# INCOME-TAX AND CENTRAL SALES TAX

## AMENDMENTS BY THE FINANCE ACT, 2007

## I INCOME-TAX ACT, 1961

### 1. RATES OF TAX

Section 2 of the Finance Act, 2007 read with Part I of the First Schedule to the Finance Act, 2007, seeks to specify the rates at which income-tax is to be levied on income chargeable to tax for the assessment year 2007-08. Part II lays down the rate at which tax is to be deducted at source during the financial year 2007-08 i.e. A.Y. 2008-09 from income subject to such deduction under the Income-tax Act; Part III lays down the rates for charging income-tax in certain cases, rates for deducting income-tax from income chargeable under the head "salaries" and the rates for computing advance tax for the financial year 2007-08 i.e. A.Y.2008-09. Part III of the First Schedule to the Finance Act, 2007 will become Part I of the First Schedule to the Finance Act, 2008 and so on.

Rates for deduction of tax at source for the A.Y. 2008-09

Part II of the First Schedule to the Act specifies the rates at which income-tax is to be deducted at source during the financial year 2007-08 i.e. A.Y. 2008-09 from income other than "salaries". These rates of tax deduction at source are the same as were applicable for the A.Y.2007-08. However, for A.Y.2008-09, a threshold limit has been fixed for applicability of surcharge in the case of firms and companies also.

(i) Surcharge @ 10% of income-tax deducted at source would be attracted in the case of firms and domestic companies only if the income or the aggregate of such incomes paid or likely to be paid and subject to tax deduction at source exceeds Rs.1 crore.

(ii) Surcharge @ 2½% of income-tax deducted at source would be attracted in the case of foreign companies only if the income or the aggregate of such incomes paid or likely to be paid and subject to tax deduction at source exceeds Rs.1 crore.

Rates for deduction of tax at source from "salaries", computation of "advance tax" and charging of income-tax in certain cases during the financial year 2007-08

Part III of the First Schedule to the Act specifies the rate at which income-tax is to be deducted at source from "salaries" and also the rate at which "advance tax" is to be computed and income-tax is to be calculated or charged in certain cases for the financial year 2007-08 i.e. A.Y. 2008-09. There is no change in the rate structure as compared to A.Y.2007-08, except for increase in the threshold limit by Rs.10,000 in the case of individuals, HUFs, AOPs, BOIs and artificial juridical persons.

(i) (a) Individual/ HUF/ AOP / BOI and every artificial juridical person

| Level of total income | Rate of income-tax |
| --- | --- |
| Where the total income does not exceed Rs.1,10,000 | Nil |
| Where the total income exceeds Rs.1,10,000 but does not exceed Rs.1,50,000 | 10% of the amount by which the total income exceeds Rs.1,10,000. |
| Where the total income exceeds Rs.1,50,000 but does not exceed Rs.2,50,000 | Rs.4,000 plus 20% of the amount by which the total income exceeds Rs.1,50,000. |
| Where the total income exceeds Rs.2,50,000 | Rs.24,000 plus 30% of the amount by which the total income exceeds Rs.2,50,000. |

The threshold exemption level will be Rs.1,45,000 for resident women and Rs.1,95,000 for resident individuals of the age of 65 years or more at any time during the previous year. The slab rates for these assessees are as given in (b) and (c) below.

(b) For resident women below the age of 65 years at any time during the previous year

| Level of total income | Rate of income-tax |
| --- | --- |
| Where the total income does not exceed Rs.1,45,000 | Nil |
| Where the total income exceeds Rs.1,45,000 but does not exceed Rs.1,50,000 | 10% of the amount by which the total income exceeds Rs.1,45,000. |
| Where the total income exceeds Rs.1,50,000 but does not exceed Rs.2,50,000 | Rs.500 plus 20% of the amount by which the total income exceeds Rs.1,50,000. |
| Where the total income exceeds Rs.2,50,000 | Rs.20,500 plus 30% of the amount by which the total income exceeds Rs.2,50,000. |

(c) For resident individuals of the age of 65 years or more at any time during the previous year

| Level of total income | Rate of income-tax |
|---|---|
| Where the total income does not exceed Rs.1,95,000 | Nil |
| Where the total income exceeds Rs.1,95,000 but does not exceed Rs.2,50,000 | 20% of the amount by which the total income exceeds Rs.1,95,000. |
| Where the total income exceeds Rs.2,50,000 | Rs.11,000 plus 30% of the amount by which the total income exceeds Rs.2,50,000. |

(ii) Co-operative society

There is no change in the rate structure as compared to A.Y.2007-08.

| | Level of total income | Rate of income-tax |
|---|---|---|
| (1) | Where the total income does not exceed Rs.10,000 | 10% 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% 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% of the amount by which the total income exceeds Rs.20,000 |

(iii) Firm

The rate of tax for A.Y.2008-09 is the same as that for A.Y.2007-08 i.e. 30% on the whole of the total income of the firm.

(iv) Local authority

The rate of tax for A.Y.2008-09 is the same as that for A.Y.2007-08 i.e. 30% on the whole of the total income of the local authority.

(v) Company

The rates of tax for A.Y.2008-09 are the same as that for A.Y.2007-08.

| | | |
|---|---|---|
| (1) | In the case of a domestic company | 30% of the total income |
| (2) | In the case of a company other than a domestic company | 50% of specified royalties and fees for rendering technical services and 40% on the balance of the total income. |

### Surcharge

The rates of surcharge applicable for A.Y.2008-09 are as follows -

(i) Individual/HUF/AOP/BOI

Where total income exceeds Rs.10,00,000, surcharge is payable at the rate of 10% on the income-tax computed in accordance with the provisions of Paragraph (i) [(a), (b) or (c)] above or section 111A or 112 after reducing rebate under Chapter VIII-A.

Marginal relief: In case of such individuals/HUFs/AOPs/BOIs having a total income exceeding Rs.10,00,000, the additional amount of income-tax payable (together with surcharge) on the excess of income over Rs.10,00,000 should not be more than the amount of income exceeding Rs.10,00,000. This is called 'marginal relief'.

Income-tax on total income of Rs.10 lakhs works out to Rs.2,49,000. Surcharge is not attracted on this tax since the total income does not exceed Rs.10 lakhs. However, if the total income is say, Rs.10,30,000, tax on the same would be Rs.2,83,800 (i.e. Rs.2,58,000 + 25,800, being surcharge of 10%). The additional tax works out to Rs.34,800 (i.e., 2,83,800-2,49,000). However, the additional tax cannot exceed the amount by which Rs.10,30,000 exceeds Rs.10,00,000. That is, the additional tax cannot exceed Rs.30,000. Therefore, the total tax payable would be only Rs.2,79,000 (i.e. 2,49,000 + 30,000). The marginal relief is Rs.4,800 (i.e. 34,800-30,000).

(ii) Artificial juridical person

Surcharge is payable at the rate of 10% of income-tax computed in accordance with the provisions of paragraph (i)(a) above or section 111A or section 112.

(iii) Firm/Domestic company

Where the total income exceeds Rs.1 crore, surcharge is payable at the rate of 10% of income-tax computed in accordance with the provisions of para (iii)/(v)(1) above or section 111A or section 112. Marginal relief is available in case of such firms/companies having a total income exceeding Rs.1 crore i.e. the additional amount of income-tax payable (together with surcharge) on the excess of income over Rs.1 crore should not be more than the amount of income exceeding Rs.1 crore.

(iv) Foreign company

Where the total income exceeds Rs.1 crore, surcharge is payable at the rate of 2½% of income-tax computed in accordance with the provisions of paragraph (v)(2) above or section 111A or section 112. Marginal relief is available in case of such companies having a total income exceeding Rs.1 crore i.e. the additional amount of income-tax payable (together with surcharge) on the excess of income over Rs.1 crore should not be more than the amount of income exceeding Rs.1 crore.

### Education cess on income-tax

The amount of income-tax as increased by the union surcharge should be further increased by an additional surcharge called the “Education cess on income-tax”, calculated at the rate of 2% of such income-tax and surcharge. Education cess is leviable in the case of all assessees i.e. individuals, HUF, AOP/BOI, co-operative societies, firms, local authorities and companies. Further, “Secondary and higher education cess on income-tax” @1% of income-tax and surcharge is leviable from A.Y.2008-09 to fulfill the commitment of the Government to provide and finance secondary and higher education.

2. BASIC CONCEPTS

(a) Assessing Officer to include Additional Commissioner and Additional Director [Section 2(7A)]

Clauses (1C) and (1D) inserted in section 2 to define Additional Commissioner and Additional Director, respectively.

(i) The definition of Assessing Officer, as it stands at present, does not include Additional Commissioner and Additional Director.

(ii) The Delhi Bench of the Tribunal, in Bindal Apparels Ltd. v. ACIT 104 TTJ (Del) 950, held that the Additional Commissioner of Income-tax cannot exercise or perform all or any powers and functions of an Assessing Officer, as the definition of "Assessing Officer" under the Income-tax Act does not include Additional Commissioner of Income-tax.

(iii) Therefore, in order to fill this lacuna, Additional Commissioner of income-tax and Additional Director of income-tax have now been included within the scope of definition of “Assessing Officer” with retrospective effect from 1.6.94 and 1.10.96, respectively.

(iv) Consequently, sub-sections (1C) and (1D) have been inserted in section 2 w.e.f. 1.6.94 to define Additional Commissioner and Additional Director, respectively, to mean a person appointed to be so under section 117(1).

(v) Further, clause (9B) has been inserted w.e.f. 1.4.88 to define an “Assistant Director” to mean a person appointed to be an Assistant Director of Income-tax under section 117(1).

(b) Amendment of definition of 'India' [Section 2(25A)]

The Income-tax Act extends to the whole of India. Therefore, the definition of the term “India” is very important. Section 2(25A) has been substituted to define the term 'India' to mean –

(i) the territory of India as per article 1 of the Constitution,

(ii) its territorial waters, seabed and subsoil underlying such waters,

(iii) continental shelf,

(iv) exclusive economic zone or

(v) any other specified maritime zone and the air space above its territory and territorial waters.

Specified maritime zone means the maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976.

This amendment is likely to have an effect on income assignable to satellites and the signals beamed through air space.

(Effective retrospectively from 25.8.76)

3. RESIDENCE AND SCOPE OF TOTAL INCOME

(a) Contribution made by any employer to the pension scheme of Central Government deemed to be income received [Section 7(iii)]

Related amendment in sections: 17(1)(viii), 80CCD

(i) As per clause (iii) of section 7, the contribution made by the Central Government in the previous year to the account of an employee under a pension scheme referred in section 80CCD is deemed to be income received in the previous year.

(ii) As per section 17(1)(viii), salary includes the contribution made by the Central Government in the previous year to the account of an employee under a pension scheme referred to in section 80CCD.

(iii) Section 80CCD provides for deduction of employee's and employer's contribution to pension scheme notified by the Central Government. However, if the amount contributed exceeds 10% of salary, then the deduction would be restricted to 10% of salary. This restriction is applicable both in the case of employee's contribution and employer's contribution to such scheme.

(iv) The benefit of deduction under this section is currently available only to individuals employed by the Central Government on or after 1.1.2004.

(v) This deduction is now extended also to individuals employed by any other employer on or after 1.1.2004.

(vi) The entire employer's contribution would be included in the salary of the employee. However, deduction under section 80CCD would be restricted to 10% of salary.

(vii) Accordingly, clause (iii) of section 7 has been amended to also deem the contribution made by any other employer in the previous year to the account of an employee under a pension scheme referred in section 80CCD as income received in the previous year.

(viii) Further, clause (viii) of section 17(1) has been amended to provide for inclusion of the contribution made by any other employer in the previous year to the account of an employee under a pension scheme referred in section 80CCD in the salary of the employee.

(Effective retrospectively from 1.4.2004)

(b) Income deemed to accrue or arise in India to a non-resident by way of interest, royalty and fee for technical services to be taxed irrespective of territorial nexus [Explanation to section 9]

(i) The Supreme Court, in Ishikawajima-Harima Heavy Industries Ltd. v. Director of Income-tax (2007) 288 ITR 408, observed that in order to tax the income of a non-resident assessee under section 9(1)(vii), relating to fee for technical services, the income sought to be taxed must have sufficient territorial nexus with India i.e. the fees paid for technical services provided by a non-resident cannot be taxed in India unless the services were utilized in India and rendered in India. This observation is not in consonance with the source rule spelt out in the law and the stand taken by India in the bilateral treaties with different countries.

(ii) It is now clarified that such income by way of interest, royalty or fee for technical services which is deemed to accrue or arise in India by virtue of clauses (v), (vi) and (vii) of section 9(1), 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.

(Effective retrospectively from 1.6.76)

4. INCOMES WHICH DO NOT FORM PART OF TOTAL INCOME

(a) Exemption of compensation received on account of disaster [Section 10 (10BC)]

(i) This clause exempts any amount received or receivable as compensation by an individual or his legal heir on account of any disaster.

(ii) Such compensation should be granted by the Central Government or a State Government or a local authority.

(iii) However, exemption would not be available in respect of compensation for alleviating any damage or loss, which has already been allowed as deduction under the Act.

(iv) "Disaster" means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man made causes, or by accident or negligence. It should have the effect of causing -

(1) substantial loss of life or human suffering; or

(2) damage to, and destruction of, property; or

(3) damage to, or degradation of, environment.

It should be of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area.

(Effective retrospectively from A.Y.2005-06)

(b) Exemption of interest on notified bonds issued by State Pooled Finance Entities [Section 10(15)(vii)]

(i) Under sub-clause (vii) of section 10(15), interest on bonds issued by a local authority and specified by the Central Government by notification in the Official Gazette, is exempt from income-tax.

(ii) This clause has been amended so as to provide that interest on bonds issued by a State Pooled Finance Entity and specified by the Central Government by notification in the Official Gazette, shall also be exempt from income-tax.

(iii) "State Pooled Finance Entity" means such entity which is set up in accordance with the guidelines for the Pooled Finance Development Scheme notified by the Central Government in the Ministry of Urban Development.

(Effective from A.Y. 2008-09)

(c) Exemption of income of ASOSAI-SECRETARIAT [Section 10(23BBD)]

(i) Clause (23BBD) provides exemption of any income of the Secretariat of the Asian Organisation of the Supreme Audit Institutions registered as "ASOSAI-SECRETARIAT" under the Societies Registration Act, 1860 for seven previous years relevant to A.Y.2001-02 to A.Y.2007-08.

(ii) The Comptroller and Auditor General of India is the Secretary General of ASOSAI and its Secretariat functions from his office.

(iii) Since the term of the Comptroller and Auditor General of India as the Secretary General of ASOSAI has been extended by another three years, this clause has been amended to extend the said exemption for a further period of three assessment years i.e. A.Y 2008-09, A.Y.2009-10 & A.Y.2010-11.

(Effective from A.Y.2008-09)

(d) Exemption of income of Central Electricity Regulatory Commission [Section 10(23BBG)]

A new clause (23BBG) has been inserted in section 10 to provide exemption to any income of Central Electricity Regulatory Commission constituted under sub-section (1) of Section 76 of the Electricity Act, 2003.

(Effective from A.Y. 2008-09)

(e) Approval of prescribed authority required for exemption of funds/institutions established for charitable purposes [Section 10(23C)]

Related amendment in sections: 80E & 143(3)

(i) Sub-clause (iv) of section 10(23C) provides for exemption of the income of any fund or institution established for charitable purposes which is notified by the Central Government in the Official Gazette, having regard to the objects of the fund or institution and its importance throughout India or throughout any State or States.

(ii) Similarly, sub-clause (v) of section 10(23C) provides for exemption of the income of any trust (including any other legal obligation) or institution established wholly for public religious purposes or wholly for public religious and charitable purposes, which is notified by the Central Government in the Official Gazette.

(iii) Sub-clauses (iv) and (v) have been amended to provide that such exemption would be available to the entities referred to therein only if they are approved by the prescribed authority. The Central Government will no longer issue notification for this purpose.

(iv) Consequential amendments have been made in clause (23C) of section 10, so as to include a reference to approval granted by the prescribed authority under sub-clause (iv) or sub-clause (v) of the said clause.

(v) It has also been provided that all pending applications in respect of which no notification has been issued under the said sub-clause (iv) or (v) before 1st June, 2007, shall stand transferred on that day to the prescribed authority and the prescribed authority may proceed with such applications from the stage at which they were on that day.

(vi) Consequently, an amendment has been made in the definition of "approved charitable institution" under section 80E. Such an institution was required to be notified by the Central Government under section 10(23C). Now, hereafter such institutions have to be approved by the prescribed authority under section 10(23C).

(vii) Consequential amendment has been made in sub-clause (ii) of the proviso to section 143(3). Therefore, in the case of such fund, trust or institution which is required to furnish a return under section 139(4C), no order of assessment of total income shall be made by the Assessing Officer without giving effect to the provisions of section 10, unless the approval granted to such fund, trust or institution has been withdrawn.

(Effective from 1.6.2007)

(f) Exemption of specified income of Investor Protection Fund set up by commodity exchanges [Section 10(23EC)]

(i) Clause (23EA) exempts income by way of contributions received from recognised stock exchanges and the members thereof, of notified Investor Protection Fund, set up by recognised stock exchanges in India, either jointly or separately.

(ii) In order to provide similar exemption to Investor Protection Funds set up by commodity exchanges, a new clause (23EC) has been inserted in section 10.

(iii) This clause exempts 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.

(iv) 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 entire amount so shared shall be deemed to be the income of the previous year in which the amount is so shared and shall accordingly be chargeable to income-tax.

(v) A “commodity exchange” means a “registered association” as defined in clause section 2(jj) of the Forward Contracts (Regulation) Act, 1952. i.e. an association to which for the time being a certificate of registration has been granted by the Forward Markets Commission under Sec. 14B of that Act.

(Effective from A.Y. 2008-09)

(g) Pass through status restricted to investment in a venture capital undertaking engaged in specified businesses [Section 10(23FB)]

(i) Under clause (23FB), any income of a venture capital company or venture capital fund set up to raise funds for investment in a venture capital undertaking is exempt from tax.

(ii) Section 115U provides that any income received by a person out of investments made in a venture capital company or venture capital fund would be chargeable to income-tax in the same manner as if such income was received by such person directly from the venture capital undertaking. Therefore, at present, venture capital company/venture capital fund is a pass through entity.

(iii) As per the existing definition, “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 and notified in the Official Gazette by the Board.

(iv) This clause has been amended to restrict such exemption only in respect of income of a venture capital company or venture capital fund from investment in a venture capital undertaking engaged in certain specified businesses or industries.

(v) For this purpose, this clause has amended the definition of venture capital undertaking to mean such domestic company whose shares are not listed in a recognised stock exchange in India and which is engaged in

(i) the 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 i.e.

(1) a road including toll road, a bridge or a rail system;

(2) a highway project including housing or other activities being an integral part of the highway project;

(3) a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system;

(4) a port, airport, inland waterway, inland port or navigational channel in the sea.

(ii) dairy or poultry industry.

(vi) Therefore, exemption under this clause would be available only if the venture capital company/venture capital fund invests in the businesses or industries specified in (v) above. In such cases, tax would be payable by the investor under section 115U. If the venture capital company/venture capital fund invests in other businesses or industries, then it would not be eligible for exemption under this clause.

(Effective from A.Y.2008-09)

(h) Restrictive conditions to apply for units in SEZ also for availing benefit under section 10AA

(i) Under the Income-tax Act, in respect of provisions in the nature of tax holidays for an undertaking, benefit of exemption/deduction available to newly established undertakings is generally denied to units which are reconstructed or split up.

(ii) These restrictive conditions are already contained in, inter alia, sections 10A and 10B. However, there was no such restriction in section 10AA.

(iii) Therefore, these conditions have now been introduced in section 10AA to prevent misuse of benefit available thereunder by merely shifting the location of an existing unit to a SEZ, since the same would mitigate the objective of encouraging industrial development, employment generation etc.

(iv) This amendment has been effected by substituting existing sub-section (4) of section 10AA.

(v) Benefit under section 10AA would no longer be available to those units which are formed by splitting up or reconstruction of a business already in existence (except in circumstances provided in section 33B), or formed by transfer to a new business, of plant and machinery previously used for any purpose exceeding 20% of the total value of machinery and plant used in the business.

(vi) For this purpose, 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:

(a) such machinery or plant was not at any time 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 has been allowed in respect of such machinery or plant to any person earlier.

(Effective retrospectively from 10.2.2006)

5. CHARITABLE OR RELIGIOUS TRUSTS AND INSTITUTIONS

(a) Removal of requirement to file an application for registration within one year of creation or establishment of the trust or institution [Section 12A]

Related amendment in section: 12AA

(i) The marginal heading of section 12A has been substituted. Section 12A now provides the conditions for applicability of sections 11 and 12.

(ii) Clause (a) of section 12A requires a charitable or religious trust or institution to make an application for registration within one year from the date of creation of the trust or establishment of the institution. The Commissioner is empowered to condone the delay in making the application for registration if he is satisfied that there were sufficient reasons for such delay. In such cases, the exemption provisions of section 11 and 12 would apply from the date of creation of the trust or establishment of the institution.

(iii) This requirement of filing an application for registration under section 12A within one year of creation of the religious or charitable trust or institution has been removed. The application can be filed at any time now. This has been provided by insertion of new clause (aa) in section 12A(1). Further, a proviso has been inserted in clause (a) to restrict the applicability of that clause to applications made prior to 1.6.2007.

(iv) Also, the power of the Commissioner to grant registration for past years, by condoning the delay in filing such application, has been removed.

(v) Accordingly, in respect of applications filed on or after 1st June, 2007, the provisions of sections 11 and 12 shall apply from the assessment year relevant to the financial year in which the application is made i.e. the exemption would be available only with effect from the assessment year relevant to the previous year in which the application is filed. It would not be available in respect of any earlier assessment year.

(vi) Consequential amendments have been made in sub-sections (1) and (2) of section 12AA to include a reference to an application for registration of a trust or institution made under the newly inserted clause (aa) of section 12A.

(Effective from 1.6.2007)

(b) Exemption not to be denied to trusts investing in shares of a public sector company or shares prescribed as a form or mode of investment under section 11(5)(xii) [Section 13(1)]

(i) Section 13 provides that the exemption provisions contained in sections 11 and 12 shall not apply to a charitable or religious trust or institution if any shares in a company, other than a Government company or a corporation established by or under a Central, State or Provincial Act, are held by the trust or institution after 30.11.83.

(ii) This condition has now been relaxed to permit the charitable or religious trusts and institutions to invest in shares in a public sector company and shares prescribed as a form or mode of investment under section 11(5)(xii).

Note – Section 11(5) specifies the forms and modes of investing and depositing the money for the purpose of claiming exemption. Clause (xii) of section 11(5) permits investment/deposit in any other form or mode of investment or deposit as may be prescribed.

(Effective retrospectively from 1.4.99)

6. INCOME FROM SALARIES

Deemed concession in the matter of rent [Section 17]

(i) Under section 17(2)(ii), the value of any concession in the matter of rent arising to an employee in respect of any accommodation provided by his employer is considered as "perquisite" chargeable to tax in the hands of the employee.

(ii) Rule 3(1) of the Income-tax Rules provides the basis of valuation of perquisites in respect of accommodation provided to an employee, as under:

(a) 20% of salary in cities having population exceeding 4 lacs (10% of salary up to 31.3.2006)

(b) 15% of salary in other cities (7.5% of salary up to 31.3.2006)

(iii) In case of furnished accommodation provided by an employer, the value arrived as above was to be further increased by 10 percent of the cost of furniture, where the same is owned by the employer, or the actual hire charges paid by the employer in case the furniture is hired.

(iv) This method of perquisite valuation resulted in genuine hardship to employees availing facility of residential accommodation in remote areas, as the value of perquisite was determined as a percentage of salary of the employee, irrespective of the fair rental value of the property (which may be much lower than 20%/15% of salary in such cases).

(v) Rule 3(1) was challenged as ultra vires before the Supreme Court in the case of Arun Kumar v. UOI (2006) 286 ITR 89. The Apex court, while holding that the provisions of Rule 3(1) were constitutionally valid, observed that the same would be applicable only if 'concession in the matter of rent' with respect to the accommodation provided by an employer accrues to the employee under the substantive provisions of section 17(2)(ii). The Assessing Officer, before applying Rule 3(1), was required to establish that there was 'concession in the matter of rent' provided to the employee.

(vi) Further, as per the Apex court, the difference between the value as per Rule 3(1) and the rent recovered from the employee, could not per se be considered as ‘concession in the matter of rent’ provided to the employee.

(vii) In order to clarify the correct intent of law, Explanations have been inserted in section 17(2)(ii) to provide that the difference between the specified rate (as shown in column 4 of the table below w.e.f. 1.4.2006 and column 2 of the table below upto 31.3.2006) and the amount of rent recoverable/recovered from the employee would be deemed to be the concession in the matter of rent in case of accommodation owned by the employer. In case of accommodation taken on lease or rent by the employer, the difference between the actual lease rent or 15% of salary (10% of salary up to 31.3.2006), whichever is lower, and rent recovered/recoverable from the employee would be deemed to be the concession in the matter of rent.

| Upto 31.3.2006 | | From 1.4.2006 | |
|---|---|---|---|
| (1) | (2) | (3) | (4) |
| Type of accomodation | Deemed concession in the matter of rent | Type of accomodation | Deemed concession in the matter of rent |
| Accommodation owned by the employer | | Accommodation owned by the employer | |
| In cities having a population exceeding 4 lakh | 10% of salary minus rent recoverable from the employee. | In cities having a population exceeding 25 lakh | 15% of salary minus rent recoverable from the employee. |
| In other cities | 7.5% of salary minus rent | In cities having a population | 10% of salary minus rent |

| | | | |
|---|---|---|---|
| | recoverable from the employee. | exceeding 10 lakh but not exceeding 25 lakh | recoverable from the employee. |
| | | In other cities | 7½% of salary minus rent recoverable from employee. |
| | | | |
| Accommodation taken on lease by the employer | Rent paid by the employer or 10% of salary, whichever is lower, minus rent recoverable from the employee. | Accommodation taken on lease by the employer | Rent paid by the employer or 15% of salary, whichever is lower, minus rent recoverable from the employee. |

(viii) This deeming provision is applicable to employees other than Government employees. In case of furnished accommodation provided to such employees, the excess of hire charges paid or 10% p.a. of cost of furniture, as the case may be, over and above the charges paid or payable by the employee would be added to the value determined in column (4) above for determining whether there is a concession in the matter of rent.

Note – Once there is a deemed concession, the provisions of Rule 3(1) would be applicable in computing the taxable perquisite.

(ix) "Salary" includes 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. However, it does not include the following, namely–

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

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

(3) allowances which are exempted from the payment of tax;

(4) value of the perquisites specified in section 17(2);

(5) any payment or expenditure specifically excluded under the proviso to section 17(2) i.e., medical expenditure/payment of medical insurance premium specified therein.

(x) In case of Government employees, the excess of licence fees determined by the employer as increased by the value of furniture and fixture over and above the rent recovered/recoverable from the employee and the charges paid or payable for furniture by the employee would be deemed to be the concession in the matter of rent.

7. PROFITS AND GAINS OF BUSINESS OR PROFESSION

(a) Increase in time limit for availing weighted deduction in respect of scientific research expenditure [Section 35(2AB)]

Section 35(2AB) provides for a weighted deduction of one and a half times of the expenditure on in-house research and development incurred up to 31.3.2007 by a company engaged in the business of bio-technology or manufacturing or production of any drugs or pharmaceuticals etc. The benefit would now be available in respect of such expenditure incurred up to 31.3.2012.

(Effective from A.Y.2008-09)

(b) Medical insurance premium paid by employer to insure the health of his employees to qualify for deduction if paid by any mode other than cash [Section 36(1)(ib)]

(i) Section 36(1)(ib) provides deduction in respect of premium paid by an employer to keep in force an insurance on the health of his employees under a scheme framed in this behalf by GIC or any other insurer.

(ii) So far, only premium paid by cheque qualified for deduction under this section. Now, premium paid by any mode other than cash would qualify for deduction.

(Effective from A.Y.2008-09)

(c) Co-operative banks to be allowed deduction in respect of provision for bad and doubtful debts [Section 36(1)(viia)]

Related amendment in section: 10(15)

(i) Under section 36(1)(viia), deduction of an amount not exceeding 7½% of the total income (computed before making any deduction under the said clause and Chapter VIA) and an amount not exceeding 10% of the aggregate average advances made by the rural branches of a scheduled bank or a non-scheduled bank computed in the prescribed manner is allowed in the computation of income of such banks. “Scheduled bank”, as defined in the Explanation to clause (viia) of section 36(1) specifically excludes a co-operative bank.

(ii) The deduction earlier allowable under section 80P in the case of a co-operative society engaged in carrying on the business of banking (i.e. co-operative banks) has been withdrawn from A.Y. 2007-08 except in the case of a primary agricultural credit society or a primary co-operative agricultural and rural development bank. This is for the purpose of treating the co-operative banks at par with other commercial banks, which do not enjoy similar benefits.

(iii) Since profits of co-operative banks are now taxable, the deduction in respect of any provision for bad and doubtful debts allowable to other banks under section 36(1)(viia) has been extended to co-operative banks also. However, this deduction is not available to primary agricultural credit societies and primary co-operative agricultural and rural development banks, since they are still eligible for deduction under section 80P.

(iv) Consequently, the definition of scheduled bank in the Explanation to said clause (viia) has been amended to include a co-operative bank.

(v) Section 43D provides that in the case of, inter alia, a scheduled bank, the interest on bad and doubtful debts as per the guidelines of the RBI shall be chargeable to tax in the year in which it is credited to the profit and loss account or in the year in which it is actually received, whichever is earlier. This provision would now be applicable to co-operative banks also, since the Explanation to this section provides that "scheduled bank" shall have the same meaning assigned to it in the Explanation to section 36(1)(viia).

(vi) Section 10(15) exempts, inter alia, interest payable by a scheduled bank to a non-resident or to a person who is not ordinarily resident within the meaning of section 6(6) on deposits in foreign currency where the acceptance of such deposits by the bank is approved by the Reserve Bank of India.

(vii) However, in this case, exemption under section 10(15) is not available to a co-operative bank. Therefore, scheduled banks, which so far had the same meaning as defined in the Explanation to section 36(1)(viia), has now been defined in section 10(15) itself to specifically exclude a co-operative bank.

(Effective from A.Y.2007-08)

(d) Restriction of deduction under section 36(1)(viii) relating to transfer to any special reserve

(i) The existing clause (viii) of section 36(1) has been substituted with a new clause mainly for making the ensuing amendments in the scheme for granting the deduction on account of transfer to the special reserve by a specified entity [specified in the table below (b)]–

(a) Deduction is now admissible also to a co-operative bank other than a primary agricultural credit society and primary co-operative agricultural and rural development bank;

(b) Deduction was earlier available to the extent of 40% of the profits derived from such business of providing long-term finance carried to the reserve account. Now, this deduction is restricted to a maximum of 20% of the profits derived from eligible business. The eligible business for different entities specified are given in the table below –

| | Specified entity | Eligible business |
|---|---|---|
| 1. | Financial Corporation specified in section 4A of the Companies Act, 1956 | Business of providing long-term finance for - |

| | | |
|---|---|---|
| | Financial corporation which is a public sector company<br>Banking company<br>Co-operative bank (other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank) | (i) industrial or agricultural development or development of infrastructure facility in India; or<br>(ii) construction or purchase of houses in India for residential purposes. |
| 2. | A housing finance company | Business of providing long-term finance for the construction or purchase of houses in India for residential purposes. |
| 3. | Any other financial corporation including a public company | Business of providing long-term finance for development of infrastructure facility in India. |

(ii) However, where the aggregate amount carried to such reserve account exceeds twice the amount of paid up share capital and general reserve, no deduction shall be allowed in respect of such excess. This provision remains unchanged.

(Effective from A.Y.2008-09)

(e) Withdrawal of deduction in respect of contribution towards Exchange Risk Administration Fund by public financial institutions [Section 36(1)(x)]

(i) Under section 36(1)(x), any sum paid by a public financial institution by way of contribution towards any Exchange Risk Administration Fund (ERAF) set up by public financial institutions, either jointly or separately, is allowed as deduction in the computation of income of the payer institution.

(ii) ERAFs were set up under a scheme known as Exchange Risk Administration Scheme (ERAS). The benefit of coverage of exchange risk under the Scheme was available to borrowers of foreign currency loans provided by institutions out of their external commercial borrowings.

(iii) The foreign exchange scenario in India has undergone a sea change since the launching of ERAS. There are several options available in the market for borrowers to hedge their foreign exchange risk. Responding to changed market dynamics ERAFs have been discontinued by the Industrial and Development Bank of India (IDBI), Power Finance Corporation (PFC) and Indian Renewable Energy Development Agency (IREDA). This clause has, therefore, outlived its utility.

(iv) Therefore, the Finance Act 2007 has omitted this clause w.e.f. A.Y.2008-09.

(Effective from A.Y.2008-09)

(f) Central Government empowered to notify statutory corporations and body corporates for the purpose of deduction under section 36(1)(xii)

(i) Section 36(1)(xii) provides for deduction of any expenditure (not being in the nature of capital expenditure) incurred by a corporation or a body corporate constituted or established by a Central, State or Provincial Act, for the objects and purposes authorised by the said Acts.

(ii) It is possible that the objects and purposes as listed in the Acts may permit any kind of expenditure, the allowability of which cannot be questioned in terms of the existing provisions. Therefore, the Central Government has now been empowered to notify the statutory corporations or bodies after studying the objects and purposes enunciated in the Acts under which these statutory corporations or bodies are established.

(iii) Accordingly, this section has been substituted to provide that the deduction shall be allowed if such corporation or body corporate is notified by the Central Government in the Official Gazette under the said clause, having regard to the objects and purposes of the corresponding Central, State or Provincial Act.

(Effective from A.Y.2008-09)

(g) Deduction of contribution by a public financial institution to Credit guarantee fund trust for small industries [Section 36(1)(xiv)]

(i) New clause (xiv) has been inserted in section 36(1) to provide for deduction of any sum paid by a public financial institution by way of contribution to such credit guarantee fund trust for small industries notified by the Central Government in the Official Gazette.

(ii) Public financial institution has the meaning assigned to it in section 4A of the Companies Act, 1956.

(Effective from A.Y.2008-09)

(h) Disallowance of entire expenditure in respect of which payments exceeding Rs.20,000 have been made otherwise than by account payee cheque or account payee bank draft [Section 40A(3)]

(i) Under section 40A(3), 20% of the expenditure in respect of which payment exceeding Rs.20,000 has been made by account payee cheque or account payee bank draft is disallowed.

(ii) The disallowance has been raised from 20% to 100% of the expenditure. In case of an assessee following mercantile system of accounting, if an expenditure has been allowed as deduction in any previous year on due basis, and payment exceeding Rs.20,000 has been made in the subsequent year otherwise than by account payee cheque or account payee bank draft, then the payment so made shall be deemed to be the income of the subsequent year in which such payment has been made.

(iii) However, no disallowance would be made 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.

(Effective from A.Y.2008-09)

(i) Method of computing deduction in the case of business reorganisation of co-operative banks [New section 44DB]

Related amendments in sections: 47 & 49

(i) This section provides the manner in which the deduction under the following sections are to be allowed in a case where business reorganisation of a co-operative bank has taken place during the financial year –

(1) Section 32 (Depreciation);

(2) Section 35D (Amortisation of certain preliminary expenses);

(3) Section 35DD (Amortisation of expenses in case of amalgamation or demerger);

(4) Section 35DDA (Amortisation of expenditure incurred under voluntary retirement scheme).

(ii) Business reorganisation means the reorganisation of business involving the amalgamation or demerger of a co-operative bank.

(iii) Co-operative bank shall have the meaning assigned to it in clause (cci) of section 5 of the Banking Regulation Act, 1949 i.e., a primary co-operative bank or Central Co-operative bank or a State co-operative bank.

(iv) Predecessor co-operative bank means the amalgamating co-operative bank or the demerged co-operative bank, as the case may be.

(v) Successor co-operative bank means the amalgamated co-operative bank or the resulting bank, as the case may be.

(vi) The amount of deduction allowable to the predecessor co-operative bank under the above-mentioned sections has to be determined in accordance with the following formula -

$$A \times \frac{B}{C}$$

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.

(vii) The amount of deduction allowable to the successor co-operative bank under the above-mentioned sections has to be determined in accordance with the formula -

$$A \times \frac{B}{C}$$

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

C = the total number of days in the financial year in which the business reorganisation has taken place.

For example, let us take a case where the deduction allowable under section 32 to the predecessor co-operative bank is, say, Rs.1,20,000 and the business re-organisation took place on 1.11.06. Then, the deduction allowable to the predecessor co-operative bank under section 32 would be Rs.70,356 i.e. Rs.1,20,000 x 214/365. The deduction allowable to the successor co-operative bank would be Rs.49,644 i.e. Rs.1,20,000 x 151/365.

(viii) In a case where an undertaking of the predecessor co-operative bank entitled to the deduction under sections 35D, 35DD or 35DDA is transferred before the expiry of the period specified therein to a successor co-operative bank on account of business reorganisation, the provisions of section 35D, section 35DD or section 35DDA shall 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.

(ix) Amalgamated co-operative bank means -

(1) a co-operative bank with which one or more amalgamating co-operative banks merge; or

(2) a co-operative bank formed as a result of merger of two or more amalgamating co-operative banks;

(x) Amalgamating co-operative bank means

(1) a co-operative bank which merges with another co-operative bank; or

(2) every co-operative bank merging to form a new co-operative bank.

(xi) Amalgamation means the merger of an amalgamating co-operative bank or banks with an amalgamated co-operative bank, in such a manner that

(1) 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;

(2) the members holding 75% or more voting rights in the amalgamating co-operative bank become members of the amalgamated co-operative bank; and

(3) the shareholders holding 75% 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.

(xii) 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

(1) 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;

(2) 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;

(3) 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;

(4) the shareholders holding 75% 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;

(5) the transfer of the undertaking is on a going concern basis; and

(6) 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.

(xiii) Demerged co-operative bank means the co-operative bank whose undertaking is transferred, pursuant to a demerger, to a resulting bank.

(xiv) Resulting co-operative bank means -

(1) one or more co-operative banks to which the undertaking of the demerged co-operative bank is transferred in a demerger; or

(2) any co-operative bank formed as a result of demerger.

(xv) Consequential amendment has been made in section 47 to provide that any transfer in a business reorganisation, of a capital asset by the predecessor co-operative bank to the successor co-operative bank is not considered as a transfer for charge of capital gains. Similarly, 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 would not be considered as a transfer if it is made in consideration of the allotment to him of any share or shares in the successor co-operative bank.

(xvi) Consequently, section 49 has been amended to provide that where the capital asset became the property of the assessee by such mode as specified in (xv) above, then 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.

(xvii) The cost of acquisition of shares in the amalgamated co-operative bank, which became the property of the assessee by virtue of a transfer as a result of business reorganisation shall be the cost of acquisition to him of the shares in the amalgamating co-operative bank.

(xviii) Similarly, the cost of acquisition of the shares in the resulting co-operative bank shall be the amount which bears to the cost of acquisition of shares held by the assessee in the demerged co-operative bank, the same proportion as the net book value of the assets transferred in a demerger bears to the net worth of the demerged co-operative bank immediately before demerger i.e.,

Cost of acquisition of shares in the resulting co-operative bank = $A \times \frac{B}{C}$

A = Cost of acquisition of shares held in the demerged co-operative bank

B = Net book value of the assets transferred in a demerger

C = Net worth of the demerged co-operative bank i.e. 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.

(xix) The cost of acquisition of the original shares held by the shareholder in the demerged co-operative bank shall be deemed to have been reduced by the amount as so arrived at in (xviii) above.

(Effective from A.Y.2008-09)

8. CAPITAL GAINS

(a) Transfer of drawings, paintings, sculptures etc. to attract capital gains tax [Section 2(14)]

(i) Section 2(14) defines the term “Capital Asset”. “Personal effects”, other than jewellery, were specifically excluded from the definition of the term “Capital assets”.

(ii) Now, archaelogical collections, drawings, paintings, sculptures or any work of art are included within the meaning of the term “Capital assets”. This amendment has been effected by excluding the above from the ambit of “personal effects”.

(Effective from A.Y.2008-09)

(b) Cost of acquisition of specified securities and sweat equity shares [Section 49(2AB)]

Related amendment in section: 2(42A)

(i) Currently, the allotment of shares under eligible Employee Stock Option Plans (ESOPs) does not attract tax liability either in the hands of the employee or employer, even where the allotment of shares is at a price lower than the market value of such shares.

(ii) The Finance Act, 2007 has brought ESOPs under the FBT net. FBT would be leviable on the employer to the extent of concession given to the employee/former employee while allotting any specified security (which includes ESOPs) or sweat equity shares.

(iii) “Specified security” means the securities as defined in section 2(h) of the Securities Contracts (Regulation) Act, 1956 and includes employees’ stock option.

(iv) “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.

(v) The value of fringe benefits would be the fair market value of the specified security or sweat equity shares on the date on which the option vests with employee as reduced by the amount actually paid by, or recovered from the employee in respect of such security or shares. Fair market value means the value determined in accordance with the method prescribed by the CBDT.

(vi) Consequently, it has been provided that for the purpose of computing capital gains in the hands of the employee at the time of sale of such securities/shares by the employee, the cost of acquisition shall be the fair market value which has been taken into account for the purpose of computing the value of fringe benefits in the hands of the employer.

(vii) Further, the period of holding, in the case of a 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 employees, shall be reckoned from the date of allotment or transfer of such specified security or sweat equity shares. Such period of holding will determine whether the asset transferred is a long-term capital asset or short-term capital asset.

(Effective from A.Y.2008-09)

(c) Quantum of exemption under section 54EC in respect of investment of capital gains in long-term specified assets restricted

(i) Section 54EC provides exemption in respect of capital gains arising from transfer of long-term capital assets if such capital gains are invested in long-term specified assets, namely, bonds redeemable after three years issued by NHAI or RECL, within a period of 6 months from the date of such transfer.

(ii) This exemption has been restricted, by limiting the maximum investment on or after 1.4.2007 in such long-term specified assets to Rs.50 lakh during any financial year.

(iii) Prior to amendment, "Long term specified assets" meant any bond redeemable after three years and issued on or after 1st April, 2006 by National Highways Authorities of India and Rural Electrification Corporation Ltd. Such bonds had to be notified by the Central Government in the Official Gazette.

(iv) The requirement of notifying such bonds by the Central Government in the Official Gazette has now been dispensed with.

(v) "Long term specified assets" is now defined to mean any bond redeemable after three years and issued on or after 1st day of April, 2007 by the National Highways Authorities of India or by the Rural Electrification Corporation Ltd. This amendment is effective from 1st April, 2007.

9. INCOME FROM OTHER SOURCES

Income to include gifts received by an individual under section 56(2)(vi) [Section 2(24)(xiv)]

(i) Gifts received by an individual or HUF from any person was taxable under section 56(2)(v) under the head "Income from other sources" unless such gifts fell within the exempted categories specified therein. This provision was introduced by the Finance (No.2) Act, 2004 w.e.f. 1.9.2004.

(ii) Thereafter, the Taxation Laws (Amendment) Act, 2006 restricted the applicability of clause (v) of section 56(2) to gifts received up to 31.3.2006.

(iii) New clause (vi) was introduced to tax gifts received by an individual or HUF on or after 1.4.2006. This clause provided an exemption if the aggregate value of gifts received by such individual or HUF is not more than Rs.50,000. Further, gifts received from the following persons are also fully exempt -

(i) any local authority; or

(ii) any fund or foundation or university of other educational institution or hospital or other medical institution or any trust or institution referred to in section 10(23C); or

(iii) any trust or institution registered under section 12AA.

(iv) The definition of income under section 2(24) has now been amended to include any sum referred to in section 56(2)(vi).

(Effective from A.Y.2007-08)

10. SET-OFF AND CARRY FORWARD OF LOSSES

(a) Scope of benefit under section 72A expanded

(i) Under section 72A, the benefit of carry forward of losses and unabsorbed depreciation of amalgamating company is available to the amalgamated company only if the amalgamating company is owning an industrial undertaking or a ship or a hotel or in the case of amalgamation of banking companies.

(ii) Now, the benefit has been extended to amalgamation of public sector companies engaged in the business of operation of aircrafts.

(iii) This amendment would entitle the benefit of carry forward and set-off of unabsorbed loss and depreciation in case of merger of Air India and Indian Airlines.

(Effective from A.Y.2008-09)

(b) Provisions relating to carry forward and set off of accumulated loss and unabsorbed depreciation allowance in business reorganisation of co-operative banks [Section 72AB]

(i) Under this section, in a case where the amalgamation has taken place during the previous year, set-off of accumulated loss and the unabsorbed depreciation of the predecessor co-operative bank will be allowed in the hands of the successor co-operative bank as if the amalgamation had not taken place. All the other provisions of this Act relating to set off and carry forward of loss and allowance for depreciation would apply accordingly.

(ii) The benefit of carry-forward and set-off of accumulated losses under this section would be allowed only on fulfillment of the following conditions -

(a) Conditions to be fulfilled by the predecessor co-operative bank

(1) It should have been engaged in the business of banking for three or more years; and

(2) It 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) Conditions to be fulfilled by the successor co-operative bank

(1) It should hold 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;

(2) It continues the business of the predecessor co-operative bank for a minimum period of five years from the date of business reorganisation; and

(3) It 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.

(iii) The amount of set-off of the accumulated loss and unabsorbed depreciation allowable to the resulting co-operative bank has to be calculated in the following manner -

(1) In a case where the whole of the amount of such loss or unabsorbed depreciation is directly relatable to the undertakings transferred to the resulting co-operative bank - the entire accumulated loss or unabsorbed depreciation of the demerged co-operative bank is allowed to be set-off.

(2) In a case where the accumulated loss or unabsorbed depreciation is not directly relatable to the undertakings transferred to the resulting co-operative bank - 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.

For example, if A Co.op Bank is the demerged co-operative bank and B Co. op Bank is the resulting co-operative bank, the amount of set-off of the accumulated loss and unabsorbed depreciation allowable to B Co-op. bank would be –

$$\begin{array}{c}\text{Unabsorbed business loss/depreciation}\\ \text{of A Co-Op bank}\end{array} \times \frac{\begin{array}{c}\text{Assets of the undertaking transferred}\\ \text{to B Co-op bank}\end{array}}{\text{Assets of A Co-op bank}}$$

(iv) The Central Government may specify other conditions by notification in the Official Gazette as it considers necessary, to ensure that the business reorganisation is for genuine business purposes.

(v) 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.

For example, if the date on which business re-organisation took place is 1.11.06, then the period between 1.4.06 and 31.10.06 and the period between 1.11.06 and 31.3.07 would be deemed to be two different previous years for the purposes of set-off and carry forward of unabsorbed business losses and depreciation.

(vi) In a case where the conditions specified in (ii) above or notified under (iv) above 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.

(vii) 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.

(viii) 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 and which would have been allowed to such bank as if the business reorganisation had not taken place.

(Effective from A.Y.2008-09)

11. DEDUCTIONS FROM GROSS TOTAL INCOME

(a) Furnishing return of income on or before due date mandatory for claiming exemption under sections 80-ID and 80-IE also [Section 80AC]

(i) Section 80AC stipulates compulsory filing of return of income on or before the due date specified under section 139(1), as a pre-condition for availing benefit under the following sections –

(1) Section 80-IA applicable to industrial undertakings or enterprises engaged in infrastructure development, etc.

(2) Section 80-IAB applicable to undertakings or enterprises engaged in any business of developing a special economic zone.

(3) Section 80-IB applicable to certain industrial undertakings other than infrastructure development undertakings.

(4) Section 80-IC applicable to certain undertakings or enterprises in certain special category States.

(ii) New section 80-ID has been inserted to provide a tax holiday in respect of profits and gains from the business of hotel or business of building, owning and operating a convention centre in NCR.

(iii) New section 80-IE has been inserted to provide a tax holiday in respect of profits and gains derived by certain undertakings in North-Eastern States.

(iv) Consequently, section 80AC has been amended to make filing of return on or before the due date mandatory for availing benefit of deduction under sections 80-ID and 80-IE also.

(Effective from A.Y.2008-09)

(b) Subscription to notified bonds of NABARD to qualify for deduction under section 80C

Section 80C(2) has been amended to provide that the subscription to such bonds issued by NABARD (as the Central Government may notify in the Official Gazette) would qualify for deduction under section 80C w.e.f. A.Y.2008-09.

(Effective from A.Y.2008-09)

(c) Increased deduction for medical insurance premium [Section 80D]

(i) The maximum permissible deduction under section 80D in respect of medical insurance premium has been increased from Rs.10,000 to Rs.15,000.

(ii) Further, for senior citizens, the maximum permissible deduction has been increased from Rs.15,000 to Rs.20,000.

(iii) So far, only premium paid by cheque qualified for deduction under this section. Now, premium paid by any mode other than cash would qualify for deduction.

(Effective from A.Y.2008-09)

(d) Deduction in respect of interest on loan for higher education of spouse/children [Section 80E]

The deduction under section 80E available to an individual in respect of interest on loan taken for his higher education has now been extended to also include interest on such loan taken for higher education of his relative i.e. his or her spouse and children.

(Effective from A.Y.2008-09)

(e) Widening of scope of benefit and extension of time limit under section 80-IA

(i) Benefit of deduction under section 80-IA has been extended to an undertaking which lays and begins to operate a cross country natural gas distribution network, including pipelines and storage facilities being an integral part of such network by inserting clause (vi) in sub-section (4).

(ii) For claiming benefit under this clause, the undertaking should fulfill the following conditions-

(1) it is owned by a company registered in India or a consortium of such companies or a board or corporation established or constituted under any Central or State Act;

(2) it is approved by the Petroleum and Natural Gas Regulatory Board;

(3) 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;

(4) it starts functioning on or after 1st April, 2007.

(iii) Further, the conditions that it should not be formed by splitting up or reconstruction of a business already in existence (except in circumstances provided in section 33B) and it should not be formed by the transfer to a new business of plant and machinery previously used for any purposes would apply to these undertakings also.

(iv) 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 10% of the total borrowings of the assessee.

(v) Deduction under section 80-IA(4)(v) is available to an undertaking owned by an Indian company and set up for reconstruction or revival of a power generating plant if such undertaking begins to generate or transmit or distribute power before 31.3.07. The time-limit has now been extended up to 31.3.08.

(vi) Navigational sea channels have been included within the scope of the term "Infrastructure facility" for the purpose of deduction under section 80-IA(4)(i) available to an enterprise carrying on the business of developing or operating and maintaining or developing, operating and maintaining any infrastructure facility fulfilling the conditions prescribed therein.

(Effective from A.Y.2008-09)

(f) Denial of transfer of benefit of deduction under section 80-IA to the amalgamated/resulting company [Section 80-IA(12A)]

The transfer of benefit of deduction under section 80-IA to the amalgamated/resulting company by virtue of sub-section (12) of section 80-IA would not be available in respect of any enterprise or undertaking which is transferred in a scheme of amalgamation or demerger effected on or after 1.4.2007.

(Effective from A.Y.2008-09)

(g) Works contractor not entitled to benefit of deduction under section 80-IA [Section 80-IA(13)]

The benefit provided under section 80-IA to an undertaking engaged in development of infrastructure facility like highways and ports, industrial parks etc. would not be available to a person who merely executes a works contract entered into with the undertaking or enterprise referred to in that section.

(Effective retrospectively from A.Y.2000-01)

(h) Extension of time limit for industries in the State of Jammu and Kashmir for the purpose of tax holiday under section 80-IB

(i) Section 80-IB(4) provides for deduction of 100% of profits and gains for the first five assessment years and 25% (30% in case of a company) of profits and gains for the next five assessment years in case of profits derived from an industrial undertaking set up in the State of Jammu and Kashmir.

(ii) However, such industrial undertaking should begin to manufacture or produce articles or things or operate a cold storage plant on or before 31.3.2007.

(iii) This deduction has now been extended to all such industrial undertakings set up in Jammu and Kashmir which begin to manufacture or produce articles or things or operate a cold storage plant on or before 31.3.2012.

(Effective from A.Y.2008-09)

(i) Tax holiday in respect of profits and gains from the business of hotel or business of building, owning and operating a convention centre in NCR [New section 80-ID]

Related amendment in section: 80A

(i) New section 80-ID has been inserted to provide a deduction of 100% of profits and gains derived by an undertaking from the eligible business i.e. business of hotel or business of building, owning and operating a convention centre in a specified area, for a period of 5 consecutive assessment years beginning from the year in which such hotel starts functioning or convention centre starts operating on a commercial basis.

(ii) However, such hotel or convention centre should be constructed at any time during the period from 1.4.2007 to 31.3.2010.

(iii) Specified area means the National Capital Territory of Delhi and the districts of Faridabad, Gurgaon, Gautam Budh Nagar and Ghaziabad. This is to boost the construction activity in NCR in view of the upcoming Common Wealth Games in 2010.

(iv) "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.

(v) "hotel" means a hotel of two-star, three-star or four-star category as classified by the Central Government;

(vi) Such business should not be formed by the splitting up, or the reconstruction, of a business already in existence. It should not be formed by the transfer to a new business of a building previously used as a hotel or convention center. Further, it should not be formed by the transfer to a new business of machinery or plant previously used for any purpose exceeding 20% of the total value of machinery and plant used in the business.

(vii) For this purpose, 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:

(a) such machinery or plant was not at any time 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 has been allowed in respect of such machinery or plant to any person earlier.

(viii) The profits and gains from the eligible business should be computed as if such eligible business were the only source of income of the assessee during the relevant assessment year.

(ix) The deduction under this section should not exceed the profits of such eligible business of the undertaking.

(x) The deduction shall be allowed only if the accounts are audited by a Chartered Accountant, who is also required to certify that the deduction has been correctly claimed. Further, the audit report should be furnished along with the return of income.

(xi) Further, where any amount of profits of an undertaking or enterprise is allowed as deduction under this section, no deduction under any other provision of Chapter VI-A or section 10AA is allowable in respect of such profits.

(xii) Where any goods or services held for the purposes of eligible business are transferred to any other business carried on by the assessee or, where any goods held for any other business are transferred to the eligible business and, in either case, if the consideration for such transfer as recorded in the accounts of the eligible business does not correspond to the market value thereof, then the profits eligible for deduction shall be computed by adopting market value for such goods or services. In case of exceptional difficulty in this regard, the profits shall be computed by the Assessing Officer on a reasonable basis.

(xiii) Similarly, where due to the close connection between the assessee and the other person or for any other reason, it appears to the Assessing Officer that the profits of eligible business is increased to more than the ordinary profits, the Assessing Officer shall compute the amount of profits on a reasonable basis for allowing the deduction.

(xiv) The Central Government may notify that the benefit conferred by this section shall not apply to any class of undertaking with effect from any specified date.

(xv) Consequent to insertion of this section, section 80A has been amended to provide that where in computing the total income of an AOP or a BOI, any deduction is admissible under, inter-alia, section 80-ID, no such deduction shall be made in computing the total income of a member of the AOP or BOI in relation to the share of such member in the income of the AOP or BOI.

(Effective from A.Y.2008-09)

(j) Tax holiday in respect of profits and gains from eligible business of certain undertakings in North-Eastern States [New Section 80-IE]

Related amendment in sections: 80A & 80-IC

(i) This section provides incentive to an undertaking which has during the period between 1st April, 2007 and 1st April, 2017, begun or begins, in any of the North-Eastern States (i.e., the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura) -

(1) to manufacture or produce any eligible article or thing;

(2) to undertake substantial expansion to manufacture or produce any eligible article or thing;

(3) to carry on any eligible business.

(ii) 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 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;

(c) plastic carry bags of less than 20 microns; and

(d) goods falling under Chapter 27 of the First Schedule to the Central Excise Tariff Act, 1985 produced by petroleum oil or gas refineries.

(iii) Substantial expansion means increase in the investment in the plant and machinery by at least 25% 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.

(iv) 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.

(v) Where the gross total income of an assessee includes any profits and gains derived by such an undertaking, a deduction of 100% of the profits and gains derived from such business for 10 consecutive assessment years commencing with the initial assessment year shall be allowed in computing the total income of the assessee. 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.

(vi) However, the following conditions have to be fulfilled by the undertaking for claiming benefit of deduction under this section -

   (1) It should not be formed by splitting up, or the reconstruction, of a business already in existence (except in circumstances provided in section 33B)

   (2) It should not be formed by the transfer to a new business of machinery or plant previously used for any purpose exceeding 20% of the total value of machinery and plant used in the business.

(vii) For this purpose, 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:

   (a) such machinery or plant was not at any time 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 has been allowed in respect of such machinery or plant to any person earlier.

(viii) Where deduction has been allowed under this section 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.

(ix) Further, 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 10 assessment years.

(x) The profits and gains from the eligible business should be computed as if such eligible business were the only source of income of the assessee during the relevant assessment year.

(xi) The deduction under this section should not exceed the profits of such eligible business of the undertaking.

(xii) The deduction shall be allowed only if the accounts are audited by a Chartered Accountant, who is also required to certify that the deduction has been correctly claimed. Further, the audit report should be furnished along with the return of income.

(xiii) Where any goods or services held for the purposes of eligible business are transferred to any other business carried on by the assessee or, where any goods held for any other business are transferred to the eligible business and, in either case, if the consideration for such transfer as recorded in the accounts of the eligible business does not correspond to the market value thereof, then the profits eligible for deduction shall be computed by adopting market value for such goods or services. In case of exceptional difficulty in this regard, the profits shall be computed by the Assessing Officer on a reasonable basis.

(xiv) Similarly, where due to the close connection between the assessee and the other person or for any other reason, it appears to the Assessing Officer that the profits of eligible business is increased to more than the ordinary profits, the Assessing Officer shall compute the amount of profits on a reasonable basis for allowing the deduction.

(xv) The Central Government may notify that the benefit conferred by this section shall not apply to any class of undertaking with effect from any specified date.

(xvi) Where any undertaking of an Indian company which is entitled to the deduction under this section is transferred before the expiry of the period of deduction to another Indian company in a scheme of amalgamation or demerger, no deduction shall be admissible to the amalgamating or demerged company for the previous year in which the amalgamation or demerger takes place and the amalgamated or the resulting company shall be entitled to the deduction as if the amalgamation or demerger had not taken place.

(xvii) Consequent to insertion of this section, amendment has been made in section 80-IC(2) restricting the period upto which the benefit of deduction therein is available in respect of income derived from an eligible undertaking set up in the State of Sikkim. Such benefit was available in respect of any undertaking or enterprise which has begun to manufacture or produce eligible articles or things or undertake substantial expansion during the period between 23.12.2002 and 31.3.2012 in the State of Sikkim. Now, the terminal date under section 80-IC has been restricted to 31.3.2007, in view of insertion of section 80-IE.

(xviii) Further, section 80A has been amended to provide that where in computing the total income of an AOP or a BOI, any deduction is admissible under, inter-alia, section 80-IE, no such deduction shall be made in computing the total income of a member of the AOP or BOI in relation to the share of such member in the income of the AOP or BOI.

(Effective from A.Y.2008-09)

12. INCOME-TAX AUTHORITIES

(a) Additional Commissioner and Additional Director may exercise the powers / perform the functions conferred on or assigned to the Assessing Officer [Section 120(4]

(i) Under clause (b) of section 120(4), the CBDT can empower the Director General or Chief Commissioner or Commissioner to issue orders in writing to the effect that the powers and functions conferred on or assigned to the Assessing Officer can be exercised or performed by a Joint Commissioner or Joint Director.

(ii) This clause has been amended to provide that the powers and functions conferred on or assigned to the Assessing Officer may also be exercised or performed by an Additional Commissioner and Additional Director, on issue of order in writing to that effect by the Director General, Chief Commissioner or Commissioner.

(iii) This amendment takes effect retrospectively from 1st June, 1994 (for inclusion of Additional Commissioner) and 1st October 1996 (for inclusion of Additional Director).

(b) Change of method for calculation of interest from per annum basis to per month basis [Section 132B(4)]

(i) According to section 132B(4)(a), the Central Government shall pay simple interest at the rate of 6% per annum on the excess of money seized and the sale proceeds arising on the sale of assets seized over the amount required to meet the liabilities i.e. tax, interest and penalty.

(ii) Under sections 220(2), 234A, 234B, 234C, 234D and 244A, interest is chargeable on per month basis. Accordingly, section 132B(4)(a) has now been amended to change the method of calculation of interest to per month basis from the existing per annum basis. The rate of interest would now be ½% per month or part of a month.

(iii) The difference between calculation of interest on per-annum basis and per-month basis lies in the procedure followed for calculation of interest under these two methods. When interest is calculated on per annum basis, any fraction of a month is ignored and when interest is calculated for every month or part of a month basis, any fraction of a month is deemed a full month and interest is calculated for the full month. This principle has been followed in framing rule 119A which provides for procedure for calculation of interest on annual or monthly basis.

(iv) The amendment regarding change of method of calculation of interest to monthly basis will be applicable in respect of interest chargeable or payable for the period commencing on or after 1st April, 2008. For any period ending on or before 31st March, 2008, interest shall continue to be charged or paid on per annum basis.

(v) Further, in a case where interest is chargeable or payable in respect of both the periods, that is, the period before 31st March, 2008 and the period thereafter, interest shall be calculated on per annum basis upto 31.3.2008 and per month basis for so much of such period as falls after that date.

(Effective from 1.4.2008)

13. ASSESSMENT PROCEDURE

(a) Power of CBDT to dispense with furnishing documents etc. with the return and filing of return in electronic form [Sections 139C & 139D]

Related amendment in section: 139(9)

(i) The Finance Act, 2006 inserted a proviso to section 139(9) empowering the Board to frame rules to relax the requirement of filing of documents along with the return of income for any class or classes of persons.

(ii) The Finance Act, 2007 has now introduced new sections 139C and 139D, wherein wide ranging powers, including the power to frame rules to dispense with furnishing documents etc. with the return, have been given to the CBDT for implementing the scheme of filing Electronic Returns.

(iii) Since the scheme, including notifying new forms for filing electronic returns for corporate assesses was already implemented during the earlier period, these provisions have been introduced with retrospective effect from 1.6.2006. Consequently, the proviso to section 139(9) has been omitted with retrospective effect from 1.6.2006.

(iv) Section 139C provides that the CBDT may make rules providing for a class or classes of persons who may not be required to furnish documents, statements, receipts, certificate, reports of audit or any other documents, which are otherwise required to be furnished along with the return under any other provisions of this Act.

(v) However, on demand, the said documents, statements, receipts, certificate, reports of audit or any other documents have to be produced before the Assessing Officer.

(vi) Section 139D empowers the CBDT to make rules providing for –

(a) the class or classes of persons who shall be required to furnish the return of income in electronic form;

(b) the form and the manner in which the return of income in electronic form may be furnished;

(c) the documents, statements, receipts, certificates or audited reports which may not be furnished along with the return of income in electronic form but have to be produced before the Assessing Officer on demand;

(d) the computer resource or the electronic record to which the return of income in electronic form may be transmitted.

(Effective from 1.6.2006)

(b) Assessee to be given an opportunity of being heard before issuing directions for special audit [Section 142(2A)]

(i) There is currently no specific requirement that the Assessing Officer should give the assessee an opportunity of being heard, before directing special audit under section 142(2A). The Supreme Court in Rajesh Kumar & Ors. v. DCIT (2006) 287 ITR 91 observed that the order under section 142(2A) is a quasi judicial order. Therefore, the principles of natural justice have to be applied and the assessee has to be given an opportunity of being heard before directing the special audit. The principles of natural justice are based on two principles, namely, (i) nobody shall be condemned unheard; (ii) nobody shall be a judge of his own cause. Once it is held that the assessee suffers civil consequences and any order passed would be prejudicial to him, the principles of natural justice must be held to be implicit. If the principles of natural justice were to be excluded, the Parliament could have said so expressly.

(ii) Accordingly, to give effect to the observation of the Supreme Court, the Finance Act, 2007 has provided that the Assessing Officer is now required to give the assessee an opportunity of being heard before issuing directions for special audit under section 142(2A).

(iii) Further, where the direction for special audit is issued by the Assessing Officer on or after 1.6.2007, the expenses of, and incidental to, such special audit, including remuneration of the Accountant, shall be determined by the Chief Commissioner or Commissioner in accordance with the prescribed guidelines.

The expenses so determined shall be paid by the Central Government. [Proviso to section 142(2D)]

(Effective from 1.6.2007)

(c) Increase in time limit for completion of assessments were reference is made to the Transfer Pricing Officer [Sections 153 & 153B]

(i) The order of the Transfer Pricing Officer determining the arm's length price of an international transaction is now binding on the Assessing Officer and the Assessing Officer shall proceed to compute the total income in conformity with the arm's length price determined by the Transfer Pricing Officer.

(ii) Consequently, the time limit for completion of assessment/re-assessment where a reference is made to the Transfer Pricing Officer under section 92CA(1) (on or after 1.6.2007 or before that date but the order is yet to be passed as on that date) has been increased by 12 months i.e.

| Section | Particulars | Time-limit |
|---|---|---|
| Second Proviso to section 153(1) | Completion of assessment under section 143 or section 144 for the A.Y. 2005-06 onwards | 33 months from the end of the assessment year in which the income was first assessable. |
| Third proviso to section 153(2) | Completion of assessment/ reassessment/recomputation under section 147 if notice is served under section 148 on or after April 1, 2006 | 21 months from the end of the financial year in which notice under section 148 is served |
| Third proviso to section 153(2A) | Fresh assessment in pursuance of an order under section 254 (received by the Chief Commissioner / Commissioner on or after April 1, 2006) or an order passed by the Commissioner under sections 263 and 264 on or after April 1, 2006 | 21 months from the end of the financial year in which such order is received by the Chief Commissioner / Commissioner or passed by the Commissioner, as the case may be. |
| Third Proviso to section 153B(1) | Completion of assessment in cases where the last of the authorizations for search under section 132 or for requisition under section 132A was executed during F.Y.2005-06 or thereafter. | 33 months from the end of the financial year in which the last of the authorizations for search under section 132 or requisition under section 132A was executed |

| | | |
|---|---|---|
| Fourth Proviso to section 153B(1) | Completion of assessment/ reassessment in case of other person referred to in section 153C in cases where the last of the authorizations for search under section 132 or for requisition under section 132A was executed during F.Y.2005-06 or thereafter. | 33 months from the end of the financial year in which the last of the authorizations for search under section 132 or for requisition under section 132A was executed or 21 months from the end of the financial year in which the 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. |

(Effective from 1.6.2007)

(d) Prior approval of Joint Commissioner required for assessment or reassessment in respect of search cases [New section 153D)]

New section 153D has been inserted to provide that assessment or reassessment of search cases in respect of each assessment year referred to in section 153A(b) or the assessment year referred to in 153B(1)(b) shall not be made by an Assessing Officer below the rank of Joint Commissioner without the previous approval of the Joint Commissioner.

Note -

(i) Section 153A(b) provides for assessment or reassessment of total income of each of the six assessment years immediately preceding the assessment year relevant to the previous year in which the search was conducted under section 132 or requisition was made under section 132A.

(ii) Section 153B(1)(b) provides the time limit for completion of assessment in respect of the assessment year relevant to the previous year in which the search is conducted under section 132 or requisition is made under section 132A.

(Effective from 1.6.2007)

(e) Time limit for completion of assessment of shipping business of non-residents [Section 172]

(i) Section 172 provides for presumptive taxation at 7½% of the freight paid or payable in case of shipping business of a non-resident.

(ii) Such income is chargeable to tax in the same previous year in which it is earned.

(iii) However, the time limit for completion of assessment in such cases has not been provided in the Act.

(iv) The Finance Act, 2007 now provides a time limit of 9 months for completing such assessments by inserting sub-section (4A) in section 172.

(v) The period of 9 months is reckoned from the end of the financial year in which the return under section 172(3) is furnished.

(vi) However, in respect of returns filed on or before 1.4.2007, assessments are required to be completed on or before 31.12.2008

(Effective from A.Y.2007-08)

14. APPEALS AND REVISION

(a) Appealable orders before Commissioner (Appeals) to include an order imposing penalty under section 271AAA [Section 246A]

(i) A new section 271AAA has been inserted w.e.f. 1.4.2007 to provide for imposition of penalty at 10% of undisclosed income of the specified previous year, in respect of searches initiated under section 132 on or after 1.6.2007.

(ii) Consequently, section 246A has been amended to include an order imposing penalty under section 271AAA as an appealable order before Commissioner (Appeals).

(Effective from 1.6.2007)

(b) Appeal by person denying liability to deduct tax under section 195 [New section 248]

Related amendment in section: 249(2)(a)

(i) Under the existing section 248, in all such cases where any person denies his liability to deduct tax at source under section 195 or pay such tax under section 200, an appeal can be filed with the Commissioner (Appeals), after deducting and paying such tax.

(ii) Therefore, the existing provision covered cases where the tax is borne by the assessee and also cases where the tax is borne by the non-resident who is the recipient of income.

(iii) This section has been substituted to restrict the eligibility of filing an appeal only to cases where the tax is borne by the assessee. Therefore, the cases where the tax is to be borne by the non-resident is now outside the scope of section 248 and no appeal can be filed in such cases.

(iv) The new section 248 provides that 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.

(v) Consequential amendment has been made in section 249(2)(a) to provide that where the appeal is under section 248, it shall be presented within 30 days of the date of payment of the tax.

(Effective from 1.6.2007)

(c) Order rejecting approval under section 80G(5)(vi) appealable before Appellate Tribunal [Section 253]

(i) Under section 80G, deductions in respect of donations to certain funds, charitable institutions is available from the taxable income of the donor. This section provides for two categories of funds –

(1) Funds enumerated in sections 80G(2); and

(2) Funds which are approved by the Commissioner under clause (vi) of sub-section (5) of section 80G.

(ii) Under section 253, as it stands at present, no appeal lies to the Appellate Tribunal against the order passed by the Commissioner under section 80G(5)(vi) rejecting the approval of such funds.

(iii) This section has, therefore, been amended to allow an appeal to be filed against such orders of the Commissioner before the Appellate Tribunal.

(Effective from 1.6.2007)

(d) Power of Appellate Tribunal to grant stay of demand of tax [Section 254(2A)]

(i) Under section 254(2A), the Appellate Tribunal can grant stay of demand of tax which can extend only up to 180 days from the date of granting such stay. If the appeal is not disposed of within 180 days, the stay order shall stand vacated after the expiry of the said period. This provision would apply even where the appeal was not disposed of within a period of 180 days for reasons not attributable to the fault of the assessee.

(ii) Therefore, sub-section (2A) has been amended to provide that where an order of stay has been passed and the appeal has not been disposed of within the specified period of 180 days from the date of such order, the Appellate Tribunal may extend the period of stay or pass an order of stay for a further period or periods, as it thinks fit, 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.

(iii) However, the aggregate period of stay, including the original stay granted and the extension allowed, cannot exceed 365 days. If such appeal is not disposed of within the period originally allowed or the extended period or periods, the order of stay stall stand vacated after the expiry of such period or periods.

(Effective from 1.6.2007)

## II CENTRAL SALES TAX ACT, 1956

### Aviation Turbine Fuel sold to aircraft with a maximum take-off mass of less than 40,000 kilograms operated by scheduled airlines included in the list of declared goods [Section 14]

(a) Article 286(3) of the Constitution of India authorises the Parliament to declare some goods to be of special importance and to impose restrictions on powers of the States in regard to rates of tax and incidence of tax on declared goods. As per section 2(c) of the Central Sales Tax Act, 1956, "declared goods" means goods declared under section 14 to be of special importance in inter-State trade or commerce e.g. certain cereals/pulses/oil seeds, man-made fabrics, sugar, cotton yarn, iron and steel etc. Tax on their intra-State sales is subject to restrictions imposed through section 15. Declared goods can be taxed only at a single point, that is, tax can be imposed only at one stage in a State.

(b) Aviation Turbine Fuel sold to a Turbo-Prop Aircraft is included in the list of declared goods under clause (iid) of section 14. This clause has been substituted by the Finance Act, 2007 to include Aviation Turbine Fuel sold to an aircraft with a maximum take-off mass of less than 40,000 kilograms operated by scheduled airlines in the list of declared goods.

(c) This amendment has been effected to bring all similarly placed aircrafts, irrespective of whether they are Turbo-Prop or otherwise, within the definition of declared goods, with the object of improving air connectivity to remote parts of the country by restricting the rate of sales tax/VAT on Aviation Turbine Fuel sold to such small aircrafts.

(d) "Scheduled airlines" means the airlines which have been permitted by the Central Government to operate any Scheduled air transport service.

(Effective from 11.5.2007)

## Amendments made by the Taxation Laws (Amendment) Act, 2006 to the Income-tax Act, 1961

The Taxation Laws (Amendment) Act, 2006 received the assent of the President on 13.7.2006. The CBDT has issued Circular No.1/2007 dated 27.4.2007, which explains the nature and effect of the amendments made by the Taxation Laws (Amendment) Act, 2006.

### (1) Tax Recovery Officer to exercise or perform the powers and functions of the Assessing Officer [Section 2(44)]

(i) Section 2(44) provides that a Tax Recovery Officer means any income-tax officer who may be authorised by the Chief Commissioner or Commissioner, by a general or special order in writing, to exercise the powers of a Tax Recovery Officer.

(ii) This clause has been amended to enable a Tax Recovery Officer, if he is authorised by the Chief Commissioner or Commissioner, by general or special order in writing, to exercise the powers and functions which are conferred on, or assigned to, an Assessing Officer under the Income-tax Act, 1961 and which may be prescribed.

(Effective from 13.7.2006)

(2) Exemption of income of North-Eastern Development Finance Corporation Limited [Section 10(23BBF)]

(i) A new clause (23BBF) has been inserted in section 10 to provide for exemption of any income of the North-Eastern Development Finance Corporation Limited, being a company formed and registered under the Companies Act, 1956.

(ii) The exemption has been phased out beginning with inclusion of 20% of the total income for tax for the assessment year 2006-07, 40% for the assessment year 2007-08, 60% for the assessment year 2008-09, 80% for the assessment year 2009-10 and 100% from the assessment year 2010-11. The exemption under this clause shall be fully phased out in assessment year 2010-11 and no exemption would be available from such assessment year.

(Effective from A.Y.2006-07)

(3) Removal of the requirement of renewal of notification issued under sub-clauses (iv) and (v) of section 10(23C)

(i) Under section 10(23C), any notification issued by the Central Government in terms of sub-clause (iv) or sub-clause (v) of the said section has, at any one time, effect for such assessment year or years, not exceeding three assessment years, as may be specified in the notification.

(ii) In order to dispense with the requirement of periodic renewal of notifications and consequent delays, section 10(23C) has been amended to provide that the restriction of limit of effective period of notification to a maximum of three assessment years shall be applicable in respect of notifications issued by the Central Government under sub-clause (iv) or (v) before 13.7.2006, being the date on which Taxation Laws (Amendment) Bill, 2006 received the assent of the President.

(iii) Therefore, on account of the above amendment, any notification issued by the Central Government under the said sub-clause (iv) or sub-clause (v), on or after 13.07.2006 will be valid until withdrawn and there will be no requirement on the part of the assessee to seek renewal of the same after three years.

Note – Clause (iv) exempts income of a fund or institution established for charitable purposes and notified by the Central Government and clause (v) exempts income of a trust or institution wholly for public religious purposes or wholly for public religious and charitable purposes, which may be notified by the Central Government.

(4) Time limit for issue of notification under sub-clauses (iv) and (v) or for approval by the prescribed authority under sub-clauses (vi) and (via) of section 10(23C)

(i) Under section 10(23C), in respect of application made by a fund or trust or institution etc. for grant of approval or continuation thereof, there is no time limit for issue of notification under sub-clauses (iv) and (v) or for grant of approval under sub-clauses (vi) and (via) or for passing an order rejecting such application. As a result, there is considerable delay in disposing such applications.

(ii) In order to expedite disposal of such applications, it has now been provided that where such an application is made on or after 13.7.2006, every notification under sub-clause (iv) or sub-clause (v) shall be issued or approval under sub-clause (vi) or sub-clause (via) shall be granted or an order rejecting the application shall be passed within the period of 12 months from the end of the month in which such application was received.

(5) Funds/Trusts/Universities/Other educational institutions or hospitals or other medical institutions referred to in sub-clauses (iv),(v),(vi) or (via) of clause (23C) of section 10 to get their accounts audited and furnish audit report

(i) At present, there is no requirement on the part of any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clauses (iv), (v), (vi) or (via) of section 10(23C) to furnish audited accounts along with the return of income.

(ii) It has now been provided that if the total income of any entity referred to in sub-clauses (iv), (v), (vi) and (via) of section 10(23C), without giving effect to the provisions of the said sub-clauses, exceeds the basic exemption limit in any previous year, it shall –

(1) 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

(2) furnish such audit report along with the return of income for the relevant assessment year. The report must be in the prescribed form, duly signed and verified by the accountant, and must contain such particulars as may be prescribed.

(Effective from A.Y.2006-07)

(6) Accounts of a charitable or religious trust or institution to be audited if their total income exceeds the basic exemption limit [Section 12A(b)]

(i) Section 12A(b) provides that for availing exemption under sections 11 and 12, the accounts of the trust or institution for the previous year should have been audited if the total income of the trust or institution as computed under the Income-tax Act, 1961, without giving effect to the provisions of section 11 and section 12, exceeds Rs.50,000 in that previous year. Such audit report should be furnished along with the return of income for the relevant assessment year in the prescribed form.

(ii) Rs.50,000 was the erstwhile basic exemption limit. The basic exemption limit of AOPs has been increased to Rs.1,00,000 by the Finance Act, 2005. Therefore, clause (b) of section 12A has been amended to provide for the requirement of getting the accounts audited if in the previous year the total income exceeds the basic exemption limit.

(Effective from A.Y.2006-07)

(7) Guidelines, manner and conditions on the basis of which approval is to be granted under section 35(1)(ii) and section 35(1)(iii)

(i) So far, there have been no guidelines or manner or conditions in relation to grant of approval of the Central Government to a scientific research association, university, college or other institution. This has caused undue delay in the processing of applications received for approval from such entities. There was, therefore, a need to provide the step-wise procedure to be followed by the applicants, the manner in which their applications would be processed and the conditions subject to which the approval was to be granted to a scientific research association under clause (ii) of section 35(1) and to a university, college or other institution under clause (iii) of section 35(1).

(ii) These clauses have, therefore, been amended to lay down that the applicant scientific research association, university, college or other institution shall be approved in accordance with the guidelines, in the manner and subject to such conditions as may be prescribed. The guidelines, manner (including application Forms) and conditions have since been prescribed vide notification bearing S.O. 1856 (E) dated 30.10.2006.

(iii) The deduction under these clauses would be available only if such association, university, college or other institution is for the time being approved in accordance with the guidelines, in the manner and subject to such conditions as may be prescribed.

(iv) Further, it has been clarified that the deduction to which an assessee (i.e. donor) is entitled on account of payment of any sum to a scientific research association or university or college or other institution, shall not be denied merely on the ground that subsequent to payment of such sum by the assessee, the approval granted to any of the aforesaid entities is withdrawn.

(v) Also, it has been provided that the time limit restricting the maximum effective period of a notification to 3 assessment years shall be applicable in respect of a notification issued by the Central Government under clause (ii) or clause (iii) before 13.7.2006. Consequently, any notification issued on or after 13.7.2006 shall remain in force until approval granted to such entity is withdrawn.

(vi) In respect of an application received on or after 13.7.2006, every notification under clause (ii) or clause (iii) shall be issued or an order rejecting the application shall be passed before expiry of 12 months from the end of the month in which the application for approval was received by the Central Government.

(Effective from A.Y.2006-07)

(8) Deduction not to be denied to the donor-assessee on subsequent withdrawal of approval of specified donee entities[Section 35(2AA), 35AC & 35CCA]

(i) It has been clarified that the deduction to which an assessee is entitled on account of payment of any sum by him to a National Laboratory, University, Indian Institute of Technology or a specified person for the approved programme [referred to in sub-section (2AA) of section 35] shall not be denied to the donor-assessee merely on the ground that after payment of such sum by him, the approval granted to any of the aforesaid donee-entities has been withdrawn.

(ii) A similar amendment has been made in section 35AC clarifying that the deduction to which an assessee (i.e. the donor) is entitled on account of payment of any sum by him to a public sector company or a local authority or to an association or institution shall not be denied to the assessee merely on the ground that after payment of such sum by him, the approval granted to such association or institution has been withdrawn or the notification notifying the eligible project or scheme referred to in section 35AC has been withdrawn.

(iii) A parallel amendment has been made in section 35CCA clarifying that the deduction to which an assessee is entitled on account of payment of any sum by him to an association or institution for carrying out the programme of rural development shall not be denied to the assessee merely on the ground that after payment of such sum by him, the approval granted to such programme or, as the case may be, to the association or institution has been withdrawn.

(Effective from A.Y.2006-07)

(9) Disallowance of rent and royalty paid to a resident without deduction of tax at source [Section 40(a)(ia)]

(i) As per section 40(a)(ia), failure to deduct tax from interest, commission or brokerage, fees for professional services or fees for technical services payable to a resident or amounts payable to a resident contractor or sub-contractor, or failure to remit such tax after deduction results in disallowance of such payments in the computation of income of the payer.

(ii) This disallowance has now been extended to payments of rent and royalty. The terms rent and royalty have also been defined. Rent has been defined to have the same meaning as in clause (i) to the Explanation to section 194-I. As per the said clause, 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 land or building (including factory building) or land appurtenant to the building (including factory building) or machinery or plant or equipment or furniture or fittings whether or not all or any of the above are owned by the payee. Royalty has the same meaning as given in Explanation 2 to section 9(1)(vi).

(Effective from A.Y.2007-08)

(10) Disallowance of expenses for which payment above Rs.20,000 has been made otherwise than by account-payee cheque or account-payee bank draft [Section 40A]

(i) Section 40A(3), provides for disallowance of 20% of the expenditure if payment in a sum exceeding Rs.20,000 is made, against such expenditure, otherwise than by a crossed cheque or crossed bank draft.

(ii) Since a crossed cheque or crossed bank draft is a negotiable instrument, endorsement of the same has made it difficult to trace the final payee in many cases. This defeats the purpose of section 40A(3).

(iii) Since an account payee cheque or account payee bank draft cannot be credited to any account other than the account of the payee, section 40A(3) has been amended to require payments over Rs.20,000 to be made by an account payee cheque drawn on a bank or account payee bank draft.

(iv) Consequential amendment has been made in section 40A(4) to provide that where any payment has been made by an account payee cheque or account payee bank draft to escape disallowance under section 40A(3), then no person shall be allowed to raise a plea in any suit or other proceeding on the ground that the payment was not made in cash or any other manner.

(Effective from 13.7.2006)

(11) Cash gifts received in excess of Rs.50,000 on or after 1.4.2006 to be taxed under section 56(2)(vi)

(i) Section 56(2)(v) provides that any sum of money exceeding Rs.25,000 received without consideration by an individual or a Hindu undivided family on or after 1.9.2004 from any person, is chargeable to income-tax under the head "Income from other sources".

(ii) However, in order to avoid hardship in genuine cases, certain sums of money received have been exempted -

(a) any sum received from any relative; or

(b) any sum received on the occasion of the marriage of the individual; or

(c) any sum received under a will or by way of inheritance; or

(d) any sum received in contemplation of death of the payer.

(iii) It is now provided that the above provisions of clause (v) shall be applicable in respect of any sum of money, exceeding the specified amount, received on or after 1.9.2004 but before 1.4.2006.

(iv) Further, a new clause (vi) has been inserted in section 56(2) w.e.f. A.Y. 2007-08 to provide that where any sum of money is received without consideration on or after 1.4.2006 by an individual or a Hindu undivided family from any person or persons and the aggregate value of all such sums received during the previous year exceeds Rs.50,000/-, the whole of the aggregate value of such sum shall be included in the total income of such individual or Hindu undivided family under the head “Income from other sources”.

(v) However, certain sums of money received have been exempted i.e. 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 section 10(20) i.e. Panchayat, Municipality, Cantonment Board or 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

(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.

(vi) For the purposes of the new clause (vi), the term relative has been defined in the Explanation thereto to mean the -

(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 descendent of the individual;

(vi) any lineal ascendant or descendent of the spouse of the individual;

(vii) spouse of the person referred to in clauses (ii) to (vi).

(12) Deduction not to be denied to the donor-assessee on subsequent withdrawal of approval of the donee- association, university etc. [Section 80GGA]

(i) Section 80GGA has been amended by inserting an Explanation each after clause (aa) in respect of the entities covered in clause (a) and clause (aa), clause (b) and clause (bb) of sub-section (2).

| Clause | Entity covered | Purpose |
|---|---|---|
| (a) | University, college or other institution | Scientific research |
| (aa) | University, college or other institution | Social science and statistical research |

| | | |
|---|---|---|
| (b) | Association or institution | Rural development, training of persons for implementing rural development programme. |
| (bb) | Public sector company or a local authority or an association or institution approved by the National Committee. | Carrying out eligible project or scheme referred to in section 35AC. |

(ii) These Explanations clarify that the deduction to which an assessee is entitled in respect of any sum paid to a scientific research association, university, college or other institution or to an association or institution for carrying out the programme of rural development, or 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, respectively, shall not be denied merely on the ground that subsequent to the payment of such sum by the assessee the approval granted or, as the case may be, the notification has been withdrawn.

(Effective from A.Y.2006-07)

(13) Specified universities, colleges and other institutions compulsorily required to file their return of income [Section 139(4C) & (4D)]

(i) Clause (e) of section 139(4C) makes it mandatory for every –

(a) fund or institution referred to in section 10(23C)(iv) or

(b) trust or institution referred to in section 10(23C)(v) or

(c) any university or other educational institution referred to in section 10(23C)(vi) or

(d) any hospital or other medical institution referred to in section 10(23C)(via)

to file a return of income for the previous year, if the total income in respect of which such entities are assessable, without giving effect to the provisions of section 10, exceeds the basic exemption limit. Such return of income should be in the prescribed form and verified in the prescribed manner and should contain such other particulars as may be prescribed. All the provisions of the Income-tax Act shall, to the extent relevant, apply as if it were a return required to be furnished under section 139(1).

(ii) The scope of the aforementioned provisions of clause (e) of section 139(4C) has been expanded to require any university or other educational institution referred to in section 10(23C)(iiiad) and any hospital or other institution referred to in section 10(23C)(iiiae) to furnish their return of income for the previous year, if the total income in respect of which such entities are assessable, without giving effect to the provisions of section 10, exceeds the basic exemption limit.

(iii) Sub-section (4D) has been inserted in section 139 to require every university, college or other institution referred to in clause (ii) and clause (iii) of section 35(1), which is not required to furnish its return of income or loss under any other provision of section 139, to furnish its return in respect of its income or loss in every previous year. All the provisions of the Income-tax Act, 1961 shall apply to such return as if it were a return under section 139(1).

(Effective from A.Y.2006-07)

(14) Assessing Officer empowered to send a proposal to the Central Government recommending withdrawal of approval of scientific research association, university, college or other institution approved under section 35(1)(ii) and (iii) [Section 143]

(i) The guidelines, the manner and the conditions in accordance with which an application made by a scientific research association, university, college or other institution shall be approved under clause (ii) or clause (iii) of sub-section (1) of section 35 have been provided by the Taxation Laws (Amendment) Act, 2006. Also, the amendment provides for grant of one time approval, which means the approval is to remain in force unless it is withdrawn.

(ii) Therefore, the Assessing Officer is now required to satisfy himself as to the activities of the university, college or other institution referred to in clause (ii) or clause (iii) of section 35(1).

(iii) If the activities are not being carried out in accordance with all or any of the conditions subject to which any of the said entities had been approved, the Assessing Officer may, after giving a reasonable opportunity of showing cause to the concerned entity, send a proposal to the Central Government recommending withdrawal of approval.

(iv) The Central Government may, by order, withdraw the approval and forward a copy of the order to the concerned university, college or other institution and to the Assessing Officer.

(Effective from A.Y.2006-07)

(15) Assessing Officer empowered to rectify assessment order to allow deduction under sections 10A, 10B and 10BA in respect of convertible foreign exchange subsequently received or brought into India [Section 155]

(i) Under section 155(13), the Assessing Officer has power to rectify an assessment order to allow deduction under sections 80HHB, 80HHC, 80HHD, 80HHE, 80R, 80-O etc. (which was earlier denied on the ground that such income had not been received in convertible foreign exchange in India), when such income is subsequently received or brought into India with the approval of the competent authority.

(ii) Similar provisions are not available in respect of the provisions of sections 10A, 10B and 10BA, which also provide that foreign exchange may be brought into India within six months from the end of the financial year or within such time as may be extended by the competent authority.

(iii) Therefore, sub-section (11A) has been inserted in section 155 to provide that 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 -

(1) has not been received in convertible foreign exchange in India, or

(2) 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 approved authority 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.

(iv) The provisions of section 154 shall, to the extent relevant, apply thereto, and the period of four years for making such rectification shall be reckoned from the end of the previous year in which such income is so received in, or brought into, India.

(Effective from 13.7.2006)

## Amendments to the Central Sales Tax Act, 1956 by the Taxation Laws (Amendment) Act, 2007

The Taxation Laws (Amendment) Act, 2007 which has made several substantive changes in the Central Sales Tax Act, 1956, came into force on 1st April, 2007. Therefore, all the amendments are effective from that date. The rate of CST has been reduced from 4% to 3% with effect from 1.4.2007, in pursuance of the agreement for phasing out VAT entered into between the Central Government and the Empowered Committee of States for implementation of VAT. The following are the amendments made by the Taxation Laws (Amendment) Act, 2007 –

(1) No CST exemption in respect of subsequent sale to Government [New sub-section (2) of section 6]

(i) Section 6(2) exempts subsequent sale of goods (sold in the course of inter-state trade or commerce), to the Government or a registered dealer by transfer of documents of title to such goods during the same movement.

(ii) Now, sub-section (2) has been substituted to deny this benefit to the Government. Therefore, subsequent sale to Government will no longer be exempt from CST.

(iii) New sub-section (2) provides that where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods to a registered dealer, if the goods are of the description referred to in sub-section (3) of section 8, shall be exempt from tax.

(iv) However, no such subsequent sale shall be exempt from tax unless the dealer effecting the sale furnishes to the prescribed authority and within the prescribed time or within such further time as that authority may, for sufficient cause, permit,-

(a) a certificate duly filled and signed by the registered dealer from whom the goods were purchased containing the prescribed particulars in the prescribed form; and

(b) if the subsequent sale is made to a registered dealer, a declaration referred to in sub-section (4) of section 8:

(v) However, it shall not be necessary to furnish the declaration referred to in clause (b) of (iv) above in respect of a subsequent sale of goods if,-

(a) the sale or purchase of such goods is, under the sales tax law of the appropriate State, exempt from tax generally or is subject to tax generally at a rate which is lower than 3% or such reduced rate as may be notified by the Central Government under section 8(1) (whether called a tax or fee or by any other name); and

(b) the dealer effecting such subsequent sale proves to the satisfaction of the prescribed authority that such sale is of the nature referred to in this sub-section.

(vi) Since subsequent sale to Government is no longer exempt, the condition requiring furnishing of certificate referred to in section 8(4)(b) by the dealer effecting the sale has been removed. Therefore, section 10, imposing penalty for furnishing a false certificate or declaration, has also been accordingly amended to remove the reference to such "certificate".

(2) Concessional rate of tax not applicable on inter-State sale to Government [Section 8(1)]

(i) Presently, the applicable rate of CST in respect of sale of goods to the Government or registered dealer [in respect of goods specified in section 8(3)] is 4% or the State sales tax rate, whichever is lower.

(ii) The rate of CST has been reduced from 4% to 3% w.e.f. 1.4.2007. It is further proposed to be reduced by 1% every year and such reduction can be made by the Central Government by issue of a notification under the proviso to new section 8(1) of the Central Sales Tax, Act.

(iii) Henceforth, such concessional rate would not be available in respect of inter-State sale to Government. Sale to Government would be treated on par with sale to an unregistered dealer.

(iv) To give effect to the reduction in CST rate and denial of concessional rate in respect of sale to Government, section 8(1) has been substituted. New sub-section (1) provides that every dealer, who in the course of inter-State trade or commerce, sells to a registered dealer goods of the description referred to in sub-section (3), shall be liable to pay CST at 3% or the State sales tax rate, whichever is lower.

(v) Further, the Central Government may, by notification in the Official Gazette, reduce the rate of tax under this sub-section.

(vi) Consequential amendment has been made by substituting sub-section (4). Since sale to the Government would no longer attract concessional rate of tax, the requirement of furnishing a certificate in the prescribed form duly filled and signed by a duly authorized officer of the Government has been removed.

(vii) New sub-section (4) now provides that the concessional rate of tax under section 8(1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the prescribed authority a declaration duly filled and signed by the registered dealer to whom the goods are sold. The declaration should be in the prescribed form and should contain the prescribed particulars.

(viii) Further, the declaration should be furnished within the prescribed time or within such extended time as the prescribed authority may, for sufficient cause, permit.

(ix) Consequential amendments have been made in sub-section (5) which empowers the State Government to grant exemption from CST or to reduce the rate of CST by notification in the Official Gazette in the public interest. Hereafter, the State Government cannot grant such exemption or concession in rate of tax in respect of sale to Government. Further, the State Government is not empowered to reduce the rate of tax specified in new sub-section (2).

(x) Consequential amendments have also been made in -

(a) section 7 dealing with registration of dealers;

(b) section 9 dealing with levy and collection of tax and penalties; and

(c) section 10A dealing with imposition of penalty in lieu of prosecution.

In these sections, reference to clause (a) of sub-section (4) of section 8 [which dealt with furnishing of declaration by a registered dealer to claim the concessional rate of tax specified in section 8(1)] has been substituted with sub-section (4) of section 8, since there are no clauses in new sub-section (4).

(3) The State sales-tax rate to be the rate of CST applicable in respect of sale of goods not falling under section 8(1) [New sub-section (2) of section 8]

(i) Presently, in respect of sale of goods, not falling under section 8(1), the applicable rates of CST are –

(a) in respect of declared goods, twice the State sales-tax rate;

(b) in respect of undeclared goods, 10% or the State sales-tax rate, whichever is higher.

(ii) The applicable rate of CST on sale of goods not covered under section 8(1) would now be the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State.

(iii) For this purpose, a dealer shall be deemed to be a dealer liable to pay tax under the sales-tax law of the appropriate State, even if he may not be so liable under that law.

(4) New rates of Central Sales Tax

In view of the amendments made in section 8, the new rates of CST effective from 1.4.2007 would be -

| Description of goods | Applicable rate of CST |
|---|---|
| Section 8(1) | |
| Goods specified in section 8(3) sold to Registered dealer. | 3% or the State sales tax rate, whichever is lower. |
| (Form C to be furnished by the dealer) | |
| Section 8(2) | |
| Sale of goods not falling under section 8(1) | The State sales tax rate |
| Section 8(5) | |
| Sale of goods/ classes of goods or sale by any dealer having place of business in the State or by any class of such dealers as may be specified in the notification provided the following conditions are fulfilled: | Nil rate or lower rate than specified in sub-section (1) of section 8<br>The applicable rate would be mentioned in the Notification. |
| 1. the sale is to a registered dealer | |
| 2. Form C has been furnished. | |

(5) Tobacco products excluded from the list of declared goods [Section 14]

(i) Section 14 declares certain goods to be "goods of special importance". Section 15 places restriction on imposition of sales tax by State Governments on the declared goods specified in section 14. One of the restrictions, inter-alia, is that the rate of sales tax on such goods cannot exceed 4%.

(ii) The Taxation Laws (Amendment) Act, 2007 has omitted clause (ix) of section 14. This clause was in respect or unmanufactured tobacco and tobacco refuse, cigars and cheroots of tobacco, cigarettes and cigarillos of tobacco and other manufactured tobacco.

(iii) Consequent to the omission of clause (ix), the State Governments can impose higher rates of sales tax/VAT on unmanufactured tobacco and tobacco products.

IMPORTANT NOTIFICATIONS / CIRCULARS ISSUED BETWEEN 1.5.06 and 30.4.07

I NOTIFICATIONS

(1) Notification No.270/2006 dated 19.9.2006 – Cost Inflation Index for F.Y.2006-07

The Central Government has, vide notification no.270/2006 dated 19.9.2006 specified the cost inflation index for the financial year 2006-07. The CII for F.Y. 2006-07 is 519.

| S. No. | Financial Year | Cost Inflation Index |
|---|---|---|
| 1. | 1981-82 | 100 |
| 2. | 1982-83 | 109 |
| 3. | 1983-84 | 116 |
| 4. | 1984-85 | 125 |
| 5. | 1985-86 | 133 |
| 6. | 1986-87 | 140 |
| 7. | 1987-88 | 150 |
| 8. | 1988-89 | 161 |
| 9. | 1989-90 | 172 |
| 10. | 1990-91 | 182 |
| 11. | 1991-92 | 199 |
| 12. | 1992-93 | 223 |
| 13. | 1993-94 | 244 |
| 14. | 1994-95 | 259 |
| 15. | 1995-96 | 281 |
| 16. | 1996-97 | 305 |
| 17. | 1997-98 | 331 |
| 18. | 1998-99 | 351 |
| 19. | 1999-2000 | 389 |
| 20. | 2000-01 | 406 |
| 21. | 2001-02 | 426 |
| 22. | 2002-03 | 447 |

| | | |
|---|---|---|
| 23. | 2003-04 | 463 |
| 24. | 2004-05 | 480 |
| 25. | 2005-06 | 497 |
| 26. | 2006-07 | 519 |

[Notification no.270/2006 dated 19.9.2006]

(2) Notification No.127/2006 dated 1.6.2006 – Notified plan for deduction in respect of annuity plan of LIC

| Notification No. | Date | In exercise of powers conferred by | Details |
|---|---|---|---|
| 127/2006 | 1.6.2006 | Section 80C(2)(xii) | Jeevan Akshay-III Plan of the LIC of India, as filed by the LIC with the IRDA, as the annuity plan of the LIC for the purposes of section 80C(2)(xii) |

(3) Notification Nos. 142 & 143/2006 dated 29.6.2006 – Notified Bonds for the purpose of exemption of capital gains under section 54EC

The Central Government has notified bonds of National Highways Authority of India (NHAI) and Rural Electrification Corporation Limited (RECL), to be issued during the financial year 2006-07, redeemable after three years, as "long-term specified asset" for the purpose of exemption under section 54EC i.e. capital gains would be exempt to the extent of investment in these notified bonds.

The CBDT has, vide Order F.No.142/09/2006-TPL, dated 30.6.2006, extended the limitation period of six months for making investment under section 54EC of capital gains arising from the transfer of a long-term capital asset to –

(i) 30.9.2006, in case of persons where the long-term capital asset was transferred between 29.9.2005 and 31.12.2005;

(ii) 31.12.2006, in case of persons where the long-term capital asset was transferred between 1.1.2006 and 30.6.2006.

(4) Notification No 380/2006, dated 22.12.2006 – Restriction of maximum investment to Rs.50 lakhs for the purpose of section 54EC

The Central Government has, vide this notification, notified the bonds for an amount of Rs.3,500 crores (redeemable after three years), to be issued by the Rural Electrification Corporation Limited (RECL) during the period between 26.12.2006 to 31.3.2007, as 'long-term specified asset' for the purposes of section 54EC subject to the following conditions, namely:-

(i) a person who has made an investment of an amount aggregating more than Rs.50 lakh in the bonds of NHAI or RECL notified as long-term specified asset by the Central Government in the Official Gazette for the purposes of section 54EC vide notifications dated 29.6.2006, shall not be allotted any bonds notified as long-term specified asset by this notification;

(ii) a person who is not covered by clause (i) above, shall not be allotted the bonds notified as long-term specified asset by this notification, for any amount which exceeds the amount of Rs.50 lakh as reduced by the aggregate of the investment, if any, made by him in the bonds of NHAI and RECL notified as long-term specified asset by the Central Government for the purposes of section 54EC of vide notifications dated 29.6.2006.

For example, if one Mr.X has been allotted bonds of NHAI or RECL (vide the above-referred notifications dated 29.6.2006), aggregating to say Rs.52 lakh, he shall not be allotted any further bonds by this notification. If one Mr.Y has been allotted bonds of NHAI or RECL(vide the above-referred notifications dated 29.6.2006) to the extent of say, Rs.30 lakhs, then the allotment of bonds of RECL vide this notification cannot exceed Rs.20 lakhs.

(5) Notification No.187/2006 dated 20.7.2006 – Conditions to be fulfilled by a public facility to be eligible to be notified as an infrastructure facility in accordance with the provisions of clause (d) of the Explanation to section 36(1)(viii)

Rule 6ABAA has been inserted in the Income-tax Rules, 1962 which specifies the conditions to be fulfilled by a public facility to be eligible to be notified as an infrastructure facility in accordance with the provisions of clause (d) of the Explanation to clause (viii) of sub-section (1) of section 36. The conditions specified therein are -

(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 or any other body established or constituted under any Central or State Act;

(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 similar in nature to an infrastructure facility referred to in the Explanation to section 80-IA(4)(i);

(c) it has started or starts operating and maintaining such infrastructure facility on or after 1st April, 1995.

(6) Notification No. 188/2006, dated 20.7.2006 – Notification of public facilities as infrastructure facility for the purpose of section 36(1)(viii)

The following public facilities have been notified by the CBDT as infrastructure facility for purposes of section 36(1)(viii)-

(1) Inland Container Depot and Container Freight Station notified under the Customs Act, 1962

(2) Mass Rapid Transit system

(3) Light Rail Transit system

(4) Expressways

(5) Intra-urban or semi-urban roads like ring roads or urban by-passes or flyovers

(6) Bus and truck terminals

(7) Subways

(8) Road dividers

(9) Bulk Handling Terminals which are developed or maintained or operated for development of rail system

(10) Multilevel Computerised Car Parking.

(7) Notification No. 267/2006 dated 14.9.2006 – Notification of approved investment under section 11(5)

A new clause (v) has been inserted in rule 17C of the Income-tax Rules, 1962 so as to include as an approved investment under section 11(5), investment by a recognized Stock Exchange, in the equity shares of a company promoted by it to acquire the membership rights of other stock exchanges, where at least 51% of the paid-up share capital is held by the Stock Exchange and the balance is held by its members. The amendment is made effective retrospectively from 26th November, 1999.

(8) Notification No.314/2006, dated 9.11.2006 – Rule 6DD to provide the 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 by account payee bank draft

Section 40A(3), provides for disallowance of 20% of the expenditure if payment in a sum exceeding Rs.20,000 is made, against such expenditure, otherwise than by a crossed cheque or crossed bank draft. The Taxation Laws (Amendment) Act, 2006 has amended section 40A(3) to require payments over Rs.20,000 to be made by an account payee cheque drawn on a bank or account payee bank draft.

Accordingly, the CBDT has amended Rule 6DD to replace the words “a crossed cheque” and “a crossed bank draft” with “an account payee cheque” and “ account payee bank draft” respectively in the heading and content. Therefore, Rule 6DD would henceforth provide the 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 by account payee bank draft.

Note – The Finance Act, 2007 has raised the disallowance to 100% of the expenditure, in respect of which payment in a sum exceeding Rs.20,000 is made, otherwise than by an account payee cheque or account payee bank draft.

(9) Notification No. 357/2006, dated 24.11.2006 - Restriction regarding effective period of approval for the purposes of section 10(23C)(vi) and (via) removed

The CBDT has, vide this notification, amended Rule 2CA, which provides the guidelines for approval under sub-clauses (vi) and (via) of section 10(23C). Sub-rule (3) of Rule 2CA, which restricts the effective period of approval of such university or other educational institution or hospital or other medical institution [covered under sub-clauses (vi)/(via)] by the CBDT or Chief Commissioner or Director General to a maximum of three assessment years, has now been amended to provide that such restrictions would apply only in respect of approvals granted before 1.12.2006.

(10) Notification No. 358/2006, dated 28.11.2006 – Tax Return Preparer Scheme, 2006

The CBDT has, in exercise of the powers conferred by section 139B(1) of the Income-tax Act, 1961, framed the Tax Return Preparer Scheme, 2006, which came into force from 1.12.2006.

As per this scheme, Tax Return Preparer means any individual who has been issued a Tax Return Preparer Certificate and a unique identification number by the Partner Organisation to carry on the profession of preparing the returns of income in accordance with the provisions of this Scheme. However, the following persons are not eligible to act as a Tax Return Preparer -

(i) any person referred to in clause (ii) or clause (iii) or clause (iv) of sub-section (2) of section 288, namely, any officer of a Scheduled Bank with which the assessee maintains a current account or has other regular dealings , any legal practitioner who is entitled to practice in any civil court in India and an accountant.

(ii) any person who is in employment and income from which is chargeable to income-tax under the head salaries

Educational qualification for Tax Return Preparers

Any individual who holds a graduation degree from a recognized Indian University in the fields of Business Administration or Management or Commerce or Economics or Law or Mathematics or Statistics shall be eligible to act as Tax Return Preparer.

(11) Notifications 369-374/2006 dated 15.12.2006 – Notification of Zero Coupon Bonds

Section 2(48) defining zero coupon bonds requires that such bonds should be notified by the Central Government. Accordingly, the Central Government has, vide Notifications 369-374 dated 15.12.2006, specified the following bonds to be issued on or before 31.3.2009 by HUDCO, SIDBI, NABARD and IDFC as zero coupon bonds –

(i) 10 year zero coupon bonds of HUDCO, SIDBI, NABARD and IDFC

(ii) 15 year zero coupon bonds of HUDCO.

(12) Notification No.1/2007 dated 4.1.2007 – Exemption of interest on tax free municipal bonds issued by Nagpur Municipal Corporation

Section 10(15)(vii) exempts interest on bonds issued by a local authority, if such bonds are specified by the Central Government by notification in the Official Gazette. Accordingly, the Central Government has, vide this notification, specified Tax Free Municipal Bonds issued by Nagpur Municipal Corporation during the F.Y.2006-07, interest from which would be exempt under section 10(15)(vii). However, such benefit would be admissible only if the holder of such bonds registers his or her name and the holding with the Nagpur Municipal Corporation.

(13) Notification No.2/2007 dated 11.1.2007 – Subscription to public deposit scheme of HUDCO to qualify for deduction under section 80C

Deduction under section 80C is available, inter-alia, in respect of any sum paid or deposited in the previous year by the assessee as subscription to any such deposit scheme of a public sector company which is engaged in providing long-term finance for construction or purchase of houses in India for residential purposes, as the Central Government may, by notification in the Official Gazette, specify in this behalf. This has been provided in clause (xvi)(a) of section 80C(2). Accordingly, the Central Government has, vide this notification, specified the Public Deposit Scheme of Housing and Urban Development Corporation Ltd., subscription to which would qualify for deduction under section 80C.

(14) Notification No. 61/2007, dated 28.2.2007 – Investment by way of acquiring equity shares of an incubatee by an incubator to qualify as an approved investment under section 11(5)

Section 11(5) of the Income-tax Act, 1961 specifies the permitted modes of investment by a charitable trust or institution for claiming exemption under section 11. Clause (xii) of section 11(5) specifies that investment can be made by any other mode as may be prescribed. Rule 17C of the Income-tax Rules specifies such other modes of investment. The CBDT has, through the Income-tax (Second Amendment) Rules, 2007, which came into force on 1.3.2007, inserted new clause (vi) in Rule 17C. Clause (vi) specifies another mode of investment, namely, investment by way of acquiring equity shares of an incubatee by an incubator. Incubatee shall mean such incubatee as may be notified by the Government of India in the Ministry of Science and Technology and 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.

(15) Notification No. 67/2007, dated 8.3.2007 – Exemption of interest on Tax Free Municipal Bonds issued by Ahmedabad Municipal Corporation

Sub-clause (vii) of section 10(15) exempts interest on bonds issued by a local authority, if such bonds are specified by the Central Government by notification in the Official Gazette. Accordingly, the Central Government has, vide this notification, specified Tax Free Municipal Bonds issued by Ahmedabad Municipal Corporation during the financial year 2006-07, interest from which would be exempt under section 10(15)(vii). However, this benefit shall be admissible only if the holder of such bonds registers his or her name and the holding with the said Corporation.

II CIRCULARS

(1) Circular No.7/2006 dated 17.7.2006 - Clarification regarding deduction of interest under section 43B in view of clarificatory amendments to section 43B through the Finance Act, 2006

Section 43B was amended by the Finance Act, 2006 inserting therein two clarificatory Explanations, namely, Explanation 3C and Explanation 3D. Both the Explanations clarify that any sum payable by the assessee as interest on any loan or borrowing or advance shall be allowed as deduction if such interest has been actually paid and any interest which has been converted into a loan or borrowing or advance but has not been actually paid shall not be allowed as deduction in the computation of income. The clarificatory explanations only reiterate the rationale that conversion of interest into a loan or borrowing or advance does not amount to actual payment.

The manner in which the converted interest will be allowed as deduction has been clarified in this circular. The unpaid interest, whenever actually paid to the bank or financial institution, will be in the nature of revenue expenditure deserving deduction in the computation of income. Therefore, irrespective of the nomenclature, the deduction will be allowed in the previous year in which the converted interest is actually paid.

(2) Circular No. 8/2006, dated 6.10.2006 - Clarification regarding the meaning of the expression "the produce of animal husbandry" used in sub-clause (ii) of clause (f) of rule 6DD of the Income-tax Rules, 1962

The CBDT had, vide Circular No. 4/2006, dated 29th March, 2006 on the above subject, clarified that the expression "the produce of animal husbandry" used under rule 6DD(f)(ii) would include livestock and meat and in a case where payment exceeding rupees twenty thousand is made to a producer of the products of animal husbandry (including livestock, meat, hides and skins) otherwise than by a crossed cheque drawn on a bank or by a crossed bank draft for the purchase of such produce, no disallowance would be attracted under section 40A(3) read with rule 6DD. It was further clarified that the above exception will not be available in respect of payment for the purchase of livestock, meat, hides and skins from a person who is not proved to be the producer of these goods and is only a trader, broker or any other middleman by whatever name called.

This circular (Circular No.8/2006) gives a clarification as to -

(i) who are the producers of livestock and meat and

(ii) the evidence required to be furnished in this regard by the persons making the payments.

The CBDT is of the view that any person, by whatever name called, who buys animals from the farmers, slaughters them and then sells the raw meat carcasses to the meat processing factories or to the traders/retail outlets would be considered as a producer of livestock and meat.

The benefit of rule 6DD of the Income-tax Rules, 1952 shall be available to the person referred to in the above para subject to furnishing of the following :

(i) A declaration from the person receiving the payment that he is a producer of meat;

(ii) A confirmation that the payment, otherwise than by an account payee cheque or account payee bank draft, was made on his insistence; and

(iii) A further confirmation from a veterinary doctor certifying that the person specified in the certificate is a producer of meat and that slaughtering was done under his supervision.

(3) Circular No.10/2006 dated 16.10.06 - Clarification regarding filing of return of income by the coffee growers being individuals covered by Rule 7B of the Income tax Rules, 1962

The CBDT, vide Circular No. 10/2003 dated 24th December, 2003, had provided that an individual deriving income from growing and curing of coffee, who is not covered by the first proviso to section 139(1), would not be required to file a return of his income if his income from growing and curing of coffee was Rs.2 lakhs or less. The Finance Act, 2005 has subsequently raised the exemption limit for individual taxpayers from Rs. 50,000 to Rs.1 lakh from the A.Y. 2006-07. The exemption limit in the case of an individual, being a woman resident in India and below the age of 65 years, has been increased to Rs.1,35,000. In the case of an individual, being a resident in India, who is of the age of 65 or more at any time during the previous year, the exemption limit has been raised to Rs.1,85,000. Therefore, the CBDT has reconsidered the matter of filing of return by the individual coffee growers in order to provide further relief to them and it is clarified that:

(i) An individual deriving income from growing and curing of coffee would not be required to file his return, if the aggregate of 25% of his income from growing and curing of coffee and income under all other sources liable to tax in accordance with the provisions of this Act, is equal to or less than the exemption limit (1st slab of the rates of income-tax) prescribed for individual tax payers in the First Schedule of the Finance Act of the relevant year.

(ii) An individual deriving income from growing, curing, roasting and grounding of coffee with or without mixing chicory or other flavouring ingredients, would not be required to file the return of income if the aggregate of 40% of his income from growing, curing, roasting and grounding of coffee with or without mixing chicory or other flavoring ingredients and income under all other sources liable to tax in accordance with the provisions of this Act, is equal to or less than the exemption limit (1st slab of rates of Income tax) prescribed in the First Schedule of the Finance Act of the relevant year.