocable trust in connection with a trade or undertaking carried on in India, and not less than ninety per cent of the employees shall be employed in India ;

(*b*) the fund shall have for its sole purpose the provision of a gratuity to employees in the trade or undertaking on their retirement at or after a specified age or on their becoming incapacitated prior to such retirement or on termination of their employment after a minimum period of service specified in the rules of the fund or to the widows, children or dependants of such employees on their death ;

(*c*) the employer in the trade or undertaking shall be a contributor to the fund ; and

(*d*) all benefits granted by the fund shall be payable only in India.

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83. *See* rules 98 to 111 and Form No. 44 for form of appeal.

84. Inserted by the Finance Act, 1972, w.e.f. 1-4-1973.

85. Substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

86. Substituted for "Commissioner", *ibid.*

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Application for approval.

4. (1) An application for approval of a gratuity fund shall be made in writing by the trustees of the fund to the [87][Assessing] Officer by whom the employer is assessable and shall be accompanied by a copy of the instrument under which the fund is established and by two copies of the rules [88][and, where the fund has been in existence during any year or years prior to the financial year in which the application for approval is made, also two copies of the accounts of the fund relating to such prior year or years (not being more than three years immediately preceding the year in which the said application is made)] for which such accounts have been made up, but the [89][Chief Commissioner or Commissioner] may require such further information to be supplied as he thinks proper.

(2) If any alteration in the rules, constitution, objects or conditions of the fund is made at any time after the date of the application for approval, the trustees of the fund shall forthwith communicate such alterations to the [90][Assessing] Officer mentioned in sub-rule (1), and in default of such communication, any approval given shall, unless the [89][Chief Commissioner or Commissioner] otherwise orders, be deemed to have been withdrawn from the date on which the alteration took effect.

Gratuity deemed to be salary.

5. Where any gratuity is paid to an employee during his lifetime, the gratuity shall be treated as salary paid to the employee for the purposes of this Act.

Liability of trustees on cessation of approval.

6. If a gratuity fund for any reason ceases to be an approved gratuity fund, the trustees of the fund shall nevertheless remain liable to tax on any gratuity paid to any employee.

Contributions by employer, when deemed to be income of employer.

7. Where any contributions by an employer (including the interest thereon, if any) are repaid to the employer, the amount so repaid shall be deemed for the purposes of income-tax [91][***] to be the income of the employer of the previous year in which they are so repaid.

Appeals.

8. (1) An employer objecting to an order of the [92][Chief Commissioner or Commissioner] refusing to accord approval to a gratuity fund or an order

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87. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

88. Substituted for "and of the accounts of the fund for the last three years" by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

89. Substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

90. Substituted for "Income-tax", *ibid.*

91. Words "and super-tax" omitted by the Finance Act, 1965, w.e.f. 1-4-1965.

92. Substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

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withdrawing such approval may appeal, within sixty days of such order, to the Board.

(2) The appeal shall be in such form and shall be verified in such manner and shall be subject to the payment of such fee as may be prescribed.[93]

[94][**Particulars to be furnished in respect of gratuity funds.**

8A. The trustees of an approved gratuity fund and any employer who contributes to an approved gratuity fund shall, when required by notice from the [95][Assessing] Officer, furnish within such period, not being less than twenty-one days from the date of the notice, as may be specified in the notice, such return, statement, particulars or information, as the [95][Assessing] Officer may require.]

Provisions relating to rules.

9. (1) In addition to any power conferred in this Part, the Board may make rules—

(*a*) prescribing the statements and other information to be submitted along with an application for approval ;

(*b*) limiting the ordinary annual and other contributions of an employer to the fund ;

[96][(*bb*) regulating the investment or deposit of the moneys of an approved gratuity fund :

Provided that no rule made under this clause shall require the investment of more than fifty per cent of the moneys of such fund in Government securities[97] as defined in section 2 of the Public Debt Act, 1944 (18 of 1944) ;]

(*c*) providing for the assessment by way of penalty of any consideration received by an employee for an assignment of, or the creation of a charge upon, his beneficial interest in an approved gratuity fund ;

(*d*) providing for the withdrawal of the approval in the case of a fund which ceases to satisfy the requirements of this Part or the rules made thereunder ; and

(*e*) generally, to carry out the purposes of this Part and to secure such further control over the approval of gratuity funds and the administration of gratuity funds as it may deem requisite.

(2) All rules made under this Part shall be subject to the provisions of section 296.

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93. *See* rule 111 and Form No. 44.

94. Inserted by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

95. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

96. Inserted by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

97. For definition of "Government security", *see* footnote 12 on p. 1.488 *ante*.

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[98][*THE FIFTH SCHEDULE*

[99][[*See* section 33(1)(*b*)(*B*)(*i*)]]

LIST OF ARTICLES AND THINGS

(*1*) Iron and steel (metal), ferro-alloys and special steels.

(*2*) Aluminium, copper, lead and zinc (metals).

(*3*) [1][Coal, lignite, iron ore], bauxite, manganese ore, dolomite, limestone, magnesite and mineral oil.

(*4*) Industrial machinery specified under the heading "8. Industrial machinery", sub-heading "A. Major items of specialised equipment used in specific industries", of the First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951).

(*5*) Boilers and steam generating plants, steam engines and turbines and internal combustion engines.

(*6*) Flame and drip proof motors.

(*7*) Equipment for the generation and transmission of electricity including transformers, cables and transmission towers.

(*8*) Machine tools and precision tools (including their attachments and accessories, cutting tools and small tools), dies and jigs.

(*9*) Tractors, earth-moving machinery and agricultural implements.

(*10*) Motor trucks and buses.

(*11*) Steel castings and forgings and malleable iron and steel castings.

(*12*) Cement and refractories.

(*13*) Fertilisers, namely, ammonium sulphate, ammonium sulphate nitrate (double salt), ammonium nitrate, calcium ammonium nitrate (nitrolime stone), ammonium chloride, superphosphate, urea and complex fertilisers of synthetic origin containing both nitrogen and phosphorus, such as ammonium phosphates, ammonium sulphate phosphate and ammonium nitro phosphate.

(*14*) Soda ash.

(*15*) Pesticides.

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98. Inserted by the Finance Act, 1965, w.e.f. 1-4-1965. The original Schedule was omitted by the Finance Act, 1964, w.e.f. 1-4-1964.

99. Substituted for "[*See* sections 33(1)(*b*)(*B*)(*i*) and 80B(7)]" by the Finance Act, 1968, w.e.f. 1-4-1969. "[*See* sections 33(1)(*b*)(*B*)(*i*) and 80B(7)]" was substituted for "[*See* sections 33(1)(*iii*)(*c*), 80E and 85A]" by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968 and "[*See* sections 33(1)(*iii*)(*c*), 80E and 85A]" was substituted for "[*See* section 33(1)(*iii*)(*c*)]" by the Finance Act, 1966, w.e.f. 1-4-1966.

1. Substituted for "Iron ore" by the Finance (No. 2) Act, 1965, w.e.f. 1-4-1965.

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(*16*) Paper and pulp [2][including newsprint].

(*17*) Electronic equipment, namely, radar equipment, computers, electronic accounting and business machines, electronic communication equipment, electronic control instruments and basic components, such as valves, transistors, resistors, condensers, coils, magnetic materials and microwave components.

(*18*) Petrochemicals including corresponding products manufactured from other basic raw materials like calcium carbide, ethyl alcohol or hydrocarbons from other sources.

(*19*) Ships.

(*20*) Automobile ancillaries.

(*21*) Seamless tubes.

(*22*) Gears.

(*23*) Ball, roller and tapered bearings.

(*24*) Component parts of the articles mentioned in item Nos. (4), (5), (7) and (9), that is to say, such parts as are essential for the working of the machinery referred to in the items aforesaid and have been given for that purpose some special shape or quality which would not be essential for their use for any other purpose and are in complete finished form and ready for fitment.

(*25*) Cotton seed oil.

[2][(*26*) Tea.

(*27*) Printing machinery.]

[3][(*28*) Processed seeds.

(*29*) Processed concentrates for cattle and poultry feed.

(*30*) Processed (including frozen) fish and fish products.

(*31*) Vegetable oils and oil-cakes manufactured by the solvent extraction process from seeds other than cotton seed.]

[4][(*32*) Textiles (including those dyed, printed or otherwise processed) made wholly or mainly of cotton, including cotton yarn, hosiery and rope.

(*33*) Textiles (including those dyed, printed or otherwise processed) made wholly or mainly of jute, including jute twine and jute rope.]]

THE SIXTH SCHEDULE

[*Omitted by the Finance Act, 1972, w.e.f. 1-4-1973. Originally, the Schedule was inserted by the Finance Act, 1968, w.e.f. 1-4-1969 and was later amended by the Finance (No. 2) Act, 1971, w.e.f. 1-4-1972.*]

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2. Inserted by the Finance Act, 1966, w.e.f. 1-4-1966 ; but for the purposes of section 33(1), the amendment shall have effect in respect of machinery or plant installed after 31-3-1966.

3. Inserted by the Finance Act, 1968, w.e.f. 1-4-1969.

4. Inserted by the Finance Act, 1969, w.e.f. 1-4-1970.

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[5][*THE SEVENTH SCHEDULE*

[*See* section 35E]

PART A

MINERALS

1. Aluminium ores.
2. Apatite and phosphatic ores.
3. Beryl.
4. Chrome ore.
5. Coal and lignite.
6. Columbite, Samarskite and other minerals of the "rare earths" group.
7. Copper.
8. Gold.
9. Gypsum.
10. Iron ore.
11. Lead.
12. Manganese ore.
13. Molybdenum.
14. Nickel ores.
15. Platinum and other precious metals and their ores.
16. Pitchblende and other uranium ores.
17. Precious stones.
18. Rutile.
19. Silver.
20. Sulphur and its ores.
21. Tin.
22. Tungsten ores.
23. Uraniferous allanite, monazite and other thorium minerals.
24. Uranium bearing tailings left over from ores after extraction of copper and gold, ilmenite and other titanium ores.
25. Vanadium ores.
26. Zinc.
27. Zircon.

PART B

GROUPS OF ASSOCIATED MINERALS

1. Apatite, Beryl, Cassiterite, Columbite, Emerald, Felspar, Lepidolite, Mica, Pitchblende, Quartz, Samarskite, Scheelite, Topaz, Tantalite, Tourmaline.

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5. Inserted by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

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2. Iron, Manganese, Titanium, Vanadium and Nickel minerals.
3. Lead, Zinc, Copper, Cadmium, Arsenic, Antimony, Bismuth, Cobalt, Nickel, Molybdenum, and Uranium minerals, and Gold and Silver, Arsinopyrite, Chalcopyrite, Pyrite, Pyphrotite and Pentalandite.
4. Chromium, Osmiridium, Platinum and Nickel minerals.
5. Kyanite, Sillimanite, Corrundum, Dumortierite and Topaz.
6. Gold, Silver, Tellurium, Selenium and Pyrite.
7. Barytes, Fluorite, Chalcocite, Selenium, and minerals of Zinc, Lead and Silver.
8. Tin and Tungsten minerals.
9. Limestone, Dolomite and Magnesite.
10. Ilmenite, Monazite, Zircon, Rutile, Garnet and Sillimanite.
11. Sulphides of Copper and Iron.
12. Coal, Fireclay and Shale.
13. Magnetite and Apatite.
14. Magnesite and Chromite.
15. Talc (Soapstone and Steatite) and Dolomite.
16. Bauxite, Laterite, Aluminous Clays, Lithomorge, Titanium, Vanadium, Gallium and Columbium minerals.]

[6][*THE EIGHTH SCHEDULE*

[*See* section 80-IA(2)(*iv*)(*b*)]

LIST OF INDUSTRIALLY BACKWARD STATES AND UNION TERRITORIES

(*1*) Arunachal Pradesh
(*2*) Assam
(*3*) Goa
(*4*) Himachal Pradesh
(*5*) Jammu and Kashmir
(*6*) Manipur
(*7*) Meghalaya
(*8*) Mizoram
(*9*) Nagaland
(*10*) Sikkim
(*11*) Tripura
(*12*) Andaman and Nicobar Islands
(*13*) Dadra and Nagar Haveli

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6. Inserted by the Finance Act, 1993, w.e.f. 1-4-1994. Prior to its omission, the Eighth Schedule was inserted by the Direct Taxes (Amendment) Act, 1974, w.e.f. 1-4-1974, later on amended by the Finance Act, 1976, w.e.f. 1-4-1976, and omitted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, with retrospective effect from 1-4-1984.

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(*14*) Daman and Diu

(*15*) Lakshadweep

(*16*) Pondicherry.]

THE NINTH SCHEDULE

[7][*Omitted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1-4-1988. Original Ninth Schedule was inserted by the Direct Taxes (Amendment) Act, 1974, w.e.f. 1-4-1975.*]

THE TENTH SCHEDULE

[*See* section 3(5)]

[8][*Omitted by the Finance Act, 1999, w.e.f. 1-4-2000.*]

[9][*THE ELEVENTH SCHEDULE*

[*See* section 32A, [10][section 32AB,] [11][section 80CC*(3)(*a*)(*i*), section 80-I(2)] [12][, section 80J(4)† and section 88A‡ (3)(*a*)(*i*)]

LIST OF ARTICLES OR THINGS

1. Beer, wine and other alcoholic spirits.
2. Tobacco and tobacco preparations, such as, cigars and cheroots, cigarettes, biris, smoking mixtures for pipes and cigarettes, chewing tobacco and snuff.
3. Cosmetics and toilet preparations.
4. Tooth paste, dental cream, tooth powder and soap.
5. Aerated waters in the manufacture of which blended flavouring concentrates in any form are used.

   [13][*Explanation*.—"Blended flavouring concentrates" shall include, and shall be deemed always to have included, synthetic essences in any form.]
6. Confectionery and chocolates.

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7. Omitted Ninth Schedule was amended by the Finance Act, 1975, w.e.f. 1-4-1976, the Finance Act, 1976, w.e.f. 1-4-1976, the Finance (No. 2) Act, 1977, w.e.f. 1-4-1978, the Finance Act, 1981, w.e.f. 1-4-1982 and the Finance Act, 1984, w.e.f. 1-4-1985.

8. Prior to its omission, the Tenth Schedule was inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989, and later on amended by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

Original Tenth Schedule was inserted by the Finance Act, 1975, w.e.f. 1-4-1976 and was later on omitted by the Finance Act, 1985, w.e.f. 1-4-1986.

9. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 1-4-1978.

10. Inserted by the Finance Act, 1986, w.e.f. 1-4-1987.

11. Inserted by the Finance Act, 1981, w.e.f. 1-4-1981.

12. Substituted for "and section 80J(4)" by the Finance Act, 1990, w.e.f. 1-4-1990. Earlier, these words were inserted by the Finance Act, 1979, w.e.f. 1-4-1979.

13. Inserted by the Finance Act, 1987, w.e.f. 1-4-1988.

*Section 80CC has now been omitted by the Finance (No. 2) Act, 1996, w.r.e.f. 1-4-1993.

†Section 80J has now been omitted, *ibid.*, w.r.e.f. 1-4-1989.

‡Section 88A has now been omitted, *ibid.*, w.r.e.f. 1-4-1994.

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7. Gramophones, including record-players and gramophone records.
8. [14][***]
9. [15][Projectors.]
10. Photographic apparatus and goods.

11-21. [14][***]

22. Office machines and apparatus such as typewriters, calculating machines, cash registering machines, cheque writing machines, inter-com machines and teleprinters.

    Explanation.—The expression "office machines and apparatus" includes all machines and apparatus used in offices, shops, factories, workshops, educational institutions, railway stations, hotels and restaurants for doing office work [16][and for data processing (not being computers within the meaning of section 32AB)].

23. Steel furniture, whether made partly or wholly of steel.
24. Safes, strong boxes, cash and deed boxes and strong room doors.
25. Latex foam sponge and polyurethane foam.
26. [17][***]
27. Crown corks, or other fittings of cork, rubber, polyethylene or any other material.
28. Pilfer-proof caps for packaging or other fittings of cork, rubber, polyethylene or any other material.
29. [17][***]]

[18][*THE TWELFTH SCHEDULE*

[*See* section 80HHC(2)(*b*)(*ii*)]

PROCESSED MINERALS AND ORES

(*i*) Pulverised or micronised—barytes, calcite, steatite, pyrophylite, wollastonite, zircon, bentonite, red or yellow oxide, red or yellow ochre, talc, quartz, feldspar, silica powder, garnet, silliminite, fireclay, ballclay, manganese dioxide ore.

(*ii*) Processed or activated—bentonite, diatomious earth, fullers earth.

(*iii*) Processed—kaoline (china clay), whiting, calcium carbonate.

(*iv*) Beneficated-chromite, flourspar, graphite, vermiculite, ilmenite, brown ilmenite (lencoxene) rutile, monazite and other mineral concentrates.

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14. Omitted by the Finance Act, 1981, w.e.f. 1-4-1982.

15. Substituted for "Cinematograph films and projectors" by the Finance Act, 1988, w.e.f. 1-4-1989.

16. Substituted for ", for data processing and for transmission and reception of messages" by the Finance Act, 1987, w.e.f. 1-4-1988.

17. Omitted by the Finance Act, 1981, w.e.f. 1-4-1982.

18. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-4-1991. Earlier, the Twelfth Schedule was inserted by the Finance Act, 1982, w.e.f. 1-4-1983 and omitted by the Finance Act, 1986, w.e.f. 1-4-1987.

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(*v*) Mica blocks, mica splittings, mica condenser films, mica powder, micanite, silvered mica, punched mica, mica paper, mica tapes, mica flakes.

(*vi*) Exfoliated-vermiculite, calcined kyanite, magnesite, calcined magnesite, calcined alumina.

(*vii*) Sized iron ore processed by mechanical screening or crushing and screening through dry process or mechanical crushing, screening, washing and classification through wet process.

(*viii*) Iron ore concentrates processed through crushing, grinding or magnetic separation.

(*ix*) Agglomerated iron ore.

(*x*) Cut and polished minerals and rocks including cut and polished granite.

Explanation.—For the purposes of this Schedule, "processed", in relation to any mineral or ore, means—

(*a*) dressing through mechanical means to obtain concentrates after removal of gangue and unwanted deleterious substances or through other means without altering the minerological identity;

(*b*) pulverisation, calcination or micronisation;

(*c*) agglomeration from fines;

(*d*) cutting and polishing;

(*e*) washing and levigation;

(*f*) benefication by mechanical crushing and screening through dry process;

(*g*) sizing by crushing, screening, washing and classification through wet process;

(*h*) other upgrading techniques such as removal of impurities through chemical treatment, refining by gravity separation, bleaching, floatation or filtration.]

[19][*THE THIRTEENTH SCHEDULE*

[20][[*See* sections 80-IB(4) and 80-IC(2)]]

LIST OF ARTICLES OR THINGS

PART A

FOR THE STATE OF SIKKIM

S. No.	*Article or thing*
1.	Tobacco and tobacco products (including cigarettes, cigars and gutka, etc.)
2.	Aerated branded beverages
3.	Pollution-causing paper and paper products

19. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

20. Substituted for "[*See* section 80-IC(2)]" by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005.

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PART B

FOR THE STATE OF HIMACHAL PRADESH AND
THE STATE OF UTTARANCHAL

S. No.	*Activity or article or thing*	*Excise classification*	*Sub-class under National Industrial Classification (NIC), 1998*
1.	Tobacco and tobacco products including cigarettes and pan masala	24.01 to 24.04 and 21.06	1600
2.	Thermal Power Plant (coal/oil based)		40102 or 40103
3.	Coal washeries/dry coal processing		
4.	Inorganic Chemicals excluding medicinal grade oxygen (2804.11), medicinal grade hydrogen peroxide (2847.11), compressed air (2851.30)	Chapter 28	
5.	Organic chemicals excluding Provitamins/ vitamins, Hormones (29.36), Glycosides (29.39), sugars* (29.40)	Chapter 29	24117
6.	Tanning and dyeing extracts, tannins and their derivatives, dyes, colours, paints and varnishes; putty, fillers and other mastics; inks	Chapter 32	24113 or 24114
7.	Marble and mineral substances not classified elsewhere	25.04 25.05	14106 or 14107
8.	Flour mills/rice mills	11.01	15311
9.	Foundries using coal		
10.	Minerals fuels, mineral oils and products of their distillation; bituminous substances : mineral waxes	Chapter 27	
11.	Synthetic rubber products	40.02	24131
12.	Cement clinkers and asbestos, raw including fibre	2502.10, 2503.00	
13.	Explosive (including industrial explosives, detonators and fuses, fireworks, matches, propellant powders, etc.)	36.01 to 36.06	24292
14.	Mineral or chemical fertilizers	31.02 to 31.05	2412
15.	Insecticides, fungicides, herbicides and pesticides (basic manufacture and formulation)	3808.10	24211 or 24219
16.	Fibre glass and articles thereof	70.14	26102
17.	Manufacture of pulp—wood pulp, mechanical or chemical (including dissolving pulp)	47.01	21011

*Serial No. 5 - Reproduction by synthesis not allowed as also downstream industries for sugar.

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S. No.	*Activity or article or thing*	*Excise classification*	*Sub-class under National Industrial Classification (NIC), 1998*
18.	Branded aerated water/soft drinks (non-fruit based)	2201.20, 2202.20	15541 or 15542
[21][*19.*	*Manufacture of pulp-wood pulp, mechanical or chemical (including dissolving pulp)*	*4701.00*	
	Newsprint in rolls or sheets	*4801.00*	
	Writing or printing paper for printing of educational textbooks	*4802.10*	
	Paper or paperboard, in the manufacture of which—	*4802.20*	
	(a) the principal process of lifting the pulp is done by hand; and		
	(b) if power driven sheet forming equipment is used, the Cylinder Mould VAT does not exceeds 40 inches		
	Maplitho paper supplied to a Braille press against an indent placed by the National Institute for Visually Handicapped, Dehradun	*4802.30*	
	Others	*4802.90*	

21. Substituted by the Finance (No. 2) Act, 2009, w.e.f. **1-4-2010.** Prior to its substitution, S. No. 19 and entries relating thereto, read as under:

"19. Paper	4801	21011 to 21019
Writing or printing paper, etc.	4802.10	
Paper or paperboard, etc.	4802.20	
Maplitho paper, etc.	4802.30	
Newsprint, in rolls or sheets	4801.00	
Craft paper, etc.	4804.10	
Sanitary towels, etc.	4818.10	
Cigarette paper	48.13	
Grease-proof paper	4806.10	
Toilet or facial tissue, etc.	4803	
Paper and paper board, laminated internally with bitumen, tar or asphalt	4807.10	
Carbon or similar copying paper	4809.10	
Products consisting of sheets of paper or paperboard, impregnated, coated or covered with plastics, etc.	4811.20	
Paper and paperboard, coated, impregnated or covered with wax, etc.	4811.40"	

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S. No.	Activity or article or thing	Excise classification	Sub-class under National Industrial Classification (NIC), 1998
	Toilet or facial tissue stock, towel or napkin stock and similar paper of a kind used for household or sanitary purposes, cellulose wadding and webs of cellulose fibres, whether or not creped, crinkled embossed, perforated, surfact-coloured, surface decorated or printed, in rolls of a width exceeding 36 cms. or in rectangular (including square) sheets with at least one side exceeding 36 cms. in unfolded state.	*4803.00*	
	Kraft paper supplied to a Braille press against an indent placed by the National Institute for Visually Handicapped, Dehradun	*4804.10*	
	Kraft paper and paperboard used in the manufacture of cartons for packing of horticultural produce	*4804.20*	
	Others	*4804.90*	
	Other uncoated paper and paperboard, in roll or sheets, not further worked or processed than as specified in Note 2 to this Chapter.	*4805.00*	
	Grease-proof paper	*4806.10*	
	Glassine and other glazed transparent or translucent paper	*4806.20*	
	Others	*4806.90*	
	Straw Board, in the manufacture of which sun-drying process has been employed.	*4807.91*	
	Straw paper and other straw board, whether or not covered with paper other than straw paper.	*4807.92*	
	Other	*4807.99*	
	Carbon or similar copying papers	*4809.10*	
	Self-copy paper	*4809.20*	
	Others	*4809.90*	
	Paper and paperboard of a kind used for writing, printing or other graphic purposes.	*4810.10*	
	Kraft paper and paperboard other than that of a kind used for writing, printing or other graphic purposes.	*4810.20*	
	Other paper and paperboard	*4810.90*	
	Tarred, bituminized or asphalted paper and paperboard.	*4811.10*	

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S. No.	*Activity or article or thing*	*Excise classification*	*Sub-class under National Industrial Classification (NIC), 1998*
	Gummed or adhesive paper and paper-board	*4811.20*	
	- Paper and paperboard coated, impreg-nated or covered with plastic (excluding adhesives).		
	Products consisting of sheets of paper or paperboard, impregnated, coated or covered with plastics (including thermoset resins or mixtures thereof or chemical formulations containing melamine, phenol, urea formaldehyde with or without curing agents or catalysts), compressed together in one or more operations; Products known commercially as decorative laminates.	*4811.31*	
	Others	*4811.39*	
	Paper and paperboard, coated, impreg-nated or covered with wax, paraffin wax, stearin, oil or glycerol.	*4811.40*	
	Other	*4811.90*	
	Cigarette paper, whether or not cut to size or in the form of booklets or tubes.]	*4813.00.*	
20.	Plastics and articles thereof	39.09 to 39.15]	

[22][***PART C***

FOR THE STATE OF JAMMU AND KASHMIR

S. No.	*Article or thing*
1.	Cigarettes/cigars of tobacco, manufactured tobacco and substitutes
2.	Distilled/brewed alcoholic drinks
3.	Aerated branded beverages and their concentrates.]

[23][***THE FOURTEENTH SCHEDULE***

[*See* section 80-IC(2)]

LIST OF ARTICLES OR THINGS OR OPERATIONS

PART A

FOR THE NORTH-EASTERN STATES

1. Fruit and Vegetable Processing industries manufacturing or producing—

(*i*) Canned or bottled products;

22. Inserted by the Finance (No. 2) Act, 2004, w.e.f. 1-4-2005.

23. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

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(*ii*) Aseptic packaged products;
(*iii*) Frozen products;
(*iv*) De-hydrated products;
(*v*) Oleoresins.

2. Meat and Poultry Product industries manufacturing or producing—
   (*i*) Meat Products (buffalo, sheep, goat and pork);
   (*ii*) Poultry production;
   (*iii*) Egg Powder Plant.
3. Cereal Based Product industries manufacturing or producing—
   (*i*) Maize Milling including starch and its derivatives;
   (*ii*) Bread, Biscuits, Breakfast Cereal.
4. Food and Beverage industries manufacturing or producing—
   (*i*) Snacks;
   (*ii*) Non-alcoholic beverages;
   (*iii*) Confectionery including chocolate;
   (*iv*) Pasta products;
   (*v*) Processed spices, etc.;
   (*vi*) Processed pulses;
   (*vii*) Tapioca products.
5. Milk and milk based product industries manufacturing or producing—
   (*i*) Milk powder;
   (*ii*) Cheese;
   (*iii*) Butter/ghee;
   (*iv*) Infant food;
   (*v*) Weaning food;
   (*vi*) Malted milk food.
6. Food packaging industry.
7. Paper products industry.
8. Jute and mesta products industry.
9. Cattle or poultry or fishery feed products industry.
10. Edible Oil processing or vanaspati industry.
11. Processing of essential oils and fragrances industry.
12. Processing and raising of plantation crops—tea, rubber, coffee, coconuts, etc.
13. Gas based Intermediate Products Industry manufacturing or producing—
   (*i*) Gas exploration and production;
   (*ii*) Gas distribution and bottling;
   (*iii*) Power generation;

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(*iv*) Plastics;
(*v*) Yarn raw materials;
(*vi*) Fertilizers;
(*vii*) Methanol;
(*viii*) Formaldehyde and FR resin melamine and MF resin;
(*ix*) Methylamine, Hexamethylene tetramine, Ammonium bi-carbonate;
(*x*) Nitric Acid and Ammonium Nitrate;
(*xi*) Carbon black;
(*xii*) Polymer chips.

14. Agro forestry based industry.
15. Horticulture industry.
16. Mineral based industry.
17. Floriculture industry.
18. Agro-based industry.

PART B

FOR THE STATE OF SIKKIM

S. No.	*Activity or article or thing or operation*
1.	Eco-Tourism including Hotels, Resorts, Spa, Amusement Parks and Ropeways.
2.	Handicrafts and handlooms.
3.	Wool and silk reeling, weaving and processing, printing, etc.
4.	Floriculture.
5.	Precision Engineering including watch making.
6.	Electronics including computronics hardware and software and Information Technology (IT) related industries.
7.	Food processing including Agro-based industries. Processing, preservation and packaging of fruits and vegetables (excluding conventional grinding / extraction units).
8.	Medicinal and aromatic Herbs—Plantation and Processing.
9.	Raising and processing of plantation crops, *i.e.,* tea, oranges and cardamom.
10.	Mineral based industry.
11.	Pharma products.
12.	Honey.
13.	Biotechnology.

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PART C

FOR THE STATE OF HIMACHAL PRADESH AND THE STATE OF UTTARANCHAL

S. No.	*Activity or article or thing or operation*	*4/6 digit excise classification*	*Sub-class under NIC classification on 1998*	*ITC(HS) classifi-cation 4/6 digit*
1.	Floriculture	-	-	0603 or 060120 or 06029020 or 06024000
2.	Medicinal herbs and aromatic herbs, etc., processing	-	-	
3.	Honey	-	-	040900
4.	Horticulture and agro-based industries such as			
	(*a*) Sauces, ketchup, etc.	21.03	15135 to 15137 and 15139	
	(*b*) Fruit juices and fruit pulp	2202.40		
	(*c*) Jams, jellies, vegetable juices, puree, pickles, etc.	20.01		
	(*d*) Preserved fruits and vegetables			
	(*e*) Processing of fresh fruits and vegetables including packaging			
	(*f*) Processing, preservation, packaging of mushrooms			
5.	Food Processing Industry excluding those included in the Thirteenth Schedule	19.01 to 19.04		
6.	Sugar and its by-products	-	-	17019100
7.	Silk and silk products	50.04 50.05	17116	
8.	Wool and wool products	51.01 to 51.12	17117	
9.	Woven fabrics (Excisable garments)	-	-	6101 to 6117
10.	Sports goods and articles and equipment for general physical exercise and equipment for adventure sports/activities, tourism (to be specified, by notification, by the Central Government)	9506.00		

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S. No.	*Activity or article or thing or operation*	*4/6 digit excise classification*	*Sub-class under NIC classification on 1998*	*ITC(HS) classifi-cation 4/6 digit*
11.	Paper and paper products excluding those in the Thirteenth Schedule (as per excise classification)			
12.	Pharma products	30.03 to 30.05		
13.	Information and Communication Technology Industry, Computer hardware, Call Centres	84.71	30006/7	
14.	Bottling of mineral water	2201		
15.	Eco-tourism including hotels, resorts, spa, entertainment/ amusement parks and ropeways	-	55101	
16.	Industrial gases (based on atmospheric fraction)			
17.	Handicrafts			
18.	Non-timber forest product-based industries.]			

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APPENDIX

TEXT OF REMAINING PROVISIONS OF ALLIED ACTS REFERRED TO IN INCOME-TAX ACT

SECTION 5(*c*) OF BANKING REGULATION ACT, 1949

Interpretation

5. In this Act, unless there is anything repugnant in this subject or context,—

** ** **

(*c*) "banking company" means any company which transacts the business of banking in India;

Explanation.—Any company which is engaged in the manufacture of goods or carries on any trade and which accepts deposits of money from the public merely for the purpose of financing its business as such manufacturer or trader shall not be deemed to transact the business of banking within the meaning of this clause;

SECTION 45 OF BANKING REGULATION ACT, 1949

Power of Reserve Bank to apply to Central Government for suspension of business by a banking company and to prepare scheme of reconstitution or amalgamation

45. (1) Notwithstanding anything contained in the foregoing provisions of this Part or in any other law or any agreement or other instrument, for the time being in force, where it appears to the Reserve Bank that there is good reason so to do, the Reserve Bank may apply to the Central Government for an order of moratorium in respect of a banking company.

(2) The Central Government, after considering the application made by the Reserve Bank under sub-section (1), may make an order of moratorium staying the commencement or continuance of all actions and proceedings against the company for a fixed period of time on such terms and conditions as it thinks fit and proper and may from time to time extend the period so however that the total period of moratorium shall not exceed six months.

(3) Except as otherwise provided by any directions given by the Central Government in the order made by it under sub-section (2) or at any time thereafter, the banking company shall not during the period of moratorium make any payment to any depositors or discharge any liabilities or obligations to any other creditors.

(4) During the period of moratorium, if the Reserve Bank is satisfied that—

(*a*) in the public interest; or

(*b*) in the interests of the depositors; or

(*c*) in order to secure the proper management of the banking company; or

(*d*) in the interests of the banking system of the country as a whole, —

it is necessary so to do, the Reserve Bank may prepare a scheme—

(*i*) for the reconstruction of the banking company, or

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(*ii*) for the amalgamation of the banking company with any other banking institution (in this section referred to as "the transferee bank").

(5) The scheme aforesaid may contain provisions for all or any of the following matters, namely :—

(*a*) the constitution, name and registered office, the capital, assets, powers, rights, interests, authorities and privileges, the liabilities, duties and obligations, of the banking company on its reconstruction or, as the case may be, of the transferee bank;

(*b*) in the case of amalgamation of the banking company, the transfer to the transferee bank of the business, properties, assets and liabilities of the banking company on such terms and conditions as may be specified in the scheme;

(*c*) any change in the Board of Directors, or the appointment of a new Board of Directors, of the banking company on its reconstruction or, as the case may be, of the transferee bank and the authority by whom, the manner in which, and the other terms and conditions on which, such change or appointment shall be made and in the case of appointment of a new Board of Directors or of any Director, the period for which such appointment shall be made;

(*d*) the alteration of the memorandum and articles of association of the banking company on its reconstruction or, as the case may be, of the transferee bank for the purpose of altering the capital thereof or for such other purposes as may be necessary to give effect to the reconstruction or amalgamation;

(*e*) subject to the provisions of the scheme, the continuation by or against the banking company on its reconstruction or, as the case may be, the transferee bank, of any actions or proceedings pending against the banking company immediately before the date of the order of moratorium;

(*f*) the reduction of the interest or rights which the members, depositors and other creditors have in or against the banking company before its reconstruction or amalgamation to such extent as the Reserve Bank considers necessary in the public interest or in the interests of the members, depositors and other creditors or for the maintenance of the business of the banking company;

(*g*) the payment in cash or otherwise to depositors and other creditors in full satisfaction of their claim—

(*i*) in respect of their interest or rights in or against the banking company before its reconstruction or amalgamation; or

(*ii*) where their interest or rights aforesaid in or against the banking company has or have been reduced under clause (*f*), in respect of such interest or rights as so reduced;

(*h*) the allotment to the members of the banking company for shares held by them therein before its reconstruction or amalgamation [whether their interest in such shares has been reduced under clause (*f*) or not], of shares in the banking company on its reconstruction or, as the case may be, in the transferee bank and where any members claim payment in cash and not allotment of shares, or where it is not possible to allot shares to any members, the payment in cash to those members in full satisfaction of their claim—

(*i*) in respect of their interest in shares in the banking company before its reconstruction or amalgamation; or

(*ii*) where such interest has been reduced under clause (*f*), in respect of their interest in shares as so reduced;

(*i*) the continuance of the services of all the employees of the banking company (excepting such of them as not being workmen within the meaning of the Industrial Disputes Act, 1947 (14 of 1947) are specifically mentioned in the

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scheme) in the banking company itself on its reconstruction or, as the case may be, in the transferee bank at the same remuneration and on the same terms and conditions of service, which they were getting or, as the case may be, by which they were being governed, immediately before the date of the order of moratorium :

Provided that the scheme shall contain a provision that—

(*i*) the banking company shall pay or grant not later than the expiry of the period of three years from the date on which the scheme is sanctioned by the Central Government, to the said employees the same remuneration and the same terms and conditions of service as are, at the time of such payment or grant, applicable to employees of corresponding rank or status of a comparable banking company to be determined for this purpose by the Reserve Bank (whose determination in this respect shall be final);

(*ii*) the transferee bank shall pay or grant not later than the expiry of the aforesaid period of three years, to the said employees the same remuneration and the same terms and conditions of service as are, at the time of such payment or grant, applicable to the other employees of corresponding rank or status of the transferee bank subject to the qualifications and experience of the said employees being the same as or equivalent to those of such other employees of the transferee bank :

Provided further that if in any case under clause (*ii*) of the first proviso any doubt or difference arises as to whether the qualification and experience of any of the said employees are the same as or equivalent to the qualifications and experience of the other employees of corresponding rank or status of the transferee bank, the doubt or difference shall be referred, before the expiry of a period of three years from the date of the payment or grant mentioned in that clause, to the Reserve Bank whose decision thereon shall be final;

(*j*) notwithstanding anything contained in clause (*i*) where any of the employees of the banking company not being workmen within the meaning of the Industrial Disputes Act, 1947 (14 of 1947) are specifically mentioned in the scheme under clause (*i*), or where any employees of the banking company have by notice in writing given to the banking company or, as the case may be, the transferee bank at any time before the expiry of one month next following the date on which the scheme is sanctioned by the Central Government, intimated their intention of not becoming employees of the banking company on its reconstruction or, as the case may be, of the transferee bank, the payment to such employees of compensation, if any, to which they are entitled under the Industrial Disputes Act, 1947 (14 of 1947), and such pension, gratuity, provident fund and other retirement benefits ordinarily admissible to them under the rules or authorisations of the banking company immediately before the date of the order of moratorium;

(*k*) any other terms and conditions for the reconstruction or amalgamation of the banking company;

(*l*) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(6)(*a*) A copy of the scheme prepared by the Reserve Bank shall be sent in draft to the banking company and also to be transferee bank and any other banking company concerned in the amalgamation, for suggestions and objections, if any, within such period as the Reserve Bank may specify for this purpose;

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(*b*) The Reserve Bank may make such modifications, if any, in the draft scheme as it may consider necessary in the light of the suggestions and objections received from the banking company and also from the transferee bank, and any other banking company concerned in the amalgamation and from any members, depositors or other creditors of each of those companies and the transferee bank.

(7) The scheme shall thereafter be placed before the Central Government for its sanction and the Central Government may sanction the scheme without any modifications or with such modifications as it may consider necessary; and the scheme as sanctioned by the Central Government shall come into force on such date as the Central Government may specify in this behalf:

Provided that different dates may be specified for different provisions of the scheme.

(7A) The sanction accorded by the Central Government under sub-section (7), whether before or after the commencement of section 21 of the Banking Laws (Miscellaneous Provisions) Act, 1963 (55 of 1963), shall be conclusive evidence that all the requirements of this section relating to reconstruction, or, as the case may be, amalgamation have been complied with and a copy of the sanctioned scheme certified in writing by an officer of the Central Government to be a true copy thereof, shall, in all legal proceedings (whether in appeal or otherwise and whether instituted before or after the commencement of the said section 21), be admitted as evidence to the same extent as the original scheme.

(8) On and from the date of the coming into operation of the scheme or any provision thereof, the scheme or such provision shall be binding on the banking company or, as the case may be, on the transferee bank and any other banking company concerned in the amalgamation and also on all the members, depositors and other creditors and employees of each of those companies and of the transferee bank, and on any other person having any right or liability in relation to any of those companies or the transferee bank including the trustees or other persons managing, or connected in any other manner with, any provident fund or other fund maintained by any of those companies or the transferee bank.

(9) On and from the date of the coming into operation of, or as the case may be, the date specified in this behalf in, the scheme, the properties and assets of the banking company shall, by virtue of and to the extent provided in the scheme, stand transferred to, and vest in, and the liabilities of the banking company shall, by virtue of and to the extent provided in the scheme, stand transferred to, and become the liabilities of, the transferee bank.

(10) If any difficulty arises in giving effect to the provisions of the scheme, the Central Government may by order do anything not inconsistent with such provisions which appears to it necessary or expedient for the purpose of removing the difficulty.

(11) Copies of the scheme or of the any order made under sub-section (10) shall be laid before both Houses of Parliament, as soon as may be, after the scheme has been sanctioned by the Central Government, or, as the case may be, the order has been made.

(12) Where the scheme is a scheme for amalgamation of the banking company, any business acquired by the transferee bank under the scheme or under any provision thereof shall, after the coming into operation of the scheme or such provision, be carried on by the transferee bank in accordance with the law governing the transferee bank, subject to such modifications in that law or such exemptions of the transferee bank from the operation of any provisions thereof as the Central Government on the recommendation of the Reserve Bank may, by notification in the Official Gazette, make for the purpose of giving full effect to the scheme :

Provided that no such modification or exemption shall be made so as to have effect for a period of more than seven years from the date of the acquisition of such business.

(13) Nothing in this section shall be deemed to prevent the amalgamation with a banking institution by a single scheme of several banking companies in respect of each of which an order of moratorium has been made under this section.

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(14) The provisions of this section and of any scheme made under it shall have effect notwithstanding anything to the contrary contained in any other provisions of this Act or in any other law or any agreement, award or other instrument for the time being in force.

(15) In this section, "banking institution" means any banking company and includes the State Bank of India or a subsidiary bank or a corresponding new bank.

Explanation.—References in this section to the terms and conditions of service as applicable to an employee shall not be construed as extending to the rank and status of such employee.

PART V OF BANKING REGULATION ACT, 1949 : APPLICATION OF THE ACT TO CO-OPERATIVE BANKS

Act to apply to co-operative societies subject to modifications.

56. The provisions of this Act, as in force for the time being, shall apply to, or in relation to, Co-operative Societies as they apply to, or in relation to, banking companies subject to the following modifications, namely :—

(*a*) throughout this Act, unless the context otherwise requires,—

(*i*) references to a "banking company" or "the company" or "such company" shall be construed as references to a Co-operative Bank,

(*ii*) references to "commencement of this Act" shall be construed as references to commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965 (23 of 1965) ;

(*b*) in section 2, the words and figures "the Companies Act, 1956 (1 of 1956), and" shall be omitted ;

(*c*) in section 5,—

(*i*) after clause (*cc*), the following clauses shall be inserted, namely :—

(*cci*) "Co-operative Bank" means a state Co-operative Bank, a central Co-operative Bank and a primary Co-operative Bank ;

(*ccii*) "co-operative credit society" means a Co-operative Society, the primary object of which is to provide financial accommodation to its members and includes a co-operative land mortgage bank ;

(*cciia*) "co-operative society" means a society registered or deemed to have been registered under any Central Act for the time being in force relating to the multi-State co-operative societies, or any other Central or State law relating to co-operative societies for the time being in force;

(*cciii*) "Director", in relation to a Co-operative Society, includes a member of any committee or body for the time being vested with the management of the affairs of that society ;

(*cciiia*) "multi-State co-operative bank" means a multi-State co-operative society which is a primary co-operative bank;

(*cciiib*) "multi-State co-operative society" means a multi-State co-operative society registered as such under any Central Act for the time being in force relating to the multi-State co-operative societies but does not include a national co-operative society and a federal co-operative;

(*cciv*) "primary agricultural credit society" means a Co-operative Society,—

(*1*) the primary object or principal business of which is to provide financial accommodation to its members for agri-

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cultural purposes or for purposes connected with agricultural activities (including the marketing of crops) ; and

(*2*) the bye-laws of which do not permit admission of any other Co-operative Society as a member :

Provided that this sub-clause shall not apply to the admission of a Co-operative Bank as a member by reason of such Co-operative Bank subscribing to the share capital of such Co-operative Society out of funds provided by the State Government for the purpose ;

(*ccv*) "primary Co-operative Bank" means a Co-operative Society, other than a primary agricultural credit society,—

(*1*) the primary object or principal business of which is the transaction of banking business ;

(*2*) the paid-up share capital and reserves of which are not less than one lakh of rupees ; and

(*3*) the bye-laws of which do not permit admission of any other Co-operative Society as a member :

Provided that this sub-clause shall not apply to the admission of a Co-operative Bank as a member by reason of such Co-operative Bank subscribing to the share capital of such Co-operative Society out of funds provided by the State Government for the purpose ;

(*ccvi*) "primary credit society" means a Co-operative Society, other than a primary agricultural credit society,—

(*1*) the primary object or principal business of which is the transaction of banking business ;

(*2*) the paid-up share capital and reserves of which are less than one lakh of rupees ; and

(*3*) the bye-laws of which do not permit admission of any other Co-operative Society as a member :

Provided that this sub-clause shall not apply to the admission of a Co-operative Bank as a member by reason of such Co-operative Bank subscribing to the share capital of such Co-operative Society out of funds provided by the State Government for the purpose.

Explanation.—If any dispute arises as to the primary object or principal business of any Co-operative Society referred to in clauses (*cciv*), (*ccv*) and (*ccvi*), a determination thereof by the Reserve Bank shall be final ;

(*ccvii*) "Central Co-operative Bank", "primary rural credit society" and "State Co-operative Bank", shall have the meanings respectively assigned to them in the National Bank for Agricultural and Rural Development Act, 1981 (61 of 1981);

** ** **

SECTION 3 OF CANTONMENTS ACT, 1924

Definition of cantonments.

3. (1) The Central Government may, by notification in the Official Gazette, declare any place or places in which any part of the Forces is quartered or which, being in the vicinity of any such place or places, is or are required for the service of such forces to be a cantonment for the purpose of this Act and of all other enactments for the time being

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in force, and may, by a like notification, declare that any cantonment shall cease to be a cantonment.

(2) The Central Government may, by a like notification, define the limits of any cantonment for the aforesaid purposes.

(3) When any place is declared a cantonment for the first time, the Central Government may, until a Board is constituted in accordance with the provisions of this Act, by order make any provision which appears necessary to it either for the administration of the cantonment or for the constitution of the Board.

(4) The Central Government may, by notification in the Official Gazette, direct that in any place declared a cantonment under sub-section (1) the provisions of any enactment relating to local self-government other than this Act shall have effect only to such extent or subject to such modifications, or that any authority constituted under any such enactment shall exercise authority only to such extent, as may be specified in the notification.

SECTION 2 OF COMPANIES ACT, 1956

Definitions.

2. In this Act, unless the context otherwise requires,—

** ** **

(*13*) "director" includes any person occupying the position of director, by whatever name called ;

** ** **

(*24*) "manager" means an individual (not being the managing agent) who, subject to the superintendence, control and direction of the Board of directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, and whether under a contract of service or not ;

** ** **

SECTION 3 OF COMPANIES ACT, 1956

Definitions of "company", "existing company", "private company" and "public company".

3. (1) In this Act, unless the context otherwise requires, the expressions "company", "existing company", "private company" and "public company", shall, subject to the provisions of sub-section (2), have the meanings specified below :—

(*i*) "company" means a company formed and registered under this Act or an existing company as defined in clause (*ii*) ;

(*ii*) "existing company" means a company formed and registered under any of the previous companies laws specified below :—

(*a*) any Act or Acts relating to companies in force before the Indian Companies Act, 1866 (10 of 1866) and repealed by that Act ;

(*b*) the Indian Companies Act, 1866 (10 of 1866) ;

(*c*) the Indian Companies Act, 1882 (6 of 1882) ;

(*d*) the Indian Companies Act, 1913 (7 of 1913) ;

(*e*) the Registration of Transferred Companies Ordinance, 1942 (54 of 1942) ;

(*f*) any law corresponding to any of the Acts or the Ordinance aforesaid and in force—

(*1*) in the merged territories or in a Part B State (other than the State of Jammu and Kashmir), or any part thereof, before the extension thereto of the Indian Companies Act, 1913 (7 of 1913) ; or

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(*2*) in the State of Jammu and Kashmir, or any part thereof, before the commencement of the Jammu and Kashmir (Extension of Laws) Act, 1956, in so far as banking, insurance and financial corporations are concerned, and before the commencement of the Central Laws (Extension to Jammu and Kashmir) Act, 1968, in so far as other corporations are concerned ; and

(*g*) the Portuguese Commercial Code, in so far as it relates to "*sociedades anonimas*" ;

(*iii*) "private company" means a company which has a minimum paid-up capital of one lakh rupees or such higher paid-up capital as may be prescribed, and by its articles,—

(*a*) restricts the right to transfer its shares, if any ;

(*b*) limits the number of its members to fifty not including—

(*i*) persons who are in the employment of the company ; and

(*ii*) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased ; and

(*c*) prohibits any invitation to the public to subscribe for any shares in, or debentures of, the company ;

(*d*) prohibits any invitation or acceptance of deposits from persons other than its members, directors or their relatives :

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this definition, be treated as a single member ;

(*iv*) "public company" means a company which—

(*a*) is not a private company ;

(*b*) has a minimum paid-up capital of five lakh rupees or such higher paid-up capital, as may be prescribed ;

(*c*) is a private company which is a subsidiary of a company which is not a private company.

(2) Unless the context otherwise requires, the following companies shall not be included within the scope of any of the expressions defined in clauses (*i*) to (*iv*) of sub-section (1), and such companies shall be deemed, for the purposes of this Act, to have been formed and registered outside India :—

(*a*) a company the registered office whereof is in Burma, Aden or Pakistan and which immediately before the separation of that country from India was a company as defined in clause (*i*) of sub-section (1) ;

(*b*) ** ** **

SECTION 4 OF COMPANIES ACT, 1956

Meaning of "holding company" and "subsidiary".

4. (1) For the purposes of this Act, a company shall, subject to the provisions of sub-section (3), be deemed to be a subsidiary of another if, but only if,—

(*a*) that other controls the composition of its Board of directors; or

(*b*) that other—

(*i*) where the first-mentioned company is an existing company in respect of which the holders of preference shares issued before the commencement of this Act have the same voting rights in all respects as the holders of

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equity shares, exercises or controls more than half of the total voting power of such company;

(*ii*) where the first-mentioned company is any other company, holds more than half in nominal value of its equity share capital; or

(*c*) the first-mentioned company is a subsidiary of any company which is that other's subsidiary.

Illustration

Company B is a subsidiary of Company A, and Company C is a subsidiary of Company B. Company C is a subsidiary of Company A, by virtue of clause (*c*) above. If Company D is a subsidiary of Company C, Company D will be a subsidiary of Company B and consequently also of Company A, by virtue of clause (*c*) above, and so on.

(2) For the purposes of sub-section (1), the composition of a company's Board of directors shall be deemed to be controlled by another company if, but only if, that other company by the exercise of some power exercisable by it at its discretion without the consent or concurrence of any other person, can appoint or remove the holders of all or a majority of the directorships; but for the purposes of this provision that other company shall be deemed to have power to appoint to a directorship with respect to which any of the following conditions is satisfied, that is to say—

(*a*) that a person cannot be appointed thereto without the exercise in his favour by that other company of such a power as aforesaid;

(*b*) that a person's appointment thereto follows necessarily from his appointment as director or manager of, or to any other office or employment in, that other company; or

(*c*) that the directorship is held by an individual nominated by that other company or a subsidiary thereof.

(3) In determining whether one company is a subsidiary of another—

(*a*) any shares held or power exercisable by that other company in a fiduciary capacity shall be treated as not held or exercisable by it;

(*b*) subject to the provisions of clauses (*c*) and (*d*), any shares held or power exercisable—

(*i*) by any person as a nominee for that other company (except where that other is concerned only in a fiduciary capacity); or

(*ii*) by, or by a nominee for, a subsidiary of that other company, not being a subsidiary which is concerned only in a fiduciary capacity;

shall be treated as held or exercisable by that other company;

(*c*) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust deed for securing any issue of such debentures shall be disregarded;

(*d*) any shares held or power exercisable by, or by a nominee for, that other or its subsidiary [not being held or exercisable as mentioned in clause (*c*)] shall be treated as not held or exercisable by that other, if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money and the shares are held or the power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

(4) For the purposes of this Act, a company shall be deemed to be the holding company of another if, but only if, that other is its subsidiary.

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(5) In this section, the expression "company" includes any body corporate, and the expression "equity share capital" has the same meaning as in sub-section (2) of section 85.

(6) In the case of a body corporate which is incorporated in a country outside India, a subsidiary or holding company of the body corporate under the law of such country shall be deemed to be a subsidiary or holding company of the body corporate within the meaning and for the purposes of this Act also, whether the requirements of this section are fulfilled or not.

(7) A private company, being a subsidiary of a body corporate incorporated outside India, which, if incorporated in India, would be a public company within the meaning of this Act, shall be deemed for the purposes of this Act to be a subsidiary of a public company if the entire share capital in that private company is not held by that body corporate whether alone or together with one or more other bodies corporate incorporated outside India.

SECTION 4A OF COMPANIES ACT, 1956

Public financial institutions.

4A. (1) Each of the financial institutions specified in this sub-section shall be regarded, for the purposes of this Act, as a public financial institution, namely :—

(*i*) the Industrial Credit and Investment Corporation of India Limited, a company formed and registered under the Indian Companies Act, 1913 (7 of 1913) ;

(*ii*) the Industrial Finance Corporation of India, established under section 3 of the Industrial Finance Corporation Act, 1948 (15 of 1948) ;

(*iii*) the Industrial Development Bank of India, established under section 3 of the Industrial Development Bank of India Act, 1964 (18 of 1964) ;

(*iv*) the Life Insurance Corporation of India, established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956) ;

(*v*) the Unit Trust of India, established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963);

(*vi*) the infrastructure Development Finance Company Limited, a company formed and registered under this Act;

(*vii*) [***]

(2) Subject to the provisions of sub-section (1), the Central Government may, by notification in the Official Gazette, specify such other institution as it may think fit to be a public financial institution :

Provided that no institution shall be so specified unless—

(*i*) it has been established or constituted by or under any Central Act, or

(*ii*) not less than fifty-one per cent of the paid-up share capital of such institution is held or controlled by the Central Government.

NOTIFIED INSTITUTIONS UNDER SECTION 4A(2) OF COMPANIES ACT, 1956

In exercise of the powers conferred by sub-section (2) of section 4A of the Companies Act, 1956 (1 of 1956), the Central Government hereby specifies the following institutions to be public financial institutions, namely :

(*1*) The Industrial Reconstruction Corporation of India established under the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984); (*2*) The General Insurance Corporation of India established under the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972); (*3*) The National Insurance Company Limited, formed and registered under the Companies Act, 1956 (1 of 1956); (*4*) The New India Assurance Company Limited, formed and registered under the Companies Act, 1956 (1 of 1956); (*5*) The Oriental Fire and General Insurance Company Limited, formed and registered under the Companies Act, 1956 (1 of 1956); (*6*) The United Fire and General Insurance Company Limited, formed and

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registered under the Companies Act, 1956 (1 of 1956); (*7*) * * *; (*8*) Tourism Finance Corporation of India Limited, formed and registered under the Companies Act, 1956 (1 of 1956); (*9*) IFCI Venture Capital Funds Limited, formed and registered under the Companies Act, 1956 (1 of 1956); (*10*) Technology Development and Information Company of India Limited, formed and registered under the Companies Act, 1956 (1 of 1956); (*11*) Power Finance Corporation Limited, formed and registered under the Companies Act, 1956 (1 of 1956); (*12*) National Housing Bank established under the National Housing Bank Act, 1987 (53 of 1987); (*13*) Small Industries Development Bank of India established under the Small Industries Development Bank of India Act, 1989 (39 of 1989); (*14*) Rural Electrification Corporation Ltd., formed and registered under the Companies Act, 1956 (1 of 1956); (*15*) Indian Railway Finance Corpn. Ltd.; (*16*) Industrial Finance Corporation of India Ltd. formed and registered under the Companies Act, 1956; (*17*) Andhra Pradesh State Financial Corporation; (*18*) Assam Financial Corporation; (*19*) Bihar State Financial Corporation; (*20*) Delhi Financial Corporation; (*21*) Gujarat State Financial Corporation; (*22*) Haryana Financial Corporation; (*23*) Himachal Pradesh Financial Corporation; (*24*) Jammu & Kashmir State Financial Corporation; (*25*) Karnataka State Financial Corporation; (*26*) Kerala Financial Corporation; (*27*) Madhya Pradesh Financial Corporation; (*28*) Maharashtra State Financial Corporation; (*29*) Orissa State Financial Corporation; (*30*) Punjab Financial Corporation; (*31*) Rajasthan Financial Corporation; (*32*) Tamilnadu Industrial Development Corporation Limited; (*33*) Uttar Pradesh Financial Corporation; (*34*) West Bengal Financial Corporation; (*35*) Indian Renewable Energy Development Agency Ltd.; (*36*) North Eastern Development Finance Corpn. Ltd.; (*37*) Housing & Urban Development Corpn. Ltd.; (*38*) Export-Import Bank of India; (*39*) National Bank for Agriculture & Rural Development (NABARD); (*40*) National Co-operative Development Corporation (NCDC); (*41*) National Dairy Development Board; (*42*) Pradeshiya Industrial and Investment Corporation of U.P. Limited; (*43*) Rajasthan State Industrial Development and Investment Corporation Limited; (*44*) SICOM Limited; (*45*) West Bengal Industrial Development Corporation Limited; (*46*) Tamil Nadu Industrial Development Corporation Limited; (*47*) Punjab State Industrial Development Corpn. Ltd. (PSIDC); (*48*) EDC Limited; (*49*) Tamil Nadu Power Finance and Infrastructure Development Corporation Ltd.; (*50*) Tamil Nadu Urban Finance and Infrastructure Development Corporation Limited; (*51*) Kerala State Power & Infrastructure Finance Corporation Limited; (*52*) Jammu & Kashmir Development Financial Corporation Ltd.; (*53*) Kerala State Industrial Development Corporation Limited; (*54*) India Infrastructure Finance Company Limited.

Source : *Notification No. SO 1329, dated 13-5-1978, as amended by SO 2901, dated 9-10-1987; SO 7(E), dated 3-1-1990; SO 238(E), dated 20-3-1990; SO 674(E), dated 31-8-1990; SO 321(E), dated 12-4-1990; SO 484(E), dated 26-7-1991; SO 812(E), dated 2-12-1991; SO 128(E), dated 11-2-1992; SO 765(E), dated 8-10-1993; SO 98(E), dated 15-2-1995; SO 247(E), dated 28-3-1995; SO 843(E), dated 17-10-1995; SO 529(E), dated 23-7-1996; SO 837(E), dated 9-12-1996; SO 433(E), dated 14-6-1999; SO 440(E), dated 17-4-2002; SO 322(E), dated 25-3-2003; SO 518(E), dated 9-5-2003; SO 219(E), dated 23-2-2004; SO 544(E), dated 30-4-2004; SO 1531(E), dated 25-10-2005; SO 20(E), dated 9-1-2007; SO 1583(E), dated 20-9-2007; SO 2007(E), dated 29-11-2007 and SO 298(E), dated 12-2-2008; SO 110 (E), dated 9-1-2009 and SO 143(E), dated 14-1-2009.*

SECTION 25 OF COMPANIES ACT, 1956

Power to dispense with "Limited" in name of charitable or other company.

25. (1) Where it is proved to the satisfaction of the Central Government that an association—

(*a*) is about to be formed as a limited company for promoting commerce, art, science, religion, charity or any other useful object, and

(*b*) intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members,

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the Central Government may, by licence, direct that the association may be registered as a company with limited liability, without the addition to its name of the word "Limited" or the words "Private Limited".

(2) The association may thereupon be registered accordingly; and on registration shall enjoy all the privileges, and (subject to the provisions of this section) be subject to all the obligations, of limited companies.

(3) Where it is proved to the satisfaction of the Central Government—

(*a*) that the objects of a company registered under this Act as a limited company are restricted to those specified in clause (*a*) of sub-section (1), and

(*b*) that by its constitution the company is required to apply its profits, if any, or other income in promoting its objects and is prohibited from paying any dividend to its members,

the Central Government may, by licence, authorise the company by a special resolution to change its name, including or consisting of the omission of the word "Limited" or the words "Private Limited"; and section 23 shall apply to a change of name under this sub-section as it applies to a change of name under section 21.

(4) A firm may be a member of any association or company licensed under this section, but on the dissolution of the firm, its membership of the association or company shall cease.

(5) A licence may be granted by the Central Government under this section on such conditions and subject to such regulations as it thinks fit, and those conditions and regulations shall be binding on the body to which the licence is granted, and where the grant is under sub-section (1), shall, if the Central Government so directs, be inserted in the memorandum, or in the articles, or partly in the one and partly in the other.

(6) It shall not be necessary for a body to which a licence is so granted to use the word "Limited" or the words "Private Limited" as any part of its name and, unless its articles otherwise provide, such body shall, if the Central Government by general or special order so directs and to the extent specified in the directions, be exempt from such of the provisions of this Act as may be specified therein.

(7) The licence may at any time be revoked by the Central Government, and upon revocation, the Registrar shall enter the word "Limited" or the words "Private Limited" at the end of the name upon the register of the body to which it was granted; and the body shall cease to enjoy the exemption granted by this section :

Provided that, before a licence is so revoked, the Central Government shall give notice in writing of its intention to the body, and shall afford it an opportunity of being heard in opposition to the revocation.

(8) (*a*) A body in respect of which a licence under this section is in force shall not alter the provisions of its memorandum with respect to its objects except with the previous approval of the Central Government signified in writing.

(*b*) The Central Government may revoke the licence of such a body if it contravenes the provisions of clause (*a*).

(*c*) In according the approval referred to in clause (*a*), the Central Government may vary the licence by making it subject to such conditions and regulations as that Government thinks fit, in lieu of, or in addition to, the conditions and regulations, if any, to which the licence was formerly subject.

(*d*) Where the alteration proposed in the provisions of the memorandum of a body under this sub-section is with respect to the objects of the body so far as may be required to enable it to do any of the things specified in clauses (*a*) to (*g*) of sub-section (1) of section 17, the provisions of this sub-section shall be in addition to, and not in derogation of, the provisions of that section.

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(9) Upon the revocation of a licence granted under this section to a body the name of which contains the words "Chamber of Commerce", that body shall, within a period of three months from the date of revocation or such longer period as the Central Government may think fit to allow, change its name to a name which does not contain those words; and—

(*a*) the notice to be given under the proviso to sub-section (7) to that body shall include a statement of the effect of the foregoing provisions of this sub-section; and

(*b*) section 23 shall apply to a change of name under this sub-section as it applies to a change of name under section 21.

(10) If the body makes default in complying with the requirements of sub-section (9), it shall be punishable with fine which may extend to five thousand rupees for every day during which the default continues.

SECTION 77A OF COMPANIES ACT, 1956

Power of company to purchase its own securities.

77A. (1) Notwithstanding anything contained in this Act, but subject to the provisions of sub-section (2) of this section and section 77B, a company may purchase its own shares or other specified securities (hereinafter referred to as "buy-back") out of—

(*i*) its free reserves; or

(*ii*) the securities premium account; or

(*iii*) the proceeds of any shares or other specified securities :

Provided that no buy-back of any kind of shares or other specified securities shall be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

(2) No company shall purchase its own shares or other specified securities under sub-section (1), unless—

(*a*) the buy-back is authorised by its articles;

(*b*) a special resolution has been passed in general meeting of the company authorising the buy-back :

Provided that nothing contained in this clause shall apply in any case where—

(*A*) the buy-back is or less than ten per cent of the total paid-up equity capital and free reserves of the company; and

(*B*) such buy-back has been authorised by the Board by means of a resolution passed at its meeting :

Provided further that no offer of buy-back shall be made within a period of three hundred and sixty-five days reckoned from the date of the preceding offer of buy-back, if any.

Explanation : For the purposes of this clause, the expression "offer of buy-back" means the offer of such buy-back made in pursuance of the resolution of the Board referred in the first proviso;

(*c*) the buy-back is or less than twenty-five per cent of the total paid-up capital and free reserves of the company :

Provided that the buy-back of equity shares in any financial year shall not exceed twenty-five per cent of its total paid-up equity capital in that financial year;

(*d*) the ratio of the debt owed by the company is not more than twice the capital and its free reserves after such buy-back :

Provided that the Central Government may prescribe a higher ratio of the debt than that specified under this clause for a class or classes of companies.

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Explanation.—For the purposes of this clause, the expression "debt" includes all amounts of unsecured and secured debts;

(*e*) all the shares or other specified securities for buy-back are fully paid-up;

(*f*) the buy-back of the shares or other specified securities listed on any recognised stock exchange is in accordance with the regulations made by the Securities and Exchange Board of India in this behalf;

(*g*) the buy-back in respect of shares or other specified securities other than those specified in clause (*f*) is in accordance with the guidelines as may be prescribed.

(3) The notice of the meeting at which special resolution is proposed to be passed shall be accompanied by an explanatory statement stating—

(*a*) a full and complete disclosure of all material facts;

(*b*) the necessity for the buy-back;

(*c*) the class of security intended to be purchased under the buy-back;

(*d*) the amount to be invested under the buy-back; and

(*e*) the time limit for completion of buy-back.

(4) Every buy-back shall be completed within twelve months from the date of passing the special resolution or a resolution passed by the Board under clause (*b*) of sub-section (2).

(5) The buy-back under sub-section (1) may be—

(*a*) from the existing security holders on a proportionate basis; or

(*b*) from the open market; or

(*c*) from odd lots, that is to say, where the lot of securities of a public company, whose shares are listed on a recognised stock exchange, is smaller than such marketable lot, as may be specified by the stock exchange; or

(*d*) by purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity.

(6) Where a company has passed a special resolution under clause (*b*) of sub-section (2) or the Board has passed a resolution under the first proviso to clause (*b*) of that sub-section to buy-back its own shares or other securities under this section, it shall, before making such buy-back, file with the Registrar and the Securities and Exchange Board of India a declaration of solvency in the form as may be prescribed and verified by an affidavit to the effect that the Board has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year of the date of declaration adopted by the Board, and signed by at least two directors of the company, one of whom shall be the managing director, if any :

Provided that no declaration of solvency shall be filed with the Securities and Exchange Board of India by a company whose shares are not listed on any recognised stock exchange.

(7) Where a company buys-back its own securities, it shall extinguish and physically destroy the securities so bought-back within seven days of the last date of completion of buy-back.

(8) Where a company completes a buy-back of its shares or other specified securities under this section, it shall not make further issue of the same kind of shares (including allotment of further shares under clause (*a*) of sub-section (1) of section 81) or other specified securities within a period of six months except by way of bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares.

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(9) Where a company buys-back its securities under this section, it shall maintain a register of the securities so bought, the consideration paid for the securities bought-back, the date of cancellation of securities, the date of extinguishing and physically destroying of securities and such other particulars as may be prescribed.

(10) A company shall, after the completion of the buy-back under this section, file with the Registrar and the Securities and Exchange Board of India, a return containing such particulars relating to the buy-back within thirty days of such completion, as may be prescribed :

Provided that no return shall be filed with the Securities and Exchange Board of India by a company whose shares are not listed on any recognised stock exchange.

(11) If a company makes default in complying with the provisions of this section or any rules made thereunder, or any regulations made under clause (*f*) of sub-section (2), the company or any officer of the company who is in default shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to fifty thousand rupees, or with both.

Explanation.—For the purposes of this section,—

(*a*) "specified securities" includes employees' stock option or other securities as may be notified by the Central Government from time to time;

(*b*) "free reserves" shall have the meaning assigned to it in clause (*b*) of *Explanation* to section 372A.

SECTION 200 OF COMPANIES ACT, 1956

Prohibition of tax-free payments.

200. (1) No company shall pay to any officer or employee thereof, whether in his capacity as such or otherwise, remuneration free of any tax, or otherwise calculated by reference to, or varying with, any tax payable by him, or the rate or standard rate of any such tax, or the amount thereof.

Explanation.—In this sub-section, the expression "tax" comprises any kind of income-tax including super-tax.

(2) Where by virtue of any provision in force immediately before the commencement of this Act, whether contained in the company's articles, or in any contract made with the company, or in any resolution passed by the company in general meeting or by the company's Board of directors, any officer or employee of the company holding any office at the commencement of this Act is entitled to remuneration in any of the modes prohibited by sub-section (1), such provision shall have effect during the residue of the term for which he is entitled to hold such office at such commencement, as if it provided instead for the payment of a gross sum subject to the tax in question, which, after deducting such tax, would yield the net sum actually specified in such provision.

(3) This section shall not apply to any remuneration—

(*a*) which fell due before the commencement of this Act, or

(*b*) which may fall due after the commencement of this Act, in respect of any period before such commencement.

SECTION 205(1) OF COMPANIES ACT, 1956

Dividend to be paid only out of profits.

205. (1) No dividend shall be declared or paid by a company for any financial year except out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (2) or out of the profits of the company for any previous financial year or years arrived at after providing for

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depreciation in accordance with those provisions and remaining undistributed or out of both or out of moneys provided by the Central Government or a State Government for the payment of dividend in pursuance of a guarantee given by that Government :

Provided that—

(*a*) if the company has not provided for depreciation for any previous financial year or years which falls or fall after the commencement of the Companies (Amendment) Act, 1960, it shall, before declaring or paying dividend for any financial year provide for such depreciation out of the profits of that financial year or out of the profits of any other previous financial year or years;

(*b*) if the company has incurred any loss in any previous financial year or years, which falls or fall after the commencement of the Companies (Amendment) Act, 1960, then, the amount of the loss or an amount which is equal to the amount provided for depreciation for that year or those years whichever is less, shall be set off against the profits of the company for the year for which dividend is proposed to be declared or paid or against the profits of the company for any previous financial year or years, arrived at in both cases after providing for depreciation in accordance with the provisions of sub-section (2) or against both;

(*c*) the Central Government may, if it thinks necessary so to do in the public interest, allow any company to declare or pay dividend for any financial year out of the profits of the company for that year or any previous financial year or years without providing for depreciation :

Provided further that it shall not be necessary for a company to provide for depreciation as aforesaid where dividend for any financial year is declared or paid out of the profits of any previous financial year or years which falls or fall before the commencement of the Companies (Amendment) Act, 1960.

SECTION 226(2) OF COMPANIES ACT, 1956

Qualifications and disqualifications of auditors.

226. (1) ** ** **

(2) (*a*) Notwithstanding anything contained in sub-section (1), but subject to the provisions of any rules made under clause (*b*), the holder of a certificate granted under a law in force in the whole or any portion of a Part B State immediately before the commencement of the Part B States (Laws) Act, 1951 (3 of 1951) or of the Jammu and Kashmir (Extension of Laws) Act, 1956 (62 of 1956), as the case may be, entitling him to act as an auditor of companies in the territories which, immediately before the 1st November, 1956, were comprised in that State or any portion thereof, shall be entitled to be appointed to act as an auditor of companies registered anywhere in India.

(*b*) The Central Government may, by notification in the Official Gazette, make rules providing for the grant, renewal, suspension or cancellation of auditors' certificates to persons in the territories which, immediately before the 1st November, 1956, were comprised in Part B States for the purposes of clause (*a*), and prescribing conditions and restrictions for such grant, renewal, suspension or cancellation.

SECTION 233B OF COMPANIES ACT, 1956

Audit of cost accounts in certain cases.

233B. (1) Where in the opinion of the Central Government it is necessary so to do in relation to any company required under clause (*d*) of sub-section (1) of section 209 to include in its books of account the particulars referred to therein, the Central Government may, by order, direct that an audit of cost accounts of the company shall be

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conducted in such manner as may be specified in the order by an auditor who shall be a cost accountant within the meaning of the Cost and Works Accountants Act, 1959 (23 of 1959) :

Provided that if the Central Government is of opinion that sufficient number of cost accountants within the meaning of the Cost and Works Accountants Act, 1959 (23 of 1959), are not available for conducting the audit of the cost accounts of companies generally, that Government may, by notification in the Official Gazette, direct that, for such period as may be specified in the said notification, such chartered accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949), as possesses the prescribed qualifications, may also conduct the audit of the cost accounts of companies, and thereupon a chartered accountant possessing the prescribed qualifications may be appointed to audit the cost accounts of the company.

(2) The auditor under this section shall be appointed by the Board of directors of the company in accordance with the provisions of sub-section (1B) of section 224 and with the previous approval of the Central Government :

Provided that before the appointment of any auditor is made by the Board, a written certificate shall be obtained by the Board from the auditor proposed to be so appointed to the effect that the appointment, if made, will be in accordance with the provisions of sub-section (1B) of section 224.

(3) An audit conducted by an auditor under this section shall be in addition to an audit conducted by an auditor appointed under section 224.

(4) An auditor shall have the same powers and duties in relation to an audit conducted by him under this section as an auditor of a company has under sub-section (1) of section 227 and such auditor shall make his report to the Central Government in such form and within such time as may be prescribed and shall also at the same time forward a copy of the report to the company.

(5) (*a*) A person referred to in sub-section (3) or sub-section (4) of section 226 shall not be appointed or re-appointed for conducting the audit of the cost accounts of a company.

(*b*) A person appointed, under section 224, as an auditor of a company, shall not be appointed or re-appointed for conducting the audit of the cost accounts of that company.

(*c*) If a person, appointed for conducting the audit of cost accounts of a company, becomes subject, after his appointment, to any of the disqualifications specified in clause (*a*) or clause (*b*) of this sub-section, he shall, on and from the date on which he becomes so subject, cease to conduct the audit of the cost accounts of the company.

(6) Upon receipt of an order under sub-section (1), it shall be the duty of the company to give all facilities and assistance to the person appointed for conducting the audit of the cost accounts of the company.

(7) The company shall, within thirty days from the date of receipt of a copy of the report referred to in sub-section (4), furnish the Central Government with full information and explanations on every reservation or qualification contained in such report.

(8) If, after considering the report referred to in sub-section (4) and the information and explanations furnished by the company under sub-section (7), the Central Government is of opinion that any further information or explanation is necessary, that Government may call for such further information and explanation and thereupon the company shall furnish the same within such time as may be specified by that Government.

(9) On receipt of the report referred to in sub-section (4) and the informations and explanations furnished by the company under sub-section (7) and sub-section (8), the Central Government may take such action on the report, in accordance with the provisions of this Act or any other law for the time being in force, as it may consider necessary.

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(10) The Central Government may direct the company whose cost accounts have been audited under this section to circulate to its members, along with the notice of the annual general meeting to be held for the first time after the submission of such report, the whole or such portion of the said report as it may specify in this behalf.

(11) If default is made in complying with the provisions of this section, the company shall be liable to be punished with fine which may extend to five thousand rupees, and every officer of the company who is in default, shall be liable to be punished with imprisonment for a term which may extend to three years, or with fine which may extend to fifty thousand rupees, or with both.

SECTION 293A OF COMPANIES ACT, 1956

Prohibitions and restrictions regarding political contributions.

293A. (1) Notwithstanding anything contained in any other provision of this Act,—

(*a*) no Government company; and

(*b*) no other company which has been in existence for less than three financial years,

shall contribute any amount or amounts, directly or indirectly,—

(*i*) to any political party; or

(*ii*) for any political purpose to any person.

(2) A company, not being a company referred to in clause (*a*) or clause (*b*) of sub-section (1), may contribute any amount or amounts, directly or indirectly,—

(*a*) to any political party; or

(*b*) for any political purpose to any person:

Provided that the amount or, as the case may be, the aggregate of the amounts which may be so contributed by a company in any financial year shall not exceed five per cent of its average net profits determined in accordance with the provisions of sections 349 and 350 during the three immediately preceding financial years.

Explanation : Where a portion of a financial year of the company falls before the commencement of the Companies (Amendment) Act, 1985, and a portion falls after such commencement, the latter portion shall be deemed to be a financial year within the meaning and for the purposes, of this sub-section:

Provided further that no such contribution shall be made by a company unless a resolution authorising the making of such contribution is passed at a meeting of the Board of directors and such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making and the acceptance of the contribution authorised by it.

(3) Without prejudice to the generality of the provisions of sub-sections (1) and (2),—

(*a*) a donation or subscription or payment caused to be given by a company on its behalf or on its account to a person who, to its knowledge, is carrying on any activity which, at the time at which such donation or subscription or payment was given or made, can reasonably be regarded as likely to effect public support for a political party shall also be deemed to be contribution of the amount of such donation, subscription or payment to such person for a political purpose;

(*b*) the amount of expenditure incurred, directly or indirectly, by a company on advertisement in any publication (being a publication in the nature of a souvenir, brochure, tract, pamphlet or the like) by or on behalf of a political party or for its advantage shall also be deemed,—

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(*i*) where such publication is by or on behalf of a political party, to be a contribution of such amount to such political party, and

(*ii*) where such publication is not by or on behalf of but for the advantage of a political party, to be a contribution for a political purpose to the person publishing it.

(4) Every company shall disclose in its profit and loss account any amount or amounts contributed by it to any political party or for any political purpose to any person during the financial year to which that account relates, giving particulars of the total amount contributed and the name of the party or person to which or to whom such amount has been contributed.

(5) If a company makes any contribution in contravention of the provisions of this section,—

(*a*) the company shall be punishable with fine which may extend to three times the amount so contributed; and

(*b*) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purposes of this section, "political party" means a political party registered under section 29A of the Representation of the People Act, 1951 (43 of 1951).

SECTION 391 OF COMPANIES ACT, 1956

Power to compromise or make arrangements with creditors and members.

391. (1) Where a compromise or arrangement is proposed—

(*a*) between a company and its creditors or any class of them; or

(*b*) between a company and its members or any class of them,

the Tribunal may, on the application of the company or of any creditor or member of the company, or, in the case of a company which is being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs.

(2) If a majority in number representing three-fourths in value of the creditors, or class of creditors, or members, or class of members, as the case may be, present and voting either in person or, where proxies are allowed under the rules made under section 643, by proxy, at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Tribunal, be binding on all the creditors, all the creditors of the class, all the members, or all the members of the class, as the case may be, and also on the company, or in the case of a company which is being wound up, on the liquidator and contributories of the company :

Provided that no order sanctioning any compromise or arrangement shall be made by the Tribunal unless the Tribunal is satisfied that the company or any other person by whom an application has been made under sub-section (1) has disclosed to the Tribunal, by affidavit or otherwise, all material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company, the pendency of any investigation proceedings in relation to the company under sections 235 to 251, and the like.

(3) An order made by the Tribunal under sub-section (2) shall have no effect until a certified copy of the order has been filed with the Registrar.

(4) A copy of every such order shall be annexed to every copy of the memorandum of the company issued after the certified copy of the order has been filed as aforesaid, or in the

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case of a company not having a memorandum, to every copy so issued of the instrument constituting or defining the constitution of the company.

(5) If default is made in complying with sub-section (4), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to one hundred rupees for each copy in respect of which default is made.

(6) The Tribunal may, at any time after an application has been made to it under this section, stay the commencement or continuation of any suit or proceeding against the company on such terms as the Tribunal thinks fit, until the application is finally disposed of.

(7) ** ** **

SECTION 392 OF COMPANIES ACT, 1956

Power of Tribunal to enforce compromise and arrangement.

392. (1) Where the Tribunal makes an order under section 391 sanctioning a compromise or an arrangement in respect of a company, it—

(*a*) shall have power to supervise the carrying out of the compromise or an arrangement; and

(*b*) may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement.

(2) If the Tribunal aforesaid is satisfied that a compromise or an arrangement sanctioned under section 391 cannot be worked satisfactorily with or without modifications, it may, either on its own motion or on the application of any person interested in the affairs of the company, make an order winding up the company, and such an order shall be deemed to be an order made under section 433 of this Act.

(3) The provisions of this section shall, so far as may be, also apply to a company in respect of which an order has been made before the commencement of the Companies (Amendment) Act, 2001 sanctioning a compromise or an arrangement.

SECTION 393 OF COMPANIES ACT, 1956

Information as to compromises or arrangements with creditors and members.

393. (1) Where a meeting of creditors or any class of creditors, or of members or any class of members, is called under section 391,—

(*a*) with every notice calling the meeting which is sent to a creditor or member, there shall be sent also a statement setting forth the terms of the compromise or arrangement and explaining its effect, and in particular, stating any material interests of the directors, managing director or manager of the company, whether in their capacity as such or as members or creditors of the company or otherwise, and the effect on those interests, of the compromise or arrangement, if, and in so far as, it is different from the effect on the like interests of other persons; and

(*b*) in every notice calling the meeting which is given by advertisement, there shall be included either such a statement as aforesaid or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement as aforesaid.

(2) Where the compromise or arrangement affects the rights of debenture holders of the company, the said statement shall give the like information and explanation as respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the company's directors.

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(3) Where a notice given by advertisement includes a notification that copies of a statement setting forth the terms of the compromise or arrangement proposed and explaining its effect can be obtained by creditors or members entitled to attend the meeting, every creditor or member so entitled shall, on making an application in the manner indicated by the notice, be furnished by the company, free of charge, with a copy of the statement.

(4) Where default is made in complying with any of the requirements of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty thousand rupees; and for the purpose of this sub-section any liquidator of the company and any trustee of a deed for securing the issue of debentures of the company shall be deemed to be an officer of the company :

Provided that a person shall not be punishable under this sub-section if he shows that the default was due to the refusal of any other person, being a director, managing director, manager or trustee for debenture holders, to supply the necessary particulars as to his material interests.

(5) Every director, managing director, or manager of the company, and every trustee for debenture holders of the company, shall give notice to the company of such matters relating to himself as may be necessary for the purposes of this section; and if he fails to do so, he shall be punishable with fine which may extend to five thousand rupees.

SECTION 394 OF COMPANIES ACT, 1956

Provisions for facilitating reconstruction and amalgamation of companies.

394. (1) Where an application is made to the Tribunal under section 391 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Tribunal—

(*a*) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of any company or companies, or the amalgamation of any two or more companies; and

(*b*) that under the scheme the whole or any part of the undertaking, property or liabilities of any company concerned in the scheme (in this section referred to as a "transferor company") is to be transferred to another company (in this section referred to as "the transferee company"),

the Tribunal may, either by the order sanctioning the compromise or arrangement or by a subsequent order, make provision for all or any of the following matters :

(*i*) the transfer to the transferee company of the whole or any part of the undertaking, property or liabilities of any transferor company;

(*ii*) the allotment or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person;

(*iii*) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;

(*iv*) the dissolution, without winding up, of any transferor company;

(*v*) the provision to be made for any persons who, within such time and in such manner as the Tribunal directs, dissent from the compromise or arrangement; and

(*vi*) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out :

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Provided that no compromise or arrangement proposed for the purposes of, or in connection with, a scheme for the amalgamation of a company, which is being wound up, with any other company or companies, shall be sanctioned by the Tribunal unless the Tribunal has received a report from the Registrar that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest :

Provided further that no order for the dissolution of any transferor company under clause (*iv*) shall be made by the Tribunal unless the Official Liquidator has, on scrutiny of the books and papers of the company, made a report to the Tribunal that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest.

(2) Where an order under this section provides for the transfer of any property or liabilities, then, by virtue of the order, that property shall be transferred to and vest in, and those liabilities shall be transferred to and become the liabilities of, the transferee company; and in the case of any property, if the order so directs, freed from any charge which is, by virtue of the compromise or arrangement, to cease to have effect.

(3) Within thirty days after the making of an order under this section, every company in relation to which the order is made shall cause a certified copy thereof to be filed with the Registrar for registration.

If default is made in complying with this sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees.

(4) In this section—

(*a*) "property" includes property, rights and powers of every description; and "liabilities" includes duties of every description; and

(*b*) "transferee company" does not include any company other than a company within the meaning of this Act; but "transferor company" includes any body corporate, whether a company within the meaning of this Act or not.

SECTION 620A OF COMPANIES ACT, 1956

Power to modify Act in its application to Nidhis, etc.

620A. (1) In this section, *"Nidhi"* or "Mutual Benefit Society" means a company which the Central Government may, by notification in the Official Gazette, declare to be a *Nidhi* or Mutual Benefit Society, as the case may be.

(2) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act specified in the notification—

(*a*) shall not apply to any *Nidhi* or Mutual Benefit Society, or

(*b*) shall apply to any *Nidhi* or Mutual Benefit Society with such exceptions, modifications and adaptations as may be specified in the notification.

(3) A copy of every notification issued under sub-section (1) shall be laid as soon as may be after it is issued, before each House of Parliament.

NOTIFIED NIDHIS/MUTUAL BENEFIT SOCIETIES UNDER SECTION 620A OF COMPANIES ACT, 1956

In exercise of the powers conferred by section 620A of the Companies Act, 1956 (1 of 1956), the Central Government hereby—

(*i*) declares the companies specified in Schedules I and II annexed hereto as *nidhis* and mutual benefit societies respectively; and

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(*ii*) directs that the provisions of the said Act specified in column (1) of Schedule III annexed hereto shall not apply or, as the case may be, shall apply with the exceptions, modifications and adaptations specified in the corresponding entry in column (2) thereof, to such *nidhis* and mutual benefit societies.

SCHEDULE I : NIDHIS

1. Adambakkam Janopakara Saswatha Nidhi Ltd., Madras
2. Alandur Praja Sahaya Saswatha Nidhi Ltd., Madras
3. Bhuvanagiri Hindu Saswatha Paropakara Nidhi Ltd., Madras
4. Chennai Sri Andal Dhanasekara Saswatha Nidhi Ltd., Madras
5. Chennai Sri Ekambareswarar Saswatha Nidhi Ltd., Madras
6. Chidambaram Hindu Saswatha Jananukula Nidhi Ltd., Madras
7. Chingleput Dhanasekara Nidhi Ltd., Madras
8. Choolai Janopakara Nidhi Ltd., Madras
9. Conjeevaram Hodsonpet Dhanasekara Nidhi Ltd., Madras
10. Cuddalore Permanent Fund Ltd., Madras
11. Egmore Benefit Society Third Branch Ltd., Madras
12. Kumbakonam Mutual Benefit Fund Ltd., Madras
13. Madras Catholic Permanent Fund Ltd., Madras
14. Madras Christian Benefit Fund Ltd., Madras
15. Madras Mutual Benefit Permanent Fund Ltd., Madras
16. Madras Purasawalkam Hindu Janopakara Saswatha Nidhi or the Permanent General Benefit Fund Ltd., Madras
17. Madura Hindu Permanent Fund Ltd., Madras
18. Muthialpet Benefit Fund Ltd., Madras
19. Mylapore Hindu Permanent Fund Ltd., Madras
20. Nagapatnam Permanent Fund Ltd., Madras
21. Nugambakkam Saswatha Dhana Raksha Nidhi Ltd., Madras
22. Pudupakkam Permanent Fund Ltd., Madras
23. Purasawalkam Dhana Vardhana Saswatha Nidhi Ltd., Madras
24. Purasawalkam Hindu Santhatha Sanga Nidhi Ist Branch Ltd., Madras
25. Purasawalkam Permanent Fund Ltd., Madras
26. Paraspara Sahaya Nidhi (Perambu) Ltd., Madras
27. Shiyali Janopakara Nidhi Ltd., Madras
28. Sivagana Shri Meenakshi Swadeshi Saswatha Nidhi Ltd., Madras
29. Shri Villiputhur Permanent Fund Ltd., Madras
30. Sunrise Corporation Ltd., Madras
31. Thiyagarayanagar Fund Ltd., Madras
32. Tinnelvelly District Permanent Fund Ltd., Madras
33. Tiruvatteeswaran Hindu Janopakara Nidhi Ltd., Madras
34. Triplicate Permanent Fund Ltd., Madras
35. Trivellore Janopakara Saswatha Nidhi Ltd., Madras
36. Villupuram People's Mutual Benefit Society Ltd., Madras
37. Abiramapuram Fund Ltd., Madras
38. Arcot Dhana Sekara Nidhi Ltd., Madras
39. Arcot Tiruvalluvar Nidhi Ltd., Madras

40. Saraswathi Vilasam Shanmugananda Nidhi Ltd., Madras
41. Thirumagal Mutual Benefit Fund Ltd., Madras
42. Varalakshmi Fund (Vellore) Ltd., Madras
43. Vellore Saswatha Nidhi Ltd., Madras
44. Walajabad Dhanasekara Saswatha Nidhi Ltd., Madras
45. Chittoor Saswatha Nidhi Ltd., Andhra Pradesh
46. Madanapalle Sri Venkateswara Nidhi Ltd., Andhra Pradesh
47. Anantapur Sri Satyanarayana Nidhi Ltd., Andhra Pradesh
48. Nellore Permanent Fund Ltd., Andhra Pradesh
49. Adoni Arya Vaisya Fund Ltd., Andhra Pradesh
50. Dharamavaram Mutual Benefit Permanent Fund, Andhra Pradesh
51. Anantapur National Fund Ltd., Andhra Pradesh
52. Hindupur Mutual Benefit Permanent Fund Ltd., Andhra Pradesh
53. Madakasira Mutual Benefit Permanent Fund Ltd., Andhra Pradesh
54. Penukonda Maruthi Benefit Permanent Fund Ltd., Andhra Pradesh
55. Bangalore Cantonment Permanent Fund Ltd., Mysore
56. Harpanahallai Sree Venkataramanaswamy Permanent Bhandar Ltd., Mysore
57. Ballary Brucepeettah Hindu Mutual Benefit Permanent Fund Ltd., Mysore
58. Hospet Ryots Agro-Industrial Corporation Ltd., Mysore
59. Anantapur Sree Vasavamba Permanent Fund Ltd., Andhra Pradesh
[1]60. Shri Vasavi Parameswari Permanent Fund Ltd., Madras
61. Kuries & Trades Ltd., Ernakulam
62. Saidapet Saswatha Nidhi Ltd., Madras
63. Shree Rajagopaul Benefit Fund Ltd., Madras

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1. Inserted *vide* Notification Nos. GSR 853, dated 4-6-1964, GSR 1332, dated 30-8-1965, GSR 111, dated 14-1-1966, GSR 607, dated 22-4-1967, GSR 608, dated 22-9-1967, GSR 1306, dated 23-7-1971, GSR 1, dated 21-12-1973, GSR 690, dated 22-6-1974, GSR 275, dated 14-2-1975, GSR 409, dated 29-3-1975, GSR 1300, dated 11-9-1976, GSR 426, dated 8-3-1978, GSR 728, dated 28-4-1978, GSR 1269, dated 4-10-1979, GSR 1100, dated 9-10-1980, GSR 1099, dated 9-10-1980, GSR 164, dated 10-2-1983, GSR 843, dated 19-11-1983, GSR 844, dated 19-11-1983, GSR 217, dated 25-2-1984, GSR 231, dated 20-2-1985, GSR 21, dated 24-12-1985, GSR 275, dated 3-3-1986, GSR 306, dated 11-4-1986, GSR 701, dated 22-8-1986, GSR 961, dated 24-10-1986, GSR 365, dated 22-4-1987, GSR 430, dated 20-5-1987, GSR 921, dated 30-11-1987, GSR 922, dated 3-12-1987, GSR 264, dated 5-4-1988, GSR 479, dated 8-6-1988, GSR 515, dated 23-6-1988, GSR 596, dated 15-7-1988, GSR 597, dated 15-7-1988, GSR 598, dated 15-7-1988, GSR 959 to 961, dated 1-12-1988, GSR 800, dated 22-9-1988, GSR 318, dated 24-4-1989, GSR 501, dated 7-7-1989, GSR 502, dated 22-7-1989, GSR 649, dated 22-8-1989, GSR 650, dated 22-8-1989, GSR 651, dated 22-8-1989, GSR 102, dated 5-2-1990, GSR 515, dated 7-8-1990, SO 3052, dated 7-10-1990, GSR 782, dated 13-12-1990, GSR 783, dated 13-12-1990, GSR 784, dated 13-12-1990, GSR 314, dated 30-4-1991, SO 2146, dated 26-7-1991, SO 123, dated 30-12-1992, GSR 272, dated 12-5-1993, GSR 291, dated 27-5-1993, GSR 307, dated 27-5-1993, GSR 292, dated 27-5-1993, GSR 102, dated 27-5-1993, GSR 189, dated 4-4-1994, GSR 296, dated 27-5-1994, GSR 441, dated 11-8-1994, SO 2302, dated 16-8-1994, SO 2303, dated 19-8-1994, SO 2304, dated 23-8-1994, SO 2508, dated 27-8-1994, SO 2509, dated 23-8-1994, SO 1313, dated 28-4-1995, SO 1314, dated 28-4-1995, SO 1315, dated 28-4-1995, GSR 242, dated 28-4-1995, GSR 32, dated 10-1-1996, GSR 207, dated 6-5-1996, GSR 230, dated 22-5-1996, GSR 248, dated 6-6-1996, GSR 785(E), dated 6-10-2003, GSR 91(E), dated 3-1-2004, GSR 547(E), dated 25-8-2004, GSR 14(E), dated 11-1-2005, GSR 102(E), dated 25-2-2005, GSR 450(E), dated 1-7-2005, GSR 546(E), dated 8-9-2006, GSR 611(E), dated 20-9-2007, GSR 329(E), dated 1-5-2008 and GSR 522(E), dated 14-7-2009.

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64. The Madras Chromepet Permanent Fund Ltd., Madras
65. The Adoni Mutual Benefit Permanent Fund Ltd., Andhra Pradesh
66. Sriman Madhva Sidhanta Permanent Nidhi Ltd.
67. Thirumylai Saswatha Sahaya Nidhi Ltd.
68. Taheri Aid Fund Ltd.
69. Kumbakonam Diocesan Catholics Permanent Fund Ltd.
70. Matha Vara Nidhi Ltd.
71. Amritsar Radhasaomi Finance Co. (P.) Ltd.
72. Nambalam Benefit Society Ltd.
73. Makkal Nala Abivirthi Niddhi Ltd.
74. Kilpank Benefit Society Ltd.
75. Samarasa Mutual Benefit Fund Ltd.
76. Chromepet Saswatha Nidhi Ltd.
77. Sri Raja Raja Cholan Mutual Benefit Fund Ltd.
78. Palghat Permanent Fund Ltd.
79. Grama Nala Saswatha Nidhi Ltd.
80. Kondan Mutual Benefit Fund Ltd.
81. Sri Saithai Mutual Benefit Fund Ltd.
82. Mini Mutual Benefit Fund Ltd.
83. Annanagar Janopakara Nidhi Ltd.
84. Dhanalakshmi Fund (India) Ltd.
85. Aminjikarai Benefit Fund Ltd., Madras
86.
87. Jawahar Nagar Nidhi (Madras) Ltd.
88. Shenoy Nagar Saswatha Nidhi Ltd., Madras
89.
90.
91. Kayanat Permanent Fund Ltd.
92. Piravom Funds Ltd.
93. Chennapuri Mutual Benefit Fund Ltd.
94. Chetpet Saswatha Nidhi Ltd.
95. Royapettah Benefit Fund Ltd.
96. Shenoy Nagar Benefit Fund Ltd.
97. Kalaimagal Mutual Benefit Fund Ltd.
98. Mini Muthoottu Mutual Fund Ltd.
99. Dravidian Benefit Fund Ltd.
100. Ashoknagar Janopakara Saswatha Nidhi Ltd.
101.
102. St. Mary's Finance Ltd.
103. Tamilnadu Viswakarma Mutual Benefit Fund Ltd.
104. Shree Ambika Nidhi Ltd.
105. West Mambalm Permanent Fund Ltd.
106. Al-Falah Mutual Benefits Ltd.
107. Manipal Sowbhagya Nidhi Ltd.
108. Jayalakshmi Mutual Benefits Fund Ltd.

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109. Kodam Bakkam Benefits Fund Ltd.
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111. Parktown Benefit Fund Ltd.
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115. Kanchi Mutual Benefit Fund Ltd.
116. Thirumangalam Janopakara Permanent Fund Ltd.
117. St. Marry's Fund Ltd.
118. Sreevari Benefit Society Ltd.
119. Gillnagar Benefit Fund Ltd.
120. Kerala Permanent Fund Ltd.
121. Pammal Makkal Nala Fund Ltd.
122. Pondicherry Mutual Benefit Fund Ltd.
123. Bliss Benefit Fund Ltd.
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132. Alwarpet Benefit Fund Ltd.
133. Al-Najib Milli Mutual Benefit Funds Ltd.
134. Nirappukattil Mutual Funds Ltd.
135. Mannady Permanent Fund Ltd.
136. Virudhunagar Benefit Fund Ltd.
137. Sri Akilakrishna Benefit Society Ltd.
138. South East Benefit Fund Ltd.
139. Rasi Nidhi Ltd.
140. Sri Kandaswamy Permanent Fund Ltd.
141. Sri Padmanabha Permanent Fund Ltd.
142. Incan Mutual Benefit Ltd.
143. Subam Benefit Fund Ltd.
144. Saibala Benefit Fund Ltd.
145. Tulasi Krishna Permanent Fund Ltd.
146. Indian Members Benefit Fund Ltd.
147. Nanganallur Permanent Fund Ltd.
148. Peravallur Permanent Fund Ltd.
149. Ayodhya Benefit Fund Ltd.
150. Self Growth Nidhi Ltd.
151. Shri Samundeswari Benefit Fund Ltd.
152. ICS Benefit Fund Ltd.

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153. Shri Navrathana Benefit Fund Ltd.
154. Sullivan Garden Benefit Fund Ltd.
155. Shabab Islamic Investment and Mutual Benefits (India) Limited, Lucknow
156. Venkatesapuram Benefit Fund Limited, Madras
157. Canara Nidhi Limited, Manipal
158. SMP Mutual Benefit Limited, Haldwani, Uttar Pradesh
159. Trywell Finance Mutual Benefit Company Limited, New Delhi
160. The Hasnapuram Mutual Benefit Permanent Fund Limited, Madras
161. Manappuram Benefit Fund Limited, Trissur
162. Galaxy Mutual Benefit Company Limited, Lucknow
163. Alagendran Benefit Fund Limited, Madras
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172. Devta Mutual Benefits Limited, Meerut
173. Sanjeevarayan Benefit Fund Limited, Madras
174. Manali Benefit Fund Limited, Madras
175. Eldico Mutual Benefit Company Limited, Lucknow
176. Sidhartha Mutual Benefit Fund Limited, New Delhi
177. Pallavan Mutual Benefit Fund Limited, Madras
178. Devidas Finance Limited, Puttur
179. Thiru-Vi-Ka Nagar Benefit Fund Limited, Madras
180. Kumari Benefit Fund Limited, Madras
181. Vellavedu Benefit Fund Limited, Vellavedu, Tamil Nadu
182. Promptekk Benefit Fund Limited, Madras
183. Sarvajana Benefit Fund Limited, Madras
184. Sri Muthukumaraswamy Permanent Fund Limited, Madras
185. Perfect Benefit Fund Limited, Madras
186. Trichy Rockcity Benefit Fund Limited, Trichy, Tamil Nadu
187. Vedaraniam Benefit Fund Limited, Vedaraniam, Tamil Nadu
188. Crystal India Mutual Benefits Limited, District Nainital, Uttar Pradesh
189. Gowthami Permanent Fund Limited, Kakinada, Andhra Pradesh
190. Kaveripatnam Benefit Fund Limited, Dharmapuri, Tamil Nadu
191. Shri Shanthi Nath Benefit Fund Limited, Villupuram, Tamil Nadu
192. Veejay Benefit Fund Limited, Madras
193. Chepauk Benefit Fund Limited, Chennai
194. Baggyalakshmi Benefit Fund Limited, Chennai
195. Samayapuram Mariamman Benefit Fund Limited, Trichy, Tamilnadu
196. Lakshmipuram Benefit Fund Limited, Tiruninravur, Chennai
197. Sri Devigayathri Benefit Fund Limited, Chennai

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198. Eravi Vinayagar Benefit Fund Limited, Kanyakumari District, Tamilnadu
199. Bhavsar Maratah Benefit Fund Limited, Chennai
200. Minjur Benefit Fund Limited, Minjur, Tamilnadu
201. Sakthi Benefit Fund Limited, Chennai
202. Kulitalai Benefit Funds Limited, Kulitalai, Tamilnadu
203. Kudumba Vilakku Benefit Fund Limited, Thanjavur, Tamilnadu.*
204. Karur Benefit Fund Limited, Karur, Tamil Nadu.
205. Town Benefit Fund (Kumbakonam) Limited, Kumbakonam, Tamil Nadu.
206. City Benefit Fund (Kumbakonam) Limited, Kumbakonam, Tamil Nadu.
207. Kasthuribai Benefit Fund Limited, Vellore, Tamil Nadu.
208. Merchants Benefit Fund Limited, 341, Indira Nagar, Neyveli - 607801, Tamil Nadu.
209. Bethel Benefit Fund Limited, 33, (Old No. 18) Srinivasa Raghavan Road, Srinivasa Nagar, Perungalathur, Chennai - 600063.
210. Tindivanam Benefit Fund Limited, No. 4, Thiruvalluvar Street, Tindivanam - 604001, Tamil Nadu.
211. Neema Benefit Fund Limited, Neema Buildings, Adoor, Pathanamthitta Distt., Kerala - 691523.
212. Sri Maragathambigai Benefit Fund Limited, 466, J.N. Street, Tindivanam - 604001, Tamilnadu
213. Varthaka Mandal Nidhi Limited, XL/6013, T.D. Shopping Complex, T.D. West Road, Ernakulam - 682035, Kerala.
214. Ayanavaram Permanent Fund Limited, 11/7, Parasurama Easwaran Koil Street, Ayanavaram, Chennai - 600023.
215. Amaravatthi Benefit Fund Limited, No. 15, 1st Street, Conransmith Road, Gopalapuram, Chennai - 600086.
216. Sree Venkata Krupa Permanent Fund Limited, 3-5-131, Adrathi Lane, Tirupati - 517501, Andhra Pradesh.
217. Arumbakkam Benefit Fund Limited, 28A, New No. 6, Poonamallee High Road, Arumbakkam, Chennai - 600106.
218. Thiruvanmiyoor Permanent Fund Limited, Annamalai Complex, 123-A, Dr. Muthulakshmi Road, Chennai - 600041.
219. Hari Sankara Benefit Fund Limited, No. 5, East Street, Tirukoilur - 605757, Tamilnadu.
220. Chiranjeevi Benefit Fund Limited, 13/7, Thiruchendur Road, Tuticorin - 628003, Tamilnadu.
221. Sri Benefit Fund Limited, 39, Bazaar Street, Sirkali - 609110, Tamilnadu.
222. Villivakkam Janopakara Fund Limited, 1, Meetu Street, Villivakkam, Chennai - 600049.
223. South Madras Benefit Fund Limited, 20, Kallukaran Street, Mylapore, Chennai-600004.
224. Thiruvallur Thripurasundari Benefit Fund Limited, 33, North Raja Street, Tiruvallur-602001, Tamilnadu.

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*Recognition to Kuber Mutual Benefits Ltd., U.P. (notified *vide* Notification No. GSR 163, dated 18-3-1993) withdrawn *vide* GSR 226(E), dated 26-3-1999.

Recognition to Singh Mutual Benefit Company Limited, Haldwani, Nainital withdrawn *vide* Notification No. GSR 655(E), dated 4-10-2004.

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225. Sri Annamalai Benefit Fund Limited, 1st Floor, Annamalai Tower, 50, Kubera Street, Villupuram-605602, Tamilnadu.
226. Thendral Benefit Fund Ltd., No. 44, 6th Cross Street, M.K.B. Nagar, Chennai-600039.
227. T.V.R. Benefit Fund Limited, 66, East Main Street, Thiruvarur-610001, Tamilnadu.
228. Lalapet Benefit Fund Limited, 2/60 (New No. 2/87), Main Road, Lalapet-639105, Karur District, Tamilnadu.
229. Jeya Bharath Benefit Fund Limited, New No. 15(8), C.N.K. Road, Chepauk, Chennai-600005.
230. Twin Cities Permanent Fund Limited, 1-1-790, Ashok Nagar Extension, Gandhinagar, Hyderabad-500080, Andhra Pradesh.
231. Thiyagadurugam Benefit Fund Limited, No. 7, Kavarai Street, Thiyagadurugam-606206, Tamilnadu.
232. Sembiam Benefit Fund Limited, New No. 154 (Old No. 251), Paper Mills Road, Ist Floor, Perambur, Chennai-600011.
233. Vijaysubham Benefit Fund Limited, 117, North Car Street, Sirkali-609110, Tamilnadu.
234. Madurai City Benefit Fund Limited, 71, North Veli Street, Simmakkal, Madurai-625001, Tamilnadu.
235. Rajapalayam Benefit Fund Limited, 428-A, Ambalapuli Bazar, Ist Floor, Rajapalayam-626117, Tamilnadu.
236. Prakasam District Permanent Fund Limited, 23-1-106, Gandhi Road, Ongole-523001, Andhra Pradesh.
237. Collector Nagar Benefit Fund Limited, 2/267, Mugappair East, Chennai-600050.
238. Chordia Benefit Fund Limited, 29/A2, Panruti Road, Ulundurpet-606107, Tamilnadu.
239. SRM Benefit Fund Limited, 3, Veerasamy Street, West Mambalam, Chennai-600033.
240. East West Benefit Fund Limited, F41/4, Ist Floor, First Main Road, Anna Nagar East, Chennai-600102.
241. Variar Benefit Fund Limited, Flat No. 193/8, Asiad Colony, Jawaharlal Nehru Road, Anna Nagar, West Extension, Chennai-600101.
242. Azax Benefit Fund Limited, No. 666/1, T.H. Road, Chennai-600019.
243. Muthoot Mercantile Syndicate Limited, 75, Attukal Shopping Complex, East Fort, Thiruvananthapura-695023, Kerala.
244. Uttiramerur Benefit Fund Limited, No. 45, Bazar Street, Uttiramerur-603406, Tamilnadu.
245. Kasi Viswanathar (Chennai) Benefit Fund Limited, No. 9, Market Street, (1st Floor), Ayanavaram, Chennai-600023.
246. Raj Benefit Fund Limited, 2F, Bharathy Road, Cuddalore-607 001, Tamil Nadu.
247. Trisea Benefit Fund Limited, 227F, Roy Building, Rajakkamangalam Road, Ramanputhoor, Nagercoil-4, Tamil Nadu.
248. Vilavancode Selfreliance Credit Services Limited, Good News Centre, Unnamalakadai-629 179, Tamil Nadu.
249. Muthoot M. George Permanent Fund Limited, P.B. No. 11, Muthoot Buildings, Kozhencherry, Kerala.
250. North West Madras Benefit Society Limited, 59/22A, First Main Road, Jawahar Nagar, Chennai-600082.
251. Purasai Benefit Fund Limited, 60 (Old No. 169), Vellala Street, Purasawalkam, Chennai-600084.

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252. Dhana Chakra Permanent Fund (India) Limited, Door No. 3-57/1, Opp. Vinayaka Temple, Main Road, Kondapalli-521228, Vijayawada, Andhra Pradesh.
253. Vijaya Krishna Benefit Fund Limited, Gajavalli Mansions, 11-14-5, Opp. S.B.I. Velagaletivari Street, Vijayawada-520001, Andhra Pradesh.
254. Rani Mangammal Benefit Fund Limited, 160, Big Bazar Street, Trichy-620008, Tamil Nadu.
255. Sree Varadaraja Benefit Fund Limited, New No. 149/1, Old No. 63/1 Purasawalkam High Road, Purasawalkam, Chennai-600007.
256. Sri Kaalihambal Benefit Fund Limited, No. 281/18, T.H. Road, Chennai-600021.
257. Coastal Permanent Fund Limited, 11-62-125, Canal Road, Vijayawada-520001, Andhra Pradesh.
258. Nachhiarkoil Town Benefit Fund Ltd., 5/3, North Street, Nachhiarkoil-612 602, Tamilnadu.
259. Business Benefit Company Limited, Transworld Towers, Business Lane, Andamukkam, Beach Road, Kollam-1, Kerala.
260. Kothattai Benefit Fund Limited, 369/1, Main Road, Pennadam-606 105, Tamilnadu.
261. Brindavan Nagar Benefit Fund Limited, Sree Venkateswara Nilayam, No. 71, Mahalakshmi Nagar, 5th Cross Street, Brindavan Nagar, Adambakkam, Chennai-600 088, Tamilnadu.
262. Sri Ambal Benefit Fund Limited, No. 6, Mela Sannadhi Street, Vedaranyam, Tamilnadu.
263. Erode Benefit Fund Limited, 116, Bazaar Street, Kavindapadi-638 455, Erode (RMS), Tamilnadu.
264. Sri Mangalam Benefit Fund Limited, 139, T.H. Road, Kaladipet, Thiruvottiyur, Chennai-19, Tamilnadu.
265. Sri Veerabathira Benefit Fund Limited, 76, Nanayakara Street, Nagapattinam-611 011, Tamilnadu.
266. Madras Harbour Benefit Fund Limited, New No. 5, (Old No. 9) Nyniappn Street, (behind Broadway Theatre), Mannady, Chennai-600 001, Tamilnadu.
267. Kumari Christavar Benefit Fund Limited, III-A, Joshua Street, Nagercoil-629 001, Tamilnadu.
268. Kannadasan Nagar Benefit Fund Limited, New No. 144-A, (Old No. 32A), T.H. Road, M.R. Nagar, Kodungaiyur, Chennai-600 118.
269. Kanya Benefit Fund Limited, 'Sat Anugraha', Cross Road, North Car Street, Nagercoil-629 001, Tamilnadu.
270. Hold & Grow Benefit Funds Limited, 1st Floor, Kamalam Complex, No. 8-B, Dr. Besant Road, Kumbakonam-612 001, Tamilnadu.
271. Kundavai Benefit Fund Limited, 180/2435, South Main Street, Thanjavur-613 009, Tamilnadu.
272. Koyambedu Permanent Fund Limited, 853, Sixth Avenue, 13th Main Road Junction, Anna Nagar West, Chennai - 600 040, Tamilnadu.
273. Shree Vijayaram Benefit Fund Limited, Plot No. B4/4, 1st Floor, 80 Feet Road, Anna Nagar, Madurai - 625 020, Tamilnadu.
274. Suriyan Benefit Fund (Madras) Limited, New No. 46, (Old No. 487), Mint Street, Chennai-600 079, Tamilnadu.
275. Woriur Benefit Fund Limited, 116, Walaja Road, Woriur, Trichy-620 003, Tamilnadu.
276. Panruti Benefit Funds Limited, 124/4, V.O.C. Street, Panruti-607 106, Tamilnadu.

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277. Vaitheeswarankoil Benefit Fund Limited, 6/7, Senbagavalli Street, Vaitheeswarankoil 609 117, Nagapattinam District, Tamilnadu.
278. Dew Drop Benefit Fund Limited, 10, 45th Street, 9th Avenue, Ashok Nagar, Chennai-600 083, Tamilnadu.
279. Teachers' Welfare Credit & Holding Limited, 10/99, Bejoygarh, Jadavpur, Calcutta - 700 092.
280. Saligramam Benefit Fund Limited, No. 7-D, Arunachalam Road (Upstairs), Saligramam, Chennai-600 093, Tamilnadu.
281. Pegasus Permanent Fund Limited, 3-6-736 & 737, Street No. 12, Himayatnagar, Hyderabad-500 029, Andhra Pradesh.
282. A.S.S. Benefit Fund Limited, Checkittavilai, Vattakottai, Mangarai, P.O. 629 157, Tamilnadu.
283. Central Madras Benefit Fund Limited, CMBF Maaligai, P-7 M.M.D.A. Colony, (Arumbakkam), Chennai-600 106, Tamilnadu.
284. East Gate Benefit Fund Limited, 126-A, Pampatti Street, East Gate, Thanjavur-613 001, Tamilnadu.
285. Camp Road Benefit Fund Limited, Sakthi Complex, 201/807, Velachery Road, Selaiyur, Chennai-600 073, Tamilnadu.
286. Ashok Nagar Benefit Fund Limited, New No. 72, Old No. 83/1, 53rd Street, 7th Avenue, Ashok Nagar, Chennai-600 083, Tamilnadu.
287. Gomukhi Benefit Fund Limited 21-B, Gandhi Road, Kallakurichi-606 202, Villupuram District, Tamilnadu.
288. Social Mutual Benefits Co. Limited, Social Bhawan, Anekant Palace, 29, Rajpur Road, Dehradun - 248 001 (U.A.).
289. Kuzhithurai Benefit Fund Limited, Kazhuvanthitta, Kuzhithurai (P.O.), Kanyakumari District, Tamilnadu.
290. Suresh Benefit Fund Limited, New No. 5, Old No. 2, Kulandai Gramani Street, Purasawakkam, Chennai-600 084, Tamilnadu.
291. Nagai Sivasakthi Benefit Fund Limited, No. 20, Neela South Street, Nagapattinam - 611 001, Tamilnadu.
292. Purasaiwakkam Gangatheeshwarar Benefit Fund Limited, New No. 91, (Old No. 101), 1st Floor, Vellala Street, Purasaiwakkam, Chennai-600 084.
293. Thiruvarangam Benefit Fund Limited, 2/C, S.V.Chari Road, Srirangam, Trichy-620 006.
294. Servaroys Benefit Fund Limited, Flat No. 37/E, Karuneegar Street, Adambakkam, Chennai-600 088.
295. Pothigai Benefit Fund Limited, 75/34, College Road, Ambasamudram-627 401, Tamilnadu.
296. Tirupati Benefit Fund Limited, 559-A, Reddy & Reddy Colony, Tirupati-517 501, Andhra Pradesh.
297. Surana Benefit Fund Limited, No. 14, Maniyam Kanda Swamy Street, Tindivanam-604 001, Tamilnadu.
298. Sri Girivaru Benefit Society Limited, New No. 1041, Old No. 525/2, Poonamallee High Road, Arumbakkam, Chennai-600 106.
299. The Thiruvottiyur Benefit Fund Limited, 14, Sannadhi Street, Thiruvottiyur, Chennai-600 019.
300. Sree Thanigaivelan Benefit Fund Limited, No. 14/G1, 1st Main Road, South High Court Colony, Villivakkam, Chennai-600 049.

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301. Cheyyar Sri Vasavi Benefit Fund Limited, B. Ramakannu Chettiar Building, N. No. 113, O.No. 40, Gandhi Road, Cheyyar-604 407, T.V.Malai Dt. Tamilnadu.
302. Sri Bhagyalakshmi Benefit Fund Limited, 2/15, Opp. Balaram Theatre, Srikalahasti-517 644, Andhra Pradesh.
303. S.A. Benefit Fund Limited, 174, West Car Street, Chidambaram-608 001, Tamilnadu.
304. Puthu Perungalathur Benefit Fund Limited, No. 41, Kamarajar Nedunchalai, New Perungalathur, Chennai-600 063.
305. Ashwini Benefit Fund Limited, No. 101-B, Neeli Appadurai Street, Ponneri-601 204, Tamilnadu.
306. Maragadhambal Benefit Fund Limited, No. 128 (New), Erukkanchery High Road, Vyasarpadi, Chennai-600 039.
307. Sri Arunai Benefit Fund Limited, 13, Thenmathathi Street, Tiruvannamalai-606 601, Tamilnadu.
308. Sri Mukunth Benefit Fund Limited, 9 J/1, Jawahar Main Street, S.S.Colony, Madurai-625 010, Tamilnadu.
309. East Rajaji Nagar Benefit Fund Limited, No. 84/71, Jayaprakash Street, Jambulingam Main Road, G.K.M. Colony, Chennai-600 082.
310. Kudalmanagar Benefit Fund Limited, Aruna Arcade, 37, Kansamettu Street, 1st floor, Madurai-625 020, Tamilnadu.
311. Sri Ratna Permanent Fund Limited, D. No. 34-1-19/1, Temple Street, Kakinada-533 001, Andhra Pradesh.
312. Bhuvanagiri Benefit Fund Limited, No. 30, Yadava Street, Bhuvanagiri - 608 601, Cuddalore - District, Tamilnadu.
313. Bharani Saswatha Sahaya Nidhi Limited, 3-35, Main Road, Uppal, Hyderabad-500 039.
314. Tirukkoilur Benefit Fund Limited, 8, Market Street, Tirukkoilur-605 757, Tamilnadu.
315. Ananthapuri Benefit Fund Limited, Flat No. 207, Nandini Gardens, West Fort, Trivandrum -23, Kerala.
316. Alankar Benefit Fund Limited, 29, Shivaji Nagar, Thanjavur-620 001, Tamilnadu.
317. Vulcan Benefit Fund Limited, 29/30, 2nd Floor, SNS Plaza, No. 41, Kumara Krupa Road, Bangalore-560 001, Karnataka.
318. Mahalakshmi Benefit Fund Limited, No. 71 (New 18), Jayarama Chetty Street, 1st Floor, Vellore-632 004, Vellore District, Tamilnadu.
319. Kottai Benefit Fund Limited, 121, Thalayari Street, Pattukkottai-614 601, Thanjavur District, Tamilnadu.
320. Adhisesan Pettai Benefit Fund Limited, 258, Bodupatti Road, Mullai Nagar, A.S. Pettai, Namakkal - 637 001, Tamilnadu.
321. Port City Benefit Fund Limited, No. 21-D/2, W.G.C. Road, Tuticorin-628 002. Tamilnadu.
322. Arcot Sri Mahaveer Benefit Fund Limited, No. 117, Bazar Street, Arcot - 632 503, Vellore - District, Tamilnadu.
323. Perambur Benefit Society Limited, 14/196, Perambur Barracks Road, Chennai-600 012.
324. Nirmal Krishna Benefit Fund Limited, Mathempala, Palukal P.O., K.K. District-629 170, Tamilnadu.
325. Periapet Benefit Fund Limited, 1, Soodiammanpet Street, Saidapet, Chennai - 600 015.
326. Mangaiyaar Benefit Fund Limited, 7/54, Junction Main Road, Ideal Garden Complex, Five Road, Salem - 636 004, Tamilnadu.

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327. Veer Mutual Benefits Limited, Delhi Road, New Hardwar - 249 407.
328. KAY ESS ARR Benefit Fund Limited, 12/161, G.R. Complex, Theppakulam Street, Tiruchengode-637 211, Namakkal District, Tamilnadu.
329. Vilavancode Benefit Fund Limited, "VBF Towers", Main Road, Marthandam-629 165, Tamilnadu.
330. Arunattu Benefit Fund Limited, New No. 399, Poonamalee High Road, Aminjikarai, Chennai-600 029.
331. Padma Balaji Benefit Fund Limited, 103A, Ayyanar Koil Main Road, Sellur, Madurai - 625 002, Tamilnadu.
332. Ramanathapuram Benefit Fund Limited, 87-B, Vandikkara Street, First Floor, Ramanathapuram -623 501.
333. Karavilai Benefit Fund Limited, 8-12A, Vijayam, Karavilai, Villukury-629 180, Kanyakumari District, Tamilnadu.
334. Mayuranathar Benefit Fund Limited, Taj Complex, 123-A No. 2 Road, Mayiladuthurai-609 001, Tamil Nadu.
335. Kalpataru Katariya Benefit Fund Limited, Katariya Complex, (1st Floor) 31, Maniyakara Street, Arakkonam-631 001, Tamil Nadu.
336. Periyakulam Benefit Fund Limited, 81, South Street, Thenkarai, Periyakulam, Tamil Nadu.
337. Sri Neelayathachi Benefit Fund Limited, 3, Big Bazar Street, Nagapattinam, Tamil Nadu.
338. Palavakkam Benefit Fund Limited, 559-1/34, Bharathi Nagar, Palavakkam, Chennai-600 041.
339. Shri Madheswara Benefit Fund Limited, JSM Complex, Thuraiyur Road, N. Kosavampatti, Namakkal-637 002, Tamil Nadu.
340. Thondai Nadu Benefit Fund Limited, No. 56, Kosa Annamalai Street, Gudiyattam-632 602, Tamil Nadu.
341. Bryant Nagar Benefit Fund Limited, 10-D, 8th Main Road, Bryantnagar, Tuticorin-628 008, Tamil Nadu.
342. City West Benefit Fund Limited, 126, Yadhaval Street, Padi, Chennai-600 050.
343. Sapphire Benefit Fund Limited, 35-B, Easwaran Kovil Street, Erode-638 001, Tamil Nadu.
344. Kodavaasal Town Benefit Fund Limited, 13-D, Main Road, Kodavasal-612 601, Tamil Nadu.
345. Nagaraja Benefit Fund Limited, 43/1-119E-10, Beach Road, Kottar (P.O.), Nagercoil-629 002, Tamil Nadu.
346. Parkkavi Benefit Fund Limited, B1, Adhavaa Residential & Commercial Complex, 122/81, Ammamandapam Road, Srirangam, Trichy-620 006, Tamil Nadu.
347. Nangai Benefit Fund Limited, 4-75, Middle Street, Derisanamcope, K.K. District-629 851, Tamil Nadu.
348. Cordial Benefit Fund Limited, No. 16 (1st Floor) Elumalai Street, West Tambaram, Chennai-600 045.
349. Mailam Murugan Benefit Fund Limited, 11, Kamatchi Amman Koil Street, Tindivanam-604 001, Tamil Nadu.
350. Uthangarai Benefit Fund Limited, 41/15-B, Cuddalore Main Road, Uthangarai-635 207, Krishnagiri District, Tamil Nadu.
351. Nanjil Benefit Fund Limited, 52, Kattabomman Junction, Nagercoil, Kanyakumari District, Tamil Nadu.
352. Kumaragiri Benefit Fund Limited, 4/135-B, Main Road, Pudukottai-628 103, Thoothukudi District, Tamil Nadu.

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353. Cape Benefit Fund Limited, Dr. Mathias Shopping Complex, Meenakshipuram Nagercoil-629 001, Tamil Nadu.
354. Kalkulam Benefit Fund Limited, Saraswati Bhawan, Kanjirathukonam, Mekkamandapam - 629 166, Kanyakumari District, Tamil Nadu.
355. K.M.T. Benefit Fund Limited, Sornamahal Buildings, Main Bazaar, Nilakottai, Dindigul District.
356. R.K. Nagar Benefit Fund Limited, G. Sankaraval, 15, E.H. Road, Durgadevi Nagar, Tondiarpet, Chennai.
357. Navasakthi Vinayagar Benefit Fund Limited, Dhayalan Complex, 8-8A, Kamarajar Road, Mayiladuthurai-609 001, Tamil Nadu.
358. Nethaji Nagar Benefit Fund Ltd., 55/20-B, Main Street, Nethaji Nagar, Tondaiarpet, Chennai-600081.
359. Kanyakumari Benefit Fund Ltd., 49A, Vanchiathithan New Street, Vadasery, Nagercoil-629001.
360. Papanasam Benefit Fund Ltd., 11/4, South Main Street, Papanasam-614205.
361. Cine Technicians Kalaivannar NSK Benefit Fund Ltd., 130-A, NT Ramarao Street, Rangarajapuram, Kodambakkam, Chennai-600024.
362. Sri Ram Nallamani Yadava Benefit Fund Ltd., 70, TPK Road, Madurai-625011.
363. Little Kancheepuram Benefit Fund Ltd., 15, Kotrampalayam Street, Kancheepuram - 631501.
364. RMG Benefit Fund Ltd., 38, Jeenis Road, Saidapet, Chennai-600015.
365. Virugambakkam Benefit Fund Ltd., 66B, L&T Colony, 1st Floor, CRR Puram, Virugambakkam, Chennai-600092.
366. Kodeeswaran Benefit Fund Ltd., 1, South Street, Thenkarai, Periakulam-626501.
367. Veeranam Benefit Fund Ltd., 1, Kannan Complex, Omampuliyur Road, Kattumannarkoil-608301.
368. Sendoor Murugan Benefit Fund Ltd., 23/6, First Main Road, Jawahar Nagar, Chennai-600082.

SCHEDULE II : MUTUAL BENEFIT SOCIETIES

Every "mutual insurance company" as defined in clause (*a*) of sub-section (1) of section 95 of the Insurance Act, 1938 (4 of 1938).

PARTS II & III OF SCHEDULE VI TO COMPANIES ACT, 1956

SCHEDULE VI

PART II

REQUIREMENTS AS TO PROFIT AND LOSS ACCOUNT

1. The provisions of this Part shall apply to the income and expenditure account referred to in sub-section (2) of section 210 of the Act, in like manner as they apply to a profit and loss account, but subject to the modification of references as specified in that sub-section.

2. The profit and loss account—

(*a*) shall be so made out as clearly to disclose the result of the working of the company during the period covered by the account; and

(*b*) shall disclose every material feature, including credits or receipts and debits or expenses in respect of non-recurring transactions or transactions of an exceptional nature.

3. The profit and loss account shall set out the various items relating to the income and expenditure of the company arranged under the most convenient heads; and in particular, shall disclose the following information in respect of the period covered by the account :

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(*i*) (*a*) The turnover, that is, the aggregate amount for which sales are effected by the company, giving the amount of sales in respect of each class of goods dealt with by the company, and indicating the quantities of such sales for each class separately.

(*b*) Commission paid to sole selling agents within the meaning of section 294 of the Act.

(*c*) Commission paid to other selling agents.

(*d*) Brokerage and discount on sales, other than the usual trade discount.

(*ii*) (*a*) In the case of manufacturing companies,—

(1) The value of the raw materials consumed, giving item-wise break-up and indicating the quantities thereof. In this break-up, as far as possible, all important basic raw materials shall be shown as separate items. The intermediates or components procured from other manufacturers may, if their list is too large to be included in the break-up, be grouped under suitable headings without mentioning the quantities, provided all those items which in value individually account for 10% or more of the total value of the raw material consumed shall be shown as separate and distinct items with quantities thereof in the break-up.

(2) The opening and closing stocks of goods produced, giving break-up in respect of each class of goods and indicating the quantities thereof.

(*b*) In the case of trading companies, the purchases made and the opening and closing stocks, giving break-up in respect of each class of goods traded in by the company and indicating the quantities thereof.

(*c*) In the case of companies rendering or supplying services, the gross income derived from services rendered or supplied.

(*d*) In the case of a company, which falls under more than one of the categories mentioned in (*a*), (*b*) and (*c*) above, it shall be sufficient compliance with the requirements herein if the total amounts are shown in respect of the opening and closing stocks, purchases, sales and consumption of raw material with value and quantitative break-up and the gross income from services rendered is shown.

(*e*) In the case of other companies, the gross income derived under different heads.

Note 1: The quantities of raw materials, purchases, stocks and the turnover, shall be expressed in quantitative denominations in which these are normally purchased or sold in the market.

Note 2 : For the purpose of items (*ii*)(*a*), (*ii*)(*b*) and (*ii*)(*d*), the items for which the company is holding separate industrial licences, shall be treated as separate classes of goods, but where a company has more than one industrial licence for production of the same item at different places or for expansion of the licensed capacity, the item covered by all such licences shall be treated as one class. In the case of trading companies, the imported items shall be classified in accordance with the classification adopted by the Chief Controller of Imports and Exports in granting the import licences.

Note 3 : In giving the break-up of purchases, stocks and turnover, items like spare parts and accessories, the list of which is too large to be included in the break-up, may be grouped under suitable headings without quantities, provided all those items, which in value individually account for 10% or more of the total value of the purchases, stocks, or turnover, as the case may be, are shown as separate and distinct items with quantities thereof in the break-up.

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(*iii*) In the case of all concerns having works-in-progress, the amounts for which such works have been completed at the commencement and at the end of the accounting period.

(*iv*) The amount provided for depreciation, renewals or diminution in value of fixed assets.

If such provision is not made by means of a depreciation charge, the method adopted for making such provision.

If no provision is made for depreciation, the fact that no provision has been made shall be stated and the quantum of arrears of depreciation computed in accordance with section 205(2) of the Act shall be disclosed by way of a note.

(*v*) The amount of interest on the company's debentures and other fixed loans, that is to say, loans for fixed periods, stating separately the amount of interest, if any, paid or payable to the managing director, the managing agent, the secretaries and treasurers and the manager, if any.

(*vi*) The amount of charge for Indian income-tax and other Indian taxation on profits, including, where practicable, with Indian income-tax any taxation imposed elsewhere to the extent of the relief, if any, from Indian income-tax and distinguishing, where practicable, between income-tax and other taxation.

(*vii*) The amounts reserved for—

(*a*) repayment of share capital; and

(*b*) repayment of loans.

(*viii*) (*a*) The aggregate, if material, of any amounts set aside or proposed to be set aside, to reserves, but not including provisions made to meet any specific liability, contingency or commitment known to exist at the date as at which the balance sheet is made up.

(*b*) The aggregate, if material, of any amounts withdrawn from such reserves.

(*ix*) (*a*) The aggregate, if material, of the amounts set aside to provisions made for meeting specific liabilities, contingencies or commitments.

(*b*) The aggregate, if material, of the amounts withdrawn from such provisions, as no longer required.

(*x*) Expenditure incurred on each of the following items, separately for each item :—

(*a*) Consumption of stores and spare parts.

(*b*) Power and fuel.

(*c*) Rent.

(*d*) Repairs to buildings.

(*e*) Repairs to machinery.

(*f*) (*1*) Salaries, wages and bonus.

(*2*) Contribution to provident and other funds.

(*3*) Workmen and staff welfare expenses to the extent not adjusted from any previous provision or reserve.

Note 1 : Information in respect of this item should also be given in the balance sheet under the relevant provision or reserve account.

Note 2 ** ** **

(*g*) Insurance.

(*h*) Rates and taxes, excluding taxes on income.

(*i*) Miscellaneous expenses :

Provided that any item under which the expenses exceed 1 per cent of the total revenue of the company or Rs. 5,000, whichever is higher, shall be

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shown as a separate and distinct item against an appropriate account head in the Profit and Loss Account and shall not be combined with any other item to be shown under 'Miscellaneous expenses'.

(*xi*) (*a*) The amount of income from investments, distinguishing between trade investments and other investments.

(*b*) Other income by way of interest, specifying the nature of the income.

(*c*) The amount of income-tax deducted if the gross income is stated under sub-paragraphs (*a*) and (*b*) above.

(*xii*) (*a*) Profits or losses on investments showing distinctly the extent of the profits or losses earned or incurred on account of membership of a partnership firm to the extent not adjusted from any previous provision or reserve.

Note : Information in respect of this item should also be given in the balance sheet under the relevant provision or reserve account.

(*b*) Profits or losses in respect of transactions of a kind, not usually undertaken by the company or undertaken in circumstances of an exceptional or non-recurring nature, if material in amount.

(*c*) Miscellaneous income.

(*xiii*) (*a*) Dividends from subsidiary companies.

(*b*) Provisions for losses of subsidiary companies.

(*xiv*) The aggregate amount of the dividends paid, and proposed, and stating whether such amounts are subject to deduction of income-tax or not.

(*xv*) Amount, if material, by which any items shown in the profit and loss account are affected by any change in the basis of accounting.

4. The profit and loss account shall also contain or give by way of a note detailed information, showing separately the following payments provided or made during the financial year to the directors (including managing directors) the managing agents, secretaries and treasurers or manager, if any, by the company, the subsidiaries of the company and any other person :—

(*i*) managerial remuneration under section 198 of the Act paid or payable during the financial year to the directors (including managing directors), the managing agent, secretaries and treasurers or manager, if any;

(*ii*) expenses reimbursed to the managing agent under section 354;

(*iii*) commission or other remuneration payable separately to a managing agent or his associate under sections 356, 357 and 358;

(*iv*) commission received or receivable under section 359 of the Act by the managing agent or his associate as selling or buying agent of other concerns in respect of contracts entered into by such concerns with the company;

(*v*) the money value of the contracts for the sale or purchase of goods and materials or supply of services, entered into by the company with the managing agent or his associate under section 360 during the financial year;

(*vi*) other allowances and commission including guarantee commission (details to be given);

(*vii*) any other perquisites or benefits in cash or in kind (stating approximate money value where practicable);

(*viii*) pensions, etc.,—

(*a*) pensions,

(*b*) gratuities,

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(*c*) payments from provident funds, in excess of own subscriptions and interest thereon,

(*d*) compensation for loss of office,

(*e*) consideration in connection with retirement from office.

4A. The profit and loss account shall contain or give by way of a note a statement showing the computation of net profits in accordance with section 349 of the Act with relevant details of the calculation of the commissions payable by way of percentage of such profits to the directors (including managing directors), the managing agents, secretaries and treasurers or manager (if any).

4B. The profit and loss account shall further contain or give by way of a note detailed information in regard to amounts paid to the auditor, whether as fees, expenses or otherwise for services rendered—

(*a*) as auditor;

(*b*) as adviser, or in any other capacity, in respect of—

(*i*) taxation matters;

(*ii*) company law matters;

(*iii*) management services; and

(*c*) in any other manner.

4C. In the case of manufacturing companies, the profit and loss account shall also contain, by way of a note in respect of each class of goods manufactured, detailed quantitative information in regard to the following, namely :—

(*a*) the licensed capacity (where licence is in force);

(*b*) the installed capacity; and

(*c*) the actual production.

Note 1 : The licensed capacity and installed capacity of the company as on the last date of the year to which the profit and loss account relates, shall be mentioned against items (*a*) and (*b*) above, respectively.

Note 2 : Against item (*c*), the actual production in respect of the finished products meant for sale shall be mentioned. In cases where semi-processed products are also sold by the company, separate details thereof shall be given.

Note 3 : For the purposes of this paragraph, the items for which the company is holding separate industrial licences shall be treated as separate classes of goods but where a company has more than one industrial licence for production of the same item at different places or for expansion of the licensed capacity, the item covered by all such licences shall be treated as one class.

4D. The profit and loss account shall also contain by way of a note the following information, namely :—

(*a*) value of imports calculated on C.I.F. basis by the company during the financial year in respect of :—

(*i*) raw materials;

(*ii*) components and spare parts;

(*iii*) capital goods;

(*b*) expenditure in foreign currency during the financial year on account of royalty, know-how, professional, consultation fees, interest, and other matters;

(*c*) value of all imported raw materials, spare parts and components consumed during the financial year and the value of all indigenous raw materials, spare

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parts and components similarly consumed and the percentage of each to the total consumption;

(*d*) the amount remitted during the year in foreign currencies on account of dividends, with a specific mention of the number of non-resident shareholders, the number of shares held by them on which the dividends were due and the year to which the dividends related;

(*e*) earnings in foreign exchange classified under the following heads, namely :—

(*i*) export of goods calculated on F.O.B. basis;

(*ii*) royalty, know-how, professional and consultation fees;

(*iii*) interest and dividend;

(*iv*) other income, indicating the nature thereof.

5. The Central Government may direct that a company shall not be obliged to show the amount set aside to provisions other than those relating to depreciation, renewal or diminution in value of assets, if the Central Government is satisfied that the information should not be disclosed in the public interest and would prejudice the company, but subject to the condition that in any heading stating an amount arrived at after taking into account the amount set aside as such, the provision shall be so framed or marked as to indicate that fact.

6. (1) Except in the case of the first profit and loss account laid before the company after the commencement of the Act, the corresponding amounts for the immediately preceding financial year for all items shown in the profit and loss account shall also be given in the profit and loss account.

(2) The requirement in sub-clause (1) shall, in the case of companies preparing quarterly or half-yearly accounts, relate to the profit and loss account for the period which entered on the corresponding date of the previous year.

Note : Reference to managing agents, secretaries and treasurers should be omitted.

PART III

INTERPRETATION

7. (1) For the purposes of Parts I and II of this Schedule, unless the context otherwise requires,—

(*a*) the expression "provision" shall, subject to sub-clause (2) of this clause, mean any amount written off or retained by way of providing for depreciation renewals or diminution in value of assets, or retained by way of providing for any known liability of which the amount cannot be determined with substantial accuracy;

(*b*) the expression "reserve" shall not, subject as aforesaid, include any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets or retained by way of providing for any known liability ;

(*c*) the expression "capital reserve" shall not include any amount regarded as free for distribution through the profit and loss account; and the expression "revenue reserve" shall mean any reserve other than a capital reserve;

and in this sub-clause the expression "liability" shall include all liabilities in respect of expenditure contracted for and all disputed or contingent liabilities.

(2) Where—

(*a*) any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets, not being an amount written off in relation to fixed assets before the commencement of this Act; or

(*b*) any amount retained by way of providing for any known liability;

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is in excess of the amount which in the opinion of the directors is reasonably necessary for the purpose, the excess shall be treated for the purposes of this Schedule as a reserve and not as a provision.

8. For the purposes aforesaid, the expression "quoted investment" means an investment as respects which there has been granted a quotation or permission to deal on a recognised stock exchange, and the expression "unquoted investment" shall be construed accordingly.

ARTICLES 243(d) & 243P(e) OF CONSTITUTION OF INDIA

Definitions.

243. ** ** **

(*d*) "Panchayat" means an institution (by whatever name called) of self-Government constituted under article 243B, for the rural areas;

Definitions

243P. ** ** **

(*e*) "Municipality" means an institution of self-Government constituted under article 243Q;

ARTICLE 276(2) OF CONSTITUTION OF INDIA

276. (2) The total amount payable in respect of any one person to the State or to any one municipality, district board, local board or other local authority in the State by way of taxes on professions, trades, callings and employments shall not exceed two thousand and five hundred rupees per annum.

EIGHTH SCHEDULE TO THE CONSTITUTION OF INDIA

[Articles 344(1) and 351]

Languages

1. Assamese.
2. Bengali.
3. Bodo
4. Dogri
5. Gujarati.
6. Hindi.
7. Kannada.
8. Kashmiri.
9. Konkani.
10. Maithili
11. Malayalam.
12. Manipuri.
13. Marathi.
14. Nepali.
15. Oriya.
16. Punjabi.
17. Sanskrit.
18. Santhali.
19. Sindhi.
20. Tamil.
21. Telugu.
22. Urdu.

SECTION 60 OF CODE OF CIVIL PROCEDURE, 1908

Property liable to attachment and sale in execution of decree.

60. (1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over which, or the

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profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf :

Provided that the following properties shall not be liable to such attachment or sale, namely :—

(*a*) the necessary wearing-apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman ;

(*b*) tools of artisans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section ;

(*c*) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist or a labourer or a domestic servant and occupied by him ;

(*d*) books of account ;

(*e*) a mere right to sue for damages ;

(*f*) any right of personal service ;

(*g*) stipends and gratuities allowed to pensioners of the Government or of a local authority or of any other employer, or payable out of any service family pension fund notified in the Official Gazette by the Central Government or the State Government in this behalf, and political pension ;

(*h*) the wages of labourers and domestic servants, whether payable in money or in kind ;

(*i*) salary to the extent of the first one thousand rupees and two-thirds of the remainder in execution of any decree other than a decree for maintenance :

Provided that where any part of such portion of the salary as is liable to attachment has been under attachment, whether continuously or intermittently, for a total period of twenty-four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months, and, where such attachment has been made in execution of one and the same decree, shall, after the attachment has continued for a total period of twenty-four months, be finally exempt from attachment in execution of that decree ;

(*ia*) one-third of the salary in execution of any decree for maintenance;

(*j*) the pay and allowances of persons to whom the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957), applies ;

(*k*) all compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act, 1925 (19 of 1925), for the time being applies in so far as they are declared by the said Act not to be liable to attachment ;

(*ka*) all deposits and other sums in or derived from any fund to which the Public Provident Fund Act, 1968 (23 of 1968), for the time being applies, in so far as they are declared by the said Act as not to be liable to attachment ;

(*kb*) all moneys payable under a policy of insurance on the life of the judgment-debtor ;

(*kc*) the interest of lessee of a residential building to which the provisions of law for the time being in force relating to control of rents and accommodation apply ;

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(*l*) any allowance forming part of the emoluments of any servant of the Government or of any servant of a Railway company or local authority which the appropriate Government may by notification in the Official Gazette declare to be exempt from attachment, and any subsistence grant or allowance made to any such servant while under suspension ;

(*m*) an expectancy of succession by survivorship or other merely contingent or possible right or interest ;

(*n*) a right to future maintenance ;

(*o*) any allowance declared by any Indian law to be exempt from liability to attachment or sale in execution of a decree ; and

(*p*) where the judgment-debtor is a person liable for the payment of land-revenue; any movable property which, under any law for the time being applicable to him, is exempt from sale for the recovery of an arrear of such revenue.

Explanation I : The moneys payable in relation to the matters mentioned in clauses (*g*), (*h*), (*i*), (*ia*), (*j*), (*l*) and (*o*) are exempt from attachment or sale, whether before or after they are actually payable, and, in the case of salary, the attachable portion thereof is liable to attachment, whether before or after it is actually payable.

Explanation II : In clauses (*i*) and (*ia*), "salary" means the total monthly emoluments, excluding any allowance declared exempt from attachment under the provisions of clause (*l*), derived by a person from his employment whether on duty or on leave.

Explanation III : In clause (*l*) "appropriate Government" means—

(*i*) as respects any person in the service of the Central Government, or any servant of a Railway Administration or of a cantonment authority or of the port authority of a major port, the Central Government;

(*ii*) [*omitted;*]

(*iii*) as respects any other servant of the Government or a servant of any other local authority, the State Government.

Explanation IV : For the purposes of this proviso, "wages" includes bonus, and "labourer" includes a skilled, unskilled or semi-skilled labourer.

Explanation V : For the purposes of this proviso, the expression "agriculturist" means a person who cultivates land personally and who depends for his livelihood mainly on the income from agricultural land, whether as owner, tenant, partner or agricultural labourer.

Explanation VI : For the purposes of *Explanation V,* an agriculturist shall be deemed to cultivate land personally, if he cultivates land—

(*a*) by his own labour, or

(*b*) by the labour of any member of his family, or

(*c*) by servants or labourers on wages payable in cash or in kind (not being as a share of the produce), or both.

(1A) Notwithstanding anything contained in any other law for the time being in force, an agreement by which a person agrees to waive the benefit of any exemption under this section shall be void.

(2) Nothing in this section shall be deemed to exempt houses and other buildings (with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment) from attachment or sale in execution of decrees for rent of any such house, building, site or land.

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SECTION 360 OF CODE OF CRIMINAL PROCEDURE, 1973

Order to release on probation of good conduct or after admonition.

360. (1) When any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and in the meantime to keep the peace and be of good behaviour :

Provided that where any first offender is convicted by a Magistrate of the second class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class forwarding the accused to or taking bail for his appearance before, such Magistrate, who shall dispose of the case in the manner provided by sub-section (2).

(2) Where proceedings are submitted to a Magistrate of the first class as provided by sub-section (1), such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

(3) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian Penal Code (45 of 1860) punishable with not more than two years' imprisonment or any offence punishable with fine only and no previous conviction is proved against him, the Court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition.

(4) An order under this section may be made by any Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) When an order has been made under this section in respect of any offender, the High Court or Court of Session may, on appeal when there is a right of appeal to such Court, or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law :

Provided that the High Court or Court of Session shall not under this sub-section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

(6) The provisions of sections 121, 124 and 373 shall, so far as may be apply in the case of sureties offered in pursuance of the provisions of this section.

(7) The Court, before directing the release of an offender under sub-section (1) shall be satisfied that an offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the observance of the conditions.

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(8) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

(9) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence and such Court may after hearing the case, pass sentence.

(10) Nothing in this section shall affect the provisions of the Probation of Offenders Act, 1958 (20 of 1958), or the Children Act, 1960 (60 of 1960), or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders.

SECTION 50 OF CUSTOMS ACT, 1962

Entry of goods for exportation.

50. (1) The exporter of any goods shall make entry thereof by presenting to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export in the prescribed form.

(2) The exporter of any goods, while presenting a shipping bill or bill of export, shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.

SECTION 2(1)(a), (e) AND (l) OF DEPOSITORIES ACT, 1996

Definitions.

2. (1) In this Act, unless the context otherwise requires,—

(*a*) "beneficial owner" means a person whose name is recorded as such with a depository;

** ** **

(*e*) "depository" means a company formed and registered under the Companies Act, 1956 (1 of 1956), and which has been granted a certificate of registration under sub-section (1A) of section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);

** ** **

(*l*) "security" means such security as may be specified by the Board;

** ** **

SECTION 2(d) OF DISASTER MANAGEMENT ACT, 2005

Definitions.

2. In this Act, unless the context otherwise requires,—

** ** **

(*d*) "disaster" means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man made causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area;

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SECTION 1 OF EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952

Short title, extent and application.

1. ** ** **

(3) Subject to the provisions contained in section 16, it applies—

(*a*) to every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed, and

(*b*) to any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf :

Provided that the Central Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than twenty as may be specified in the notification.

(4) Notwithstanding anything contained in sub-section (3) of this section or sub-section (1) of section 16, where it appears to the Central Provident Fund Commissioner, whether on an application made to him in this behalf or otherwise, that the employer and the majority of employees in relation to any establishment have agreed that the provisions of this Act should be made applicable to the establishment, he may, by notification in the Official Gazette, apply the provisions of this Act to that establishment on and from the date of such agreement or from any subsequent date specified in such agreement.

SECTION 2 OF FOREIGN EXCHANGE MANAGEMENT ACT, 1999

Definitions.

2. In this Act, unless the context otherwise requires,—

** ** **

(*c*) "authorised person" means an authorised dealer, money changer, offshore banking unit or any other person for the time being authorised under sub-section (1) of section 10 to deal in foreign exchange or foreign securities;

** ** **

(*h*) "currency" includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, travellers cheques, letters of credit, bills of exchange and promissory notes, credit cards or such other similar instruments, as may be notified by the Reserve Bank;

** ** **

(*m*) "foreign currency" means any currency other than Indian currency;

(*n*) "foreign exchange" means foreign currency and includes,—

(*i*) deposits, credits and balances payable in any foreign currency,

(*ii*) drafts, travellers cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency,

(*iii*) drafts, travellers cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency;

** ** **

(*q*) "Indian currency" means currency which is expressed or drawn in Indian rupees but does not include special bank notes and special one rupee notes issued under section 28A of the Reserve Bank of India Act, 1934 (2 of 1934);

** ** **

(*v*) "person resident in India" means—

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(*i*) a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include—

(*A*) a person who has gone out of India or who stays outside India, in either case—

(*a*) for or on taking up employment outside India, or

(*b*) for carrying on outside India a business or vocation outside India, or

(*c*) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

(*B*) a person who has come to or stays in India, in either case, otherwise than—

(*a*) for or on taking up employment in India, or

(*b*) for carrying on in India a business or vocation in India, or

(*c*) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

(*ii*) any person or body corporate registered or incorporated in India,

(*iii*) an office, branch or agency in India owned or controlled by a person resident outside India,

(*iv*) an office, branch or agency outside India owned or controlled by a person resident in India;

(*w*) "person resident outside India" means a person who is not resident in India;

SECTION 2 OF FORWARD CONTRACTS (REGULATION) ACT, 1952

Definitions.

2. In this Act, unless the context otherwise requires,—

(*a*) "association" means any body of individuals, whether incorporated or not, constituted for the purpose of regulating and controlling the business of the sale or purchase of any goods;

(*b*) "Commission" means the Forward Markets Commission established under section 3;

(*c*) "forward contract" means a contract for the delivery of goods and which is not a ready delivery contract;

(*d*) "goods" means every kind of movable property other than actionable claims, money and securities;

(*e*) "Government security" means a Government security as defined in the Public Debt Act, 1944 (18 of 1944);

(*f*) "non-transferable specific delivery contract" means a specific delivery contract, the rights or liabilities under which or under any delivery order, railway receipt, bill of lading, warehouse receipt or any other document of title relating thereto are not transferable;

(*g*) "option in goods" means an agreement, by whatever name called, for the purchase or sale of a right to buy or sell, or a right to buy and sell, goods in future, and includes a *teji, a mandi, a teji-mandi, a galli,* a put, a call or a put and call in goods;

(*h*) "prescribed" means prescribed by rules made under this Act;

(*i*) "ready delivery contract" means a contract which provides for the delivery of goods and the payment of a price therefor, either immediately or within such period not exceeding eleven days after the date of the contract and subject to

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such conditions as the Central Government may, by notification in the Official Gazette, specify in respect of any goods, the period under such contract not being capable of extension by the mutual consent of the parties thereto or otherwise:

Provided that where any such contract is performed either wholly or in part,—

(*1*) by tendering of the documents of title to the goods covered by the contract by any party thereto (not being a commission agent or a bank) who has acquired ownership of the said documents by purchase, exchange or otherwise, to any other person (including a commission agent but not including a bank); or

(*2*) by the realisation of any sum of money, being the difference between the contract rate and the settlement rate or clearing rate or the rate of any offsetting contract; or

(*3*) by any other means whatsoever,

and as a result of which the actual tendering of the goods covered by the contract or the payment of the full price therefor is dispensed with, then, such contract shall not be deemed to be a ready delivery contract.

Explanation.—For the purposes of this clause,—

(*i*) "bank" includes any banking company as defined in the Banking Regulation Act, 1949 (10 of 1949), a co-operative bank as defined in the Reserve Bank of India Act, 1934 (2 of 1934), the State Bank of India and any of its subsidiaries and any corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970);

(*ii*) "commission agent" means a person who, in the ordinary course of business, makes contract for the sale or purchase of goods for others for a remuneration (whether known as commission or otherwise) which is determined in the contract itself or determinable from the terms of the contract, in either case, only with reference to the quantity of goods or to the price therefor as stipulated in the contract;

(*j*) "recognised association" means an association to which recognition for the time being has been granted by the Central Government under section 6 in respect of goods or classes of goods specified in such recognition;

(*jj*) "registered association" means an association to which for the time being a certificate of registration has been granted by the Commission under section 14B;

(*k*) "rules", with reference to the rules relating in general to the constitution and management of an association, includes in the case of an incorporated association its memorandum and articles of association;

(*l*) "securities" includes shares, scrips, stocks, bonds, debentures, debenture-stocks, or other marketable securities of a like nature in or of any incorporated company or other body corporate and also Government securities;

(*m*) "specific delivery contract" means a forward contract which provides for the actual delivery of specific qualities or types of goods during a specified future period at a price fixed thereby or to be fixed in the manner thereby agreed and in which the names of both the buyer and the seller are mentioned;

(*n*) "transferable specific delivery contract" means a specific delivery contract which is not a non-transferable specific delivery contract and which is subject to such conditions relating to its transferability as the Central Government may, by notification in the Official Gazette, specify in this behalf.

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CHAPTER IV OF HIGH COURT JUDGES (SALARIES & CONDITIONS OF SERVICE) ACT, 1954

Travelling allowances to a Judge.

22. Every Judge shall receive such reasonable allowances to reimburse him for expenses incurred in travelling on duty within the territory of India and shall be afforded such reasonable facilities in connection with travelling as may, from time to time, be prescribed.

Facility of rent-free houses.

22A. (1) Every Judge shall be entitled without payment of rent to the use of an official residence in accordance with such rules as may, from time to time, be made in this behalf.

(2) Where a Judge does not avail himself of the use of an official residence, he may be paid every month an allowance of ten thousand rupees.

Conveyance facilities.

22B. Every Judge shall be entitled to a staff car and two hundred litres of fuel every month or the actual consumption of fuel per month, whichever is less.

Sumptuary allowance.

22C. The Chief Justice and each of the other Judges of every High Court shall be entitled to a sumptuary allowance of three thousand rupees per month and two thousand rupees per month, respectively.

Exemption from liability to pay income-tax on certain perquisites received by a Judge.

22D. Notwithstanding anything contained in the Income-tax Act, 1961 (43 of 1961),—

(*a*) the value of rent-free official residence provided to a Judge under sub-section (1) of section 22A or the allowance paid to him under sub-section (2) of that section;

(*b*) the value of the conveyance facilities provided to a Judge under section 22B;

(*c*) the sumptuary allowance provided to a Judge under section 22C;

(*d*) the value of leave travel concession provided to a Judge and members of his family,

shall not be included in the computation of his income chargeable under the head "Salaries" under section 15 of the Income-tax Act, 1961.

SECTION 21 OF INDIAN PENAL CODE, 1860

"Public servant".

21. The words "public servant" denote a person falling under any of the descriptions hereinafter following, namely :—

** ** **

Second - Every Commissioned Officer in the Military, Naval or Air Forces of India;

Third - Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

Fourth - Every officer of a Court of Justice (including a liquidator, receiver or Commissioner) whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorised by a Court of Justice to perform any of such duties;

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Fifth - Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant;

Sixth - Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;

Seventh - Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

Eighth - Every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

Ninth - Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue-process, or to investigate, or to report, on any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government;

Tenth - Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

Eleventh - Every person who holds any office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

Twelfth - Every person—

(*a*) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;

(*b*) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956).

Illustration

A Municipal Commissioner is a public servant.

Explanation 1.—Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

Explanation 2.—Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

Explanation 3.—The word "election" denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under, any law prescribed as by election.

SECTION 2 OF INDUSTRIAL DISPUTES ACT, 1947

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

** ** **

(*g*) "employer" means—

(*i*) in relation to an industry carried on by or under the authority of any department of the Central Government or a State Government, the author-

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ity prescribed in this behalf, or where no authority is prescribed, the head of the department;

(*ii*) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;

** ** **

(*s*) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

(*i*) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(*ii*) who is employed in the police service or as an officer or other employee of a prison; or

(*iii*) who is employed mainly in a managerial or administrative capacity; or

(*iv*) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

SECTION 11B OF INDUSTRIES (DEVELOPMENT AND REGULATION) ACT, 1951

Power of Central Government to specify the requirements which shall be complied with by the small scale industrial undertakings.

11B. (1) The Central Government may, with a view to ascertaining which ancillary and small scale industrial undertakings need supportive measures, exemptions or other favourable treatment under this Act to enable them to maintain their viability and strength so as to be effective in :

(*a*) promoting in a harmonious manner the industrial economy of the country and easing the problem of unemployment, and

(*b*) securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good,

specify, having regard to the factors mentioned in sub-section (2), by notified order, the requirements which shall be complied with by an industrial undertaking to enable it to be regarded, for the purposes of this Act, as an ancillary, or a small scale industrial undertaking and different requirements, may be so specified for different purposes or with respect to industrial undertakings engaged in the manufacture or production of different articles :

Provided that no industrial undertaking shall be regarded as an ancillary industrial undertaking unless it is, or is proposed to be, engaged in :—

(*i*) the manufacture of parts, components, sub-assemblies, toolings or intermediates; or

(*ii*) rendering of services, or supplying or rendering, not more than fifty per cent of its production or its total services, as the case may be, to other units for production of other articles.

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(2) The factors referred to in sub-section (1) are the following, namely :—

(*a*) the investment by the industrial undertaking in :—

(*i*) plant and machinery, or

(*ii*) land, buildings, plant and machinery;

(*b*) the nature of ownership of the industrial undertaking;

(*c*) the smallness of the number of workers employed in the industrial undertaking;

(*d*) the nature, cost and quality of the product of the industrial undertaking;

(*e*) foreign exchange, if any, required for the import of any plant or machinery by the industrial undertaking; and

(*f*) such other relevant factors as may be prescribed.

(3) A copy of every notified order proposed to be made under sub-section (1) shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the proposed notified order or both Houses agree in making any modification in the proposed notified order, the notified order shall not be made, or as the case may be, shall be made only in such modified form as may be agreed upon by both the Houses.

(4) Notwithstanding anything contained in sub-section (1), an industrial undertaking which, according to the law for the time being in force, fell, immediately before the commencement of the Industries (Development and Regulation) Amendment Act, 1984, under the definition of an ancillary, or small scale industrial undertaking, shall, after such commencement, continue to be regarded as an ancillary, or small scale industrial undertaking for the purposes of this Act until the definition aforesaid is altered or superseded by any notified order made under sub-section (1).

SECTION 14 OF INDUSTRIES (DEVELOPMENT AND REGULATION) ACT, 1951

Procedure for the grant of licence or permission.

14. Before granting any licence or permission under section 11, section 11A, section 13 or section 29B, the Central Government may require such officer or authority as it may appoint for the purpose, to make a full and complete investigations in respect of applications received in this behalf, and report to it the result of such investigation and in making any such investigation, the officer or authority shall follow such procedure as may be prescribed.

SECTION 2(1)(t) AND EXPLANATION TO SECTION 66A OF INFORMATION TECHNOLOGY ACT, 2000

Definitions.

2. (1) In this Act, unless the context otherwise requires,—

** ** **

(*t*) "electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche;

** ** **

Punishment for sending offensive messages through communication service, etc.

66A. ** ** **

Explanation.—For the purposes of this section, terms "electronic mail" and "electronic mail message" means a message or information created or transmitted or received on a

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computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message.

SECTION 2 OF INSURANCE ACT, 1938

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

** ** **

(*5B*) "Controller of Insurance" means the officer appointed by the Central Government under section 2B to exercise all the powers, discharge the functions and performs the duties of the Authority under this Act or the Life Insurance Corporation Act, 1956 (31 of 1956) or the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972) or the Insurance Regulatory and Development Authority Act, 1999;

** ** **

(*7A*) "Indian insurance company" means any insurer being a company—

(*a*) which is formed and registered under the Companies Act, 1956 (1 of 1956);

(*b*) in which the aggregate holdings of equity shares by a foreign company, either by itself or through its subsidiary companies or its nominees, do not exceed twenty-six per cent paid-up equity capital of such Indian insurance company;

(*c*) whose sole purpose is to carry on life insurance business or general insurance business or re-insurance business.

Explanation—For the purposes of this clause, the expression "foreign company" shall have the meaning assigned to it under clause (*23A*) of section 2 of the Income-tax Act, 1961 (43 of 1961);

** ** **

(*9*) "insurer" means—

(*a*) any individual or unincorporated body of individuals or body corporate incorporated under the law of any country other than India, carrying on insurance business not being a person specified in sub-clause (*c*) of this clause which—

(*i*) carries on that business in India, or

(*ii*) has his or its principal place of business or is domiciled in India, or

(*iii*) with the object of obtaining insurance business, employs a representative, or maintains a place of business, in India;

(*b*) any body corporate [not being a person specified in sub-clause (*c*) of this clause] carrying on the business of insurance, which is a body corporate incorporated under any law for the time being in force in India; or stands to any such body corporate in the relation of a subsidiary company within the meaning of the Indian Companies Act, 1913 (7 of 1913), as defined by sub-section (2) of section 2 of that Act, and

(*c*) any person who in India has a standing contract with underwriters who are members of the Society of Llyod's whereby such person is authorised within the terms of such contract to issue protection notes, cover notes, or other documents granting insurance cover to others on behalf of the underwriters,

but does not include a principal agent, chief agent, special agent, or an insurance agent or a provident society as defined in Part III;

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SECTION 43 OF LIFE INSURANCE CORPORATION ACT, 1956

Application of the Insurance Act.

43. (1) The following sections of the Insurance Act shall, so far as may be, apply to the Corporation as they apply to any other insurer, namely :—

Sections 2, 2B, 3, 18, 26, 33, 38, 39, 41, 45, 46, 47A, 50, 51, 52, 110A, 110B, 110C, 119, 121, 122 and 123.

(2) The Central Government shall as soon as may be after the commencement of this Act, by notification in the Official Gazette, direct that the following sections of the Insurance Act shall apply to the Corporation subject to such conditions and modifications as may be specified in the notification, namely :—

Sections 2D, 10, 11, 13, 14, 15, 20, 21, 22, 23, 25, 27A, 28A, 35, 36, 37, 40, 40A, 40B, 43, 44, 102 to 106, 107 to 110, 111, 113, 114 and 116A.

(2A) Section 42 of the Insurance Act shall have effect in relation to the issue to any individual of a license to act as an agent for the purpose of soliciting or procuring life insurance business for the Corporation as if the reference to an officer authorised by the Authority in this behalf in sub-section (1) thereof included a reference to an officer of the Corporation authorised by the Authority in this behalf.

(3) The Central Government may, by notification in the Official Gazette, direct that all or any of the provisions of the Insurance Act other than those specified in sub-section (1) or sub-section (2), shall apply to the Corporation subject to such conditions and modifications as may be specified in the notification.

(4) Every notification issued under sub-section (2) or sub-section (3) shall be laid for not less than thirty days before both Houses of Parliament as soon as possible after it is issued, and shall be subject to such modifications as Parliament may make during the session in which it is so laid or the session immediately following.

(5) Save as provided in this section, nothing contained in the Insurance Act shall apply to the Corporation.

SECTION 2 OF LIMITED LIABILITY PARTNERSHIP ACT, 2008

Definitions.

2. (1) In this Act, unless the context otherwise requires,—

** ** **

(*d*) "body corporate" means a company as defined in section 3 of the Companies Act, 1956 (1 of 1956) and includes—

(*i*) a limited liability partnership registered under this Act;

(*ii*) a limited liability partnership incorporated outside India; and

(*iii*) a company incorporated outside India,

but does not include—

(*i*) a corporation sole;

(*ii*) a co-operative society registered under any law for the time being in force; and

(*iii*) any other body corporate (not being a company as defined in section 3 of the Companies Act, 1956 (1 of 1956) or a limited liability partnership as defined in this Act), which the Central Government may, by notification in the Official Gazette, specify in this behalf;

(*e*) "business" includes every trade, profession, service and occupation;

** ** **

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(*j*) "designated partner" means any partner designated as such pursuant to section 7;

** ** **

(*l*) "financial year", in relation to a limited liability partnerships, means the period from the 1st day of April of a year to the 31st day of March of the following year :

Provided that in the case of a limited liability partnership incorporated after the 30th day of September of a year, the financial year may end on the 31st day of March of the year next following that year;

(*m*) "foreign limited liability partnership" means a limited liability partnership formed, incorporated or registered outside India which establishes a place of business within India;

(*n*) "limited liability partnership" means a partnership formed and registered under this Act;

(*o*) "limited liability partnership agreement" means any written agreement between the partners of the limited liability partnership or between the limited liability partnership and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to that limited liability partnership;

** ** **

(*q*) "partner", in relation to a limited liability partnership, means any person who becomes a partner in the limited liability partnership in accordance with the limited liability partnership agreement;

** ** **

SECTION 3(12) OF MERCHANT SHIPPING ACT, 1958

Definitions.

3. In this Act, unless the context otherwise requires,—

** ** **

(*12*) "fishing vessel" means a ship fitted with mechanical means of propulsion which is exclusively engaged in sea fishing for profit;

SECTION 2 OF NATIONAL TRUST FOR WELFARE OF PERSONS WITH AUTISM, CEREBRAL PALSY, MENTAL RETARDATION AND MULTIPLE DISABILITIES ACT, 1999

Definitions.

2. In this Act, unless the context otherwise requires,—

(*a*) "autism" means a condition of uneven skill development primarily affecting the communication and social abilities of a person, marked by repetitive and ritualistic behaviour;

** ** **

(*c*) "cerebral palsy" means a group of non-progressive conditions of a person characterised by abnormal motor control posture resulting from brain insult or injuries occurring in the pre-natal, perinatal or infant period of development;

** ** **

(*g*) "mental retardation" means a condition of arrested or incomplete development of mind of a person which is specially characterised by sub-normality of intelligence;

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(*h*) "multiple disabilities" means a combination of two or more disabilities as defined in clause (*i*) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996);

** ** **

(*j*) "person with disability" means a person suffering from any of the conditions relating to autism, cerebral palsy, mental retardation or a combination of any two or more of such conditions and includes a person suffering from severe multiple disability;

** ** **

(*o*) "severe disability" means disability with eighty per cent or more of one or more of multiple disabilities;

** ** **

SECTION 2 OF PATENTS ACT, 1970

Definitions and interpretation

2. (1) ** ** **

(*b*) "Controller" means the Controller General of Patents, Designs and Trade Marks referred to in section 73;

** ** **

(*o*) "patented article" and "patented process" mean respectively an article or process in respect of which a patent is in force;

** ** **

(*q*) "patent of addition" means a patent granted in accordance with section 54;

** ** **

(*y*) "true and first inventor" does not include either the first importer of an invention into India, or a person to whom an invention is first communicated from outside India.

SECTION 4 OF PAYMENT OF GRATUITY ACT, 1972

Payment of gratuity.

4. (1) ** ** **

(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned :

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account :

Provided further that in the case of an employee who is employed in a seasonal establishment and who is not so employed throughout the year, the employer shall pay the gratuity at the rate of seven days' wages for each season.

Explanation.—In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.

(3) The amount of gratuity payable to an employee shall not exceed three lakhs and fifty thousand rupees.

** ** **

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SECTION 2 OF PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS & FULL PARTICIPATION) ACT, 1995

Definitions

2. ** ** **

(*a*) "appropriate Government" means,—

(*i*) in relation to the Central Government or any establishment wholly or substantially financed by that Government, or a Cantonment Board constituted under the Cantonment Act, 1924 (2 of 1924), the Central Government;

(*ii*) in relation to a State Government or any establishment wholly or substantially financed by that Government, or any local authority, other than a Cantonment Board, the State Government;

(*iii*) in respect of the Central Co-ordination Committee and the Central Executive Committee, the Central Government;

(*iv*) in respect of the State Co-ordination Committee and the State Executive Committee, the State Government;

(*b*) "blindness" refers to a condition where a person suffers from any of the following conditions, namely :—

(*i*) total absence of sight; or

(*ii*) visual acuity not exceeding 6/60 or 20/200 (snellen) in the better eye with correcting lenses; or

(*iii*) limitation of the field of vision subtending an angle of 20 degree or worse;

** ** **

(*i*) "disability" means—

(*i*) blindness;

(*ii*) low vision;

(*iii*) leprosy-cured;

(*iv*) hearing impairment;

(*v*) locomotor disability;

(*vi*) mental retardation;

(*vii*) mental illness;

** ** **

(*l*) "hearing impairment" means loss of sixty decibels or more in the better ear in the conversational range of frequencies;

** ** **

(*n*) "leprosy-cured person" means any person who has been cured of leprosy but is suffering from—

(*i*) loss of sensation in hands or feet as well as loss of sensation and paresis in the eye and eye-lid but with no manifest deformity;

(*ii*) manifest deformity and paresis but having sufficient mobility in their hands and feet to enable them to engage in normal economic activity;

(*iii*) extreme physical deformity as well as advanced age which prevents him from undertaking any gainful occupation,

and the expression "leprosy-cured" shall be construed accordingly;

(*o*) "locomotor disability" means disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy;

(*p*) "medical authority" means any hospital or institution specified for the purposes of this Act by notification by the appropriate Government;

(*q*) "mental illness" means any mental disorder other than mental retardation;

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(*r*) "mental retardation" means a condition of arrested or incomplete development of mind of a person which is specially characterised by subnormality of intelligence;

** ** **

(*t*) "person with disability" means a person suffering from not less than forty per cent of any disability as certified by a medical authority;

(*u*) "person with low vision" means a person with impairment of visual functioning even after treatment or standard refractive correction but who uses or is potentially capable of using vision for the planning or execution of a task with appropriate assistive device;

** ** **

(*w*) "rehabilitation" refers to a process aimed at enabling persons with disabilities to reach and maintain their optimal physical, sensory, intellectual, psychiatric or social functional levels;

SECTION 56 OF PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS & FULL PARTICIPATION) ACT, 1995

Institutions for persons with severe disabilities.

56. (1) The appropriate Government may establish and maintain institutions for persons with severe disabilities at such places as it thinks fit.

(2) Where, the appropriate Government is of opinion that any institution other than an institution, established under sub-section (1), is fit for the rehabilitation of the persons with severe disabilities, the Government may recognise such institution as an institution for persons with severe disabilities for the purposes of this Act :

Provided that no institution shall be recognised under this section unless such institution has complied with the requirements of this Act and the rules made thereunder.

(3) Every institution established under sub-section (1) shall be maintained in such manner and satisfy such conditions as may be prescribed by the appropriate Government.

(4) For the purposes of this section "person with severe disability" means a person with eighty per cent or more of one or more disabilities.

SECTION 2(e) OF RESERVE BANK OF INDIA ACT, 1934

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

** ** **

(*e*) "scheduled bank" means a bank included in the Second Schedule ;

REGULATION 2(p) OF SECURITIES AND EXCHANGE BOARD OF INDIA (MUTUAL FUNDS) REGULATIONS, 1996

Definitions.

2. In these regulations, unless the context otherwise requires:—

** ** **

(*p*) "money market mutual fund" means a scheme of a mutual fund which has been set up with the objective of investing exclusively in money market instruments;

SECTION 2 OF SECURITIES CONTRACTS (REGULATION) ACT, 1956

Definitions.

2. In this Act, unless the context otherwise requires,—

(*a*) "contract" means a contract for or relating to the purchase or sale of securities;

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(*aa*) "corporatisation" means the succession of a recognised stock exchange, being a body of individuals or a society registered under the Societies Registration Act, 1860 (21 of 1860), by another stock exchange, being a company incorporated for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities carried on by such individuals or society;

(*ab*) "demutualisation" means the segregation of ownership and management from the trading rights of the members of a recognised stock exchange in accordance with a scheme approved by the Securities and Exchange Board of India;

(*ac*) "derivative" includes—

(*A*) a security derived from a debt instrument, share, loan, whether secured or unsecured, risk instrument or contract for differences or any other form of security;

(*B*) a contract which derives its value from the prices, or index of prices, of underlying securities;

(*b*) "Government security" means a security created and issued, whether before or after the commencement of this Act, by the Central Government or a State Government for the purpose of raising a public loan and having one of the forms specified in clause (*2*) of section 2 of the Public Debt Act, 1944 (18 of 1944);

(*c*) "member" means a member of a recognised stock exchange;

(*d*) "option in securities" means a contract for the purchase or sale of a right to buy or sell, or a right to buy and sell, securities in future, and includes a *teji, a mandi, a teji mandi, a galli,* a put, a call or a put and call in securities;

(*e*) "prescribed" means prescribed by rules made under this Act;

(*f*) "recognised stock exchange" means a stock exchange which is for the time being recognised by the Central Government under section 4;

(*g*) "rules", with reference to the rules relating in general to the constitution and management of a stock exchange, includes, in the case of a stock exchange which is an incorporated association, its memorandum and articles of association;

(*ga*) "scheme" means a scheme for corporatisation or demutualisation of a recognised stock exchange which may provide for—

(*i*) the issue of shares for a lawful consideration and provision of trading rights in lieu of membership cards of members of a recognised stock exchange;

(*ii*) the restrictions on voting rights;

(*iii*) the transfer of property, business, assets, rights, liabilities, recognitions, contracts of the recognised stock exchange, legal proceedings by, or against, the recognised stock exchange, whether in the name of the recognised stock exchange or any trustee or otherwise and any permission given to, or by, the recognised stock exchange;

(*iv*) the transfer of employees of a recognised stock exchange to another recognised stock exchange;

(*v*) any other matter required for the purpose of, or in connection with, the corporatisation or demutualisation, as the case may be, of the recognised stock exchange;

(*gb*) "Securities Appellate Tribunal" means a Securities Appellate Tribunal established under sub-section (1) of section 15K of the Securities and Exchange Board of India Act, 1992 (15 of 1992);

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(*h*) "securities" include—

(*i*) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;

(*ia*) derivative;

(*ib*) units or any other instrument issued by any collective investment scheme to the investors in such schemes;

(*ic*) security receipt as defined in clause (*zg*) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(*id*) units or any other such instrument issued to the investors under any mutual fund scheme;

(*ie*) any certificate or instrument (by whatever name called), issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case may be;

(*ii*) Government securities;

(*iia*) such other instruments as may be declared by the Central Government to be securities; and

(*iii*) rights or interest in securities;

(*i*) "spot delivery contract" means a contract which provides for,—

(*a*) actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;

(*b*) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository;

(*j*) "stock exchange" means—

(*a*) any body of individuals, whether incorporated or not, constituted before corporatisation and demutualisation under sections 4A and 4B, or

(*b*) a body corporate incorporated under the Companies Act, 1956 (1 of 1956) whether under a scheme of corporatisation and demutualisation or otherwise,

for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities.

SECTION 3(1)(ga) OF SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS) ACT, 1985

Definitions.

3. (1) In this Act, unless the context otherwise requires,—

** ** **

(*ga*) "net worth" means the sum total of the paid-up capital and free reserves.

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Explanation.—For the purposes of this clause, "free reserves" means all reserves credited out of the profits and share premium account but does not include reserves credited out of re-evaluation of assets, write back of depreciation provisions and amalgamation.

** ** **

SECTION 17 OF SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS) ACT, 1985

Powers of Board to make suitable order on the completion of inquiry.

17. (1) If after making an inquiry under section 16, the Board is satisfied that a company has become a sick industrial company, the Board shall, after considering all the relevant facts and circumstances of the case, decide, as soon as may be by order in writing, whether it is practicable for the company to make its net worth exceed the accumulated losses within a reasonable time.

(2) If the Board decides under sub-section (1) that it is practicable for a sick industrial company to make its net worth exceed the accumulated losses within a reasonable time, the Board, shall, by order in writing and subject to such restrictions or conditions as may be specified in the order, give such time to the company as it may deem fit to make its net worth exceed the accumulated losses.

(3) If the Board decides under sub-section (1) that it is not practicable for a sick industrial company to make its net worth exceed the accumulated losses within a reasonable time and that it is necessary or expedient in the public interest to adopt all or any of the measures specified in section 18 in relation to the said company it may, as soon as may be, by order in writing, direct any operating agency specified in the order to prepare, having regard to such guidelines as may be specified in the order, a scheme providing for such measures in relation to such company.

(4) The Board may,—

(*a*) if any of the restrictions or conditions specified in an order made under sub-section (2) are not complied with by the company concerned, or if the company fails to revive in pursuance of the said order, review such order on a reference in that behalf from any agency referred to in sub-section (2) of section 15 or on its own motion and pass a fresh order in respect of such company under sub-section (3);

(*b*) if the operating agency specified in an order made under sub-section (3) makes a submission in that behalf, review such order and modify the order in such manner as it may deem appropriate.

SECTION 18 OF SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS) ACT, 1985

Preparation and sanction of schemes.

18. (1) Where an order is made under sub-section (3) of section 17 in relation to any sick industrial company, the operating agency specified in the order shall prepare, as expeditiously as possible and ordinarily within a period of ninety days from the date of such order, a scheme with respect to such company providing for any one or more of the following measures, namely :—

(*a*) the financial reconstruction of the sick industrial company;

(*b*) the proper management of the sick industrial company by change in, or take over of, the management of the sick industrial company;

(*c*) the amalgamation of—

(*i*) the sick industrial company with any other company, or

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(*ii*) any other company with the sick industrial company;

(hereafter in this section, in the case of sub-clause (*i*), the other company, and in the case of sub-clause (*ii*), the sick industrial company, referred to as "transferee company");

(*d*) the sale or lease of a part or whole of any industrial undertaking of the sick industrial company;

(*da*) the rationalisation of managerial personnel, supervisory staff and workmen in accordance with law;

(*e*) such other preventive, ameliorative and remedial measures as may be appropriate;

(*f*) such incidental, consequential or supplemental measures as may be necessary or expedient in connection with or for the purposes of the measures specified in clauses (*a*) to (*e*).

(2) The scheme referred to in sub-section (1) may provide for any one or more of the following, namely :—

(*a*) the constitution, name and registered office, the capital, assets, powers, rights, interests, authorities and privileges, duties and obligations of the sick industrial company or, as the case may be, of the transferee company;

(*b*) the transfer to the transferee company of the business, properties, assets and liabilities of the sick industrial company on such terms and conditions as may be specified in the scheme;

(*c*) any change in the Board of Directors, or the appointment of a new Board of Directors, of the sick industrial company and the authority by whom, the manner in which and the other terms and conditions on which, such change or appointment shall be made and in the case of appointment of a new Board of Directors or of any director, the period for which such appointment shall be made;

(*d*) the alteration of the memorandum or articles of association of the sick industrial company or, as the case may be, of the transferee company for the purpose of altering the capital structure thereof or for such other purposes as may be necessary to give effect to the reconstruction or amalgamation;

(*e*) the continuation by, or against, the sick industrial company or, as the case may be, the transferee company of any action or other legal proceeding pending against the sick industrial company immediately before the date of the order made under sub-section (3) of section 17;

(*f*) the reduction of the interest or rights which the shareholders have in the sick industrial company to such extent as the Board considers necessary in the interests of the reconstruction, revival or rehabilitation of the sick industrial company or for the maintenance of the business of the sick industrial company;

(*g*) the allotment to the shareholders of the sick industrial company of shares in the sick industrial company or, as the case may be, in the transferee company and where any shareholder claims payment in cash and not allotment of shares, or where it is not possible to allot shares to any shareholder, the payment of cash to those shareholders in full satisfaction of their claims—

(*i*) in respect of their interest in shares in the sick industrial company before its reconstruction or amalgamation; or

(*ii*) where such interest has been reduced under clause (*f*) in respect of their interest in shares as so reduced;

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(*h*) any other terms and conditions for the reconstruction or amalgamation of the sick industrial company;

(*i*) sale of the industrial undertaking of the sick industrial company free from all encumbrances and all liabilities of the company or other such encumbrances and liabilities as may be specified, to any person, including a co-operative society formed by the employees of such undertaking and fixing of reserve price for such sale;

(*j*) lease of the industrial undertaking of the sick industrial company to any person, including a co-operative society formed by the employees of such undertaking;

(*k*) method of sale of the assets of the industrial undertaking of the sick industrial company such as by public auction or by inviting tenders or in any other manner as may be specified and for the manner of publicity therefor;

(*l*) transfer or issue of the shares in the sick industrial company at the face value or at the intrinsic value which may be at discount value or such other value as may be specified to any industrial company or any person including the executives and employees of the sick industrial company;

(*m*) such incidental, consequential and supplemental matters as may be necessary to secure that the reconstruction or amalgamation or other measures mentioned in the scheme are fully and effectively carried out.

(3) (*a*) The scheme prepared by the operating agency shall be examined by the Board and a copy of the scheme with modification, if any, made by the Board shall be sent, in draft, to the sick industrial company and the operating agency and in the case of amalgamation, also to any other company concerned, and the Board shall publish or cause to be published the draft scheme in brief in such daily newspapers as the Board may consider necessary, for suggestions and objections, if any, within such period as the Board may specify.

(*b*) The Board may make such modifications, if any, in the draft scheme as it may consider necessary in the light of the suggestions and objections received from the sick industrial company and the operating agency and also from the transferee company and any other company concerned in the amalgamation and from any shareholder or any creditors or employees of such companies :

Provided that where the scheme relates to amalgamation, the said scheme shall be laid before the company other than the sick industrial company in the general meeting for the approval of the scheme by its shareholders and no such scheme shall be proceeded with unless it has been approved, with or without modification, by a special resolution passed by the shareholders of the transferee company.

(4) The scheme shall thereafter be sanctioned, as soon as may be, by the board (hereinafter referred to as the "sanctioned scheme") and shall come into force on such date as the Board may specify in this behalf :

Provided that different dates may be specified for different provisions of the scheme.

(5) The Board may on the recommendations of the operating agency or otherwise, review any sanctioned scheme and make such modifications as it may deem fit or may by order in writing direct any operating agency specified in the order, having regard to such guidelines as may be specified in the order, to prepare a fresh scheme providing for such measures as the operating agency may consider necessary.

(6) When a fresh scheme is prepared under sub-section (5), the provisions of sub-sections (3) and (4) shall apply in relation thereto as they apply to in relation to a scheme prepared under sub-section (1).

(6A) Where a sanctioned scheme provides for the transfer of any property or liability of the sick industrial company in favour of any other company or person or where such scheme provides for the transfer of any property or liability of any other company or

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person in favour of the sick industrial company, then, by virtue of, and to the extent provided in, the scheme, on and from the date of coming into operation of the sanctioned scheme or any provision thereof, the property shall be transferred to, and vest in, and the liability shall become the liability of, such other company or person or, as the case may be, the sick industrial company.

(7) The sanction accorded by the Board under sub-section (4) shall be conclusive evidence that all the requirements of this scheme relating to the reconstruction or amalgamation, or any other measure specified therein have been complied with and a copy of the sanctioned scheme certified in writing by an officer of the Board to be a true copy thereof, shall, in all legal proceedings (whether in appeal or otherwise) be admitted as evidence.

(8) On and from the date of the coming into operation of the sanctioned scheme or any provision thereof, the scheme or such provision shall be binding on the sick industrial company and the transferee company or, as the case may be, the other company and also on the shareholders, creditors and guarantors and employees of the said companies.

(9) If any difficulty arises in giving effect to the provisions of the sanctioned scheme, the Board may, on the recommendation of the operating agency or otherwise, by order do anything, not inconsistent with such provisions, which appears to it to be necessary or expedient for the purpose of removing the difficulty.

(10) The Board may, if it deems necessary or expedient so to do, by order in writing, direct any operating agency specified in the order to implement a sanctioned scheme with such terms and conditions and in relation to such sick industrial company as may be specified in the order.

(11) Where the whole of the undertaking of the sick industrial company is sold under a sanctioned scheme, the Board may distribute the sale proceeds to the parties entitled thereto in accordance with the provisions of section 529A and other provisions of the Companies Act, 1956 (1 of 1956).

(12) The Board may monitor periodically the implementation of the sanctioned scheme.

SECTION 2 OF SPECIAL ECONOMIC ZONES ACT, 2005

Definitions

2. In this Act, unless the context otherwise requires,—

** ** **

(*g*) "Developer" means a person who, or a State Government which, has been granted by the Central Government a letter of approval under sub-section (10) of section 3 and includes an authority and a Co-Developer;

** ** **

(*j*) "entrepreneur" means a person who has been granted a letter of approval by the Development Commissioner under sub-section (9) of section 15;

** ** **

(*q*) "International Financial Services Centre" means an International Financial Services Centre which has been approved by the Central Government under sub-section (1) of section 18;

(*r*) "manufacture" means to make, produce, fabricate, assemble, process or bring into existence, by hand or by machine, a new product having a distinctive name, character or use and shall include processes such as refrigeration, cutting, polishing, blending, repair, remaking, re-engineering and includes agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture, viticulture and mining;

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(*u*) "Offshore Banking Unit" means a branch of a bank located in a Special Economic Zone and which has obtained the permission under clause (*a*) of sub-section (1) of section 23 of the Banking Regulation Act, 1949 (10 of 1949);

** ** **

(*za*) "Special Economic Zone" means each Special Economic Zone notified under the proviso to sub-section (4) of section 3 and sub-section (1) of section 4 (including Free Trade and Warehousing Zone) and includes an existing Special Economic Zone;

** ** **

(*zc*) "Unit" means a Unit set up by an entrepreneur in a Special Economic Zone and includes an existing Unit, an Offshore Banking Unit and a Unit in an International Financial Services Centre whether established before or established after the commencement of this Act;

** ** **

CHAPTER IV OF SUPREME COURT JUDGES (SALARIES & CONDITIONS OF SERVICE) ACT, 1958

Travelling allowance to a Judge.

22. A Judge shall receive such reasonable allowance to reimburse him for expenses incurred in travelling on duty within the territory of India and shall be afforded such reasonable facilities in connection with travelling as may, from time to time, be prescribed.

Facilities for rent-free houses and other conditions of service.

23. (1) Every Judge shall be entitled without payment of rent to the use of an official residence in accordance with such rules as may, from time to time, be made in this behalf.

(1A) Where a Judge does not avail himself of the use of an official residence, he may be paid every month an allowance of ten thousand rupees.

(2) Every Judge and the members of his family shall be entitled to such facilities for medical treatment and for accommodation in hospitals as may, from time to time, be prescribed.

(3) The conditions of service of a Judge for which no express provision has been made in this Act shall be as such as may be determined by rules made under this Act.

(4) Sub-sections (1), (2) and (3) shall be deemed to have come into force on the 26th day of January, 1950 and sub-section (1A) shall be deemed to have come into force on the 9th day of May, 1986 and any rule made under any of the said sub-sections may be made so as to be retrospective to any date not earlier than the commencement of the respective sub-section.

Conveyance facilities.

23A. Every Judge shall be entitled to a staff car and two hundred litres of fuel every month or the actual consumption of fuel per month, whichever is less.

Sumptuary allowance.

23B. The Chief Justice and each of the other Judges shall be entitled to a sumptuary allowance of four thousand rupees per month and three thousand rupees per month respectively.

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Medical facilities for retired Judges.

23C. Every retired Judge shall, with effect from the date on which the Supreme Court Judges (Conditions of Service) Amendment Act, 1976 (36 of 1976), receives the assent of the President, be entitled, for himself and his family, to the same facilities as respects medical treatment and on the same conditions as retired officer of the Central Civil Services, Class I and his family, are entitled under any rules and orders of the Central Government for the time being in force.

Exemption from liability to pay income-tax on certain perquisites received by a Judge.

23D. Notwithstanding anything contained in the Income-tax Act, 1961 (43 of 1961),—

(*a*) the value of rent-free official residence provided to a Judge under sub-section (1) of section 23 or the allowance paid to him under sub-section (1A) of that section;

(*b*) the value of the conveyance facilities provided to a Judge under section 23A;

(*c*) the summary allowance provided to a Judge under section 23B;

(*d*) the value of leave travel concession provided to a Judge and members of his family,

shall not be included in the computation of his income chargeable under the head "Salaries" under section 15 of the Income-tax Act, 1961.

SECTION 2(e) OF TRADE UNIONS ACT, 1926

Definitions.

2. ** ** **

(*e*) "registered Trade Union" means a Trade Union registered under this Act;

SECTION 53A OF TRANSFER OF PROPERTY ACT, 1882

Part performance.

53A. Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

then notwithstanding that where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract :

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.

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*FINANCE ACT, 2010

An Act to give effect to the financial proposals of the Central Government for the financial year 2010-2011.

BE it enacted by Parliament in the Sixty-first Year of the Republic of India as follows :—

CHAPTER I

PRELIMINARY

Short title and commencement.

1. (1) This Act may be called the Finance Act, 2010.

(2) Save as otherwise provided in this Act, sections 2 to 56 shall be deemed to have come into force on the 1st day of April, 2010.

CHAPTER II

RATES OF INCOME-TAX

Income-tax.

2. (1) Subject to the provisions of sub-sections (2) and (3), for the assessment year commencing on the 1st day of April, 2010, income-tax shall be charged at the rates specified in Part I of the First Schedule and such tax shall be increased by a surcharge, for purposes of the Union, calculated in each case in the manner provided therein.

(2) In the cases to which Paragraph A of Part I of the First Schedule applies, where the assessee has, in the previous year, any net agricultural income exceeding five thousand rupees, in addition to total income, and the total income exceeds one lakh sixty thousand rupees, then,—

(*a*) the net agricultural income shall be taken into account, in the manner provided in clause (*b*) [that is to say, as if the net agricultural income were comprised in the total income after the first one lakh sixty thousand rupees of the total income but without being liable to tax], only for the purpose of charging income-tax in respect of the total income; and

*RELEVANT EXTRACTS.

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(*b*) the income-tax chargeable shall be calculated as follows :—

(*i*) the total income and the net agricultural income shall be aggregated and the amount of income-tax shall be determined in respect of the aggregate income at the rates specified in the said Paragraph A, as if such aggregate income were the total income;

(*ii*) the net agricultural income shall be increased by a sum of one lakh sixty thousand rupees, and the amount of income-tax shall be determined in respect of the net agricultural income as so increased at the rates specified in the said Paragraph A, as if the net agricultural income as so increased were the total income;

(*iii*) the amount of income-tax determined in accordance with sub-clause (*i*) shall be reduced by the amount of income-tax determined in accordance with sub-clause (*ii*) and the sum so arrived at shall be the income-tax in respect of the total income :

Provided that in the case of every woman, resident in India and below the age of sixty-five years at any time during the previous year, referred to in item (II) of Paragraph A of Part I of the First Schedule, the provisions of this sub-section shall have effect as if for the words "one lakh sixty thousand rupees", the words "one lakh ninety thousand rupees" had been substituted :

Provided further that in the case of every individual, being a resident in India, who is of the age of sixty-five years or more at any time during the previous year, referred to in item (III) of Paragraph A of Part I of the First Schedule, the provisions of this sub-section shall have effect as if for the words "one lakh sixty thousand rupees", the words "two lakh forty thousand rupees" had been substituted.

(3) In cases to which the provisions of Chapter XII or Chapter XII-A or Chapter XII-H or section 115JB or sub-section (1A) of section 161 or section 164 or section 164A or section 167B of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the Income-tax Act) apply, the tax chargeable shall be determined as provided in that Chapter or that section, and with reference to the rates imposed by sub-section (1) or the rates as specified in that Chapter or section, as the case may be :

Provided that the amount of income-tax computed in accordance with the provisions of section 111A or section 112 shall be increased by a surcharge, for purposes of the Union, as provided in Paragraph A, B, C, D or E, as the case may be, of Part I of the First Schedule :

Provided further that in respect of any income chargeable to tax under sections 115A, 115AB, 115AC, 115ACA, 115AD, 115B, 115BB, 115BBA, 115BBC, 115E and 115JB of the Income-tax Act, the amount of income-tax computed under this sub-section shall be increased by a surcharge, for purposes of the Union, calculated,—

(*a*) in the case of a domestic company, at the rate of ten per cent of such income-tax where the total income exceeds one crore rupees;

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(*b*) in the case of every company, other than a domestic company, at the rate of two and one-half per cent of such income-tax where the total income exceeds one crore rupees :

Provided also that in the case of every company having total income chargeable to tax under section 115JB of the Income-tax Act, and such income exceeds one crore rupees, the total amount payable as income-tax and surcharge on such income-tax shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

(4) In cases in which tax has to be charged and paid under section 115-O or sub-section (2) of section 115R of the Income-tax Act, the tax shall be charged and paid at the rates as specified in those sections and shall be increased by a surcharge, for purposes of the Union, calculated at the rate of seven and one-half per cent of such tax.

(5) In cases in which tax has to be deducted under sections 193, 194, 194A, 194B, 194BB, 194D and 195 of the Income-tax Act, at the rates in force, the deductions shall be made at the rates specified in Part II of the First Schedule and shall be increased by a surcharge, for purposes of the Union, calculated in cases wherever prescribed, in the manner provided therein.

(6) In cases in which tax has to be deducted under sections 194C, 194E, 194EE, 194F, 194G, 194H, 194-I, 194J, 194LA, 196B, 196C and 196D of the Income-tax Act, the deductions shall be made at the rates specified in those sections and shall be increased by a surcharge, for purposes of the Union, in the case of every company, other than a domestic company, calculated at the rate of two and one-half per cent of such tax, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds one crore rupees.

(7) In cases in which tax has to be collected under the proviso to section 194B of the Income-tax Act, the collection shall be made at the rates specified in Part II of the First Schedule, and shall be increased by a surcharge, for purposes of the Union, calculated, in cases wherever prescribed, in the manner provided therein.

(8) In cases in which tax has to be collected under section 206C of the Income-tax Act, the collection shall be made at the rates specified in that section and shall be increased by a surcharge, for purposes of the Union, in the case of every company, other than a domestic company, calculated at the rate of two and one-half per cent of such tax, where the amount or the aggregate of such amounts collected and subject to the collection exceeds one crore rupees.

(9) Subject to the provisions of sub-section (10), in cases in which income-tax has to be charged under sub-section (4) of section 172 or sub-section (2) of section 174 or section 174A or section 175 or sub-section (2) of section 176 of the Income-tax Act or deducted from, or paid on, income chargeable under the head "Salaries" under section 192 of the said Act or in which the "advance tax" payable under Chapter XVII-C of the said Act has to be computed at the rate or rates in force, such income-tax or, as the case may be, "advance tax" shall be so charged, deducted or computed at the rate or rates specified in Part III of the First

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Schedule and such tax shall be increased by a surcharge, for purposes of the Union, calculated in such cases and in such manner as provided therein :

Provided that in cases to which the provisions of Chapter XII or Chapter XII-A or section 115JB or sub-section (1A) of section 161 or section 164 or section 164A or section 167B of the Income-tax Act apply, "advance tax" shall be computed with reference to the rates imposed by this sub-section or the rates as specified in that Chapter or section, as the case may be :

Provided further that the amount of "advance tax" computed in accordance with the provisions of section 111A or section 112 of the Income-tax Act shall be increased by a surcharge, for purposes of the Union, as provided in Paragraph E of Part III of the First Schedule pertaining to the case of a company :

Provided also that in respect of any income chargeable to tax under sections 115A, 115AB, 115AC, 115ACA, 115AD, 115B, 115BB, 115BBA, 115BBC, 115E and 115JB of the Income-tax Act, "advance tax" computed under the first proviso shall be increased by a surcharge, for purposes of the Union, calculated,—

(*a*) in the case of every domestic company, at the rate of seven and one-half per cent of such "advance tax" where the total income exceeds one crore rupees;

(*b*) in the case of every company, other than a domestic company, at the rate of two and one-half per cent of such "advance tax" where the total income exceeds one crore rupees :

Provided also that in the case of every company having total income chargeable to tax under section 115JB of the Income-tax Act, and such income exceeds one crore rupees, the total amount payable as "advance tax" on such income and surcharge thereon, shall not exceed the total amount payable as "advance tax" on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

(10) In cases to which Paragraph A of Part III of the First Schedule applies, where the assessee has, in the previous year or, if by virtue of any provision of the Income-tax Act, income-tax is to be charged in respect of the income of a period other than the previous year, in such other period, any net agricultural income exceeding five thousand rupees, in addition to total income and the total income exceeds one lakh sixty thousand rupees, then, in charging income-tax under sub-section (2) of section 174 or section 174A or section 175 or sub-section (2) of section 176 of the said Act or in computing the "advance tax" payable under Chapter XVII-C of the said Act, at the rate or rates in force,—

(*a*) the net agricultural income shall be taken into account, in the manner provided in clause (*b*) [that is to say, as if the net agricultural income were comprised in the total income after the first one lakh sixty thousand rupees of the total income but without being liable to tax], only for the purpose of charging or computing such income-tax or, as the case may be, "advance tax" in respect of the total income; and

(*b*) such income-tax or, as the case may be, "advance tax" shall be so charged or computed as follows :—

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(*i*) the total income and the net agricultural income shall be aggregated and the amount of income-tax or "advance tax" shall be determined in respect of the aggregate income at the rates specified in the said Paragraph A, as if such aggregate income were the total income;

(*ii*) the net agricultural income shall be increased by a sum of one lakh sixty thousand rupees, and the amount of income-tax or "advance tax" shall be determined in respect of the net agricultural income as so increased at the rates specified in the said Paragraph A, as if the net agricultural income were the total income;

(*iii*) the amount of income-tax or "advance tax" determined in accordance with sub-clause (*i*) shall be reduced by the amount of income-tax or, as the case may be, "advance tax" determined in accordance with sub-clause (*ii*) and the sum so arrived at shall be the income-tax or, as the case may be, "advance tax" in respect of the total income :

Provided that in the case of every woman, resident in India and below the age of sixty-five years at any time during the previous year, referred to in item (II) of Paragraph A of Part III of the First Schedule, the provisions of this sub-section shall have effect as if for the words "one lakh sixty thousand rupees", the words "one lakh ninety thousand rupees" had been substituted :

Provided further that in the case of every individual, being a resident in India, who is of the age of sixty-five years or more at any time during the previous year, referred to in item (III) of Paragraph A of Part III of the First Schedule, the provisions of this sub-section shall have effect as if for the words "one lakh sixty thousand rupees", the words "two lakh forty thousand rupees" had been substituted.

(11) The amount of income-tax as specified in sub-sections (1) to (10) and as increased by the applicable surcharge, for purposes of the Union, calculated in the manner provided therein, shall be further increased by an additional surcharge, for purposes of the Union, to be called the "Education Cess on income-tax", calculated at the rate of two per cent of such income-tax and surcharge so as to fulfil the commitment of the Government to provide and finance universalised quality basic education :

Provided that nothing contained in this sub-section shall apply to cases in which tax is to be deducted or collected under the sections of the Income-tax Act mentioned in sub-sections (5), (6), (7) and (8), if the income subjected to deduction of tax at source or collection of tax at source is paid to a domestic company and any other person who is resident in India.

(12) The amount of income-tax as specified in sub-sections (1) to (10) and as increased by the applicable surcharge, for purposes of the Union, calculated in the manner provided therein, shall also be increased by an additional surcharge, for purposes of the Union, to be called the "Secondary and Higher Education Cess on income-tax", calculated at the rate of one per cent of such income-tax and

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surcharge so as to fulfil the commitment of the Government to provide and finance secondary and higher education :

Provided that nothing contained in this sub-section shall apply to cases in which tax is to be deducted or collected under the sections of the Income-tax Act mentioned in sub-sections (5), (6), (7) and (8), if the income subjected to deduction of tax at source or collection of tax at source is paid to a domestic company and any other person who is resident in India.

(13) For the purposes of this section and the First Schedule,—

(*a*) "domestic company" means an Indian company or any other company which, in respect of its income liable to income-tax under the Income-tax Act, for the assessment year commencing on the 1st day of April, 2010, has made the prescribed arrangements for the declaration and payment within India of the dividends (including dividends on preference shares) payable out of such income;

(*b*) "insurance commission" means any remuneration or reward, whether by way of commission or otherwise, for soliciting or procuring insurance business (including business relating to the continuance, renewal or revival of policies of insurance);

(*c*) "net agricultural income", in relation to a person, means the total amount of agricultural income, from whatever source derived, of that person computed in accordance with the rules contained in Part IV of the First Schedule;

(*d*) all other words and expressions used in this section and the First Schedule but not defined in this sub-section and defined in the Income-tax Act shall have the meanings, respectively, assigned to them in that Act.

CHAPTER III

DIRECT TAXES

Income-tax

Amendment of section 2.

3. In section 2 of the Income-tax Act,—

(*a*) in clause (*15*), after the proviso, the following proviso shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 2009, namely:—

"**Provided further** that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is ten lakh rupees or less in the previous year;";

(*b*) in clause (*24*), in sub-clause (*xv*), after the words, brackets and figures "value of property referred to in clause (*vii*)", the words, brackets, figures and letter "or clause (*viia*)" shall be inserted with effect from the 1st day of June, 2010.

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Amendment of section 9.

4. In section 9 of the Income-tax Act, for the *Explanation* occurring after sub-section (2), the following *Explanation* shall be substituted and shall be deemed to have been substituted with effect from the 1st day of June, 1976, namely:—

"*Explanation*.—For the removal of doubts, it is hereby declared that for the purposes of this section, income of a non-resident shall be deemed to accrue or arise in India under clause (*v*) or clause (*vi*) or clause (*vii*) of sub-section (1) and shall be included in the total income of the non-resident, whether or not,—

(*i*) the non-resident has a residence or place of business or business connection in India; or

(*ii*) the non-resident has rendered services in India.".

Amendment of section 10.

5. In section 10 of the Income-tax Act, in clause (*21*), with effect from the 1st day of April, 2011,—

(*a*) for the words "scientific research association", wherever they occur, the words "research association" shall be substituted;

(*b*) in the opening portion, after the word, brackets and figures "clause (*ii*)", the words, brackets and figures "or clause (*iii*)" shall be inserted;

(*c*) in the first proviso, in clause (*a*),—

(*A*) in sub-clause (*i*),—

(*I*) in item (2), for the words "scientific research", the words "scientific research or research in social science or statistical research" shall be substituted;

(*II*) in item (3), after the word, brackets and figures "clause (*ii*)", the words, brackets and figures "or clause (*iii*)" shall be inserted;

(*B*) in sub-clause (*ii*), for the words "scientific research", the words "scientific research or research in social science or statistical research" shall be substituted.

Amendment of section 10AA.

6. In section 10AA of the Income-tax Act, in sub-section (7), the following proviso shall be inserted, namely:—

"**Provided** that the provisions of this sub-section [as amended by section 6 of the Finance (No. 2) Act, 2009 (33 of 2009)] shall have effect for the assessment year beginning on the 1st day of April, 2006 and subsequent assessment years."

Amendment of section 12AA.

7. In section 12AA of the Income-tax Act, in sub-section (3), after the word, brackets and figure "sub-section (1)", the words, figures, letter and brackets "or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)]" shall be inserted with effect from the 1st day of June, 2010.

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Amendment of section 32.

8. In section 32 of the Income-tax Act, in sub-section (1), in the fifth proviso, for the words, brackets and figures "clause (*xiii*) and clause (*xiv*)", the words, brackets, figures and letter "clause (*xiii*), clause (*xiiib*) and clause (*xiv*)" shall be substituted with effect from the 1st day of April, 2011.

Amendment of section 35.

9. In section 35 of the Income-tax Act, with effect from the 1st day of April, 2011,—

(*i*) in sub-section (1),—

(*a*) for the words "scientific research association", wherever they occur, the words "research association" shall be substituted;

(*b*) in clause (*ii*), for the words "one and one-fourth", the words "one and three-fourth" shall be substituted;

(*c*) in clause (*iii*),—

(*A*) for the words "any sum paid to a university", the words "any sum paid to a research association which has as its object the undertaking of research in social science or statistical research or to a university" shall be substituted;

(*B*) in the proviso, for the words "such university", at both the places where they occur, the words "such association, university" shall be substituted;

(*ii*) in sub-section (2AA), in clause (*a*), for the words "one and one-fourth", the words "one and three-fourth" shall be substituted;

(*iii*) in sub-section (2AB), in clause (*1*), for the words "one and one-half", the word "two" shall be substituted.

Amendment of section 35AD.

10. In section 35AD of the Income-tax Act,—

(*a*) in sub-section (2), in clause (*iii*), in sub-clause (*c*), for the words "one-third of its total pipeline capacity", the words, brackets and figures "such proportion of its total pipeline capacity as specified by regulations made by the Petroleum and Natural Gas Regulatory Board established under sub-section (1) of section 3 of the Petroleum and Natural Gas Regulatory Board Act, 2006 (19 of 2006)" shall be substituted;

(*b*) for sub-section (3), the following sub-section shall be substituted with effect from the 1st day of April, 2011, namely:—

'(3) Where a deduction under this section is claimed and allowed in respect of the specified business for any assessment year, no deduction shall be allowed under the provisions of Chapter VI-A under the heading "*C.—Deductions in respect of certain incomes*" in relation to such specified business for the same or any other assessment year.';

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(*c*) in sub-section (5), with effect from the 1st day of April, 2011,—

(*i*) in clause (*a*), the word "and", occurring at the end, shall be omitted;

(*ii*) after clause (*a*), the following clauses shall be inserted, namely :—

"(*aa*) on or after the 1st day of April, 2010, where the specified business is in the nature of building and operating a new hotel of two-star or above category as classified by the Central Government;

(*ab*) on or after the 1st day of April, 2010, where the specified business is in the nature of building and operating a new hospital with at least one hundred beds for patients;

(*ac*) on or after the 1st day of April, 2010, where the specified business is in the nature of developing and building a housing project under a scheme for slum redevelopment or rehabilitation framed by the Central Government or a State Government, as the case may be, and which is notified by the Board in this behalf in accordance with guidelines as may be prescribed; and";

(*iii*) in clause (*b*), for the word, brackets and letter "clause (*a*)", the words, brackets and letters "clause (*a*), clause (*aa*), clause (*ab*) and clause (*ac*)" shall be substituted;

(*d*) in sub-section (8), in clause (*c*), after sub-clause (*iii*), the following sub-clauses shall be inserted with effect from the 1st day of April, 2011, namely :—

"(*iv*) building and operating, anywhere in India, a new hotel of two-star or above category as classified by the Central Government;

(*v*) building and operating, anywhere in India, a new hospital with at least one hundred beds for patients;

(*vi*) developing and building a housing project under a scheme for slum redevelopment or rehabilitation framed by the Central Government or a State Government, as the case may be, and notified by the Board in this behalf in accordance with the guidelines as may be prescribed;".

Amendment of section 35DDA.

11. In section 35DDA of the Income-tax Act, with effect from the 1st day of April, 2011,—

(*a*) after sub-section (4), the following sub-section shall be inserted, namely:—

"(4A) Where there has been reorganisation of business, whereby a private company or unlisted public company is succeeded by a limited liability partnership fulfilling the conditions laid down in the proviso to clause (*xiiib*) of section 47, the provisions of this section shall, as far as may be, apply to the successor limited liability

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partnership, as they would have applied to the said company, if reorganisation of business had not taken place.";

(*b*) in sub-section (5), for the words, brackets and figures "sub-section (3) and in the case of a firm or proprietary concern referred to in sub-section (4)", the words, brackets, figures and letter "sub-section (3), in the case of a firm or proprietary concern referred to in sub-section (4) and in the case of a company referred to in sub-section (4A)" shall be substituted.

Amendment of section 40.

12. In section 40 of the Income-tax Act, in clause (*a*), in sub-clause (*ia*),—

(*a*) for the portion beginning with the words "has not been paid,—" and ending with the words "the last day of the previous year", the words, brackets and figures "has not been paid on or before the due date specified in sub-section (1) of section 139" shall be substituted;

(*b*) for the proviso, the following proviso shall be substituted, namely:—

"**Provided** that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in sub-section (1) of section 139, such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.".

Amendment of section 43.

13. In section 43 of the Income-tax Act, with effect from the 1st day of April, 2011,—

(*a*) in clause (*1*), in *Explanation 13,* in clause (*b*), in sub-clause (*iii*), for the brackets, figures and word "(*xiii*) and (*xiv*)", the brackets, figures, letter and word "(*xiii*), (*xiiib*) and (*xiv*)" shall be substituted;

(*b*) in clause (*6*), after *Explanation 2B,* the following *Explanation* shall be inserted, namely:—

"*Explanation 2C.*—Where in any previous year, any block of assets is transferred by a private company or unlisted public company to a limited liability partnership and the conditions specified in the proviso to clause (*xiiib*) of section 47 are satisfied, then, notwithstanding anything contained in clause (*1*), the actual cost of the block of assets in the case of the limited liability partnership shall be the written down value of the block of assets as in the case of the said company on the date of conversion of the company into the limited liability partnership.".

Amendment of section 44AB.

14. In section 44AB of the Income-tax Act, with effect from the 1st day of April, 2011,—

(*a*) in clause (*a*), for the words "forty lakh rupees", the words "sixty lakh rupees" shall be substituted;

(*b*) in clause (*b*), for the words "ten lakh rupees", the words "fifteen lakh rupees" shall be substituted.

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Amendment of section 44AD.

15. In section 44AD of the Income-tax Act [as amended by section 20 of the Finance (No. 2) Act, 2009 (33 of 2009)], in the *Explanation,* in clause (*b*), in sub-clause (*ii*), for the words "forty lakh rupees", the words "sixty lakh rupees" shall be substituted with effect from the 1st day of April, 2011.

Amendment of section 44BB.

16. In section 44BB of the Income-tax Act, in the proviso to sub-section (1), after the words, figures and letter "section 44D or", the words, figures and letters "section 44DA or" shall be inserted with effect from the 1st day of April, 2011.

Amendment of section 44DA.

17. In section 44DA of the Income-tax Act, in sub-section (1), after the proviso, the following proviso shall be inserted with effect from the 1st day of April, 2011, namely:—

"**Provided further** that the provisions of section 44BB shall not apply in respect of the income referred to in this section.".

Amendment of section 47.

18. In section 47 of the Income-tax Act, after clause (*xiiia*), the following shall be inserted with effect from the 1st day of April, 2011, namely:—

'(*xiiib*) any transfer of a capital asset or intangible asset by a private company or unlisted public company (hereafter in this clause referred to as the company) to a limited liability partnership or any transfer of a share or shares held in the company by a shareholder as a result of conversion of the company into a limited liability partnership in accordance with the provisions of section 56 or section 57 of the Limited Liability Partnership Act, 2008 (6 of 2009):

Provided that—

(*a*) all the assets and liabilities of the company immediately before the conversion become the assets and liabilities of the limited liability partnership;

(*b*) all the shareholders of the company immediately before the conversion become the partners of the limited liability partnership and their capital contribution and profit sharing ratio in the limited liability partnership are in the same proportion as their shareholding in the company on the date of conversion;

(*c*) the shareholders of the company do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of share in profit and capital contribution in the limited liability partnership;

(*d*) the aggregate of the profit sharing ratio of the shareholders of the company in the limited liability partnership shall not be less than fifty per cent at any time during the period of five years from the date of conversion;

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(*e*) the total sales, turnover or gross receipts in business of the company in any of the three previous years preceding the previous year in which the conversion takes place does not exceed sixty lakh rupees; and

(*f*) no amount is paid, either directly or indirectly, to any partner out of balance of accumulated profit standing in the accounts of the company on the date of conversion for a period of three years from the date of conversion.

Explanation.—For the purposes of this clause, the expressions "private company" and "unlisted public company" shall have the meanings respectively assigned to them in the Limited Liability Partnership Act, 2008 (6 of 2009);'.

Amendment of section 47A.

19. In section 47A of the Income-tax Act, after sub-section (3), the following sub-section shall be inserted with effect from the 1st day of April, 2011, namely:—

"(4) Where any of the conditions laid down in the proviso to clause (*xiiib*) of section 47 are not complied with, the amount of profits or gains arising from the transfer of such capital asset or intangible asset or share or shares not charged under section 45 by virtue of conditions laid down in the said proviso shall be deemed to be the profits and gains chargeable to tax of the successor limited liability partnership or the shareholder of the predecessor company, as the case may be, for the previous year in which the requirements of the said proviso are not complied with.".

Amendment of section 49.

20. In section 49 of the Income-tax Act,—

(*a*) in sub-section (1), in clause (*iii*), in sub-clause (*e*), for the words, brackets, figures and letters "clause (*vicb*) of section 47", the words, brackets, figures and letters "clause (*vicb*) or clause (*xiiib*) of section 47" shall be substituted with effect from the 1st day of April, 2011;

(*b*) after sub-section (2AA), the following sub-section shall be inserted with effect from the 1st day of April, 2011, namely :—

"(2AAA) Where the capital asset being rights of a partner referred to in section 42 of the Limited Liability Partnership Act, 2008 (6 of 2009) became the property of the assessee on conversion as referred to in clause (*xiiib*) of section 47, the cost of acquisition of the asset shall be deemed to be the cost of acquisition to him of the share or shares in the company immediately before its conversion.";

(*c*) in sub-section (4), after the word, brackets and figures "clause (*vii*)", at both the places where they occur, the words, brackets, figures and letter "or clause (*viia*)" shall be inserted with effect from the 1st day of June, 2010.

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Amendment of section 56.

21. In section 56 of the Income-tax Act, in sub-section (2),—

(*a*) in clause (*vii*),—

(*i*) for sub-clause (*b*), the following sub-clause shall be substituted and shall be deemed to have been substituted with effect from the 1st day of October, 2009, namely:—

"(*b*) any immovable property, without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;";

(*ii*) in the *Explanation,* in clause (*d*),—

(*A*) in the opening portion, for the word "means—", the words "means the following capital asset of the assessee, namely:—" shall be substituted and shall be deemed to have been substituted with effect from the 1st day of October, 2009;

(*B*) in sub-clause (*vii*), the word "or" shall be omitted with effect from the 1st day of June, 2010;

(*C*) in sub-clause (*viii*), the word "or" shall be inserted at the end with effect from the 1st day of June, 2010;

(*D*) after sub-clause (*viii*), the following sub-clause shall be inserted with effect from the 1st day of June, 2010, namely:—

"(*ix*) bullion;";

(*b*) after clause (*vii*), the following shall be inserted with effect from the 1st day of June, 2010, namely:—

'(*viia*) where a firm or a company not being a company in which the public are substantially interested, receives, in any previous year, from any person or persons, on or after the 1st day of June, 2010, any property, being shares of a company not being a company in which the public are substantially interested,—

(*i*) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;

(*ii*) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration :

Provided that this clause shall not apply to any such property received by way of a transaction not regarded as transfer under clause (*via*) or clause (*vic*) or clause (*vicb*) or clause (*vid*) or clause (*vii*) of section 47.

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Explanation.—For the purposes of this clause, "fair market value" of a property, being shares of a company not being a company in which the public are substantially interested, shall have the meaning assigned to it in the *Explanation* to clause (*vii*);'.

Amendment of section 72A.

22. In section 72A of the Income-tax Act, with effect from the 1st day of April, 2011,—

(*a*) after sub-section (6), the following shall be inserted, namely:—

"(6A) Where there has been reorganisation of business whereby a private company or unlisted public company is succeeded by a limited liability partnership fulfilling the conditions laid down in the proviso to clause (*xiiib*) of section 47, then, notwithstanding anything contained in any other provision of this Act, the accumulated loss and the unabsorbed depreciation of the predecessor company, shall be deemed to be the loss or allowance for depreciation of the successor limited liability partnership for the purpose of the previous year in which business reorganisation was effected and other provisions of this Act relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly :

Provided that if any of the conditions laid down in the proviso to clause (*xiiib*) of section 47 are not complied with, the set off of loss or allowance of depreciation made in any previous year in the hands of the successor limited liability partnership, shall be deemed to be the income of the limited liability partnership chargeable to tax in the year in which such conditions are not complied with.";

(*b*) in sub-section (7), for clauses (*a*) and (*b*), the following clauses shall, respectively, be substituted, namely:—

'(*a*) "accumulated loss" means so much of the loss of the predecessor firm or the proprietary concern or the private company or unlisted public company before conversion into limited liability partnership or the amalgamating company or the demerged company, as the case may be, under the head "Profits and gains of business or profession" (not being a loss sustained in a speculation business) which such predecessor firm or the proprietary concern or the company or amalgamating company or demerged company, would have been entitled to carry forward and set off under the provisions of section 72 if the reorganisation of business or conversion or amalgamation or demerger had not taken place;

(*b*) "unabsorbed depreciation" means so much of the allowance for depreciation of the predecessor firm or the proprietary concern or the private company or unlisted public company before conversion into limited liability partnership or the amalgamating company or the demerged company, as the case may be,

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which remains to be allowed and which would have been allowed to the predecessor firm or the proprietary concern or the company or amalgamating company or demerged company, as the case may be, under the provisions of this Act, if the reorganisation of business or conversion or amalgamation or demerger had not taken place;'.

Amendment of section 80A.

23. In section 80A of the Income-tax Act, after sub-section (6) and the *Explanation* thereto, the following sub-section shall be inserted with effect from the 1st day of April, 2011, namely:—

'(7) Where a deduction under any provision of this Chapter under the heading "C.—*Deductions in respect of certain incomes*" is claimed and allowed in respect of profits of any of the specified business referred to in clause (*c*) of sub-section (8) of section 35AD for any assessment year, no deduction shall be allowed under the provisions of section 35AD in relation to such specified business for the same or any other assessment year.'.

Insertion of new section 80CCF.

24. After section 80CCE of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 2011, namely:—

"80CCF. *Deduction in respect of subscription to long-term infrastructure bonds.*—In computing the total income of an assessee, being an individual or a Hindu undivided family, there shall be deducted, the whole of the amount, to the extent such amount does not exceed twenty thousand rupees, paid or deposited, during the previous year relevant to the assessment year beginning on the 1st day of April, 2011, as subscription to long-term infrastructure bonds as may, for the purposes of this section, be notified by the Central Government.".

Amendment of section 80D.

25. In section 80D of the Income-tax Act, in sub-section (2), in clause (*a*), after the words "his family", the words "or any contribution made to the Central Government Health Scheme" shall be inserted with effect from the 1st day of April, 2011.

Amendment of section 80GGA.

26. In section 80GGA of the Income-tax Act, in sub-section (2), with effect from the 1st day of April, 2011,—

(*a*) in clause (*a*), for the words "scientific research association", the words "research association" shall be substituted;

(*b*) in clause (*aa*),—

(*A*) for the words "to a University", the words "to a research association which has as its object the undertaking of research in social science or statistical research or to a University" shall be substituted;

(*B*) in the proviso, for the words "such University", the words "such association, University" shall be substituted;

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(*C*) in the *Explanation*, for the words "scientific research association", the words "research association" shall be substituted.

Amendment of section 80-IB.

27. In section 80-IB of the Income-tax Act, in sub-section (10),—

(*i*) in clause (*a*),—

(*a*) in sub-clause (*ii*), after the words, figures and letters "the 1st day of April, 2004", the words, figures and letters "but not later than the 31st day of March, 2005" shall be inserted;

(*b*) after sub-clause (*ii*), the following sub-clause shall be inserted, namely:—

"(*iii*) in a case where a housing project has been approved by the local authority on or after the 1st day of April, 2005, within five years from the end of the financial year in which the housing project is approved by the local authority.";

(*ii*) in clause (*d*),—

(*a*) for the words "five per cent", the words "three per cent" shall be substituted;

(*b*) for the words "two thousand square feet, whichever is less", the words "five thousand square feet, whichever is higher" shall be substituted.

Amendment of section 80-ID.

28. In section 80-ID of the Income-tax Act, in sub-section (2), with effect from the 1st day of April, 2011,—

(*a*) in clause (*i*), for the words, figures and letters "the 31st day of March, 2010", the words, figures and letters "the 31st day of July, 2010" shall be substituted;

(*b*) in clause (*ii*), for the words, figures and letters "the 31st day of March, 2010", the words, figures and letters "the 31st day of July, 2010" shall be substituted.

Amendment of section 115JAA.

29. In section 115JAA of the Income-tax Act, after sub-section (6), the following shall be inserted with effect from the 1st day of April, 2011, namely:—

'(7) In case of conversion of a private company or unlisted public company into a limited liability partnership under the Limited Liability Partnership Act, 2008 (6 of 2009), the provisions of this section shall not apply to the successor limited liability partnership.

Explanation.—For the purposes of this section, the expressions "private company" and "unlisted public company" shall have the meanings respectively assigned to them in the Limited Liability Partnership Act, 2008 (6 of 2009).'.

Amendment of section 115JB.

30. In section 115JB of the Income-tax Act, in sub-section (1), with effect from the 1st day of April, 2011,—

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(*a*) for the words, figures and letters "the 1st day of April, 2010", the words, figures and letters "the 1st day of April, 2011" shall be substituted;

(*b*) for the words "fifteen per cent" at both the places where they occur, the words "eighteen per cent" shall be substituted.

Amendment of section 115WE.

31. In section 115WE of the Income-tax Act, in sub-section (1B), for the words, figures and letters "after the 31st day of March, 2010", the words, figures and letters "after the 31st day of March, 2011" shall be substituted.

Amendment of section 139.

32. In section 139 of the Income-tax Act, in sub-section (4C), for the words "scientific research association" at both the places where they occur, the words "research association" shall be substituted with effect from the 1st day of April, 2011.

Amendment of section 142A.

33. In section 142A of the Income-tax Act, in sub-section (1), for the words, figures and letter "section 69B is required to be made", the words, figures, letter and brackets "section 69B or fair market value of any property referred to in sub-section (2) of section 56 is required to be made" shall be substituted with effect from the 1st day of July, 2010.

Amendment of section 143.

34. In section 143 of the Income-tax Act,—

(*a*) in sub-section (1B), for the words, figures and letters "after the 31st day of March, 2010", the words, figures and letters "after the 31st day of March, 2011" shall be substituted;

(*b*) in sub-section (3), in the first proviso, for the words "scientific research association", wherever they occur, the words "research association" shall be substituted with effect from the 1st day of April, 2011.

Amendment of section 194B.

35. In section 194B of the Income-tax Act, for the words "five thousand rupees", the words "ten thousand rupees" shall be substituted with effect from the 1st day of July, 2010.

Amendment of section 194BB.

36. In section 194BB of the Income-tax Act, for the words "two thousand five hundred rupees", the words "five thousand rupees" shall be substituted with effect from the 1st day of July, 2010.

Amendment of section 194C.

37. In section 194C of the Income-tax Act, in sub-section (5), with effect from the 1st day of July, 2010,—

(*a*) for the words "twenty thousand rupees", the words "thirty thousand rupees" shall be substituted;

(*b*) in the proviso, for the words "fifty thousand rupees", the words "seventy-five thousand rupees" shall be substituted.

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Amendment of section 194D.

38. In section 194D of the Income-tax Act, in the second proviso, for the words "five thousand rupees", the words "twenty thousand rupees" shall be substituted with effect from the 1st day of July, 2010.

Amendment of section 194H.

39. In section 194H of the Income-tax Act, in the first proviso, for the words "two thousand five hundred rupees", the words "five thousand rupees" shall be substituted with effect from the 1st day of July, 2010.

Amendment of section 194-I.

40. In section 194-I of the Income-tax Act, in the first proviso, for the words "one hundred and twenty thousand rupees", the words "one hundred eighty thousand rupees" shall be substituted with effect from the 1st day of July, 2010.

Amendment of section 194J.

41. In section 194J of the Income-tax Act, in the first proviso to sub-section (1), in clause (*B*), for the words "twenty thousand rupees", wherever they occur, the words "thirty thousand rupees" shall be substituted with effect from the 1st day of July, 2010.

Amendment of section 201.

42. In section 201 of the Income-tax Act, for sub-section (1A), the following sub-section shall be substituted with effect from the 1st day of July, 2010, namely:—

"(1A) Without prejudice to the provisions of sub-section (1), if any such person, principal officer or company as is referred to in that sub-section does not deduct the whole or any part of the tax or after deducting fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest,—

(*i*) at one per cent for every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is deducted; and

(*ii*) at one and one-half per cent for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid, and such interest shall be paid before furnishing the statement in accordance with the provisions of sub-section (3) of section 200.".

Amendment of section 203.

43. In section 203 of the Income-tax Act, sub-section (3) shall be omitted.

Amendment of section 206C.

44. In section 206C of the Income-tax Act, in sub-section (5),—

(*a*) the first proviso shall be omitted;

(*b*) in the second proviso, for the words "Provided further", the word "Provided" shall be substituted.

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Amendment of section 245A.

45. In section 245A of the Income-tax Act, in clause (*b*), with effect from the 1st day of June, 2010,—

(*i*) in the proviso, clauses (*ii*) and (*iii*) shall be omitted;

(*ii*) in the *Explanation,*—

(*a*) clause (*ii*) shall be omitted;

(*b*) after clause (*iii*), the following clause shall be inserted, namely:—

"(*iiia*) a proceeding for assessment or reassessment for any of the assessment years, referred to in clause (*b*) of sub-section (1) of section 153A in case of a person referred to in section 153A or section 153C, shall be deemed to have commenced on the date of issue of notice initiating such proceedings and concluded on the date on which the assessment is made;";

(*c*) in clause (*iv*), for the words, brackets and figures "clause (*ii*) or clause (*iii*) or clause (*iv*) of the proviso", the words, brackets, figures and letter "clause (*iv*) of the proviso or clause (*iiia*) of the *Explanation"* shall be substituted.

Amendment of section 245C.

46. In section 245C of the Income-tax Act, in sub-section (1), for the proviso, the following proviso shall be substituted with effect from the 1st day of June, 2010, namely:—

"**Provided** that no such application shall be made unless,—

(*i*) in a case where proceedings for assessment or reassessment for any of the assessment years referred to in clause (*b*) of sub-section (1) of section 153A or clause (*b*) of sub-section (1) of section 153B in case of a person referred to in section 153A or section 153C have been initiated, the additional amount of income-tax payable on the income disclosed in the application exceeds fifty lakh rupees,

(*ii*) in any other case, the additional amount of income-tax payable on the income disclosed in the application exceeds ten lakh rupees,

and such tax and the interest thereon, which would have been paid under the provisions of this Act had the income disclosed in the application been declared in the return of income before the Assessing Officer on the date of application, has been paid on or before the date of making the application and the proof of such payment is attached with the application.".

Amendment of section 245D.

47. In section 245D of the Income-tax Act, in sub-section (4A),—

(*a*) in clause (*ii*), after the words, figures and letters "the 1st day of June, 2007", the words, figures and letters "but before the 1st day of June, 2010" shall be inserted;

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(*b*) after clause (*ii*), the following clause shall be inserted with effect from the 1st day of June, 2010, namely:—

"(*iii*) in respect of an application made on or after the 1st day of June, 2010, within eighteen months from the end of the month in which the application was made.".

Amendment of section 256.

48. In section 256 of the Income-tax Act, after sub-section (2), the following sub-section shall be inserted and shall be deemed to have been inserted with effect from the 1st day of June, 1981, namely:—

"(2A) The High Court may admit an application after the expiry of the period of six months referred to in sub-section (2), if it is satisfied that there was sufficient cause for not filing the same within that period.".

Amendment of section 260A.

49. In section 260A of the Income-tax Act, after sub-section (2), the following sub-section shall be inserted and shall be deemed to have been inserted with effect from the 1st day of October, 1998, namely:—

"(2A) The High Court may admit an appeal after the expiry of the period of one hundred and twenty days referred to in clause (*a*) of sub-section (2), if it is satisfied that there was sufficient cause for not filing the same within that period.".

Amendment of section 271B.

50. In section 271B of the Income-tax Act, for the words "one hundred thousand rupees", the words "one hundred fifty thousand rupees" shall be substituted with effect from the 1st day of April, 2011.

Amendment of section 282B.

51. In section 282B of the Income-tax Act [as inserted by section 78 of the Finance (No. 2) Act, 2009 (33 of 2009)], with effect from the 1st day of October, 2010,—

(*a*) in sub-section (1), for the words "income-tax authority shall", the words, figures and letters "income-tax authority shall, on or after the 1st day of July, 2011," shall be substituted;

(*b*) in sub-section (3), for the words "received by", the words, figures and letters "received, on or after the 1st day of July, 2011, by" shall be substituted.

Amendment of First Schedule.

52. In the First Schedule to the Income-tax Act, in rule 5, for clause (*b*) [as inserted by clause (*ii*) of section 80 of the Finance (No. 2) Act, 2009 (33 of 2009)], the following clause shall be substituted with effect from the 1st day of April, 2011, namely:—

"(*b*) (*i*) any gain or loss on realisation of investments shall be added or deducted, as the case may be, if such gain or loss is not credited or debited to the profit and loss account;

(*ii*) any provision for diminution in the value of investment debited to the profit and loss account, shall be added back;".

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Wealth-tax

Amendment of section 22A.

53. In section 22A of the Wealth-tax Act, 1957 (27 of 1957) (hereinafter referred to as the Wealth-tax Act), in clause (*b*), with effect from the 1st day of June, 2010,—

(*i*) in the proviso, clause (*iii*) shall be omitted;

(*ii*) in the *Explanation,*—

(*a*) for clause (*iii*), the following clause shall be substituted, namely:—

"(*iii*) a proceeding for assessment or reassessment for any of the assessment years, in consequence of a search initiated under section 37A or requisition made under section 37B, shall be deemed to have commenced on the date of issue of notice initiating such proceedings and concluded on the date on which the assessment is made;".

(*b*) in clause (*iv*), for the words, brackets and figures "or clause (*iii*) of the proviso", the words, brackets and figures "of the proviso or clause (*iii*) of the *Explanation*" shall be substituted.

Amendment of section 22D.

54. In section 22D of the Wealth-tax Act, in sub-section (4A),—

(*a*) in clause (*ii*), after the words, figures and letters "the 1st day of June, 2007", the words, figures and letters "but before the 1st day of June, 2010" shall be inserted;

(*b*) after clause (*ii*), the following clause shall be inserted with effect from the 1st day of June, 2010, namely:—

"(*iii*) in respect of an application made on or after the 1st day of June, 2010, within eighteen months from the end of the month in which the application was made.".

Amendment of section 27.

55. In section 27 of the Wealth-tax Act, after sub-section (3A), the following sub-section shall be inserted and shall be deemed to have been inserted with effect from the 1st day of June, 1981, namely:—

"(3B) The High Court may admit an application after the expiry of the period of ninety days referred to in sub-section (3), if it is satisfied that there was sufficient cause for not filing the same within that period.".

Amendment of section 27A.

56. In section 27A of the Wealth-tax Act, after sub-section (1), the following sub-section shall be inserted and shall be deemed to have been inserted with effect from the 1st day of October, 1998, namely:—

"(1A) The High Court may admit an appeal after the expiry of the period of one hundred and twenty days referred to in sub-section (1), if it is satisfied that there was sufficient cause for not filing the same within that period.".

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CHAPTER VIII

MISCELLANEOUS

Amendment of section 3 of Act 16 of 1955.

85. In the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, in section 3, in sub-section (1), after the words "dutiable goods", the brackets and words "(excluding goods produced or manufactured in a Special Economic Zone)" shall be inserted.

Amendment of Act 14 of 2001.

86. The Seventh Schedule to the Finance Act, 2001 shall be amended in the manner specified in the Eleventh Schedule.

Amendment of Act 18 of 2005.

87. The Seventh Schedule to the Finance Act, 2005 shall be amended in the manner specified in the Twelfth Schedule.

** ** **

THE FIRST SCHEDULE

(*See* section 2)

PART I

INCOME-TAX

Paragraph A

(*I*) In the case of every individual other than the individual referred to in items (*II*) and (*III*) of this Paragraph or Hindu undivided family or association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (*vii*) of clause (*31*) of section 2 of the Income-tax Act, not being a case to which any other Paragraph of this Part applies,—

Rates of income-tax

(*1*) where the total income does not exceed Rs. 1,60,000	*Nil;*
(*2*) where the total income exceeds Rs. 1,60,000 but does not exceed Rs. 3,00,000	10 per cent of the amount by which the total income exceeds Rs. 1,60,000;
(*3*) where the total income exceeds Rs. 3,00,000 but does not exceed Rs. 5,00,000	Rs. 14,000 *plus* 20 per cent of the amount by which the total income exceeds Rs. 3,00,000;
(*4*) where the total income exceeds Rs. 5,00,000	Rs. 54,000 *plus* 30 per cent of the amount by which the total income exceeds Rs. 5,00,000

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(*II*) In the case of every individual, being a woman resident in India, and below the age of sixty-five years at any time during the previous year,—

Rates of income-tax

(*1*) where the total income does not exceed Rs. 1,90,000	*Nil;*
(*2*) where the total income exceeds Rs. 1,90,000 but does not exceed Rs. 3,00,000	10 per cent of the amount by which the total income exceeds Rs. 1,90,000;
(*3*) where the total income exceeds Rs. 3,00,000 but does not exceed Rs. 5,00,000	Rs. 11,000 *plus* 20 per cent of the amount by which the total income exceeds Rs. 3,00,000;
(*4*) where the total income exceeds Rs. 5,00,000	Rs. 51,000 *plus* 30 per cent of the amount by which the total income exceeds Rs. 5,00,000

(*III*) In the case of every individual, being a resident in India, who is of the age of sixty-five years or more at any time during the previous year,—

Rates of income-tax

(*1*) where the total income does not exceed Rs. 2,40,000	*Nil;*
(*2*) where the total income exceeds Rs. 2,40,000 but does not exceed Rs. 3,00,000	10 per cent of the amount by which the total income exceeds Rs. 2,40,000;
(*3*) where the total income exceeds Rs. 3,00,000 but does not exceed Rs. 5,00,000	Rs. 6,000 *plus* 20 per cent of the amount by which the total income exceeds Rs. 3,00,000;
(*4*) where the total income exceeds Rs. 5,00,000	Rs. 46,000 *plus* 30 per cent of the amount by which the total income exceeds Rs. 5,00,000

Paragraph B

In the case of every co-operative society,—

Rates of income-tax

(*1*) where the total income does not exceed Rs. 10,000	10 per cent of the total income;
(*2*) where the total income exceeds Rs. 10,000 but does not exceed Rs. 20,000	Rs. 1,000 *plus* 20 per cent of the amount by which the total income exceeds Rs. 10,000;
(*3*) where the total income exceeds Rs. 20,000	Rs. 3,000 *plus* 30 per cent of the amount by which the total income exceeds Rs. 20,000

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Paragraph C

In the case of every firm,—

Rate of income-tax

On the whole of the total income	30 per cent

Paragraph D

In the case of every local authority,—

Rate of Income-tax

On the whole of the total income	30 per cent

Paragraph E

In the case of a company,—

Rates of Income-tax

I. In the case of a domestic company	30 per cent of the total income;
II. In the case of a company other than a domestic company—	
(*i*) on so much of the total income as consists of,—	
(*a*) royalties received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 31st day of March, 1961 but before the 1st day of April, 1976; or	
(*b*) fees for rendering technical services received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 29th day of February, 1964 but before the 1st day of April, 1976,	
and where such agreement has, in either case, been approved by the Central Government	50 per cent;
(*ii*) on the balance, if any, of the total income	40 per cent

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Surcharge on income-tax

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph, or in section 111A or section 112, shall, in the case of every company, be increased by a surcharge for purposes of the Union calculated,—

(*i*) in the case of every domestic company having a total income exceeding one crore rupees, at the rate of ten per cent of such income-tax;

(*ii*) in the case of every company other than a domestic company having a total income exceeding one crore rupees, at the rate of two and one-half per cent :

Provided that in the case of every company having a total income exceeding one crore rupees, the total amount payable as income-tax and surcharge on such income shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

PART II

RATES FOR DEDUCTION OF TAX AT SOURCE IN CERTAIN CASES

In every case in which under the provisions of sections 193, 194, 194A, 194B, 194BB, 194D and 195 of the Income-tax Act, tax is to be deducted at the rates in force, deduction shall be made from the income subject to the deduction at the following rates :—

	Rate of income-tax
1. In the case of a person other than a company—	
(*a*) where the person is resident in India—	
(*i*) on income by way of interest other than "Interest on securities"	10 per cent;
(*ii*) on income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort	30 per cent;
(*iii*) on income by way of winnings from horse races	30 per cent;
(*iv*) on income by way of insurance commission	10 per cent;
(*v*) on income by way of interest payable on—	10 per cent;
(*A*) any debentures or securities for money issued by or on behalf of any local authority or a corporation established by a Central, State or Provincial Act;	
(*B*) any debentures issued by a company where such debentures are listed on a recognised stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and any rules made thereunder;	

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	Rate of income-tax
(*C*) any security of the Central or State Government	
(*vi*) on any other income	10 per cent;
(*b*) where the person is not resident in India—	
(*i*) in the case of a non-resident Indian—	
(*A*) on any investment income	20 per cent;
(*B*) on income by way of long-term capital gains referred to in section 115E	10 per cent;
(*C*) on income by way of short-term capital gains referred to in section 111A	15 per cent;
(*D*) on other income by way of long-term capital gains [not being long-term capital gains referred to in clauses (*33*), (*36*) and (*38*) of section 10]	20 per cent;
(*E*) on income by way of interest payable by Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency	20 per cent;
(*F*) on income by way of royalty payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern where such royalty is in consideration for the transfer of all or any rights (including the granting of a licence) in respect of copyright in any book on a subject referred to in the first proviso to sub-section (1A) of section 115A of the Income-tax Act, to the Indian concern, or in respect of any computer software referred to in the second proviso to sub-section (1A) of section 115A of the Income-tax Act, to a person resident in India—	
(*I*) where the agreement is made on or after the 1st day of June, 1997 but before the 1st day of June, 2005	20 per cent;
(*II*) where the agreement is made on or after the 1st day of June, 2005	10 per cent;
(*G*) on income by way of royalty [not being royalty of the nature referred to in sub-item (*b*)(*i*)(*F*)] payable by Government or an Indian concern in pursuance of an	

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		Rate of income-tax
	agreement made by it with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy—	
	(*I*) where the agreement is made on or after the 1st day of June, 1997 but before the 1st day of June, 2005	20 per cent;
	(*II*) where the agreement is made on or after the 1st day of June, 2005	10 per cent;
(*H*)	on income by way of fees for technical services payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy—	
	(*I*) where the agreement is made on or after the 1st day of June, 1997 but before the 1st day of June, 2005	20 per cent;
	(*II*) where the agreement is made on or after the 1st day of June, 2005	10 per cent;
(*I*)	on income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort	30 per cent;
(*J*)	on income by way of winnings from horse races	30 per cent;
(*K*)	on the whole of the other income	30 per cent;
(*ii*)	in the case of any other person—	
(*A*)	on income by way of interest payable by Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency	20 per cent;

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		Rate of income-tax
	(*B*) on income by way of royalty payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern where such royalty is in consideration for the transfer of all or any rights (including the granting of a licence) in respect of copyright in any book on a subject referred to in the first proviso to sub-section (1A) of section 115A of the Income-tax Act, to the Indian concern, or in respect of any computer software referred to in the second proviso to sub-section (1A) of section 115A of the Income-tax Act, to a person resident in India—	
	(*I*) where the agreement is made on or after the 1st day of June, 1997 but before the 1st day of June, 2005	20 per cent;
	(*II*) where the agreement is made on or after the 1st day of June, 2005	10 per cent;
	(*C*) on income by way of royalty [not being royalty of the nature referred to in sub-item (*b*)(*ii*)(*B*)] payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy—	
	(*I*) where the agreement is made on or after the 1st day of June, 1997 but before the 1st day of June, 2005	20 per cent;
	(*II*) where the agreement is made on or after the 1st day of June, 2005	10 per cent;
	(*D*) on income by way of fees for technical services payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern and where such	

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	Rate of income-tax
agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy—	
(*I*) where the agreement is made on or after the 1st day of June, 1997 but before the 1st day of June, 2005	20 per cent;
(*II*) where the agreement is made on or after the 1st day of June, 2005	10 per cent;
(*E*) on income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort	30 per cent;
(*F*) on income by way of winnings from horse races	30 per cent;
(*G*) on income by way of short-term capital gains referred to in section 111A	15 per cent;
(*H*) on income by way of long-term capital gains [not being long-term capital gains referred to in clauses (*33*), (*36*) and (*38*) of section 10]	20 per cent;
(*I*) on the whole of the other income	30 per cent;
2. In the case of a company—	
(*a*) where the company is a domestic company—	
(*i*) on income by way of interest other than "Interest on securities"	10 per cent;
(*ii*) on income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort	30 per cent;
(*iii*) on income by way of winnings from horse races	30 per cent;
(*iv*) on any other income	10 per cent;
(*b*) where the company is not a domestic company—	
(*i*) on income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort	30 per cent;
(*ii*) on income by way of winnings from horse races	30 per cent;

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		Rate of income-tax
(*iii*)	on income by way of interest payable by Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency	20 per cent;
(*iv*)	on income by way of royalty payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 31st day of March, 1976 where such royalty is in consideration for the transfer of all or any rights (including the granting of a licence) in respect of copyright in any book on a subject referred to in the first proviso to sub-section (1A) of section 115A of the Income-tax Act, to the Indian concern, or in respect of any computer software referred to in the second proviso to sub-section (1A) of section 115A of the Income-tax Act, to a person resident in India—	
	(*A*) where the agreement is made before the 1st day of June, 1997	30 per cent;
	(*B*) where the agreement is made on or after the 1st day of June, 1997 but before the 1st day of June, 2005	20 per cent;
	(*C*) where the agreement is made on or after the 1st day of June, 2005	10 per cent;
(*v*)	on income by way of royalty [not being royalty of the nature referred to in sub-item (*b*)(*iv*)] payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy—	
	(*A*) where the agreement is made after the 31st day of March, 1961 but before the 1st day of April, 1976	50 per cent;
	(*B*) where the agreement is made after the 31st day of March, 1976 but before the 1st day of June, 1997	30 per cent;
	(*C*) where the agreement is made on or after the 1st day of June, 1997 but before the 1st day of June, 2005	20 per cent;

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		Rate of income-tax
	(*D*) where the agreement is made on or after the 1st day of June, 2005	10 per cent;
(*vi*)	on income by way of fees for technical services payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy—	
	(*A*) where the agreement is made after the 29th day of February, 1964 but before the 1st day of April, 1976	50 per cent;
	(*B*) where the agreement is made after the 31st day of March, 1976 but before the 1st day of June, 1997	30 per cent;
	(*C*) where the agreement is made on or after the 1st day of June, 1997 but before the 1st day of June, 2005	20 per cent;
	(*D*) where the agreement is made on or after the 1st day of June, 2005	10 per cent;
(*vii*)	on income by way of short-term capital gains referred to in section 111A	15 per cent;
(*viii*)	on income by way of long-term capital gains [not being long-term capital gains referred to in clauses (*33*), (*36*) and (*38*) of section 10]	20 per cent;
(*ix*)	on any other income	40 per cent;

Explanation.—For the purpose of item 1(*b*)(*i*) of this Part, "investment income" and "non-resident Indian" shall have the meanings assigned to them in Chapter XII-A of the Income-tax Act.

Surcharge on income-tax

The amount of income-tax deducted in accordance with the provisions of item 2(*b*) of this Part, shall be increased by a surcharge, for purposes of the Union, in the case of every company other than a domestic company, calculated at the rate of two and one-half per cent of such income-tax where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds one crore rupees.

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PART III

RATES FOR CHARGING INCOME-TAX IN CERTAIN CASES, DEDUCTING INCOME-TAX FROM INCOME CHARGEABLE UNDER THE HEAD "SALARIES" AND COMPUTING "ADVANCE TAX"

In cases in which income-tax has to be charged under sub-section (4) of section 172 of the Income-tax Act or sub-section (2) of section 174 or section 174A or section 175 or sub-section (2) of section 176 of the said Act or deducted from, or paid on, from income chargeable under the head "Salaries" under section 192 of the said Act or in which the "advance tax" payable under Chapter XVII-C of the said Act has to be computed at the rate or rates in force, such income-tax or, as the case may be, "advance tax" [not being "advance tax" in respect of any income chargeable to tax under Chapter XII or Chapter XII-A or income chargeable to tax under section 115JB or sub-section (1A) of section 161 or section 164 or section 164A or section 167B of the Income-tax Act at the rates as specified in that Chapter or section or surcharge, wherever applicable, on such "advance tax" in respect of any income chargeable to tax under section 115A or section 115AB or section 115AC or section 115ACA or section 115AD or section 115B or section 115BB or section 115BBA or section 115BBC or section 115E or section 115JB] shall be charged, deducted or computed at the following rate or rates:—

Paragraph A

(*I*) In the case of every individual other than the individual referred to in items (*II*) and (*III*) of this Paragraph or Hindu undivided family or association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (*vii*) of clause (*31*) of section 2 of the Income-tax Act, not being a case to which any other Paragraph of this Part applies,—

Rates of income-tax

(*1*) where the total income does not exceed Rs. 1,60,000	*Nil*;
(*2*) where the total income exceeds Rs. 1,60,000 but does not exceed Rs. 5,00,000	10 per cent of the amount by which the total income exceeds Rs. 1,60,000;
(*3*) where the total income exceeds Rs. 5,00,000 but does not exceed Rs. 8,00,000	Rs. 34,000 *plus* 20 per cent of the amount by which the total income exceeds Rs. 5,00,000;
(*4*) where the total income exceeds Rs. 8,00,000	Rs. 94,000 *plus* 30 per cent of the amount by which the total income exceeds Rs. 8,00,000.

(*II*) In the case of every individual, being a woman resident in India, and below the age of sixty-five years at any time during the previous year,—

Rates of income-tax

(*1*) where the total income does not exceed Rs. 1,90,000	*Nil*;

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(*2*) where the total income exceeds Rs. 1,90,000 but does not exceed Rs. 5,00,000	10 per cent of the amount by which the total income exceeds Rs. 1,90,000;
(*3*) where the total income exceeds Rs. 5,00,000 but does not exceed Rs. 8,00,000	Rs. 31,000 *plus* 20 per cent of the amount by which the total income exceeds Rs. 5,00,000;
(*4*) where the total income exceeds Rs. 8,00,000	Rs. 91,000 *plus* 30 per cent of the amount by which the total income exceeds Rs. 8,00,000.

(*III*) In the case of every individual, being a resident in India, who is of the age of sixty-five years or more at any time during the previous year, —

Rates of income-tax

(*1*) where the total income does not exceed Rs. 2,40,000	*Nil*;
(*2*) where the total income exceeds Rs. 2,40,000 but does not exceed Rs. 5,00,000	10 per cent of the amount by which the total income exceeds Rs. 2,40,000;
(*3*) where the total income exceeds Rs. 5,00,000 but does not exceed Rs. 8,00,000	Rs. 26,000 *plus* 20 per cent of the amount by which the total income exceeds Rs. 5,00,000;
(*4*) where the total income exceeds Rs. 8,00,000	Rs. 86,000 *plus* 30 per cent of the amount by which the total income exceeds Rs. 8,00,000.

Paragraph B

In the case of every co-operative society, —

Rates of income-tax

(*1*) where the total income does not exceed Rs. 10,000	10 per cent of the total income;
(*2*) where the total income exceeds Rs. 10,000 but does not exceed Rs. 20,000	Rs. 1,000 *plus* 20 per cent of the amount by which the total income exceeds Rs. 10,000;
(*3*) where the total income exceeds Rs. 20,000	Rs. 3,000 *plus* 30 per cent of the amount by which the total income exceeds Rs. 20,000.

Paragraph C

In the case of every firm,—

Rate of income-tax

On the whole of the total income	30 per cent

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Paragraph D

In the case of every local authority,—

Rate of income-tax

On the whole of the total income	30 per cent

Paragraph E

In the case of a company,—

Rates of income-tax

I. In the case of a domestic company	30 per cent of the total income;
II. In the case of a company other than a domestic company—	
(*i*) on so much of the total income as consists of,—	
(*a*) royalties received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 31st day of March, 1961 but before the 1st day of April, 1976; or	
(*b*) fees for rendering technical services received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 29th day of February, 1964 but before the 1st day of April, 1976,	
and where such agreement has, in either case, been approved by the Central Government	50 per cent;
(*ii*) on the balance, if any, of the total income	40 per cent.

Surcharge on income-tax

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph, or in section 111A or section 112, shall, in the case of every company, be increased by a surcharge for purposes of the Union calculated,—

(*i*) in the case of every domestic company having a total income exceeding one crore rupees, at the rate of seven and one-half per cent of such income-tax;

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(*ii*) in the case of every company other than a domestic company having a total income exceeding one crore rupees at the rate of two and one-half per cent:

Provided that in the case of every company having a total income exceeding one crore rupees, the total amount payable as income-tax and surcharge on such income shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

PART IV

[*See* section 2(13)(*c*)]

RULES FOR COMPUTATION OF NET AGRICULTURAL INCOME

Rule 1.—Agricultural income of the nature referred to in sub-clause (*a*) of clause (*1A*) of section 2 of the Income-tax Act shall be computed as if it were income chargeable to income-tax under that Act under the head "Income from other sources" and the provisions of sections 57 to 59 of that Act shall, so far as may be, apply accordingly:

Provided that sub-section (2) of section 58 shall apply subject to the modification that the reference to section 40A therein shall be construed as not including a reference to sub-sections (3) and (4) of section 40A.

Rule 2.—Agricultural income of the nature referred to in sub-clause (*b*) or sub-clause (*c*) of clause (*1A*) of section 2 of the Income-tax Act [other than income derived from any building required as a dwelling-house by the receiver of the rent or revenue of the cultivator or the receiver of rent-in-kind referred to in the said sub-clause (*c*)] shall be computed as if it were income chargeable to income-tax under that Act under the head "Profits and gains of business or profession" and the provisions of sections 30, 31, 32, 36, 37, 38, 40, 40A [other than sub-sections (3) and (4) thereof], 41, 43, 43A, 43B and 43C of the Income-tax Act shall, so far as may be, apply accordingly.

Rule 3.—Agricultural income of the nature referred to in sub-clause (*c*) of clause (*1A*) of section 2 of the Income-tax Act, being income derived from any building required as a dwelling-house by the receiver of the rent or revenue or the cultivator or the receiver of rent-in-kind referred to in the said sub-clause (*c*) shall be computed as if it were income chargeable to income-tax under that Act under the head "Income from house property" and the provisions of sections 23 to 27 of that Act shall, so far as may be, apply accordingly.

Rule 4.—Notwithstanding anything contained in any other provisions of these rules, in a case—

(*a*) where the assessee derives income from sale of tea grown and manufactured by him in India, such income shall be computed in accordance with rule 8 of the Income-tax Rules, 1962, and sixty per cent of such income shall be regarded as the agricultural income of the assessee;

(*b*) where the assessee derives income from sale of centrifuged latex or cenex or latex based crepes (such as pale latex crepe) or brown crepes

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(such as estate brown crepe, re-milled crepe, smoked blanket crepe or flat bark crepe) or technically specified block rubbers manufactured or processed by him from rubber plants grown by him in India, such income shall be computed in accordance with rule 7A of the Income-tax Rules, 1962, and sixty-five per cent of such income shall be regarded as the agricultural income of the assessee;

(*c*) where the assessee derives income from sale of coffee grown and manufactured by him in India, such income shall be computed in accordance with rule 7B of the Income-tax Rules, 1962, and sixty per cent or seventy-five per cent, as the case may be, of such income shall be regarded as the agricultural income of the assessee.

Rule 5.—Where the assessee is a member of an association of persons or a body of individuals (other than a Hindu undivided family, a company or a firm) which in the previous year has either no income chargeable to tax under the Income-tax Act or has total income not exceeding the maximum amount not chargeable to tax in the case of an association of persons or a body of individuals (other than a Hindu undivided family, a company or a firm) but has any agricultural income then, the agricultural income or loss of the association or body shall be computed in accordance with these rules and the share of the assessee in the agricultural income or loss so computed shall be regarded as the agricultural income or loss of the assessee.

Rule 6.—Where the result of the computation for the previous year in respect of any source of agricultural income is a loss, such loss shall be set off against the income of the assessee, if any, for that previous year from any other source of agricultural income:

Provided that where the assessee is a member of an association of persons or a body of individuals and the share of the assessee in the agricultural income of the association or body, as the case may be, is a loss, such loss shall not be set off against any income of the assessee from any other source of agricultural income.

Rule 7.—Any sum payable by the assessee on account of any tax levied by the State Government on the agricultural income shall be deducted in computing the agricultural income.

Rule 8.—(1) Where the assessee has, in the previous year relevant to the assessment year commencing on the 1st day of April, 2010, any agricultural income and the net result of the computation of the agricultural income of the assessee for any one or more of the previous years relevant to the assessment years commencing on the 1st day of April, 2002 or the 1st day of April, 2003 or the 1st day of April, 2004 or the 1st day of April, 2005 or the 1st day of April, 2006 or the 1st day of April, 2007 or the 1st day of April, 2008 or the 1st day of April, 2009, is a loss, then, for the purposes of sub-section (2) of section 2 of this Act,—

(*i*) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2002, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2003 or the 1st day of April, 2004 or the 1st day of April,

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2005 or the 1st day of April, 2006 or the 1st day of April, 2007 or the 1st day of April, 2008 or the 1st day of April, 2009,

(*ii*) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2003, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2004 or the 1st day of April, 2005 or the 1st day of April, 2006 or the 1st day of April, 2007 or the 1st day of April, 2008 or the 1st day of April, 2009,

(*iii*) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2004, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2005 or the 1st day of April, 2006 or the 1st day of April, 2007 or the 1st day of April, 2008 or the 1st day of April, 2009,

(*iv*) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2005, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2006 or the 1st day of April, 2007 or the 1st day of April, 2008 or the 1st day of April, 2009,

(*v*) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2006, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2007 or the 1st day of April, 2008 or the 1st day of April, 2009,

(*vi*) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2007, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2008 or the 1st day of April, 2009,

(*vii*) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2008, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2009,

(*viii*) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2009,

shall be set off against the agricultural income of the assessee for the previous year relevant to the assessment year commencing on the 1st day of April, 2010.

(2) Where the assessee has, in the previous year relevant to the assessment year commencing on the 1st day of April, 2011, or, if by virtue of any provision of the Income-tax Act, income-tax is to be charged in respect of the income of a period other than the previous year, in such other period, any agricultural income and

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the net result of the computation of the agricultural income of the assessee for any one or more of the previous years relevant to the assessment years commencing on the 1st day of April, 2003 or the 1st day of April, 2004 or the 1st day of April, 2005 or the 1st day of April, 2006 or the 1st day of April, 2007 or the 1st day of April, 2008 or the 1st day of April, 2009 or the 1st day of April, 2010, is a loss, then, for the purposes of sub-section (10) of section 2 of this Act,—

(*i*) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2003, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2004 or the 1st day of April, 2005 or the 1st day of April, 2006 or the 1st day of April, 2007 or the 1st day of April, 2008 or the 1st day of April, 2009 or the 1st day of April, 2010,

(*ii*) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2004, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2005 or the 1st day of April, 2006 or the 1st day of April, 2007 or the 1st day of April, 2008 or the 1st day of April, 2009 or the 1st day of April, 2010,

(*iii*) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2005, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2006 or the 1st day of April, 2007 or the 1st day of April, 2008 or the 1st day of April, 2009 or the 1st day of April, 2010,

(*iv*) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2006, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2007 or the 1st day of April, 2008 or the 1st day of April, 2009 or the 1st day of April, 2010,

(*v*) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2007, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2008 or the 1st day of April, 2009 or the 1st day of April, 2010,

(*vi*) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2008, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2009 or the 1st day of April, 2010,

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(*vii*) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2009, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2010,

(*viii*) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2010,

shall be set off against the agricultural income of the assessee for the previous year relevant to the assessment year commencing on the 1st day of April, 2011.

(3) Where any person deriving any agricultural income from any source has been succeeded in such capacity by another person, otherwise than by inheritance, nothing in sub-rule (1) or sub-rule (2) shall entitle any person, other than the person incurring the loss, to have it set off under sub-rule (1) or, as the case may be, sub-rule (2).

(4) Notwithstanding anything contained in this rule, no loss which has not been determined by the Assessing Officer under the provisions of these rules or the rules contained in Part IV of the First Schedule to the Finance Act, 2002 (20 of 2002), or of the First Schedule to the Finance Act, 2003 (32 of 2003), or of the First Schedule to the Finance (No. 2) Act, 2004 (23 of 2004) or of the First Schedule to the Finance Act, 2005 (18 of 2005), or of the First Schedule to the Finance Act, 2006 (21 of 2006) or of the First Schedule to the Finance Act, 2007 (22 of 2007) or of the First Schedule to the Finance Act, 2008 (18 of 2008) or of the First Schedule to the Finance (No. 2) Act, 2009 (33 of 2009) shall be set off under sub-rule (1) or, as the case may be, sub-rule (2).

Rule 9.—Where the net result of the computation made in accordance with these rules is a loss, the loss so computed shall be ignored and the net agricultural income shall be deemed to be *nil*.

Rule 10.—The provisions of the Income-tax Act relating to procedure for assessment (including the provisions of section 288A relating to rounding off of income) shall, with the necessary modifications, apply in relation to the computation of the net agricultural income of the assessee as they apply in relation to the assessment of the total income.

Rule 11.—For the purposes of computing the net agricultural income of the assessee, the Assessing Officer shall have the same powers as he has under the Income-tax Act for the purposes of assessment of the total income.

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DIVISION THREE

National Tax Tribunal Act, 2005

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NATIONAL TAX TRIBUNAL ACT, 2005

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NATIONAL TAX TRIBUNAL ACT, 2005

[49 OF 2005]

[AS AMENDED BY THE NATIONAL TAX TRIBUNAL (AMENDMENT) ACT, 2007]

An Act to provide for the adjudication by the National Tax Tribunal of disputes with respect to levy, assessment, collection and enforcement of direct taxes and also to provide for the adjudication by that Tribunal of disputes with respect to the determination of the rates of duties of customs and central excise on goods and the valuation of goods for the purposes of assessment of such duties as well as in matters relating to levy of tax on service, in pursuance of article 323B of the Constitution and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title, extent and commencement.

1. (1) This Act may be called the National Tax Tribunal Act, 2005.

(2) It extends to the whole of India.

(3) It shall come into force on such date[1] as the Central Government may, by notification in the Official Gazette, appoint :

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definitions.

2. In this Act, unless the context otherwise requires,—

(*a*) "Bench" means a Bench of the National Tax Tribunal;

(*b*) "Board of Direct Taxes" means the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963 (54 of 1963);

(*c*) "Board of Excise and Customs" means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963);

1. **28-12-2005** *vide* **SO 1826(E), dated 28-12-2005.**

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(*d*) "Central Excise Act" means the Central Excise Act, 1944 (1 of 1944);

(*e*) "Central Excise Tariff Act" means the Central Excise Tariff Act, 1985 (5 of 1986);

(*f*) "Chairperson" means the Chairperson of the National Tax Tribunal;

(*g*) "Companies (Profits) Surtax Act" means the Companies (Profits) Surtax Act, 1964 (7 of 1964);

(*h*) "Customs Act" means the Customs Act, 1962 (52 of 1962);

(*i*) "Customs, Excise and Service Tax Appellate Tribunal" means the Customs, Excise and Service Tax Appellate Tribunal constituted under section 129 of the Customs Act, 1962 (52 of 1962);

(*j*) "Customs Tariff Act" means the Customs Tariff Act, 1975 (51 of 1975);

(*k*) "Expenditure-tax Act" means the Expenditure-tax Act, 1987 (35 of 1987);

(*l*) "Gift-tax Act" means the Gift-tax Act, 1958 (18 of 1958);

(*m*) "Income-tax Act" means the Income-tax Act, 1961 (43 of 1961);

(*n*) "Income-tax Appellate Tribunal" means the Income-tax Appellate Tribunal constituted under section 252 of the Income-tax Act, 1961 (43 of 1961);

(*o*) "Interest-tax Act" means the Interest-tax Act, 1974 (45 of 1974);

(*p*) "law officer" means the Attorney-General for India, the Solicitor General of India or the Additional Solicitor General of India;

(*q*) "Member" means a Member of the National Tax Tribunal and includes the Chairperson;

(*r*) "National Tax Tribunal" means the National Tax Tribunal established under section 3;

(*s*) "notification" means a notification published in the Official Gazette;

(*t*) "prescribed" means prescribed by rules made under this Act;

(*u*) "Supreme Court" means the Supreme Court of India;

(*v*) "Wealth-tax Act" means the Wealth-tax Act, 1957 (27 of 1957);

(*w*) words and expressions used in this Act but not defined herein and defined in the Central Excise Act, the Central Excise Tariff Act, the Customs Act, the Customs Tariff Act (hereinafter referred to as the indirect taxes) or the rules made thereunder or in Chapter V of the Finance Act, 1994 (32 of 1994) shall have the meanings, respectively, assigned to them in the said Acts or the rules made thereunder;

(*x*) words and expressions used in this Act but not defined herein and defined in the Income-tax Act, the Wealth-tax Act, the Gift-tax Act, the Expenditure-tax Act, the Interest-tax Act or the Companies (Profits) Surtax Act (hereinafter referred to as the direct taxes) or the rules made thereunder shall have the meanings, respectively, assigned to them in the said Acts or the rules made thereunder.

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CHAPTER II

ESTABLISHMENT OF THE NATIONAL TAX TRIBUNAL

Establishment of National Tax Tribunal.

3. The Central Government shall, by notification* in the Official Gazette, establish with effect from such date as may be specified therein, a Tax Tribunal to be known as the National Tax Tribunal to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under this Act.

Composition of National Tax Tribunal.

4. The National Tax Tribunal shall consist of a Chairperson and such number of Members as the Central Government deems fit, to be appointed by that Government, by notification in the Official Gazette.

Constitution and jurisdiction of Benches.

5. (1) The jurisdiction of the National Tax Tribunal may be exercised by the Benches thereof to be constituted by the Chairperson.

(2) The Benches of the National Tax Tribunal shall ordinarily sit at any place in the National Capital Territory of Delhi or such other places as the Central Government may, in consultation with the Chairperson, notify:

Provided that the Chairperson may for adequate reasons permit a Bench to hold its temporary sitting for a period not exceeding fifteen days at a place other than its ordinary place of seat.

(3) The Central Government shall notify the areas in relation to which each Bench of the National Tax Tribunal may exercise its jurisdiction.

(4) The Central Government shall determine the number of Benches and each Bench shall consist of two members.

(5) The Central Government may[1][***] transfer a Member from headquarters of one Bench in one State to the headquarters of another Bench in another State or to the headquarters of any other Bench within a State:

[2][**Provided** that no Member shall be transferred without the concurrence of the Chairperson.]

Qualifications for appointment of Chairperson and other Members.

6. (1) The Chairperson of the National Tax Tribunal shall be a person who has been a Judge of the Supreme Court or the Chief Justice of a High Court.

(2) A person shall not be qualified for appointment as Member unless he—

(*a*) is, or has been, or is eligible to be, a Judge of a High Court; or

(*b*) is, or has been, a Member of the Income-tax Appellate Tribunal or of the Customs, Excise and Service Tax Appellate Tribunal for at least [3][five] years.

***Notification No. SO 25(E), dated 6-1-2006** : In exercise of the powers conferred by section 3 of the National Tax Tribunal Act, 2005 (49 of 2005), the Central Government hereby establishes, with immediate effect, the National Tax Tribunal.

1. Words "in consultation with the Chairperson" omitted by the National Tax Tribunal (Amendment) Act, 2007, w.r.e.f. 29-1-2007.
2. Inserted, *ibid.*
3. Substituted for "seven", *ibid.*

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Appointment of Chairperson and other Members.

7. (1) Subject to the provisions of sub-section (2), the Chairperson and every other Member shall be appointed by the Central Government.

(2) The Chairperson and the other Members shall be appointed by the Central Government on the recommendations of a Selection Committee consisting of—

(*a*) the Chief Justice of India or a Judge of the Supreme Court nominated by him;

(*b*) the Secretary in the Ministry of Law and Justice (Department of Legal Affairs);

(*c*) the Secretary in the Ministry of Finance (Department of Revenue).

(3) No appointment of the Chairperson or of any other Member shall be invalidated merely by reason of any vacancy or any defect in the constitution of the Selection Committee.

Terms of office of Chairperson and other Members.

8. The Chairperson and every other Member shall hold office as such for a term of five years from the date on which he enters upon his office but shall be eligible for re-appointment:

Provided that no Chairperson or other Member shall hold office as such after he has attained,—

(*a*) in the case of Chairperson, the age of sixty-eight years; and

(*b*) in the case of any other Member, the age of sixty-five years.

Resignation of Chairperson and other Members.

9. The Chairperson or any other Member may, by notice in writing under his hand addressed to the Central Government, resign his office.

Salary and allowances.

10. (1) Subject to the provisions of this Act, the salary and allowances and other terms and conditions of the Chairperson shall be the same as applicable to a sitting Judge of the Supreme Court, but no vacation shall be allowed :

Provided that if a person who, immediately before the date of assuming the office as the Chairperson was in receipt of or being eligible so to do, had elected to draw, a pension in respect of any previous service or office held by such person under the Government of the Union or of a State, his salary in respect of service as Chairperson shall be reduced by the amount of that pension.

Explanation.— For the purposes of this sub-section, "vacation" shall have the meaning assigned to it in the Supreme Court Judges (Conditions of Service) Act, 1958 (41 of 1958).

(2) A Member shall draw salary of a High Court Judge and other allowances and the terms and conditions of his service shall be the same as applicable to a Secretary to the Government of India :

Provided that if a person who, immediately before the date of assuming the office as Member was in receipt of, or being eligible so to do, had elected to draw, a pension in respect of any previous service held by such person in connection with the affairs of the Union or of a State, his salary in respect of service as Member shall be reduced to the extent of that pension.

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(3) The salary and allowances and other terms and conditions of service of Chairperson or a Member of the Tribunal shall not be varied to his disadvantage after appointment.

Removal and suspension of Chairperson and other Members.

11. (1) The Central Government may, in consultation with the Chief Justice of India, remove from office the Chairperson or any Member who—

(*a*) has been adjudged an insolvent; or

(*b*) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(*c*) has become physically or mentally incapable of acting as such Chairperson or Member of the National Tax Tribunal; or

(*d*) has acquired such financial or other interest as is likely to affect prejudicially his functions as the Chairperson or a Member of the National Tax Tribunal; or

(*e*) has so abused his position as to render his continuance in office prejudicial to the public interest.

(2) The Chairperson or any other Member shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court in which such Chairperson or Member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The Central Government may suspend from office the Chairperson or any other Member in respect of whom a reference of conducting an inquiry has been made to the Judge of the Supreme Court under sub-section (2) until the Central Government has passed orders on receipt of the report of the Judge of the Supreme Court on such reference.

(4) The Central Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the Chairperson or a Member referred to in sub-section (2).

Officers and employees of National Tax Tribunal.

12. (1) The Central Government shall provide the National Tax Tribunal with such officers and employees as it may deem fit.

(2) The salaries and allowances and other conditions of service of officers and employees of the National Tax Tribunal shall be such as may be prescribed.

(3) The officers and employees of the National Tax Tribunal shall discharge their functions under the general superintendence of the Chairperson.

(4) The officers and the other employees shall be appointed on the recommendations of a Selection Committee constituted by the Central Government.

Appearance before National Tax Tribunal.

13. (1) A party to an appeal other than Government may either appear in person or authorise one or more chartered accountants or legal practitioners [1][***] to present his or its case before the National Tax Tribunal.

1. Words "or any person duly authorised by him or it" omitted by the National Tax Tribunal (Amendment) Act, 2007, w.r.e.f. 29-1-2007.

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(2) The Government may authorise one or more legal practitioners or any of its officers to present its case before the National Tax Tribunal.

Explanation.— For the purposes of this section,—

(*a*) "chartered accountant" means a chartered accountant as defined in clause (*b*) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(*b*) "legal practitioner" means an advocate, a *vakil* or any attorney of any High Court, and includes a pleader in practice.

Member to act as Chairperson or to discharge his functions in certain circumstances.

14. (1) In the event of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the Central Government may designate the seniormost Member to act as the Chairperson until the day on which a Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

(2) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the Central Government may authorise the seniormost Member to discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

(3) The seniormost member designated to act under sub-section (1) or to discharge functions of the Chairperson under sub-section (2), of the Chairperson shall continue to draw salary and allowances of a Member.

CHAPTER III

JURISDICTION, POWERS AND FUNCTIONS OF NATIONAL TAX TRIBUNAL

Appeal to National Tax Tribunal.

15. (1) An appeal shall lie to the National Tax Tribunal from every order passed in appeal by the Income-tax Appellate Tribunal and the Customs, Excise and Service Tax Appellate Tribunal, if the National Tax Tribunal is satisfied that the case involves a substantial question of law.

(2) The Chief Commissioner or the Commissioner of Income-tax or the Chief Commissioner or Commissioner of Customs and Central Excise, as the case may be, or an assessee aggrieved by any order passed by the Income-tax Appellate Tribunal or any person aggrieved by any order passed by the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as aggrieved person), may file an appeal to the National Tax Tribunal and such appeal under this sub-section shall—

(*a*) be filed within one hundred and twenty days from the date on which the order appealed against is received by the assessee or the aggrieved person or the Chief Commissioner or Commissioner, as the case may be;

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(*b*) be in the form of a memorandum of appeal precisely stating therein the substantial question of law involved; and

(*c*) be accompanied by such fees as may be prescribed :

Provided that separate form of memorandum of appeal shall be filed for matters involving direct and indirect taxes :

Provided further that the National Tax Tribunal may entertain the appeal within sixty days after the expiry of the said period of one hundred and twenty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring an appeal in time.

(3) Where an appeal is admitted under sub-section (1), the National Tax Tribunal—

(*a*) shall formulate the question of law for hearing the appeal; and

(*b*) may also determine any relevant issue in connection with the question so formulated—

(*i*) which has not been so determined by the Income-tax Appellate Tribunal or by the Customs, Excise and Service Tax Appellate Tribunal; or

(*ii*) which has been wrongly determined by the Income-tax Appellate Tribunal or by the Customs, Excise and Service Tax Appellate Tribunal,

and shall decide the question of law so formulated and the other relevant issue so determined and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(4) Where in any appeal under this section, the decision of the Income-tax Appellate Tribunal or the Customs, Excise and Service Tax Appellate Tribunal involves the payment of any tax or duties, the assessee or the aggrieved person, as the case may be, shall not be allowed to prefer such appeal unless he deposits at least twenty-five per cent of such tax or duty payable on the basis of the order appealed against :

Provided that where in a particular case the National Tax Tribunal is of the opinion that the deposit of tax or duty under this sub-section would cause undue hardship to such person, it may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the interest of revenue.

Procedure and powers of National Tax Tribunal.

16. (1) The National Tax Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice.

(2) Subject to the other provisions of this Act, the National Tax Tribunal shall have powers to regulate its own procedure.

(3) The National Tax Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the

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Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:—

(*a*) requiring the discovery and production of books of account and other documents;

(*b*) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or a copy of such record or document, from any office;

(*c*) dismissing an appeal for default or deciding it, *ex parte;*

(*d*) setting aside any order of dismissal of any appeal for default or any order passed by it, *ex parte;*

(*e*) rectifying any mistake or error apparent on the face of record; and

(*f*) any other matter which may be prescribed.

(4) All proceedings before the National Tax Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code (45 of 1860) and the National Tax Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

Finality of orders of National Tax Tribunal.

17. Any order passed by the National Tax Tribunal shall be final and shall be given effect to accordingly and no civil court shall have or be entitled to exercise any jurisdiction, power or authority with respect to any of the matters falling within the jurisdiction of the National Tax Tribunal.

Decision by majority.

18. If the Members of a Bench consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson, who shall hear the point or points himself or nominate any other Member for such hearing and such point or points shall be decided according to the opinion of the majority, who have heard the case including those who first heard it.

Special Bench.

19. Where a judgment pronounced on a question of law by a Bench subsequently comes up for hearing before any Bench, and the latter Bench is of the opinion that the question of law requires reconsideration, then the latter Bench shall make a reference to the Chairperson to constitute a Special Bench consisting of five Members to hear and decide such question of law.

Interim Order.

20. Notwithstanding anything contained in any other provisions of this Act or any other law for the time being in force, no interim order (whether by way of injunction or stay or otherwise) shall be made in relation to any appeal under this Act, unless—

(*a*) copies of such appeal and all documents in support of the plea for such interim order are furnished to the party against whom the appeal is preferred; and

(*b*) opportunity is given to such party to be heard in the matter.

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Power to punish for contempt.

21. The National Tax Tribunal shall have and exercise the same jurisdiction, powers and authority in respect of contempt of itself as the High Court has and may exercise such power or authority, for this purpose under the provisions of the Contempt of Courts Act, 1971 (70 of 1971), which shall have effect subject to the modification that—

(*a*) any reference therein to a High Court shall be construed as including a reference to the National Tax Tribunal;

(*b*) any reference to the Advocate General in section 15 of the said Act shall be construed as a reference to such law officer as the Central Government may specify in this behalf :

Provided that such matters shall be heard by a Special Bench consisting of five Members constituted by the Chairperson.

Order of National Tax Tribunal.

22. The National Tax Tribunal may, after giving the parties to any proceedings before it, an opportunity of being heard, pass such orders thereon as it thinks fit.

Transfer of pending cases from High Court.

23. (1) On and from such date as the Central Government may, by notification, specify, all matters and proceedings including appeals and references under the direct taxes and indirect taxes pending before any High Court immediately before that date shall stand transferred to the National Tax Tribunal.

(2) Where any matter or proceeding including appeals and references stand transferred from the High Court to the National Tax Tribunal under sub-section (1),—

(*a*) the High Court shall, as soon as may be after such transfer, forward the records pertaining to such matter or proceeding to the National Tax Tribunal;

(*b*) the National Tax Tribunal shall, on receipt of such records, proceed to deal with such matter or proceeding from the stage at which it is transferred or from an earlier stage or *de novo* as it may deem fit;

(*c*) the Chairperson shall constitute a Bench consisting of such number of Members as he deems fit for hearing cases transferred under this section.

Appeal to Supreme Court.

24. Any person including any department of the Government aggrieved by any decision or order of the National Tax Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the National Tax Tribunal to him:

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within such time as it may deem fit.

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CHAPTER IV

MISCELLANEOUS

Members, etc., to be public servants.

25. The Chairperson, Members and other officers and employees of the National Tax Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

Protection of action taken in good faith.

26. No suit, prosecution or other legal proceedings shall lie against the National Tax Tribunal or its Chairperson, Member, officer or other employee in the discharge of any function for any loss or damage caused or likely to be caused by any act which is, in good faith, done or intended to be done in the discharge of any function under this Act.

Power to remove difficulties.

27. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty :

Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall, as soon as may be, after it is made, be laid before each House of Parliament.

Power to make rules.

28. (1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) the procedure under sub-section (4) of section 11 for the investigation of charges of misbehaviour or incapacity against the Chairperson or other Members;

(*b*) the salaries and allowances and other conditions of service of officers and other employees of the National Tax Tribunal under sub-section (2) of section 12;

(*c*) the amount of fees payable under clause (*c*) of sub-section (2) of section 15;

(*d*) the other matters in respect of which the National Tax Tribunal may exercise the powers of a civil court under clause (*f*) of sub-section (3) of section 16;

(*e*) any other matter which may be prescribed or in respect of which rules are required to be made by the Central Government.

Laying of rules before Parliament.

29. Every rule made under this Act by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session

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or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Consequential amendments.

30. On and from such date as the Central Government may, by notification, specify, the enactments mentioned in the Schedule shall stand amended in the manner specified therein.

SCHEDULE

[*See* section 30]

AMENDMENT OF CERTAIN ENACTMENTS

PART I

AMENDMENTS TO THE INCOME-TAX ACT, 1961

(43 OF 1961)

1. In section 2, after clause *(29C),* the following clause shall be inserted, namely :—

'(29D) "National Tax Tribunal" means the National Tax Tribunal established under section 3 of the National Tax Tribunal Act, 2005;'.

2. In Chapter XX,—

(*i*) in section 254, in sub-section (4), for the words, figures and letter "Save as provided in section 256 or section 260A", the words and figures "Save as provided in the National Tax Tribunal Act, 2005" shall be substituted;

(*ii*) sub-heading *"C-Reference to High Court"* and sections 256, 258 and 259 shall be omitted;

(*iii*) for section 260, the following section shall be substituted, namely :—

"260.*Effect to the decisions of Supreme Court and of the National Tax Tribunal.* - (1) The Supreme Court upon hearing any reference made to it by the Appellate Tribunal under section 257 shall decide the question of law raised therein, and shall deliver its judgment thereon containing the grounds on which such decision is founded, and a copy of the judgment shall be sent under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case conforming to such judgment.

(2) Where the National Tax Tribunal delivers a judgment in an appeal filed before it or in any matter transferred to it under the National Tax Tribunal Act, 2005, effect shall be given to the order of that Tribunal by the Assessing Officer on the basis of certified copy of the judgment.

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(3) The cost of any reference to the Supreme Court which shall not include the fee for making the reference shall be at the discretion of the Court.";

(*iv*) in section 260A, in sub-section (1), after the words "order passed in appeal by the Appellate Tribunal", the words "before the date of establishment of the National Tax Tribunal" shall be inserted;

(*v*) in section 261, after the words "any judgment of the High Court delivered", the words "before the establishment of the National Tax Tribunal" shall be inserted;

(*vi*) in section 263, in sub-section (3), after the words "the Appellate Tribunal,", the words "National Tax Tribunal," shall be inserted;

(*vii*) in section 264, in sub-section (7), after the words "the Appellate Tribunal,", the words "National Tax Tribunal," shall be inserted.

PART II

AMENDMENTS TO THE WEALTH-TAX ACT, 1957

(27 OF 1957)

1. In section 2, after clause (*lc*), the following clause shall be inserted, namely :—

'(*ld*) "National Tax Tribunal" means the National Tax Tribunal established under section 3 of the National Tax Tribunal Act, 2005;'.

2. In section 25, in sub-section (4), after the words "Appellate Tribunal," the words "National Tax Tribunal" shall be inserted.

3. In section 27A,—

(*i*) in sub-section (1), after the words and figures "file on or after the 1st day of October, 1998", the words "but before the date of establishment of the National Tax Tribunal" shall be inserted;

(*ii*) in sub-section (2), after the words "An appeal shall lie to the High Court", the words "before the date of establishment of the National Tax Tribunal" shall be inserted.

4. In section 29, in sub-section (1), after the words "any judgment of the High Court delivered", the words "before the date of establishment of the National Tax Tribunal" shall be inserted.

5. In section 29A, after the words "preferred to the Supreme Court", the words and figures "under this Act before the commencement of the National Tax Tribunal Act, 2005" shall be inserted.

PART III

AMENDMENTS TO THE EXPENDITURE-TAX ACT, 1987

(35 OF 1987)

1. In section 13, in sub-section (4), for the words "or any order of a High Court", the words "or any order of the National Tax Tribunal or of a High Court" shall be substituted.

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2. In section 21, in sub-section (7), after the words "Appellate Tribunal,", the words "the National Tax Tribunal," shall be inserted.

PART IV

AMENDMENTS TO THE INTEREST-TAX ACT, 1974

(45 OF 1974)

1. In section 19, in sub-section (3), after the words "the Appellate Tribunal", the words "the National Tax Tribunal" shall be inserted.

2. In section 20, in sub-section (7), for the words "Appellate Tribunal, the High Court or the Supreme Court", the words "Appellate Tribunal, the National Tax Tribunal, the High Court or the Supreme Court" shall be substituted.

PART V

AMENDMENT TO THE FINANCE (NO. 2) ACT, 1998

(21 OF 1998)

In section 76, in sub-section (1), the words, figures, letter and brackets "sections 23, 23A, 24, 25, 28 and 29 of the Wealth-tax Act as amended and section 27A as inserted by the Finance (No. 2) Act, 1998", the words, figures and letter "sections 23, 23A, 24 and 25 of the Wealth-tax Act" shall be substituted.

PART VI

AMENDMENTS TO THE CUSTOMS ACT, 1962

(52 OF 1962)

1. In section 2, after clause (*30*), the following clause shall be inserted, namely:—

'(*30A*) "National Tax Tribunal" means the National Tax Tribunal established under section 3 of the National Tax Tribunal Act, 2005;'.

2. In section 27, in sub-section (3), after the words "Appellate Tribunal", the words ", the National Tax Tribunal" shall be inserted.

3. In section 27A, in the *Explanation*, after the words "Appellate Tribunal", the words ", National Tax Tribunal" shall be inserted.

4. In section 28AA, in *Explanations* 1 and 2, after the words "Appellate Tribunal", the words ", National Tax Tribunal" shall be inserted.

5. In section 28AB, in *Explanations* 1 and 2, after the words "Appellate Tribunal", the words ", National Tax Tribunal" shall be inserted.

6. In section 28B, in sub-section (1), after the words "Appellate Tribunal", the words ", National Tax Tribunal" shall be inserted.

7. Sections 130,130A, 130B, 130C and 130D shall be omitted.

8. In section 130E, in clause *(b),* after the words "any order passed", the words "before the establishment of the National Tax Tribunal" shall be inserted.

9. In section 131, after the words "an appeal has been preferred to the Supreme Court", the words and figure "under this Act before the commencement of the National Tax Tribunal Act, 2005" shall be inserted.

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10. In section 131C, clause *(b)* shall be omitted.

PART VII

AMENDMENTS TO THE CENTRAL EXCISE ACT, 1944

(1 OF 1944)

1. In section 2, after clause (*f*), the following clause shall be inserted, namely:—

'(*ff*) "National Tax Tribunal" means the National Tax Tribunal established under section 3 of the National Tax Tribunal Act, 2005;'.

2. In section 11AA, in *Explanations* 1 and 2, after the words "Appellate Tribunal", the words ", National Tax Tribunal" shall be inserted.

3. In section 11AB, in *Explanations* 1 and 2, after the words "Appellate Tribunal", the words ", National Tax Tribunal" shall be inserted.

4. In section 11BB, in the *Explanation,* after the words "Appellate Tribunal", the words ", National Tax Tribunal" shall be inserted.

5. In section 35C, in sub-section (4), for the words, figures and letters "Save as provided in section 35G or section 35L", the words and figures "Save as provided in the National Tax Tribunal Act, 2005" shall be substituted.

6. Sections 35G, 35H, 35-I and 35J shall be omitted.

7. In section 35K,—

(*i*) in sub-section (1), the words "High Court or the" shall be omitted;

(*ii*) in sub-section (2),—

(*a*) the words "the High Court or" occurring at both the places shall be omitted;

(*b*) the words "as the case may be," shall be omitted.

8. In section 35L, in clause (*b*), after the words "any order passed", the words "before the establishment of the National Tax Tribunal" shall be inserted.

9. In section 35N, after the words "an appeal has been preferred to the Supreme Court", the words and figures "under this Act before the commencement of the National Tax Tribunal Act, 2005" shall be inserted.

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DIVISION FOUR

Securities Transaction Tax

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SECURITIES TRANSACTION TAX

Arrangement of Sections

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SECURITIES TRANSACTION TAX*

CHAPTER VII OF FINANCE (NO. 2) ACT, 2004

SECURITIES TRANSACTION TAX

Extent, commencement and application.

96. (1) This Chapter extends to the whole of India.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.[1]

(3) It shall apply to taxable securities transactions entered into on or after the commencement of this Chapter.

Definitions.

97. In this Chapter, unless the context otherwise requires,—

(*1*) "Appellate Tribunal" means the Appellate Tribunal constituted under section 252 of the Income-tax Act, 1961 (43 of 1961);

(*2*) "Assessing Officer" means the Income-tax Officer or Assistant Commissioner of Income-tax or Deputy Commissioner of Income-tax or Joint Commissioner of Income-tax or Additional Commissioner of Income-tax who is authorised by the Board to exercise or perform all or any of the powers and functions conferred on, or assigned to, an Assessing Officer under this Chapter ;

(*3*) "Board" means the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963 (54 of 1963);

(*4*) "derivative" has the meaning assigned to it in clause (*aa*) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(*5*) "equity oriented fund" means a fund—

(*i*) where the investible funds are invested by way of equity shares in domestic companies to the extent of more than [2][sixty-five] per cent of the total proceeds of such fund; and

(*ii*) which has been set up under a scheme of a Mutual Fund:

Provided that the percentage of equity shareholding of the fund shall be computed with reference to the annual average of the monthly averages of the opening and closing figures;

(*6*) "Mutual Fund" means a Mutual Fund specified under clause (*23D*) of section 10 of the Income-tax Act, 1961 (43 of 1961) ;

1. 1st October, 2004 *vide SO 1058(E), dated 28-9-2004.*

2. Substituted for "fifty" by the Finance Act, 2006, w.e.f. 1-6-2006.

***SEE* SECURITIES TRANSACTION TAX RULES, 2004.**

***SEE* ALSO CIRCULAR NO. 2/2008, DATED 22-2-2008. FOR DETAILS, *SEE* TAXMANN'S MASTER GUIDE TO INCOME-TAX ACT.**

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(*7*) "option in securities" has the meaning assigned to it in clause (*d*) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(*8*) "option premium" means the premium payable by the purchaser of an "option in securities" at the time of such purchase;

(*9*) "prescribed" means prescribed by rules made by the Board under this Chapter;

(*10*) "recognised stock exchange" shall have the same meaning as in clause (*f*) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(*11*) "securities transaction tax" means tax leviable on the taxable securities transactions under the provisions of this Chapter ;

(*12*) "strike price" means the price at which the "option in securities" may be exercised on the expiry date of such option;

(*13*) "taxable securities transaction" means a transaction of—

(*a*) purchase or sale of an equity share in a company or a derivative or a unit of an equity oriented fund, entered into in a recognised stock exchange; or

(*b*) sale of a unit of an equity oriented fund to the Mutual Fund;

(*14*) words and expressions used but not defined in this Chapter and defined in the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Income-tax Act, 1961 (43 of 1961) or the rules made thereunder, shall apply, so far as may be, in relation to securities transaction tax.

Charge of securities transaction tax.

98. On and from the commencement of this Chapter, there shall be charged a securities transaction tax in respect of the taxable securities transaction specified in column (2) of the Table below, at the rate specified in the corresponding entry in column (3) of the said Table, on the value of such transaction and such tax shall be payable by the purchaser or the seller, specified in the corresponding entry in column (4) of the said Table:

TABLE

Sl. No.	*Taxable securities transaction*	*Rate*	*Payable by*
1	*2*	*3*	*4*
1.	Purchase of an equity share in a company or a unit of an equity oriented fund, where— (*a*) the transaction of such purchase is entered into in a recognised stock exchange; and (*b*) the contract for the purchase of such share or unit is settled by the actual delivery or transfer of such share or unit.	[3][0.125] per cent	Purchaser
2.	Sale of an equity share in a company or a unit of an equity oriented fund, where—	[3][0.125] per cent	Seller

3. Substituted for "0.1" by the Finance Act, 2006, w.e.f. 1-6-2006. Earlier it was substituted for "0.075" by the Finance Act, 2005, w.e.f. 1-6-2005.

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Sl. No.	*Taxable securities transaction*	*Rate*	*Payable by*
1	*2*	*3*	*4*
	(*a*) the transaction of such sale is entered into in recognised stock exchange; and (*b*) the contract for the sale of such share or unit is settled by the actual delivery or transfer of such share or unit.		
3.	Sale of an equity share in a company or a unit of an equity oriented fund, where— (*a*) the transaction of such sale is entered into in a recognised stock exchange; and (*b*) the contract for the sale of such share or unit is settled otherwise than by the actual delivery or transfer of such share or unit.	[4][0.025] per cent	Seller
[5][4.	(*a*) Sale of an option in securities	0.017 per cent	Seller
	(*b*) Sale of an option in securities, where option is exercised	0.125 per cent	Purchaser
	(*c*) Sale of a futures in securities	0.017 per cent	Seller]
5.	Sale of a unit of an equity oriented fund to the Mutual Fund.	[6][0.25] per cent	Seller

Value of taxable securities transaction.

99. The value of taxable securities transaction,—

[6a][(*a*) in the case of a taxable securities transaction relating to an option in securities, shall be—

(*i*) the option premium, in respect of transaction at item (*a*) of serial number 4 of the Table in section 98;

(*ii*) the settlement price, in respect of transaction at item (*b*) of serial number 4 of the Table in section 98;]

4. Substituted for "0.02" by the Finance Act, 2006, w.e.f. 1-6-2006. Earlier it was substituted for "0.015" by the Finance Act, 2005, w.e.f. 1-6-2005.

5. Substituted by the Finance Act, 2008, w.e.f. 1-6-2008. Prior to its substitution, Sl. No. 4 and the entries relating thereto, as amended by the Finance Act, 2006, w.e.f. 1-6-2006 and Finance Act, 2005, w.e.f. 1-6-2005, read as under :

"4. Sale of a derivative, where the transaction of such sale is entered into in a recognised stock exchange.	0.017 per cent	Seller"

6. Substituted for "0.2" by the Finance Act, 2006, w.e.f. 1-6-2006. Earlier it was substituted for "0.15" by the Finance Act, 2005, w.e.f. 1-6-2005.

6a. Substituted by the Finance Act, 2008, w.e.f. 1-6-2008. Prior to its substitution, clause (*a*) read as under :

'(*a*) in the case of a taxable securities transaction relating to a derivative, being "option in securities", shall be the aggregate of the strike price and the option premium of such "option in securities";'

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(*b*) in the case of a taxable securities transaction relating to a derivative, being "futures", shall be the price at which such "futures" is traded; and

(*c*) in the case of any other taxable securities transaction, shall be the price at which such securities are purchased or sold:

Provided that the Board may, having regard to the manner in which taxable securities transactions are settled in a recognised stock exchange or such other factors which may be relevant for the purposes of determining the price of such securities, specify, by rules[7] made by it, the method of determining the price of such securities for the purposes of this clause.

Collection and recovery of securities transaction tax.

100. (1) Every recognised stock exchange shall collect the securities transaction tax from every person, being a purchaser or a seller, as the case may be, who enters into a taxable securities transaction in that stock exchange, at the rates specified in section 98.

(2) The prescribed person[8] in the case of every Mutual Fund shall collect the securities transaction tax from every person who sells a unit to that Mutual Fund, at the rate specified in section 98.

[8](3) The securities transaction tax collected during any calendar month in accordance with the provisions of sub-section (1) or sub-section (2), shall be paid by every recognised stock exchange or by the prescribed person[8] in the case of every Mutual Fund, as the case may be, to the credit of the Central Government by the seventh day of the month immediately following the said calendar month.

(4) Any recognised stock exchange or the prescribed person[8] in the case of any Mutual Fund, who fails to collect the tax in accordance with the provisions of sub-section (1) or sub-section (2), shall, notwithstanding such failure, be liable to pay the tax to the credit of the Central Government in accordance with the provisions of sub-section (3).

Recognised stock exchange or Mutual Fund to furnish prescribed return.

101. (1) Every recognised stock exchange or the prescribed person[8] in the case of every Mutual Fund (hereafter in this Chapter referred to as assessee) shall, within the prescribed time[9] after the end of each financial year, prepare and deliver or cause to be delivered to the Assessing Officer or to any other authority or agency authorised by the Board in this behalf, a return in such form and verified in such manner and setting forth such particulars as may be prescribed[10], in respect of all taxable securities transactions entered into during such financial year in that stock exchange or, as the case may be, in respect of all taxable securities transactions, being sale of units to such Mutual Fund during such financial year.

(2) Where any assessee fails to furnish the return under sub-section (1) within the prescribed time, the Assessing Officer may issue a notice to such assessee and

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7. See rules 3 & 4 of the Securities Transaction Tax Rules, 2004.

8. See rule 5 of the Securities Transaction Tax Rules, 2004.

9. See rule 7, *ibid.*

10. See rules 7 & 8 and Form Nos. 1, 2, *ibid.*

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serve it upon him, requiring him to furnish the return in the prescribed form and verified in the prescribed manner setting forth such particulars within such time as may be prescribed[11].

(3) Any assessee who has not furnished the return within the time allowed under sub-section (1) or sub-section (2), or having furnished a return under sub-section (1) or sub-section (2), discovers any omission or wrong statement therein, may furnish a return or a revised return, as the case may be, at any time before the assessment is made.

Assessment.

102. (1) For the purposes of making an assessment under this Chapter, the Assessing Officer may serve on any assessee, who has furnished a return under section 101 or upon whom a notice has been served under sub-section (2) of section 101 (whether a return has been furnished or not), a notice requiring him to produce or cause to be produced on a date to be specified therein such accounts or documents or other evidence as the Assessing Officer may require for the purposes of this Chapter and may, from time to time, serve further notices requiring the production of such further accounts or documents or other evidence as he may require.

(2) The Assessing Officer, after considering such accounts, documents or other evidence, if any, as he has obtained under sub-section (1) and after taking into account any other relevant material which he has gathered, shall, by an order in writing, assess the value of taxable securities transactions during the relevant financial year and determine the amount of securities transaction tax payable or refundable on the basis of such assessment:

Provided that no assessment shall be made under this sub-section after the expiry of two years from the end of the relevant financial year.

(3) Every assessee, in case any amount is refunded to it on assessment under sub-section (2), shall, within such time as may be prescribed[12], refund such amount to the concerned person from whom such amount was collected.

Rectification of mistake.

103. (1) With a view to rectifying any mistake apparent from the record, the Assessing Officer may amend any order passed by him under the provisions of this Chapter within one year from the end of the financial year in which the order sought to be amended was passed.

(2) Where any matter has been considered and decided in any proceeding by way of appeal relating to an order referred to in sub-section (1), the Assessing Officer passing such order may, notwithstanding anything contained in any law for the time being in force, amend the order under that sub-section in relation to any matter other than the matter which has been so considered and decided.

(3) Subject to the other provisions of this section, the Assessing Officer may—

(*a*) make an amendment under sub-section (1) of his own motion; or

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11. See rule 9 of the Securities Transaction Tax Rules, 2004.

12. See rule 11 of the Securities Transaction Tax Rules, 2004.

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(*b*) make such amendment if any mistake is brought to his notice by the assessee.

(4) An amendment, which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this section unless the Assessing Officer concerned has given notice to the assessee of his intention so to do and has allowed the assessee a reasonable opportunity of being heard.

(5) Where an amendment is made under this section, an order shall be passed in writing by the Assessing Officer.

(6) Subject to the other provisions of this Chapter, where any such amendment has the effect of reducing the assessment, the Assessing Officer shall make any refund, which may be due to such assessee.

(7) Where any such amendment has the effect of enhancing the assessment or reducing the refund already made, the Assessing Officer shall make an order specifying the sum payable by the assessee and the provisions of this Chapter shall apply accordingly.

Interest on delayed payment of securities transaction tax.

104. Every assessee who fails to credit the securities transaction tax or any part thereof as required under section 100, to the account of the Central Government within the period specified in that section, shall pay simple interest at the rate of one per cent of such tax for every month or part of a month by which such crediting of the tax or any part thereof is delayed.

Penalty for failure to collect or pay securities transaction tax.

105. Any assessee who—

(*a*) fails to collect the whole or any part of the securities transaction tax as required under section 100; or

(*b*) having collected the securities transaction tax, fails to pay such tax to the credit of the Central Government in accordance with the provisions of sub-section (3) of that section,

shall be liable to pay,—

(*i*) in the case referred to in clause (*a*), in addition to paying the tax in accordance with the provisions of sub-section (4) of that section, or interest, if any, in accordance with the provisions of section 104, by way of a penalty, a sum equal to the amount of securities transaction tax that he failed to collect; and

(*ii*) in the case referred to in clause (*b*), in addition to paying the tax in accordance with the provisions of sub-section (3) of that section and interest in accordance with the provisions of section 104, by way of penalty, a sum of one thousand rupees for every day during which the failure continues, so, however, that the penalty under this clause shall not exceed the amount of securities transaction tax that it failed to pay.

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Penalty for failure to furnish prescribed return.

106. If an assessee fails to furnish in due time the return which it is required to furnish under sub-section (1) of section 101 or by notice given under sub-section (2) of that section, it shall be liable to pay, by way of penalty, a sum of one hundred rupees for every day during which the failure continues.

Penalty for failure to comply with notice.

107. If the Assessing Officer in the course of any proceedings under this Chapter is satisfied that any person has failed to comply with a notice under sub-section (1) of section 102, he may direct that such person shall pay, by way of penalty, in addition to any securities transaction tax and interest, if any, payable by him, a sum of ten thousand rupees for each such failure.

Penalty not to be imposed in certain cases.

108. Notwithstanding anything contained in the provisions of section 105 or section 106 or section 107, no penalty shall be imposable for any failure referred to in the said provisions if the assessee proves that there was reasonable cause for the said failure:

Provided that no order imposing a penalty under this Chapter shall be made unless the assessee has been given a reasonable opportunity of being heard.

Application of certain provisions of Act 43 of 1961.

109. The provisions of the following sections of the Income-tax Act, 1961 (43 of 1961), as in force from time to time, shall apply, so far as may be, in relation to securities transaction tax as they apply in relation to income-tax:—

120, 131, 133A, 156, 178, 220 to 227, 229, 232, 260A, 261, 262, 265 to 269, 278B, 282 and 288 to 293.

Appeals to Commissioner of Income-tax (Appeals).

110. (1) Any assessee aggrieved by any assessment order passed by the Assessing Officer under section 102 or any order under section 103, or denying his liability to be assessed under this Chapter, or by an order levying penalty under this Chapter, may appeal to the Commissioner of Income-tax (Appeals) within thirty days from the date of receipt of the order of the Assessing Officer.

(2) Every appeal under sub-section (1) shall be in the prescribed form[13] and shall be verified in the prescribed manner and shall be accompanied by a fee of one thousand rupees.

(3) Where an appeal has been filed under the provisions of sub-section (1), the provisions of sections 249 to 251 of the Income-tax Act, 1961 (43 of 1961), shall, as far as may be, apply.

Appeals to the Appellate Tribunal.

111. (1) Any assessee aggrieved by an order passed by a Commissioner of Income-tax (Appeals) under section 110 may appeal to the Appellate Tribunal against such order.

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13. See rule 12 and Form No. 4 of the Securities Transaction Tax Rules, 2004.

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(2) The Commissioner of Income-tax may, if he objects to any order passed by the Commissioner of Income-tax (Appeals) under section 110, direct the Assessing Officer to appeal to the Appellate Tribunal against such order.

(3) Every appeal under sub-section (1) or sub-section (2) shall be filed within sixty days of the date on which the order sought to be appealed against is received by the assessee, or by the Commissioner of Income-tax, as the case may be.

(4) Every appeal under sub-section (1) or sub-section (2) shall be in the prescribed form[14] and shall be verified in the prescribed manner and in the case of an appeal filed under sub-section (1) shall be accompanied by a fee of one thousand rupees.

(5) Where an appeal has been filed before the Appellate Tribunal under sub-section (1) or sub-section (2), the provisions of sections 252 to 255 of the Income-tax Act, 1961 (43 of 1961), shall, as far as may be, apply.

False statement in verification, etc.

112. (1) If a person makes a statement in any verification under this Chapter or any rule made thereunder, or delivers an account or statement, which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to three years and with fine.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under sub-section (1) shall be deemed to be non-cognizable within the meaning of that Code.

Institution of proceedings.

113. A person shall not be proceeded against for any offence under section 112 except with the previous sanction of the Chief Commissioner of Income-tax.

[15][**Chapter VII not to apply in certain cases.**

113A. Notwithstanding anything contained in this Chapter, the provisions of this Chapter shall not apply to taxable securities transactions entered into by any person for, or on behalf of, the New Pension System Trust referred to in clause (*44*) of section 10 of the Income-tax Act, 1961 (43 of 1961).]

Power to make rules.

114. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) the time within which the return shall be delivered or caused to be delivered to the Assessing Officer or to any other agency and the form and the manner in which such return shall be furnished under sub-section (1) or sub-section (2) of section 101;

(*b*) the time within which the return shall be furnished on receipt of notice under sub-section (2) of section 101;

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14. *See* rule 13 and Form No. 5 of the Securities Transaction Tax Rules, 2004.

15. Inserted by the Finance (No. 2) Act, 2009, w.e.f. 1-10-2009.

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(*c*) the form in which an appeal under section 110 or section 111 may be filed and the manner in which they may be verified;

(*d*) any other matter which by this Chapter is to be, or may be, prescribed.

(3) Every rule made under this Chapter and every notification issued under this Chapter shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule should not be made or the notification should not be issued, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

Power to remove difficulties.

115. (1) If any difficulty arises in giving effect to the provisions of this Chapter, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date on which the provisions of this Chapter come into force.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.